

# **DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA: A SOCIO LEGAL STUDY**

A dissertation to be submitted in partial fulfillment of the  
requirement for the award of degree of Master of Laws

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by

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**Session : 2022-23**

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This is to certify that the dissertation titled, **"DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA: A SOCIO LEGAL STUDY"** is the work done by **Vaibhav Pandey** under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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# CHAPTER:1

## INTRODUCTION

### (I). Domestic Violence General

We live in 21st century's technology world where everything has become hi-tech in every home except the thoughts of man towards woman in the society. From ancient time to the present day man treats woman as an inferior person . He thinks that woman is a useable thing and it is her duty to be available every time for the fulfilment of his desires and for making his life easy and comfortable. It means women live a life of slaves whether they are educated or uneducated; working or housewife; married or unmarried they have to lead their life in one way or another according to the whim of the man. This unequal behaviour towards women is counted as domestic violence. Aggressive behaviour towards someone is a violence or crime in the society but when it is generated at home by a family member on the other family member then it is counted as domestic violence. Women and children are vulnerable members of a family and easy target of domestic violence.

We all consider that home is a safest place in the world, where every person lives securely and safely, with dignity and without any discrimination of male and female. Because we thought that unequal behaviour exists in the society not in our homes. It is a mistake to think that home is the safest place in the world, all type of violence against woman starts from home because inequality not roam in the society, actually it starts or take birth in our homes in the form of discrimination between girl and boy and then run on the roads of our society in the form of domination of men over women's life treating them as an object. According to the UN's report Dr.S.M. Jane Connor says:

“It is a popular misconception that the home is a place of safety, violence against women in the street does not occur, but the more likely place for it to happen is the home. The person most likely to perpetrate the assaults is the husband.”<sup>1</sup>

The family is considered to be as safest place for a woman to reside but Women are often in great danger in the place, where they should be safe. By contrast, the home is the least safe place for a woman. Thus domestic violence is a heinous crimes which curtails the human rights of a woman and demolishes the identity of a woman as a human being.

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<sup>1</sup> UN's report S M Jane Connor, Law Lecturer at London's School of Oriental and African Studies and author of UN Report.

## **(A) What is domestic violence?**

When one adult in a relationship misuses power to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. So, domestic violence includes infringement of her right to physical integrity, liberty, dignity and right to life. Woman is usually the primary target, violence is sometimes directed towards children, and sometimes towards family members and friends.<sup>2</sup>

### **(i).Definition of domestic violence in different countries and different persons point of view:**

Domestic violence against women is a human rights issue which effects world at large. According to the statistics provided by American Institute on Domestic Violence 85 to 95% of all domestic violence victims are women. The enormity of the problem is so huge that the president of the United states of America proclaimed October, 2001 as National Domestic Violence awareness month.<sup>3</sup>

### **(a).Kofi Annan, Secretary-General of the United Nations, declared in a 2006 report posted on the United Nations Development Fund for Women (UNIFEM) website that:**

“Violence against women and girls is a problem of pandemic proportions. At least one out of every three women around the world has been beaten, coerced into sex, or otherwise abused in her lifetime with the abuser usually someone known to her.”

It is difficult to define domestic violence because this type of violence not just include one or two things but it is denial of all and every human rights of women.

### **(b)According to the Merriam-Webster Dictionary definition of domestic violence is:**

“The inflicting of physical injury by one family or household member on another, also a repeated /habitual pattern of such Behaviour.”

### **(c) The United Nation Declaration on the Elimination of violence against women 1993 identified domestic violence against women as:**

“Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female

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<sup>2</sup> DOMESTIC VIOLENCE A FACT SHEET A SPECTRUM OF CHANGE by Ms. Pinky Anand advocate , Supreme Court of India. Seminar on Domestic Violence 15th December, 2007. Report and Recommendations.

<sup>3</sup> Srivartavas’s Commentaries on “PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005” With Allied Laws. Law Publishers (India ) Pvt. Ltd.

genital mutilation and other tradition practices harmful to women, non-spousal violence and violence related to exploitation.”

**(d) Istanbul convention, provides the following definition of violence against women.**

“Violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in or are likely to result in physical, sexual, psychological or economic harm or suffering to women ,including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life.”

**(e) The National centre for the victims of crime:**

“Domestic violence constitutes the willful intimidation, assault, battery, sexual assault or other abusive Behaviour perpetrated by one family member, household member, or intimate partner against another. In most state laws addressing domestic violence, the relationship is necessary for charge of domestic assault or abuse generally includes a spouse, persons currently residing together or those that have resided within the previous year, or persons who share a common child. In addition, as of 2007, a majority of states provide some level of statutory protection for victims of dating violence.”<sup>4</sup>

**(f) Definition of Domestic violence according to the section-3 of Protection of Women from Domestic Violence Act,2005 (India):-**

“Any act omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) Harms or injures or endangers the health, safety, life, limb or well-being whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse ; or
- (b) Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security ; or
- (c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mention in Cl. (a) or (b) ; or
- (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

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<sup>4</sup> [www.ncvc.org/ncvc/main.aspx?dbNAME=Document](http://www.ncvc.org/ncvc/main.aspx?dbNAME=Document) viewer & Document ID=32347#1



Explanation I.-For the purpose of this section,-

- (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health, or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force ;
- (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman ;
- (iii) “verbal and emotional abuse” includes-
  - (a) Insult, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child ; and
  - (b) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) “economic abuse” includes-
  - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related the shared household and maintenance ;
  - (b) disposal of household effects, any alienation of assets whether movable or immovable, valuable shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person ; and
  - (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II,--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

**(g) According to the United States Department of Justice office on Violence Against Women:**

The definition of domestic violence is a pattern of abusive Behaviour in any relationship that is used by one partner to gain or maintain control over another intimate partner. Many forms of abuse are including in the definition of domestic violence :

- Physical abuse can include hitting, biting, slapping, battering, shoving, punching, pulling hair, burning, cutting, pinching, etc (any type of violent behaviour inflicted on the victim). Physical abuse also include denying someone medical treatment and forcing drug/alcohol use on someone.
- Sexual abuse occurs when the abuser coerces or attempts to coerce the victim having sexual contact or sexual behaviour without the victims consent. This often takes the form of marital rape, attacking sexual body parts, physical violence that is followed by forcing sex, sexually demeaning the victim, or even telling sexual jokes at the victims expense.
- Emotional abuse involves invalidating or deflating the victim sense of self worth and/or self esteem. Emotional abuse often takes the form of constant criticism, name calling, injuring the victim relationship with his/her children, or interfering with victim abilities.
- Economic abuse takes place when the abuser makes or tries to make the victim financially reliant. Economic abusers often seek to maintain total control over financial resources, withhold the victims access to funds, or prohibit the victim from going to school or work.
- Psychological abuse involves the abuser invoking fear through intimidation; threatening to physical hurt to himself/herself, the victim, children, the victims family or friends, or the pets; destruction of property; injuring the pets; isolating the victim from loved ones; and prohibiting the victim from going to school or work.
- Threats to hit, injure, or use a weapon are a form of psychological abuse.

- Stalking can include following the victim, spying, watching, harassing, showing up at the victim's home or work, sending gifts, collecting information, making phone calls, leaving written messages, or appearing at a person's home or workplace. These acts individually are typically legal, but any of these behaviours done continuously results in stalking crime.
- Cyberstalking refers to online action or repeated emailing that inflicts substantial emotional distress in the recipient.<sup>5</sup>

**(h) The law of Bulgaria states about domestic violence in the Law on Protection Against Domestic Violence (2005) of Bulgaria (Chapter 1,S.2)**

“Domestic violence is any act of physical, mental or sexual violence, and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or have had family or kinship ties or cohabit or dwell in the same home.”

**(i) The law of Brazil defines domestic abuse as :-**

“Any action or omission based on gender that causes the woman's death, injury, physical, sexual or psychological suffering and moral or patrimonial damage.”It includes detail descriptions of the proscribed behaviours:

Article7: The forms of domestic and family violence against women, are, among others:

I – physical violence, understood as any behaviour that offends the woman's bodily integrity or health;

II.– psychological violence, understood as any behaviour that causes emotional damage and reduction of self-esteem or that harms and disturbs full development or that aims at degrading or controlling the woman's actions, behaviours, beliefs and decisions, by means of threat, embarrassment, humiliation, manipulation, isolation and limitation of the right to come and go or any another means that causes damage to the woman's psychological health and self-determination;

III.– sexual violence, understood as any behaviour that forces the woman to witness, maintain or participate in unwanted sexual intercourse, by means of intimidation, threat, coercion or the use of force; that includes the woman to commercialise or to use, in any way, her sexuality, that prevents her from using any contraceptive method or that forces her to marriage,

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<sup>5</sup> family.findlaw.com>...>Family Law > Domestic Violence

pregnancy, abortion or prostitution, by means of coercion, blackmail, bribe or manipulation;  
or that limits or annuls the exercise of her sexual and reproductive rights;

IV – patrimonial violence, understood as any behaviour that constitutes retention, subtraction, partial or total destruction of the woman's objects, working instruments, personal documents, property, assets and economic rights or resources, including those intended to satisfy her needs;

V – moral violence, understood as any behaviour that constitutes slander, defamation or insult.

**(j) The World Health Organization (WHO) defines intimate partner violence as:**

“Any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in relationship”<sup>6</sup>

**CONCLUSION :** Hence “Domestic Violence” is a physical, psychological and sexual violence which is inflicted by one person on another person who lives in domestic relationship. It is a type of discriminatory behaviour towards females which surely violates her human rights, by any act of physical, emotional and sexual injury or damages and prohibited or restricted her to enjoy her human rights; her equal opportunities of education, right of proper nourishment, right to pursue her career or take decisions for her life, to enjoy right on her body, to be economically strong and well sufficient, equal property rights, etc. All these are social barriers which give power to a man over women.

**(B) Situation of women from ancient to till now:**

Domestic violence against women is not a modern world concept they are suffering a lot from ages. If we start with ancient laws to recent laws we saw a ‘fight for right’ journey of women how she is coming out from the veil of unidentified person who always suppressed by the society. There are divergent thoughts relating to the condition of woman in different eras. Let's travel over step by step.

**(i) . Ancient period:-**

**(a). Manusmriti laws:**

Manusmriti is a significant ancient legal text which consists of 2690 verses. Its laws are the first one which described role of different castes, position of man and women in the society and

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<sup>6</sup> WHO: World Report on Violence and Health (2002)

moral and ethical ways to live life. Situation of women in prehistoric period is well defined in some famous *verses* of Manusmriti.

***"Yatra naryastu pujiyante ramante tatra devta***

***Yatra itaastu na pujiyante sarvaastatrafalaah kriyaah"***<sup>7</sup>

This verses means where women are honoured , divinity blossoms there, and where women are dishonoured, all action no matter how noble remain unfruitful. It means in ancient times in India women were respected so much but the real situation of women in old period is well described by the other shaloka and statements given in our holy books and by our lords and deities in those books:

***"Pita rakshati balye , Bhatra rakshanti youvane,***

***Putru rakshanti Vardhayake,Na shtree svathantraajmarhati....."***<sup>8</sup>

It means in childhood a female must be subject to her father , in youth to her husband ,when her lord is dead to her sons , a woman must never be independent. According to the laws of Manu a woman in any role at any stage of life have not any right on her own body; thoughts and belief. She must have to live life on the line of rules made by male member of the society

#### **Some other verses of Manusmriti's :**

‘It is the nature of women to seduce men in this world; for that reason, the wise are never unguarded in the company of females. Women, true to their class character, are capable of leading astray men in this world, not only a fool, but even a learned and wise man. Both become slaves of desire’.<sup>9</sup>

‘One should not marry women who has have reddish hair, redundant parts of the body [such as six fingers], one who is often sick, one without hair or having excessive hair and one who has red eyes’.<sup>10</sup>

‘One should not marry women whose names are similar to constellations, trees, rivers, those from a low caste, mountains, birds, snakes, slaves or those whose names inspires terror. Wise men should not marry women, who do not have a brother and whose parents are not socially well known’.<sup>11</sup>

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<sup>7</sup> Manusmriti.

<sup>8</sup> Manu Smriti, Ch. IX, Verse 3 (K. Hargovinda Shastri, Ed. 1965).

<sup>9</sup> 2/13 ‘Manusmriti’.

<sup>10</sup> 3/8 ‘Manusmriti’.

<sup>11</sup> 3/9 ‘Manusmriti’.

‘Wise men should marry only women who are free from bodily defects, with beautiful names, grace/gait like an elephant, moderate hair on the head and body, soft limbs and small teeth’.<sup>12</sup>

‘Food offered and served to Brahmin after Shradh ritual should not be seen by a chandal, a pig, a cock, a dog, and a menstruating women’.<sup>13</sup>

‘One should not accept meals from a woman who has extra marital relations; nor from a family exclusively dominated/managed by women or a family whose ten days of impurity because of death have not passed’.<sup>14</sup>

‘Men may be lacking virtue, be sexual perverts, immoral and devoid of any good qualities, and yet women must constantly worship and serve their husbands’.<sup>15</sup>

‘Women have no divine right to perform any religious ritual, nor make vows or observe a fast. Her only duty is to obey and please her husband and she will for that reason alone be exalted in heaven’.<sup>16</sup>

‘Any woman violating duty and code of conduct towards her husband is disgraced and becomes a patient of leprosy. After death, she enters womb of Jackal’.<sup>17</sup>

‘In case a women, proud of the greatness of her excellence or her relatives, violates her duty towards her husband, the King shall arrange to have her thrown before dogs at a public place’.<sup>18</sup>

‘Consuming liquor, association with wicked persons, separation from her husband, rambling around, sleeping for unreasonable hours and dwelling are six demerits of women.<sup>19</sup> Such women are not loyal and have extra marital relations with men without consideration for their age.<sup>20</sup> Because of their passion for men, immutable temper and natural heartlessness, they are not loyal to their husbands’.<sup>21</sup>

‘Vedic mantras are not to be recited by women, because they lack in strength and knowledge of Vedic texts. Women are impure and represent falsehood’.<sup>22</sup>

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<sup>12</sup> 3/11 ‘Manusmriti’

<sup>13</sup> 3/240 ‘Manusmriti’

<sup>14</sup> 4/217 ‘Manusmriti’

<sup>15</sup> 5/157 ‘Manusmriti’

<sup>16</sup> 5/158 ‘Manusmriti’

<sup>17</sup> 5/167 ‘Manusmriti’

<sup>18</sup> 8/370 ‘Manusmriti’

<sup>19</sup> 9/13 ‘Manusmriti’

<sup>20</sup> 9/14 ‘Manusmriti’

<sup>21</sup> 9/15 ‘Manusmriti’

<sup>22</sup> 9/18 ‘Manusmriti’

‘It is the duty of all husbands to exert total control over their wives. Even physically weak husbands must strive to control their wives’.<sup>23</sup>

Above verses of Manusmriti only and only shows that women were taken as an inferior one and they were under the control of male persons of the family and society. Their duties were to spend whole life for the welfare or comfort of their husbands if they did not do this they had to face repercussions of their actions. Some verses indicated that women’s appearances were also considered as a criteria which decided how they would be treated in the society like if she had red eyes; reddish hair redundant parts of body she would not be good to marry with. All in whole is that women had not an equal position according to the Manusmriti’s laws.

**(b) Sriman Bhagavad Gita also did not place women equal to man in the society:**

Krishna says: “.....those who take shelter in me, though they be of lower birth..... women, vaisyas (merchant) as well as shudras can approach the supreme destination.”<sup>24</sup>

This is clearly expressed in Gita in a number of chapters women are thought to be untrustworthy and stupid, easily corrupted (1:40) and a hinderance to men on the path to liberation (16:11-12).

One of among our sacred books Sriman Bhagwat Gita describes women as a lower birth. The meaning of lower birth if we explore here is clearly Indicates that if in gender lower to male and if in caste lower to higher castes like rajputs and pandits. In numbers of chapters why women were signified as untrustworthy; stupid and hinderer it means even in Sriman Bhagwat Geeta men are the superior then women.

**(c). Ramayana:**

**Tulsidas ji wrote in Ramayana :-**

***“Dhol , gawar , shudra , pashu , nari , ye sab tadan ke adhikari”***

Literal meaning of this line is dumbs, illiterate, of lower caste, animals and female deserve a beating to straighten up and get the acts together.<sup>25</sup>

Tulsidas ji who had written ‘The Ramayana’ a book which illustrates the best ways how to be a good person and how to lead a meaningful life, put women on the position equal to animal and said that they deserve a beating to straighten up and get the acts together. It conveyed that women were treated as a subservient.

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<sup>23</sup> 9/16 ‘Manusmriti’

<sup>24</sup> Bhagwad Gita: 9:32

<sup>25</sup> Manjula Batra , “Status of Women in Society”.

What we thought when we read these words in our sacred books it is sure that that time women were put on second pedestal and seen as a disrespectful member of our society.

**(d) 'The Mahabharata' :-**

In several chapters of Mahabharata there is discussion about rights and duties of women specially in chapter 11 Goddess Luxmi declared, that she lives in those women who are truthful, sincere, modest, organised, devoted to their husband and children, health conscious, patient and kind to guests.<sup>26</sup> The goddess asserts she does not reside in woman who is sinful, unclean, always disagreeing with her husband, has no patience or fortitude, is lazy, quarrelsome with her neighbours and relatives.<sup>27</sup>

Above wordings of Goddess Luxmi shows that there was a line described which women had to follow to be wealthy and the hidden idea was that women had to followed the rules and regulation which lead her towards the path of to be a server or devote to her husband and children. In this way women's thoughts were manipulated and inculcated them that they were on earth to follow the orders of male members and to serve their family members. It means women were footed lower to the male members of the society.

If we think about all together it contemplated that in ancient time the situation of women were not justify human rights means, they had not had right even on her own body all decisions relating to them were taken by male members or by society which was dominated by males. So, it indicates that domestic violence against women was prevailed and happens on the name of spiritual duties.

**(ii). Medieval period:-**

Medieval period was women's darkest age period because at that time the situation of women became worst they were treated as a subservient. Some said that it was because that time India was invaded by Muslims and they brought with them the mindset in which women were treated like a thing or an inferior one and present on the earth just to obey their husbands orders. But only this is not the whole truth our own greatest pioneer of economics and political science "Chanakya" who is ponder as a great teacher, thinker and diplomat some of his quotations describes that women were stupid; untrustworthy; speak falsehood etc, lets take a look:-

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<sup>26</sup> Anushasana Parva The Mahabharata, Translated by Kisari Mohan Ganguli, Chapter XI, pages 41-43

<sup>27</sup> Anushasana Parva The Mahabharata, Translated by Kisari Mohan Ganguli, Chapter XI, pages 41-43



- (a). “One should not place trust in rivers, animals with horns, armed ones, women or in ruling families.”**
- (b). “Women are fickle minded.”**
- (c). “Only women could speak falsehood.”**
- (d). “Untruthfulness, rashness, guile, stupidity, avarice, uncleanness and cruelty are women's seven natural flaws.”**
- (e). “Fire, water, women, fool, snake and the royal family, beware of all these, they can prove fatal.”**
- (f). “Courtesy should be learned from princes, the art of conversation from pundits, lying from gamblers and deceitful ways from women.”**
- (g). “Women have hunger two fold, shyness four fold, daring six fold and lust eight fold compared to men.”**
- (h). “A woman who keeps fast without permission of her husband shortens the life of her husband. She goes to hell and is punished with great horrors of hell.”**
- (i). “For good days one should save money, women should be protected even if it takes the money saved. But for self preservation the money and the women should be sacrificed.”**
- (j) “good woman is the one who is pious, expert in household chores, true and faithful to her husband and who never speaks lie to him”.<sup>28</sup>**

Above quotations comprehensibly demonstrate that in medieval period our own societal norms make women's situation vulnerable. Women were treated like a commodity which was used for the welfare of the males. They were not just inferior to man but according to the quotations they were considered as a curse on the earth. One of the above quotations describes seven natural flaws of women which are: untrustworthy; guile; rashness; avarice; stupidity; uncleanness; and cruelty. Good woman's definition also stated above which shows that they had their life only to please their husbands and even she had not have religious rights. In this period some other evils were also seen on the screen like sati system; child marriage; restriction on the education of girls etc . If we see definition of domestic violence given in the 'Prevention of women from domestic violence Act 2005' all these things are included in domestic violence. So, it is Crystal clear that women were victims of domestic violence even in medieval period too.

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<sup>28</sup> 10 Outrageous statements made by Acharya Chanakya demeaning women's character  
Dailybhaskar.com | Last Modified - Apr 13, 2015, 12:01 AM IST

### **(iii). Modern period:-**

If we see the list of different Acts which came into force till now for the protection and welfare of women in India, we are able to understand the situation of women in the modern world. After that we would explain the reason why these acts made or what role they play to eradicate the differences of discrimination between male and female and how these acts help woman in grabbing her human rights to lead a respectful life with her own identity.

#### **(a) Constitutional provisions for women in India are:**

We live in a democratic nation in which government has a duty to protect human rights of every citizen and treat them equally before the law without discriminating on the basis of sex; religion; place of birth etc . Democratic government stands on four pillars these are liberty, equality, fraternity and justice wherein most important is 'equality'. Our Indian constitution guarantees the equality of rights of men and women. It is apparent that Indian constitution from the very beginning made provisions for the human rights of men and women together. That is why women's human rights have been provided in the Part three of the Indian Constitution that is Fundamental Rights and Part four that is Directive Principles of State Policy.

Main provisions of Fundamental Rights can be described as under:

1. Article 14: The article states 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.' It means article 14 guarantees to every person male or female, the right to equality before the law or the equal protection of the laws.<sup>29</sup>
2. Article 15: 'State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them.'<sup>30</sup>
3. Article 15(3): This article labelled as a positive discrimination because only 'equality before law, does not play a vital role to equalise the position of women in the man based society this is the reason to put 15(3) in the constitution to provide some special privileges to

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<sup>29</sup> Article 14 of the Constitution of India provides for equality before the law & equal protection within the territory of India and prohibits discrimination on grounds of religion, race, caste, sex or place of birth, or any of them.

<sup>30</sup> Article 15(1) in The Constitution Of India 1949

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

women to make them equal to men. The article states ‘nothing in this article shall prevent the State from making any special provisions for women and children.’<sup>31</sup>

4. Article 16: This article bestowed the way to Indian women to enter in the world of government jobs because it provides equality of opportunities for men and women in matters of public employment.<sup>32</sup>

5. Article 21 (A): For a developed nation it is must that the people of the nation are educated and education is the only tool which eradicate the malice of discrimination against women in India this is the reason of putting article 21 (A) in the Indian Constitution. Article 21(a) states ‘State shall provide free and compulsory education to children between 6-14 years of age.’ this article is equally applicable to male and female children of India.

6. Article 23: Through this Article a ban has been imposed under Fundamental Rights against exploitation on immoral human traffic. Human traffic includes traffic in women and children for immoral or other purposes.

7. Article 32: The backbone of all Fundamental Rights is article 32 of Indian Constitution which itself is a Fundamental Right, actually helps in the implementation of all Fundamental Rights through guaranteeing remedial methods to achieve the goals of Part three of Indian Constitution.

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<sup>31</sup> Article 15 in The Constitution Of India 1949 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth(3) Nothing in this article shall prevent the State from making any special provision for women and children

<sup>32</sup> Article 16 in The Constitution Of India 1949

#### 16. Equality of opportunity in matters of public employment

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

As like Fundamental Rights which are essential for the human being, Directive Principles are the fundamentals of good governance. Some other provisions which are directly or indirectly related to women in Part four of the Indian Constitution are:

1. 'Equal pay for equal work': It is the duty of state to implement for both men and women the principle 'Equal pay for equal work'.<sup>33</sup> It is necessary for the state to make policy to provide all the citizens of India men and women equally right to an adequate means of livelihood.<sup>34</sup>

2. Article 41: the state Shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

3. Article 42: State shall make provision for securing just and humane condition of work and for maternity relief

4. State shall provide all citizens economic, social and cultural rights.

Fundamental Duties are also provided for the protection of women in our Indian Constitution: 42nd Amendment Act, 1976 of the Indian Constitution inserted Part IV-A article 51A(e) in the Constitution which confers duty over citizens of India to renounce practices derogatory to the dignity of women.

Thus Indian Constitution provided several provisions for the protection of women through which women become able to enjoy the right of equality and dignified life.

#### **(b) Indian Penal Code, 1860:**

Some of the important section which helps us in visualising the authoritative behaviour of man over woman. When the Act passed some sections like 497 and 498 provided in it which enshrined how a man protect his wife from other man but actually these sections only shows that the woman is the property of man. If, any outsider Indulge with his wife the man has authority to prosecute the outsider.

**Section 497 of the Act which covers 'adultery' (is stuck down by Supreme Court) v/s Section 498 of the Act.**

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<sup>33</sup> Article 39(d) of the Indian Constitution

<sup>34</sup> Article 39(a) of the Indian Constitution

**‘Adultery’** the word has been derived from the latin term *‘adulterium’* which means consensual sexual relationship between a married woman and a man without the consent and connivance of woman’s husband .

Section 497 of Indian Penal Code —‘Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.’One of the basic ingredient of the offences of adultery is that is must be committed with the consent of connivance of the husband.<sup>35</sup>

Some question arises before the Supreme Court while challenging the constitutional validity of this section on the ground that the section makes an irrational classification between men and women that this section-

1. Gives only to the husband right to prosecute the adulterer not to the wife to prosecute the woman with whom her husband has the extramarital affair or committed adultery;
2. Even this section does not provide a wife right to prosecute the husband who has committed adultery with another woman; and
3. This section does not include the cases where husband has sexual relations with unmarried woman.<sup>36</sup>

Three things depicted from the section first is only the husband had the right to prosecute means husband was the aggrieved person. Second is wife had not right to prosecute her adulterer husband. Third is this section does not include the cases where husband has sexual relations with unmarried or a prostitute woman , or with a widow, or even with a married woman whose husband consents to it or with his connivance.

When the law was written 158 years ago women were treated as oppressed class who needed protection but the truth is that till the date before the judgment of the **“Joseph shine v union of India”**<sup>37</sup>woman treated as a property of her husband. in this case it is declared that

“(i) Section 497 is struck down as unconstitutional being violative of Articles 14, 15 and 21 of the Constitution.

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<sup>35</sup> Sita Devi v. Gopal AIR 1928 Pat 375.

<sup>36</sup> Soumithri Vishnu v Union of India AIR1985SC1618

<sup>37</sup> Joseph Shine v Union of India writ petition (criminal ) no 194 of 2017

(ii) Section 198(2) of the Cr.P.C. which contains the procedure for prosecution under Chapter XX of the I.P.C. shall be unconstitutional only to the extent that it is applicable to the offence of Adultery under Section 497."

(iii) The decisions in Sowmithri Vishnu (supra), V.Rewathi (supra) and W. Kalyani (supra) hereby stand overruled.<sup>38</sup>

In this case para 1,2 and 3 shows why this section, how this section is discriminatory:

"1.Dipak Misra, CJI (For himself and A.M. Khanwilkar, J.) The beauty of the Indian

Constitution is that it includes 'I', 'you' and 'we'. Such a magnificent, compassionate and monumental document embodies emphatic inclusiveness which has been further nurtured by judicial sensitivity when it has developed the concept of golden triangle of fundamental rights. If we have to apply the parameters of a fundamental right, it is an expression of judicial sensibility which further enhances the beauty of the Constitution as conceived of. In such a situation, Signature Not Verified Digitally signed by CHETAN KUMAR Date: 27.09.18 the essentiality of the rights of women gets the real requisite 14:10:12 IST Reason:

space in the living room of individual dignity rather than the space in an annexe to the main building. That is the manifestation of concerned sensitivity. Individual dignity has a sanctified realm in a civilised society. The civility of a civilisation earns warmth and respect when it respects more the individuality of a woman. The said concept gets a further accent when a woman is treated with the real spirit of equality with a man. Any system treating a woman with indignity, inequity and inequality or discrimination invites the wrath of the Constitution. Any provision that might have, few decades back, got the stamp of serene approval may have to meet its epitaph with the efflux of time and growing constitutional precepts and progressive perception. A woman cannot be asked to think as a man or as how the society desires. Such a thought is abominable, for it slaughters her core identity. And, it is time to say that a husband is not the master. Equality is the governing parameter. All historical perceptions should evaporate and their obituaries be written. It is advisable to remember what John Stuart Mill had observed:-

—The legal subordination of one sex to another – is wrong in itself, and now one of the chief hindrances to human improvement; and that it ought to be replaced by a system of perfect equality, admitting no power and privilege on the one side, nor disability on the other.<sup>11</sup> We are commencing with the aforesaid prefatory note as we are adverting to the constitutional validity

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<sup>38</sup> Joseph Shine v Union of India writ petition (criminal ) no 194 of 2017 New Delhi September 27, 2018

of [Section 497](#) of the Indian Penal Code (IPC) and [Section 198](#) of the Code of Criminal Procedure (CrPC).

2. At this juncture, it is necessary to state that though there is necessity of certainty of law, yet with the societal changes and more so, when the rights are expanded by the Court in respect of certain aspects having regard to the reflective perception of the organic and living Constitution, it is not apposite to have an inflexible stand on the foundation that the concept of certainty of law should be allowed to prevail and govern. The progression in law and the perceptual shift compels the present to have a penetrating look to the past.

3. When we say so, we may not be understood that precedents are not to be treated as such and that in the excuse of perceptual shift, the binding nature of precedent should not be allowed to retain its status or allowed to be diluted. When a constitutional court faces such a challenge, namely, to be detained by a precedent or to grow out of the same because of the normative *On the Subjection of Women*, Chapter 1 (John Stuart Mill, 1869) changes that have occurred in the other arenas of law and the obtaining precedent does not cohesively fit into the same, the concept of cohesive adjustment has to be in accord with the growing legal interpretation and the analysis has to be different, more so, where the emerging concept recognises a particular right to be planted in the compartment of a fundamental right, such as article 14 and 21 of the Indian Constitution. In such a backdrop, when the constitutionality of a provision is assailed, the Court is compelled to have a keen scrutiny of the provision in the context of developed and progressive interpretation. A constitutional court cannot remain entrenched in a precedent, for the controversy relates to the lives of human beings who transcendently grow. It can be announced with certitude that transformative constitutionalism asserts itself every moment and asserts itself to have its space. It is abhorrent to any kind of regressive approach. The whole thing can be viewed from another perspective. What might be acceptable at one point of time may melt into total insignificance at another point of time. However, it is worthy to note that the change perceived should not be in a sphere of fancy or individual fascination, but should be founded on the solid bedrock of change that the society has perceived, the spheres in which the legislature has responded and the rights that have been accentuated by the constitutional courts. To explicate, despite conferring many a right on women within the parameters of progressive jurisprudence and expansive constitutional vision, the Court cannot conceive of women still being treated as a property of men, and secondly, where the delicate relationship between a

husband and wife does not remain so, it is seemingly implausible to allow a criminal offence to enter and make a third party culpable.”<sup>39</sup>.

### **Section 498 of the act:**

498. Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### ***“Alamgir v State”*<sup>40</sup>**

In this case court said that Section 498 intended to protect the rights of the husband and not those of the wife. The essence of the offence is the deprivation of the husband, or his custody and proper control over his wife, with the object of the accused having illicit sexual intercoms with her. Consent of the wife is not relevant.

### **The objet of the section :**

Is to protect the right of the husband, it is no defence to plead the willingness on the part of the wife to stay away from the husband or lack of direct evidence enticement or illicit intercourse.<sup>41</sup>

### **Effect of taking wife with consent or without consent of the husband:**

In this section taking wife without consent is crime but taking with the consent of the husband or of the person who has the care of her is not “taking” under this section means no crime.<sup>42</sup>

### **Section 498 is the extended part of section 497 of the Act :**

Again through this section the authority of the husband declared over the wife. Once more the section makes wife a property of her husband. If husband gives consent to move his wife than it is acceptable but if wife wants to move with another one without the consent of the husband than it is considered as a crime. Consent of wife does not matter.<sup>43</sup>

### **My opinion on the two sections 497 and 498 of Indian Penal Code:**

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<sup>39</sup> Joseph Shine v Union of India writ petition (criminal ) no 194 of 2017 New Delhi September 27, 2018

<sup>40</sup> AIR 1959 SC 436: 1959 Cr LJ 52.

<sup>41</sup> Adikan Samal v. Madhabananda, 1973 Cr LJ 1735 (Ori); see also Ram Narain, 1982 Cr LJ NOC 179 (ALL); nARAYAN dAS, 1984 Cr LJ NOC 101 (Cal).

<sup>42</sup> Abdul Rahaman, (1935) 39 Bom LR 295.

<sup>43</sup> Alamgir v State AIR 1959 SC 436: 1959 Cr LJ 52



Both the sections were available for the protection of husband's right over his wife and not used for the benefit or protection of a wife. Unfortunately these section directly or indirectly playing a vital role to victimise a married woman or shown the physical control of husband on her. It is not less to say these section humiliate a wife and infringe her Human Rights. So in my views it is domestic violence against women. If Supreme Court curtails section 497 from the Indian Penal Code by saying that it is discriminatory then they have to take into consideration section 498 also because this one also discriminatory.

### **Section 498A of Indian Penal Code:**

[498A Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation—For the purpose of this section, “cruelty” means—

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

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

### **The object of Section 498A**

Is to eradicate the evil of cruelty to the married woman by her husband or in-laws. To make this section purposeful or to give realty to it sec. 113A has been introduced in the Evidence Act raising a presumption against husband or other relatives of the husband.<sup>44</sup>

This section came into force in 1983 to get rid of the malice of cruelty and harassment for dowry to the married woman by her husband or his relatives.

### **304B of Indian Penal Code:**

[304B Dowry death—

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

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<sup>44</sup> Krishan Lal v Union of India 1994 Cr LJ 3472(P&H) (FB).

death”, and such husband or relative shall be deemed to have caused her death. Explanation— For the purpose of this sub-section, “Dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

This offence under the section was a new offence created with effect from November 19, 1986. The section provides for a more stringent offence than sec.498A. It is a substantive provision and not merely a provision effecting a change in procedure for trial of a pre-existing substantive offence. The contention that section 304B contains merely a rule of evidence is untenable. The rule of evidence to prove the offence of dowry death is contained in section 113B of the Indian Evidence Act. Section 304B has no retrospective operation.<sup>45</sup>

**(c) The Indian Evidence Act, 1872:**

1. **Section 113A:** According to this section if a suicide committed by a woman within a period of seven years from the date of her marriage the court may presume that such suicide has been abetted or that she was subjected to cruelty by her husband or any of the relatives of her husband. The burden of proof to displace the presumption is on placed on the husband or his relatives.<sup>46</sup>

2. **Section 113B:** According to this section, if it is shown that prior to the death of any woman, she had been subjected by her husband or his relatives to cruelty or harassment for or in connection with the dowry demand, the court shall raise a presumption that the woman’s husband or his relatives caused the dowry death.

Normally most of the dowry deaths take place behind the four walls of the house and there will not be any evidence to these heinous crimes. The culprits of these dowry deaths easily escape from punishment for lack of evidence to resolve this problem these special provisions have been included in the Evidence Act enabling the court to draw an adverse presumption against the accused that he caused the dowry death.

**(d) Some other Legal provisions for protection of women from domestic violence in India are:**

1. The Christian Marriage Act, 1872 (15 of 1872)

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<sup>45</sup> Soni Devrajibhai v State AIR 1991 SC 2173; (1991)4 SCC 298.

<sup>46</sup> Section 113A of The Indian Evidence Act, 1872.

2. The Indian Succession Act, 1925 (39 of 1925)
3. The Child Marriage Restraint Act, 1929
4. The Child Marriage Restraint Act, 1929 (19 of 1929):'*Child Marriage Restraint Act 1929* passed on 28 September 1929 in the British India Legislature of India, fixed the age of marriage for girls at 14 years and boys at 18 years which was later amended to 18 for girls and 21 for boys.
5. The Muslim Personal Law (Shariat) Application Act, 1937
6. The Employees' State Insurance Act, 1948
7. The Factories Act, 1948
8. Minimum Wages Act, 1948
9. The Special Marriage Act, 1954
10. The Hindu Marriage Act, 1955 (28 of 1955)
11. The Hindu Succession Act, 1956
12. The Hindu Adoptions & Maintenance Act, 1956
13. The Hindu Minority & Guardianship Act, 1956
14. The Immoral Traffic (Prevention) Act, 1956
15. The Dowry Prohibition Act, 1961 (28 of 1961 )
16. The Foreign Marriage Act, 1969 (33 of 1969)
17. The Indian Divorce Act, 1969 (4 of 1969)
18. The Medical Termination of Pregnancy Act, 1971 (34 of 1971)
19. Code of Criminal Procedure, 1973
20. The Bonded Labour System (Abolition) Act, 1976
21. The Family Courts Act, 1984
22. The Indecent Representation of Women (Prohibition) Act, 1986
23. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
24. The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989
25. The National Commission for Women Act, 1990
26. The Pre-Natal Diagnostic Technique (regulation and misuse) Act, 1994
27. The Juvenile Justice (Care & Protection of Children) Act, 2000
28. The protection of women from Domestic Violence Act, 2005

29. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

30. Criminal Law (Amendment) Act, 2013

31. Gender Sensitisation and Sexual Harassment of Women at work place & the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013.<sup>47</sup>

Crimes against women have more than doubled over the past ten years, according to latest data released by the National Crime Records Bureau (NCRB). As many as 2.24 million crimes against women were reported over the past decade: 26 crimes against women are reported every hour, or one complaint every two minutes, reveals an India Spend analysis based on the last decade's data. Cruelty by husbands and relatives under section 498-A of Indian Penal Code (IPC) is the major crime committed against women across the country, with 909,713 cases reported over the last 10 years, or 10 every hour.<sup>48</sup>

## **CONCLUSION:**

The above data which is collected by different agencies clearly indicates that despite these series of stringent laws the situation of women till now or say in modern world is not become so satisfactory or good enough. It shows till now women are needed protection of laws to enjoy their human rights equal to men and it must be noted that without these deterrent legal provisions the position of women is totally same as in ancient time. Because only those women who know their rights or take shelter of these acts can able to take equal rights to men otherwise in one form or another every women suffers domestic violence in the four walls of their safest heaven means house. It is not wrong to say that this problem is effected every community whether a woman related to rich or poor, educated or uneducated, housewife or working is victim of domestic violence.

## **(C)Co-relation between Socio-Economic strata and Domestic violence:**

Domestic violence against women is a human rights issue which effect world at large. According to the statistics provided by American Institute on Domestic Violence 85 to 95% of

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<sup>47</sup> Published in the Gazette of India, Pt. I, Sec. 1, dated 21st September, 2013, p. 543-550, no.

<sup>48</sup> [indiaspend.com](http://indiaspend.com), crime against women reported every two minutes/India spend journalism India/ Data journalism India.

all domestic violence victims are women. It is not only effect physically but psychologically ; socially and economically deter the development of a human being. One of the leading causes of domestic violence against woman is her husband's socio-economic status. Various researchers as Hoffman 1994, Smith ,1990, founded that a man with a small job ; low income and educationally not qualified perpetrate more violence against woman as compare to the other one who has high status and economically well settled but the facts lay out that it engulfs the whole world without discriminating or thinking his or her status in the society. To give worth to my words I am describing domestic violence in three categories with data:

**(i). Educated v/s Uneducated**

It's anallegory that illiterate women can suffer more domestic violence as compared to literate. Literacy does not change the rational thinking of society and mindset of men towards women. As we all know India has a patriarchal based society here we see an educated woman as a good housewife and mother her carrier and dreams are the secondary things.

If we talk about datas the situation of highest literate state of India i.e. Kerala Recent research carried out by organisation and individual researchers suggest that routine violence against women is high in Kerala where women are so highly literate. The International-C-enter for research on women (ICRW) study found that Thiruvananthapuram had a very high prevalence of domestic violence. Violence in Thiruvananthapuram is about 64% in urban non-slum areas and 71% in rural areas, this is higher than Lucknow i.e 60%,Bhopal (25%),Nagpur (59%). Another study on gender-based violence in Kerala, undertaken by Sakhi in 2004 for the Kerala government's department of health, revealed that 40% of respondents had experienced violence in the home at some point in their life. Another study conducted in Kerala found that 45%of woman had at least one incident of physical violence in their lifetime. More psychological and physical violence was reported by woman who had less social support (Rajmohan and MKC Nair 2003).<sup>49</sup>

**(ii). Working v/s Housewife**

The International Labor Organization in 2013 ranked India eleventh from the bottom in the world in female labor-force participation. Usually , economic growth in lower-middle-income countries creates more jobs for women. But as India's economy grew at an average of 7 percent

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<sup>49</sup> International Journal of Scientific and Research Publications, Volume 3, Issue 9, September 2013 ISSN 2250-3153 (High Literacy and Mounting Violence : A Case of Women in Kerala, India by Nithya N.R )

between 2004 and 2011 , its female labor force participation fell by seven percentage points , to 24 percent from 31 percent. Despite rapidly increasing educational attainment for girls and declining fertility. why this is happening, some reasons quoted in a article “Why aren’t India’s Women Working ?” in ‘The New York Times’ Aug. 23, 2015 according to their analysis of data from India’s latest labour survey shows that over a third of women engaged primarily in housework say they would like a job, with that number rising to close to half among the most educated women in rural India. Much of the reason they don’t work appears to lie the persistence of India’s traditional gender norms, which seek to ensure “purity” of women by protecting them from men other than their husband and restrict mobility outside their homes.<sup>50</sup>

**(iii). Rich ;Middle and Poor class :-**

Domestic violence against women is not only in financial low community where every day is a big fight for bread but domestic violence as a actual silent crime is in middle or rich classes because in these classes women suffer it for the fake honour of their families either for parental or in-laws side. In poor community its easy to break the silence but in upper class its very difficult for a woman to walk out from this type of relation or raise voice against this type of intimate relation violence. There are so many examples where even celebrities are victim like veteran actress Rati Agnihotri had been suffering the violence for a long time when she filed domestic violence complaint against her husband shocked the B-town. But her case is not the only one there are so many unrevealed stories which came out like:-complaint filed by Shweta Tiwari against Raja Chaudhary ;Dimpy Ganguly against Rahul Mahajan; Yukta Mookhey (former miss universe) against Prince Tuli; Rhea Pillai against Leander Paes ; Zeenat Aman against Sanjay Khan and Mazhar Khan.<sup>51</sup>It is an endless list. Above mentioned cases make clear that the women related to creamy layer of our society are not untouched from domestic violence.

Above statistics shows that in any kind of situation whether with or without education; belonging to rich or poor class; working or nonworking, since from the ages till now women are victims of domestic violence.

**(D) Significance of the topic:**

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<sup>50</sup> <https://www.nytimes.com/2015/08/24/opinion/why-arent-indias.....> .

<sup>51</sup> India TV News Desk ( updated 17 March 2015, 5:37 pm)

We are doing big err of by saying that only married women has been a victim of domestic violence, whereas the truth comes out behind the veil is that any female member of the family may become victim of domestic violence and the meaning of abuser is also not restricted to male members only, females are also considered as an abuser it depends upon circumstances. It comes out from various surveys that victims have no definite age; time period; class and caste and religion but, at any stage of life whether rich or poor or belonging to upper caste or lower caste or profess Hindu religion, Muslim religion, Sikh , Parsi or Jews religion, literate or illiterate can be sufferer of domestic violence. Domestic violence is a psychological phenomenon to control or dominate someone to fulfil or satisfy their interest or ego. It is not necessary that the abuser has violent behaviour all around society, he may be nice with his neighbours; his colleagues or in relations but behind the walls of his house his behaviour is violent and intolerable, not in every moment but sometimes when he finds that the person with whom he is related does not walk or talk according to him.

Crimes against women have more than doubled over the past ten years, according to latest data released by the National Crime Records Bureau (NCRB).As many as 2.24 million crimes against women were reported over the past decade: 26 crimes against women are reported every hour, or one complaint every two minutes, reveals an **IndiaSpend** analysis based on the last decade's data.

The study highlights the causes of domestic violence and types of abuse. It describes the laws and rights which comes out to protect women from this unendurable silent crime in India and discuss the factors which aid and abet to curb this wicked from the life of women; families and societies of India. This study elaborates the judicial trends and empirical survey which opened the window of the actual happening behind the doors.

This introductory chapter gives a view of the whole drama as like a movie trailer which assist leaders to navigate the whole text. This study is undertaken with a firm belief that domestic violence against women in India is still a big issue even after providing or protecting women with a thick wall of laws and a mammoth type of act called “ The Protection of Women from Domestic Violence Act, 2005.” Through this thesis I would try to point out the shortcomings of this Act ,its non implementation and consequent inability to curtail domestic violence in India.

## **RESEARCH METHODOLOGY**

This study is descriptive, interpretative analytical and empirical in nature. The doctrinal researches have been undertaken simultaneously. Further appraisal has been done of various laws, agencies, N.C.W. and N.H.R.C., Conventions and judicial pronouncements, regarding the topic..

In order to make the study in its proper socio legal prospective, the research study has been divided into eight chapters. The work on the subject cannot proceed without making a study of the concept of domestic violence and system of Dowry along with its relevant incidents, which leads to cruelty against women and emerging problems, this with the general introduction has been discussed as under:

**Chapter-I:** It is introductory in nature regarding domestic violence in the matrimonial home which leads to inflicting cruelty towards the women. It gives broad idea about research

work,.methodology and chapterisation of the study attempted to be done.

**Chapter-II:** deals with “Causes, kinds and impacts of Domestic ,violence against women in India” .. The concept of domestic violence, and its causes and implications has been discussed threadbare.

**Chapter-III:** deals with “Ambit of protection of women against domestic violence in India before the “Protection of Women from Domestic Violence Act,2005”..

**Chapter-IV:** deals with the provisions of “Domestic Violence Act,2005” threadbare in detail.

**Chapter-V:** deals with “The Advantages and Disadvantages of Domestic Violence Act,2005” In the recent past it has come to light that the provisions of Act have been misused with the aim of satisfying personal ego and for ulterior motives. In this Chapter a detailed discussion of the uses and abuses of the provisions of relevant law has been made.

**Chapter-VI:** deals with “Recent Judicial Trends In India ” The interpretation of domestic violence from orthodox interpretation to modern interpretation with a need of the hours with leading and latest case law of various High Courts and Apex Court of India has been discussed fully.



**Chapter-VII:** deals with “ Domestic Violence against Women: A Socio-Legal Survey.” An empirical study has been made in various strata of the society in which a Questionnaire was circulated and views of the women were obtained for preparing analytical data.

**Chapter-VIII:** The last Chapter deals with Conclusions and Suggestions.

## **CHAPTER:2**

### **CAUSES, KINDS AND IMPACTS**

#### **OF DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA**

“This humanity is male and man defines woman not in herself, but as relative to him; she is not regarded as an autonomous being.....she is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed the essential. He is the subject, he is the Absolute—she is the other.”

*Simone de Beauvoir*

A recent study by the India's Ministry of National Crime Record Bureau concluded that a woman is molested every 26 minutes and raped in every 34 minutes in India. The report further showed that a woman is kidnapped every 43 minutes in India.<sup>1</sup>-In India 70% of women are victims of domestic violence.<sup>2</sup>

### **I. Causes of Domestic Violence**

There is not a single string which accumulate whole factors or reason or causes of domestic violence. It is an endless process which is started with the birth of a female and end with her death. All those things which are necessary for a normal human being to live his or her life fully and if these are denied, are the factors forwarding the act towards domestic violence, like discrimination to access to the daily needs such as nutritious food and clothing and not giving her equal status, equal opportunity of education, equal property rights, equal freedom to pursue her career, live with dignity so on. In India the main causes behind unequal treatment of woman in home is the patriarchal structure of our society, customs which runs all aspects of life and traditions which decide different status of women in different situations like daughters are well treated then daughter-in-law, daughter-in-law has more duties then mother-in-law to take care of household chores, daughter-in-laws are treated less as compared to mother-in-law and sister-in-law that is why she (daughter-in-law) is dominated by the both in a same house having same gender.

#### **(A). Cultural Causes :-**

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<sup>1</sup> women empowerment in India >> Violence Against Women in India.The Naked TRUTH: Violence Against Women in India.

<sup>2</sup> ^a b Chowdhury, Renuka (26 October 2006).

The foremost reason of domestic violence against women is the culture of Indian society which put male on the dominant position and see female as a weaker section of the society. In India, certain customs like “Rakshabandhan” where the sister ties a rakhi (a band) on to the arms of her brother seeking protection and marriages where the concept of “Kanyadaan” (donating the daughter) still stands, women are in general brought up to believe that their security resides in obedience to the men in the family. Culture defines the role of man and women as the traditional patriarchal societies of modern India believes that Indian girls should confine themselves to the customs and traditions of their families. They consider girls as their reputation and freedom given to them either directly or indirectly refers that their reputation has been degraded or taken away. Society has the ubiquitous view that women is subject and subordinate to men and there is no need to provide them education and they have to go to their husband’s home sooner or later. This traditional view is all pervasive and one of the most responsible causes for degradation in the condition of women. As rightly said by Gandhi ji: “Women have been gifted by God but their marvellous power has been lying dormant. If they realise their power they can dazzle the world.”<sup>3</sup>

**The reasons of cultural causes of domestic violence are:**

**(i) Gender socialisation :**

Gender socialisation refers to the learning of behaviour and attitudes considered appropriate for a given sex. Boys learn to be boys and girls learn to be girls. Gender socialisation starts from the every single home of India or all over the world like when parents have a new baby, the first question they typically ask is whether they have a girl or a boy. Children’s gender assignment becomes a powerful social identity that shapes children’s lives. During early childhood, girls and boys spend much of their time in the home with their families and look towards parents and older siblings for guidance. Parents provide children with their first lessons about gender. Possible ways that parents might influence children’s gender development include role modelling and encouraging different behaviours and activities in sons and daughters.<sup>4</sup> This type of modelling and encouragement is the conduit design which inculcate authoritative behaviour in

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<sup>3</sup> Respect Women, FEMINISM REDEFINED, Orthodox Principles of Indian Society, 2nd January 2015 by

RESPECT WOMEN

<sup>4</sup> Bussey K., Bandura A. Social cognitive theory of gender development and differentiation. *Psychological Review*. 1999;106:676-713.

boys and domestic helper behaviour in girls, creates boss and employee relationship between man and woman and that develop the unwanted or hidden violence against woman.

**(ii) Belief in the inherent superiority of males :**

Women have equal rights under the law to own property and receive equal inheritance rights, but in practice, women are at a disadvantage. This is evidenced in the fact that 70% of rural land is owned by men. Laws such as the Married Women Property Rights Act of 1974 protect women, but few seek legal redress.<sup>5</sup> Although the Hindu Succession Act of 2005 provides equal inheritance rights to ancestral and jointly owned property, the law is weakly enforced, especially in Northern India.<sup>6</sup>

These paragraphs are a piece of 'Shipra Deo's' article in which she illustrated very clearly the impact of culture and societal norms on the property rights of women in India through the Anju's story:

"On a hot afternoon, Anju, 16, eldest of six sisters, sat on a Chorpoy (a woven light bedstead) a few steps away from me in a room in her house. The door was closed to block the bright sunlight or, perhaps, to muffle the sounds of our conversation. We were talking about Anju's family and the land.

As tears rolled down, the room filled with her soft wails.

"They all did a panchayat [an assembly of village leaders] immediately after my father's death, and decided that my mother should adopt the younger son of my uncle, and will her share to the adopted son."

"My mother could not say a word. They all were elder and powerful men of the family and community. Despite being educated and aware about my rights, I could not resist this injustice." A sense of helplessness was obvious on her face. Anju tried to persuade her mother to raise a voice but her mother was silent, scared, unsure, unable to do anything. Her mother didn't think that she and her daughters in the family had the ability to manage 15 bigha (around 4 acres) of land. Without a man in the family, she thought, it would be difficult to marry off the daughters. It has been 107 years of **celebrating International Women's Day**, 67 years since the adoption of the Indian constitution guaranteeing equal rights to men and women, 37 years since the ratification of the **Convention on the Elimination of all forms of Discrimination Against**

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<sup>5</sup> a b c d e f g "Periodic Review: India report 2005" (PDF). United Nations. Retrieved 28 April 2014. ^

<sup>6</sup> "Governance in India: Women's Rights". Council on Foreign Relations (U.S). Retrieved 13 April 2014.

**Women** (CEDAW) and 12 years since the amendment to the Hindu Succession Act that gives daughters an equal right to inherit property. Despite these strides, the lives of women like Anju continue to be governed by the age-old practices and norms that only ensure that women live a life of inequality, discrimination, injustice and exclusion.”<sup>7</sup>

Though property rights of women in India are recently legalised but still they actually do not enjoy the fruits of their property rights. Women who approach for property rights are often criticised for being greedy and materialistic in nature. Status of women deteriorate in home as well as in the society. The society forces the daughters to relinquish their shares in Joint Hindu family coparcenary in favour of brothers as is prevalent in Northern India.

**(iii). Religion or identity of a woman is defined by the name or faith of a man:-**

In this connection, Indira Kulkshreshtha opines: “Generally, a woman’s identity is defined in terms of her relationship with man as a daughter, a wife, a sister and a mother; it means virtually a woman doesn’t have an identity of her own”. (Kulkshreshtha 1987). She is not allowed to enjoy the status and dignity of being individual who is equal to a man. She sees herself in the shadow of her husband, lives as her husband wants her to live, and behaves as her husband wants her to behave. She sheds her ‘I’ into her husband’s person. She gives up her name, self, virginity, almost everything in marriage. She becomes her *ardhangini*. She follows her husbands willingly and ungrudgingly. She accepts her husband as a sheltering tree. She feels proud in doing these things. Though, she suffers a lot on account of the male-ego and male-domination, she considers herself incomplete, almost nothing without her husband.<sup>8</sup>

A recent judgment of Supreme Court shows clearly that in today’s world in which we said women has equal rights as to men even though she has to fight for her religious identity in the courts. In the judgment the Supreme Court declares that : Wife’s religion does not merge with husband’s after marriage. “The Supreme Court disagreed with the Bombay high court’s ruling that a woman’s religion merges with her husband’s faith after marriage and requested the Valsad Zoroastrian Trust to reconsider its decision to bar a Parsi woman from entering the Tower of Silence to perform the last rites of her parents only because she married outside the community.

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<sup>7</sup> Property and land rights are key to women’s empowerment. Reforms ...

[www.thehindu.com/.../property-rights-are-key-to-womens-empowerment/article1869...](http://www.thehindu.com/.../property-rights-are-key-to-womens-empowerment/article1869...)

<sup>8</sup> IOSR J journal Of Humanities And Social Science (IOSR-JHSS) Volume 21, Issue 9 , Ver. 8 (sep. 2016) PP 21-25 e-ISSN: 2279-0845. [www.iosrjournals.org](http://www.iosrjournals.org) **Place of the Woman in Indian Society: Brief Review** by Tukaram S.Sawant.

A bench of Chief Justice Dipak Misra and Justices A K Sikri, A M Khanwilkar, D Y Chandrachud and Ashok Bhushan said it appeared to be manifestly arbitrary that a Parsi man marrying outside the community was not barred from the Tower of Silence but a woman was. Goolrokh M Gupta has been barred from entering the Tower of Silence by the Valsad trust. The bench said marriage could never be a ground to denude the civil rights of a woman. Appreciating the arguments of senior advocate Indira Jaising on behalf of Goolrokh M Gupta, who married a Hindu and has been barred from entering the Tower of Silence by the Valsad trust, the bench said, "Marriage does not mean a woman mortgages herself to her husband. Prima facie, we do not accept this merger principle (propounded by Bombay HC toupold restraining Goolrokh from performing the last rites of her parents).""There is no law which debars a woman from entering the Tower of Silence after marrying outside the community," it said. Incidentally, Goolrokh's advocate on record in the SC is her sister Shiraz Contractor Patodia. Their parents are both aged 84 years. Given Goolrokh's marriage outside the community and the restraint imposed on her entry into the Tower of Silence, she had moved the HC seeking permission to perform her parents' last rites when they died. But the HC ruled in favour of the trust, forcing her to bring the matter to the SC. The bench considered Jaising's reference to the Special Marriage Act and said, "[The] Special Marriage Act was enacted so that a man and woman professing different faiths can marry and retain their religious identity after marriage. There is no question of merger of woman's religion with that of her husband's. Only she on her own volition can give up her religion..."The SC told the Valsad trust to shun rigidity and understand the importance of the filial emotions of a child towards her parents."<sup>9</sup> But after this judgment the situation is static. There is no any change shown at the platform of the society because its not only a court fight in real but its a fight of women with herself believing that she has a separate identity to her husband because she is so habitual to live in the shadow of her husband. So, first of all the societal behaviour and her own behaviour towards women must change.

**(iv) ‘Devadasi’ system (sacred prostitution):**

This system shows the most pathetic situation of lower caste women in the society because in some states of India on the name of god they are offered for male members to fulfil their sexual desires or say indulge those females in the field of prostitution. Despite banning through many

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<sup>9</sup> Wife's religion does not merge with husband's after ... - Times of India  
<https://timesofindia.indiatimes.com › News › India News › Wife 7th December 2017>

laws this system still prevails in south Indian states mainly in Karnataka, Tamil Nadu , Andhra Pradesh, Maharashtra, Telangana, Assam & Odissa.<sup>10</sup> One man commission which was headed by Raghunath Rao, a former judge revealed through the report that two states that is Telangana and Andhra Pradesh together have about 80,000 Devadasi women which are still following the devadasi system. But actual number could be more than 80,000.<sup>11</sup> This is the unacceptable violence against female child. It is totally true if we say this system is the worst form of domestic violence because females parents himself pushed their minor female child before their puberty forcefully or on the sake of customs and traditions in the hellish life of prostitution which they called marriage to the god. Once started this procedure continued generation to generation on the name of custom. This type of customs are the main root cause of domestic violence against women in India which are not curtailed by laws or Acts.

**(v) Custom of marriage:**

Indian customs make us believe that girls are property of their husbands that is why they thought always about her marriage and try to solemnise as early as possible in order to remove burden from their heads. This is the big reason of child marriages in India. The other belief in our customs is that in every marriage the parents of boys get gifts from the side of girls family and this system gave birth to dowry in the marriages. Indian customs makes man free and bound females in fetters of family honour responsibilities. These responsibilities gave birth to honour killing in India.

**(vi) Child Marriage:**

According to the Indian law, child marriage means marriage where either boy is below age 21 and girl is below 18 but in some cases only girl age is below 18 and man is above 21 or more. In 2014, according to UNICEF, 46% of women in South Asia, 20-24 years old, reported being married before the age of 18, while 18% before 15 years and India, ranking second in the list.<sup>12</sup> Though the child marriage in India comes down but still in some states of India it is prevalent, these states are Bihar, West Bengal and Rajasthan. There is nearly 40% prevalence as reported

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<sup>10</sup> Devadasi - Holy Aryan Hindu Prostitution System in Indian ...  
[velivada.com/2018/02/08/devadasi-holy-aryan-hindu-prostitution..](http://velivada.com/2018/02/08/devadasi-holy-aryan-hindu-prostitution..)

<sup>11</sup> Devadasi system still exists in Telangana, AP, says report | India ...  
<https://timesofindia.indiatimes.com/india/Devadasi-system-still...>

<sup>12</sup> Child Marriage In India Is Still A Reality - Feminism In India  
<https://feminisminindia.com/2017/06/12/child-marriage-reality-india>

by Unicef.<sup>13</sup> According to the new report 'Factsheet Child Marriages 2019' released by Unicef in Tamil Nadu and Kerala child marriage prevalence was 20% and if some efforts were not accelerated, more than 150 million girls would be married off before their 18th birthday by 2030. Report also mentioned that Child Marriage in India has declined from 47% in 2005-2006 to 27% in 2015-2016.<sup>14</sup> Child marriages also a reason of domestic violence or say it itself is a domestic violence because it not only a barrier between the growth of females but cease her mental, physical, and economical development.

#### **(vii) Dowry System:**

The adornment; money and other gifts or electronic accessories that a girl carries with her at the time of marriage to her husband's house is dowry. This system leads dowry deaths. Despite of the Dowry Prohibition Act of 1961 prohibits the giving or taking of dowry in India, in 2016, the reported dowry death cases are more than 7,600.<sup>15</sup> A total of 24,771 dowry deaths have been reported in the country in past three years.<sup>16</sup> In a written reply in Lok Sabha, Women and Child Development Ministry Maneka Gandhi said that 8,233, 8,083, and 8,455 cases were registered under section 304B of the Indian Penal Code (Dowry Death) in the country in 2012, 2013 and 2014 respectively.<sup>17</sup> This system makes a girl child liability on the parents and put in their mind that if a girl child born in their house they have to pay a lot of money to the bridegroom or his family at the time of marriage so instead of her proper growth their concentration diverted to accumulation of money for her Marriage. This system works differently for boy as at the time of marriage the parents of boy get lots of money and gifts so his parents feel proud or gifted at the time of boy child birth. In this way from the birth a girl child because of dowry system suffers discrimination even in her own house.

#### **(viii) Putting great responsibility of family honour on females shoulder:**

In recent days we hear about honour killing. Honour killing means when a daughter do marriage against the customary rules and regulations, she and her husband is brutally killed by

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<sup>13</sup> Child marriages still prevalent in Bihar, Bengal, Rajasthan: UNICEF  
<https://www.msn.com/en-in/news/other/child-marriages-still..>

<sup>14</sup> Child marriages still prevalent in Bihar, Bengal, Rajasthan: UNICEF  
<https://www.msn.com/en-in/news/other/child-marriages-still..>

<sup>15</sup> India - reported dowry death cases 2016 | Statistic  
[www.statista.com](http://www.statista.com) > Society > Crime & Law Enforcement

<sup>16</sup> 24,771 dowry deaths reported in last 3 years: Govt | India News, ...  
<https://indianexpress.com/article/india/india-others/24771-dowry>.

<sup>17</sup> 24,771 dowry deaths reported in last 3 years: Govt | India News, ...  
<https://indianexpress.com/article/india/india-others/24771-dowry>.



girls family members. What a shame that if a boy do this then there is no adverse action is taken by their family members. It indicates that all the responsibility of honour of family is on the female. This honour killing put a fear in the mind of every female whether educated or not that if they do any thing against the wishes of their family they have to face bad results. This honour responsibility hinders the path of every women to enjoy their fundamental rights provided by our constitution to every single women of India. This great and fictitious responsibility which only take their right and not give her any type of benefits pressurise every women to bear honour killing type of heinous form of domestic violence silently. Some recent example of honour killing is ‘ Woman Shot Dead By Brother Allegedly Over Inter-Caste Affair In UP’.<sup>18</sup>‘Maharashtra Man Stabbed For Marrying Classmate Against Family's Wishes’.<sup>19</sup>‘Haryana Man Gets Death Penalty For Murder Of Sister In Honour Killing’<sup>20</sup>

**(ix) Patriarchal nature of society:**

Men is superior and women are made for to do services of them. Indian society is a patriarchal society, man dominate over women and treat them like a commodity for their comfort that is from the childhood of a female it is the main priority to teach each every task of household as after marriage she would do efficiently or properly all the works of house and bear responsibility of children and her in-laws and her husband properly. Women have no right to take decision even related to her, only man can take decisions related to family members and other activities like finances, political involvement like to whom his wife cast her vote at the time of election etc. Hence this dominance leads women towards inferior position in the society and become cause of domestic violence.

**(x) Notion of the family as private spare:**

‘Family disputes means private disputes, no one have right to interfere in them’ this is the thinking of our society. We inculcated in our daughters that they have no talk about their family in public whether they are ill treated in the family because all the responsibility of family prestige is in the hand of family females. This is the reason because of that married woman does not talk about violence she bear after marriage in her husband house by the hand of husband or his family members.

**(xi) Acceptability of violence as a means to resolve conflicts:**

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<sup>18</sup> India News | Press Trust of India | Monday February 25, 2019

<sup>19</sup> Cities | Press Trust of India | Thursday December 20, 2018

<sup>20</sup> India News | Press Trust of India | Wednesday December 5, 2018

In most of the domestic violence cases woman does not raise their voice because she thought that to be quite can automatically resolve conflicts between her and her husband or even with her in-laws that is why she continually accepting violence as a means to resolve conflict.

### **(B) Economic causes :-**

The main reason behind the vulnerable situation of women is their poor economic condition. Although most women in India work and contribute to the economy in one form or another, much of their work is not documented or accounted for in official statistics. Women plow fields and harvest crops while working on farms, women weave and make handicrafts while working in household industries, women sell food and gather wood while working in the informal sector. Additionally, women are traditionally responsible for the daily household chores (e.g., cooking, fetching water, and looking after children). Although the cultural restrictions women face are changing, women are still not as free as men to participate in the formal economy. In the past, cultural restrictions were the primary impediments to female employment now however; the shortage of jobs throughout the country contributes to low female employment as well.<sup>21</sup>

#### **(i) Women are economically dependent on men for their livelihood in India:-**

In India, abused wives are reluctant to speak out against their husbands and in-laws not only because of cultural reasons or religious beliefs but financial too. Women who have no earning capacity of their own had the extreme choice to stay with their assaultive husbands, fearing that once a case of battering or violence's taken to Court, the marriage will end either in divorce or legal separation. And if marriage is broken in any case either emotionally or legally, the wife will be the most sufferer because she will lose not only her husband's financial support but also his physical protection.<sup>22</sup>

#### **(ii) . Lack of formal ownership of material assets constraints credit access**

Many experts argue that although financial inclusion initiatives are targeted towards the general population (including women), most initiatives are introduced without comprehensive understanding about women's socio-economic conditions, intra-household bargaining position, and restrictions on mobility. For example, rural women are actively engaged in agriculture, yet,

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<sup>21</sup> Women Employment in India – Azad  
[india.azadindia.org/social-issues/Women-Employment.html](http://india.azadindia.org/social-issues/Women-Employment.html)

<sup>22</sup> Vide 1999 Cr.L.J. (Journal)pp.86-90

many of them face constraints when accessing agriculture credit because credit approval requires ownership of material assets (to serve as collateral). Traditionally, women's lack of access to land and other properties poses significant constraints on their access to agriculture services, including credit, that require formal ownership of land (Desai 2012). In a recent study conducted in rural areas of Central India, 3,220 women were interviewed, and it was found that women have limited rights to their family's material assets. Nearly all women (91%) reported that their names are not included on the land title. Likewise, names of women are also excluded from the house title for a majority of women (67%). Despite Government of India's initiatives to improve access to financial products and services in India, research indicates that women are largely financially excluded in comparison to men. The Global Financial Inclusion (Global Findex) Database suggests that only 26% of female adults in India have an account with a formal financial institution compared to 44% of male adults (World Bank 2014). A Reserve Bank of India (RBI) report indicates that women's credit outstanding from commercial banks accounts for only 5% of all credit outstanding (RBI 2013).<sup>23</sup>

**(iii). Limited access to employment in formal and informal sectors :-**

Fact is that as many as 94% of total women workers work in the informal sector in India but they have to face gender discrimination which is almost inexistent in formal sector. Besides, their contribution in terms of income generation turns out to be less than their male counterparts, which means almost half of the population contributes to less than half to the national income.<sup>24</sup> Low income women workers, especially in the informal sector form one of the most vulnerable groups in the Indian economy. The reasons for their vulnerability are-(a) irregular work, (b) low economic status, (c) little or no bargaining power, (d) lack of control over earnings, (e) need to balance paid work with care for children and homework, (f) little or no access to institutional credit, training and information, and (g) lack of assets. Unequal gender relations play a very important role in defining their insecurities. Given their vulnerable status at home and at work,

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<sup>23</sup> Women working in informal sector in India: a saga of lopsided ...

[ipedr.com/vol4/106-M00051.pdf](http://ipedr.com/vol4/106-M00051.pdf)

<sup>24</sup> Women working in informal sector in India: a saga of lopsided ...

[ipedr.com/vol4/106-M00051.pdf](http://ipedr.com/vol4/106-M00051.pdf)

income generation alone may not improve the socio-economic status of women attached to the informal sector.<sup>25</sup>

**(iv) Limited access to get education and training for women:-**

An estimated 52-75% of Indian women engaged in agriculture are illiterate, an education barrier that prevents women from participating in more skilled labor sectors. In all activities there is an average gender wage disparity, with women earning only 70 percent of men's wage. Additionally, many women participate in agricultural work as unpaid subsistence labor. The lack of employment mobility and education render the majority of women in India vulnerable, as dependents on the growth and stability of the agricultural market.<sup>26</sup>

In view of the above data, economic condition of women also make her situation vulnerable and dependent by virtue of this condition she has to suffer or become victim of domestic violence from the ages in India.

**(C). Legal Causes :-**

**(i) Lower legal status of women in India:**

Through Indian constitution and other laws of India there was a great appeal to equalise the legal and social status of women, like The Child Marriage Restraint Act ,1921; The Prevention of Prostitution Act, 1923; The Hindu Inheritance Act of 1929; In Constitution of India Article 14, 15 and 16 enumerate the Fundamental Rights of people and guarantee to all citizens 'equal protection of law and equality of opportunity in employment'. Having regard to these constitutional provisions the Government made a series of legislations to improve the social status of woman to some extent, it happened but only in law books. In general scenario the status of women is low as compared to man.

**(ii) Laws relating to marriage:-**

Its true that in Hindu law; Parsi law; Christian law polygamousmarriages are totally absent but in Muslim law and Jews law (which is not codified and governed according to the customary rituals ) the situation is completely different which define the legal status of women in the

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<sup>25</sup> Women Workers in Informal Sector in India: Understanding the ...  
[www.ijhssnet.com/journals/Vol\\_2\\_No\\_21\\_November\\_2012/23.pdf](http://www.ijhssnet.com/journals/Vol_2_No_21_November_2012/23.pdf)

<sup>26</sup> Satyavathi, C. Tara; Bharadwaj, Ch.; Brahmanand, P.S. (2010). "Role of Farm Women In Agriculture: Lessons Learned." SAGE Gender, Technology, and Development

society except this there are other given provisions which indirectly lower down the status of women as:-**In Hindu law:**

Marriageable age given in the Hindu marriage Act is for girls 18 years and for boys 21 years, it shows gender discrimination, this age difference which is defiantly a result of our traditional thought process which every time put women on lower footing than men, affects the whole life of a married women, because every time she feels that his husband is older then her and she has to obey his all orders . In Indian families we inculcate in our children that they have to obey their elders. This legally provided lower status and gave birth to master and servant thinking which leads to domestic violence against women. Because man thought that after marriage he got the right to take every decision for her because she is not as capable as he is to take decisions. Section 7 of the Hindu Marriage Act recognises the ceremonies and customs of marriage. Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party. Kanyadaan is a popular Hindu ritual in which the father gives away his maiden daughter in marriage to the groom. It is a highly valued Hindu marriage ritual. Kanyadaan literally means 'gifting a girl'. This signifies that the father gives away his daughter to the groom as a gift as part of his duty as a parent.<sup>27</sup>It is clear that Hindu law gives action to the society to see a female as a object that is why father gifted her daughter to the groom.

#### **In Muslim law:- Legal effects of a valid marriage**

As a result of a valid marriage, sexual intercourse between the couple becomes legal. The children born of the union are legitimate. As per the Muslim Marriage Law, the husband is bound to provide for the maintenance of the wife by way of food, clothing, lodging, and all such things as may be needed to support life so long as the wife is not a minor incapable of consummation, is faithful, lives with him and **obeys his reasonable orders.**<sup>28</sup> In muslim law also a woman is on the receiver or inferior position. She has to obey orders of her husband this is her legal duty but in comparison her husband is on higher position he has legal right to issue order to his wife.

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<sup>27</sup> <https://www.boldsky.com/yoga-spirituality/faith-mysticism/2014/significance-of-kanyadaan-hindu-marriage-rituals-039798.html>

<sup>28</sup> Muslim Marriage Law in India: Formalities, Polygamy ... - Vakilsearch

### **In Jews law:-**

The uncertainty which prevailed within the Jewish community long ago still exists because of lack of codified laws. The rules of marriage and divorce are set according to their customary ritual which in itself differs from one Jewish community to the other.

### **Mutual Duty of Husband and Wife towards Each Other**

In Jews, like all religion, there exists a mutual duty of husband and wife towards each other. The ceremonies spell out in detail the mutual rights, duties and obligation between the husband and wife towards each other.

The **husband's duty towards his wife** is primarily to maintain her according to his status in life.

- To provide her with food, clothing, and dwelling to establish conjugal cohabitations with her.
- To provide her suitable medical care and nursing when she is sick.
- To protect her and to ransom her in the eventuality of her abduction and captivity and to provide for her burial in case of her death.

Similarly, **the husband is entitled to the wife's earning**, to share her inheritance in property, donation, gifts except where it was given to her on the sole condition that it will be used by her only.

When the wife renounces her claim to be supported by her husband, she acquires control over her own earnings and it could be retained by her exclusively, free from husband's claim. In Jewish marriage, it is **the duty of the wife** to go where the husband is domiciled.

- The duty of a wife is to take care of the household.
- The wife will follow her husband to every place except she will not be obliged to follow him to a country where a different language is spoken.<sup>29</sup>

Above explanation shows that a wife under Jews law is low in status as compared to husband because he has authority to command her and her activity like where she wants to live and where she has to live etc.

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<sup>29</sup> Jewish Law of Marriage and Divorce in India - iPleaders Blog

By reason of lower legal status of women even in the marriage which we consider as a bond of two equal human being who always support each other all over life gives the way to the move of violating a woman's dignity and status and in this way creates domestic violence against women. **Some more reasons which favour to the lower status of women are like :-** child custody; maintenance and inheritance laws break the spine of a woman in India while she is fighting for her rights. As women are not much aware of the legal rights and some time ill-treated or not given much attention by police and judiciary, most of time judiciary try to solve these problems outside the court which result to weaken a woman and pressurise her to be victim of domestic violence in India.

**(iii) Low levels of legal literacy among women:**

As it is universally accepted that women are less educated than men and most of the women spent their whole life in the four walls of their houses, resultantly they have less access of gaining legal knowledge of their rights and duties in the society. Because of this they accept domestic violence and man dominance as natural and necessary for their life, they do not resist if they are discriminated or treated inferior to man. They think that they are property of man and man have all the rights over her.

**(iv) Insensitive treatment with women and girls by police and Judiciary:**

Most of the women hesitate to raise their voice only because of the behaviour of the police and judiciary towards them, when they complain against their husbands and their in-laws. In this patriarchal society those women who take initiative to go against domestic violence hurts the ego of every man **whether** he is a police person or related to judiciary, They have mentality that fault must be on the part of a woman or she has no guts to handle family life. because of that to satisfy their **male** ego they inform woman's husband about the complaint then as a result she faces beating or bad Behaviour **at the hands** of her husband and family members. That is why she hesitates to file complaint against domestic violence and suffers it silently.

**(D). Political Causes :**

**(i) Under representation of women in power and politics, Parliament and in policy decisions:-**

The term 'political participation' has a very wide meaning. It is not only related to 'Right to Vote', but simultaneously relates to participation in, decision making process, political activism,

political consciousness, etc. Women in India participate in voting, run for public offices and political parties at lower levels more than men. Political activism and voting are the strongest areas of women's political participation.<sup>30</sup> India ranks 20th from the bottom in terms of representation of women in Parliament.<sup>31</sup>

India has a federal form of government, with devolved powers. The electorate votes to elect a national parliament as well as state assemblies. In 2012, India had a minimal percentage of 10.9% women elected representatives in the national parliament,<sup>32</sup>

### **(ii) Challenges to women's participation**

The level and forms of women's participation in politics is largely shaped by cultural and societal barriers in the form of violence, discrimination and illiteracy. A significant barrier to women's capability of participating in politics to be the threat of violence.<sup>33</sup> Martha C. Nussbaum states that "In the larger society, violence and the threat of violence affects many women's ability to participate actively in many forms of social and political relationship, to speak in public, to be recognized as dignified beings whose worth is equal to that of others."<sup>34</sup> Self-confidence is likely to increase participation among Indian women, specifically in running for elections.

### **(iii) Limited participation of women in organised political system:-**

Milbrath and Goel observed that it is a tradition in almost all societies that politics is mainly an affair of men and that women should fall in line with them politically. The changes brought by modern industrial societies are eroding this sex difference but the impact of tradition is still visible. Men tend to be more psychologically involved in politics than women.<sup>35</sup>

Studies on sex differences in the political behaviour usually focus on differences in early childhood socialisation. Tedin, however, gave more importance to situational factors in sex related differences in political expressiveness than to socialisation or structural factor. Women are less politically expressive because the environment of the house wife or the menial sort of

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<sup>30</sup> PDownload Mp3political empowerment of women

<sup>31</sup> Government of India. "The Constitution of India". Ministry of Law and Justice. Retrieved 22 March 2014.

<sup>32</sup> United Nations Development Programme. "Gender Inequality Index". Human Development Indices: A statistical update 2012. Retrieved 22 March 2014.

<sup>33</sup> Nussbaum, Martha C. (July 2005). "Women's Bodies: Violence, Security, and Capabilities". *Journal of*

*Human Development*. **6** (2): 173–174. doi:10.1080/14649880500120509

<sup>34</sup> Nussbaum, Martha C. (July 2005). "Women's Bodies: Violence, Security, and Capabilities". *Journal of Human Development*. **6** (2): 173–174.

<sup>35</sup> Lester W. Milbrath, M.L. Goel, op.cit., p.48



employment available to most women does not encourage them to take part in politics or give stimulation to collect and discuss politically relevant information. Female situational factors, which lead to less political expressiveness become institutionalised and passed on to future generations through the socialisation process, which in turn makes it more difficult for women to overcome situational disadvantages.<sup>36</sup>

Marcia Lee believes that, lack of female participation in politics stems from three factors, namely, children at home, fear of sex discrimination and perceptions of women that certain things are not proper to do.”<sup>37</sup>

In an effort to increase women's participation in politics in India, a 1993 Constitutional amendment mandated that a randomly selected one third of leadership positions at every level of local government be reserved for women.<sup>38</sup>

### **Conclusion:**

Political rights, legal rights and economic rights and equality among men and women are declared by human rights as a basic rights of all human beings. But in India these rights are more or less not given to or available for women and the big hinder of the path is culture and tradition of our society. Directly or indirectly culture and tradition are the sole cause of victimisation of women in India. Whenever, we want to improvise the status and situation of women in India foremost we have to change the culture and tradition pattern of India only then we are successful to give equal rights to man and woman and then eradicate the evil of domestic violence against women from India.

## **II. Kinds of Domestic Abuse:-**

In India only the half of the population has human rights as freedom of speech, expression, belief, faith; freedom to live with dignity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”. Good health is also clearly determined by other basic human rights including access to safe drinking water and sanitation, nutritious foods, adequate housing, education and safe working conditions. The right to health also means that

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<sup>36</sup> Kent L. Tedin, David W. Brady and Arnold Vedlitz, "Sex Differences in Political Attitudes and E,ehaviour: The Case for Situational Factors", Journal of Politics, Vol.39 No.2, New York, 1977, pp. 448-56.

<sup>37</sup> Marcia Manning Lee, "Why Few Women Hold Public Office: Democracy and Sexual Roles", Political Science Quarterly, Vol.91., No.2, 1976, pp.297-3 14.

<sup>38</sup> J-PAL (April 2012). *Raising female leaders*. J-PAL Policy Briefcase.

everyone should be entitled to control their own health and body, including having access to sexual and reproductive information and services, free from violence and discrimination.<sup>39</sup> Domestic violence is abuse by one partner against another in an intimate relationship such as dating, marriage, cohabitation or a familial relationship. Domestic violence is also known as domestic abuse, spousal abuse, battering, family violence, dating abuse and intimate partner violence (IPV). Domestic violence can be physical, emotional, verbal, economic and sexual abuse. Domestic violence can be subtle, coercive or violent. In India, 70% of women are victims of domestic violence.<sup>40</sup> 38% of Indian men admit they have physically abused their partners.<sup>[3]</sup> The Indian government has taken measures to try to reduce domestic violence through legislation such as the Protection of Women from Domestic Violence Act 2005.<sup>41</sup> Every 9 minutes, a case of cruelty is committed by either of husband or a relative of the husband.<sup>42</sup> Cruelty by a husband or his relatives is the greatest occurring crime against women. From 2011 to 2012, there was a 7.5% increase in cruelty by husbands and relatives.<sup>43</sup>

### **(A) Physical injury :-**

Physical injury is the most visible form of domestic violence. The scope of physical domestic/intimate partner violence includes slapping, pushing, kicking, biting, hitting, throwing objects, strangling, beating, threatening with any form of weapon, or using a weapon.<sup>44</sup> Physical injuries as a result of domestic violence against women are more obvious than psychological ones, and can be more easily noticed by health professionals as well as Courts of law in the context of legal prosecution.<sup>45</sup> This kind of abuse is a direct evidence of domestic violence. Worldwide, the percentage of women who suffer serious injuries as a result of physical domestic

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<sup>39</sup> Statement by Dr Tedros Adhanom Ghebreyesus, WHO Director-General

10. December 2017

<sup>40</sup> Chowdhury, Renuka (26 October 2006). "India tackles domestic violence". BBC

<sup>41</sup> Chowdhury, Renuka (26 October 2006). "India tackles domestic violence". BBC

<sup>42</sup> "India tackles domestic violence". BBC News. 2006-10-27. Retrieved 3 March 2014.

<sup>43</sup> [Crimes Against Women](#) (PDF). *Ncrb.gov.in*. National Crime Records Bureau. 2013. Retrieved 2014-03-0

<sup>44</sup> Committee on Health Care for Underserved Women. Intimate Partner Violence. American College of Obstetricians and Gynecologists, Feb. 2012. Web. 17 Mar. 2013.

<sup>45</sup> Domestic violence in India - Wikipedia  
[https://en.m.wikipedia.org/wiki/Domestic\\_violence\\_in\\_India](https://en.m.wikipedia.org/wiki/Domestic_violence_in_India) in

violence tends to range from 19% to 55%.<sup>46</sup> Which means most of the women who faces domestic violence are physically assaulted by their husbands or partners or family members.

### **(B) Intimidation:**

The abuser husband uses a variety of intimidation tactics to scare his wife in order to pressurise her to do work or any thing according to him. These tactics may include making threatening looks or gestures, smashing things in front of her, destroying property, hurting her pets, or putting weapons on display, or emotionally blackmailing her like threaten to commit suicide, etc. The thing behind is that if she don't obey, there will be violent consequences.<sup>47</sup> So intimidation is a type of threatening someone in order to make that person walk or fulfil any task according to the abuser. This abuse not only resist a woman to enjoy her personal liberty but side by side scattered her personality and confidence.

### **(C) Sexual assault and abuse:**

Sexual assault which is a hidden or rarely revealed by victim is an another form of Domestic Violence. It includes forceful and non-forceful acts like unwanted kissing, touching or fondling; sexual reproductive coercion, rape and marital rape. And opposite of it is also included in domestic violence as in 2013, a Court in Mumbai ruled that depriving a woman of sex is a form of cruelty.<sup>48</sup> So the sexual abuse means putting in a situation in which a woman is forced to participate in unwanted, unsafe, or degrading sexual activity even by a spouse or intimate partner with whom she has consensual sex, is an act of aggression and violence.<sup>49</sup> Child marriage, domestic violence and low literacy rates have lowered Indian women's opportunities of to be economically strong and tends to contribute to sexual violence against females in India.<sup>50</sup> A 2011 study found, "24% of Indian men have committed sexual violence at some point in their lives,

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<sup>46</sup> Ellsberg, Mary, PhD. "Intimate Partner Violence and Women's Physical and Mental Health in the WHO Multi-country Study on Women's Health and Domestic Violence: An Observational Study." *The Lancet* 371 (2008). 17 Mar. 2013.

<sup>47</sup> Domestic Violence Against Women; Causes And Cure

[www.legalservicesindia.com/article/article/domestic-violence..](http://www.legalservicesindia.com/article/article/domestic-violence..)

<sup>48</sup> [mhtml:file:///D:/Domestic Violence in India-Wikipedia, the free encyclopaedia.mht](http://mhtml:file:///D:/Domestic%20Violence%20in%20India-Wikipedia,%20the%20free%20encyclopaedia.mht).

<sup>49</sup> [html:// Domestic Violence and Abuse Signs of Abuse and Abusive Relationship](http://html://Domestic%20Violence%20and%20Abuse%20Signs%20of%20Abuse%20and%20Abusive%20Relationship)

<sup>50</sup> Nussbaum, Martha C. (Winter 2002). "[Sex, laws, and inequality: what India can teach the United States](#)" (PDF). *American Academy of Arts and Sciences*. Retrieved 27 March 2014.

20% have forced their partners to have sex with them...38% of men admitting they had physically abused their partners."<sup>51</sup> Widespread sexual violence is ascribed to the fact that violence within marriage is not against the law, and sexual violence goes largely unpunished.<sup>52</sup> This is the worst crime against woman which curtails right on her own body and wishes. Which also violate the rights provided under Indian Constitution 'personal life and liberty'.

#### **(D) Psychological, emotional or verbal abuse:-**

Emotional or psychological abuse includes any act intended to denigrate, isolate, or dominate a partner. Emotional abuse is intended to control victims by limiting resources and social contacts; creating actual and emotional dependence; and reducing victims' sense of selfworth, competence, and value. Emotional maltreatment can include verbal abuse, such as insults, criticism, ridicule, name calling, discounting, and discrediting; isolation of the victim; control of social and family contacts; denial of access to finances or transportation; demonstration of extreme jealousy and possessiveness; the monitoring of behaviour; accusations of infidelity; threats of harm to the victim's family, children, or friends; threats of abandonment or infidelity; and damage to or destruct personal property.<sup>53</sup>

#### **(E) Economic abuse:-**

India's economic boom has brought a rise in affluent women. These women are highly educated, have successful careers, dress in western clothes and visit restaurants, clubs and cinema halls. They enjoy far greater freedom than their parents' generation. However, these freedoms often clash with hard-line elements of India's largely conservative society. Much of India is still deeply patriarchal and there are wide gaps in the status of men and women. Even among India's upper crust, women's freedom can be superficial. Through out the country, women who resist gender norms often face consequences for their actions. This is particularly prevalent

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<sup>51</sup> "Indian men most sexually violent, says survey of six developing nations". *Infochange Women*. March 2011. Retrieved 27 March 2014.

<sup>52</sup> Raj, Anita; Lotus McDougal (8 March 2014). "Sexual violence and rape in India". *The Lancet*. **383**: 865. doi:10.1016/s0140-6736(14)60435-9.

<sup>53</sup> PSYCHOLOGICAL VIOLENCE AGAINST WOMEN IN INDIA | Devi ...  
www.academiamedu/4544117/\_PSYCHOLOGICAL\_VIOLENCE \_  
AGAINST\_WOMEN\_IN\_INDIA

as women are beginning to enter the labour market in full-force. Men are used to power, used to being the decision-maker, used to being the breadwinner and to the privileges this position brings in the household.<sup>54</sup>

### **(F) Stalking and harassing behaviour:-**

Stalkers may use threats and violence to frighten their victims. They may also engage in vandalism and property damage or make physical attacks that are mostly meant to frighten. Less common are sexual assaults. In 2013, Indian Parliament made amendments to the Indian Penal Code, introducing stalking as a criminal offence.<sup>55</sup> Stalking has been defined as a man following or contacting a woman, despite clear indication of disinterest by the woman, or monitoring her use of the Internet or electronic communication. A man committing the offence of stalking would be liable for imprisonment up to three years for the first offence, and shall also be liable to fine and for any subsequent conviction would be liable for imprisonment up to five years and with fine.

## **(III) Impact of Domestic violence against women**

### **(A) On children:**

Whatever happens in the four walls of home is not limited violence against women but it affects children of our houses whether they are young or adult. Gender base violence has serious repercussions on the children who become highly strung, bad tempered and anxious and perform poorly in the school. Daughters who have to undergo and observe domestic violence become sexually pervasive and develop hatred against men. They are more likely to attempt to commit suicide or something bad which would adversely affect their life and their own family life. Men who as children were exposed to their parents domestic violence are more likely to abuse their wife further in life.

### **(B) Emotional and psychological impact on women:**

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<sup>54</sup> How India's Economic Miracle Has Fuelled Domestic Violence ...  
[www.ibtimes.co.uk](http://www.ibtimes.co.uk) ›

<sup>55</sup> Criminal Law (Amendment) Act, 2013" (PDF). Government of India. Retrieved 16 April 2013.

Domestic violence against women results physical hurt, such as fracture, burns, disfigurement, cuts, bruises, broken leg and arm temporary or permanent disability, sexual abuse, unwanted pregnancies, sexually transmitted disease, which effects a woman psychologically and she suffers depression, anxiety, eating disorder, stress, phobia, obsessions, compulsive behaviour, low self esteem, sexual dysfunction, emotional instability etc.

### **(C) Social impacts on women:**

Domestic violence restrains women from playing an active role in every field whether in personal or professional life. She always hesitates to take decisions independently because she becomes habitual to ask about every thing to her husband or family members. In this way domestic violence make her weak day by day and she fails to take initiatives of any work whether at home or outside the home.

### **(D) Economic impact:**

Domestic violence against women has a serious impact on the economy of the family and nation. It has been postulated that violence leads to decreased efficiency and productivity of a women. Some social norms resist women to do work outside the house or stop them to pursue their career which result in economically weak position of women in the society and indirectly push women again in the realm of domestic violence.

## **IV Conclusion:-**

All type of abuse of women considered as domestic violence that is why section 3 of Prevention of Women from Domestic Violence Act 2005 elaborates the form of domestic violence. Abuse of women in India can shatter her human identity and pressurise her to remain in the four walls of the marital house which deteriorate her situation in the society. To change the scenario of the world towards women it is utmost compulsory that women must be empowered not only socially but economically too which can lead the fight against domestic violence and gives equal status to the women in India. Some measures are taken on the world platform to support the economic condition of women which works to ensure the full potential benefits of financial inclusion for women are secured by:

- Increasing access to finance and markets by partnering with developing countries and financial institutions within those countries;
- Reducing gender-based barriers in the business environment;
- Creating business opportunities for institutions and in the private sector to improve working conditions for female employees, market segmentation, and inclusion of women in community relationships;
- Supporting business skills and financial capability trainings for women; and
- Building the business case for equal economic opportunities for men and women.<sup>56</sup>

An important World Bank-led mechanism to accelerate financial inclusion through enabling country commitments is the new Financial Inclusion Support Framework (FISF) which was launched in 2013. The World Bank has committed to assist at least 10 IDA countries to reach their financial inclusion targets, including for women's financial inclusion, and plans to expand this support to at least a further 10 IDA/IBRD countries.

IFC's SME Finance Forum, the leading-edge knowledge agenda of the Consultative Group to Assist the Poor (CGAP), and the World Bank-led FISF are highly complementary. They strongly leverage the World Bank Group's country-level financing, advisory services, and policy dialogue to help under-served women.

IFC's Investment Services – including risk-sharing facilities, credit lines, loans, equity, SME and credit insurance, supply-chain finance and blended finance – are all products that can improve women's access to finance. IFC launched *Women's Finance Hub* in Spring 2013 – an online collaborative platform, as part of the **SME Finance Forum, that aims to further advance access to finance** for women-owned businesses by addressing missing data, disseminating research, promoting best practices and providing information on critical issues related to the women's market. The *Women, Business and the Law* project provides cross-country comparable data for 143 economies on where laws differentiate between women and men – a factor that can hinder women's ability to gain access to finance<sup>57</sup>

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<sup>56</sup> Through technical/advisory assistance and lending support, the World Bank Group works to ensure the full potential benefits of financial inclusion for women are secured by: in 2013

<sup>57</sup> Expanding Women's Access to Financial Services - World Bank





# **CHAPTER 3**

## **AMBIT OF PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE IN INDIA BEFORE THE "PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005"**

### **(I). Provisions provided in India for the protection of woman against discrimination or domestic violence:**

India is a democratic state in which all are equal before law still the women are treated unequally in every field whether it is political, economic, or social. Their position remained subordinate as compared to men. Keeping in mind to curb this inequality from the society some special privileges are given to them in the Indian Constitution and some other distinctive rights are provided under other codes, both civil and criminal.

#### **(A) Constitutional privileges for women:**

The momentous change seen after the independence in the rights available to women when Constitution of India framed and enshrined the principle of equality, liberty and social justice in it . The framer of the Constitution were well aware of the sociology of the problem of the discrimination against females. While considering the extensive problem they enumerated in the Indian Constitution all the necessary ideas to eliminate inequality from the society and to provide opportunities for the exercise of human rights. Our Constitution manifests the concept of gender equality in its Preamble, Fundamental Rights, Fundamental Duties and in Directive Principles. Constitution not only accord gender equality, but also authorise the State Governments to adopt measures towards positive discrimination in favour of women to eliminate the mounting socio-economic, political and educational disadvantages faced by them. Some important aspects are explained in the Preamble of the Constitution.

##### **(i). The Preamble of the Indian Constitution:**

The Preamble of the Indian Constitution defines 'equality' in this way: 'The Preamble to the Constitution of India resolved to secure to all its citizens justice--social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity;

and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation'. So it makes crystal clear that men and women have equal rights. According to the Preamble of the Constitution following are the rights provided to all citizens of India:

**(a). Political rights:**

Under the Constitution both man and woman have equal political rights through which they are able to take part in the administration of the country. Women's equality in power sharing and active participation in decision making in political process will ensure the achievement of the goal of women empowerment. Keeping the idea Government of India through 73rd and 74th Constitutional Amendment Acts reserved the one third of seats in all local elected bodies for women as a sign of political empowerment but representation in the parliament and state legislative assemblies are still not reachable. The fact file of the Lok Sabha seats reveal the truth. The first Lok Sabhas had only 4.4 per cent women members. The sixth Lok Sabha in 1977 witnessed the smallest proportion of women in Parliament at mere 3.5 percent and in the 16th Lok Sabha, 61 women leaders have made their way to the Parliament. This is the highest ever number of Lok Sabha seats won by women and constitutes 11.23 per cent of the total 543 Parliamentary seats.<sup>1</sup> it means still women are not equally participating in the political field it can be done through political awareness, giving them adequate education, making them economically independent and protect them from physical or domestic violence by introducing and strictly implementing stringent laws.

**(b) Economic Rights:**

Constitution of India does not differentiate between men and women both have been equally treated by it. There is urgent need to improve women's economic status as it is necessary for the economic development of our country and that is why Indian constitution provides some special economic rights or privileges to the women. Some economic rights given by Constitution of India are like equal remuneration, maternity leave and benefits, improve their condition in matters relating to wages, property right etc. here again lack of economic field awareness and because of some customary reasons women are still caught behind the doors of their houses and work like a slave.

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<sup>1</sup> Women Members of Parliament in India - Political Corner  
[www.elections.in/political-corner/women-members-of-parliament-in-india](http://www.elections.in/political-corner/women-members-of-parliament-in-india)

### **(c) Social Justice:**

Actually social justice define human right to live with dignity. For this codification of personal laws has been done time to time like 'Immoral Traffic (Prevention) Act (1956), Maternity Benefit Act (1961), Commission of Sati (Prevention) Act (1987), Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994) etc. these type of laws prevent the violation of social justice and human rights. In *Valsamma Paulv. Cochin University*<sup>2</sup> the Supreme Court held that human rights are derived from the dignity and worth inherent in human beings. Human rights and fundamental freedoms have been reiterated by the Universal Declaration of Human Rights and they are interdependent and have Mutual reinforcement. To accomplish these goals, the Constitution guarantees certain fundamental rights, incorporate directive principle and fundamental duties.

### **(ii) Fundamental rights :**

Fundamental rights are those human rights which are essential for every human being irrespective of man, woman, or child for their over all development. But there are some special privileges for women which are provided in fundamental rights to curtail the evil of unequal treatment and violence created against them in the society. These privileges are equality before law for women (Article 14). The state shall not discriminate against any citizen of India on the ground of sex [Article 15(1)]. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women [Article 15(3)]. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [Article 16(2)]. Traffic in human beings and forced labour are prohibited [Article 23(1)]. Right to life (article 21 ) In 'Menka Gandhi vs. the Union of India'<sup>3</sup> it was held that the right to life is not merely confined to physical existence but also includes within its ambit, the right to live with human dignity. In 'Francis Corolie Mullin v. The Union Territory of Delhi' <sup>4</sup> it was held that life means something more than just physical survival and is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world, but includes 'the right to live with human dignity'.

### **(iii) Directive Principles and Fundamental Duties and other Special Privileges for Women :**

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<sup>2</sup> (1996) 3 SCC 545: 1996 SCC (L&S) 772.

<sup>3</sup> (1978) 1 SCC 248: AIR 1978 SC 597.

<sup>4</sup> (1981) AIR 746, 1981 SCR (2) 516

Directive Principles defined as state policies which are necessary to fulfil the social need. These are not enforceable in any court of law and these guiding fundamentals of the states for the good governance of the country, are contained in part IV of the Constitution. These are given for the welfare of the people including women and direct the State to secure for men and women equally the right to an adequate means of livelihood. The State has to secure equal pay for equal work for both Indian men and women [Article 39(a)]. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [Article 39(e)]. The state shall make provision for securing just and humane conditions of work and maternity relief [Article 42]. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [Article 51-A(e)]. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D(3)]. One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [Article 243-D(4)]. One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women [Article 243-T(3)]. The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [Article 243-T(4)].

**(B) Other than constitution following safeguards are available in India for women:**

**(i) Protection of Women from Domestic Violence Act (2005)**

This Act is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional.

**(ii) Immoral Traffic (Prevention) Act (1956)**

This Act is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organised means of living.

**(iii) Indecent Representation of Women (Prohibition) Act (1986)**

This Act prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

**(iv) Commission of Sati (Prevention) Act (1987)**

This Act provides for the more effective prevention of the commission of sati and its glorification on women.

**(v) Dowry Prohibition Act (1961)**

This Act prohibits the giving or taking of dowry at or before or any time after the marriage from women.

**(vi) Maternity Benefit Act (1961)**

This Act regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits.

**(vii) Medical Termination of Pregnancy Act (1971)**

This Act provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.

**(viii) Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994)**

This Act prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female foeticide.

**(ix) Equal Remuneration Act (1976)**

This Act provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination on the ground of sex, against women in recruitment and service conditions.

**(x) Dissolution of Muslim Marriages Act (1939)**

This Act grants a Muslim wife the right to seek the dissolution of her marriage.

**(xi) Muslim Women (Protection of Rights on Divorce) Act (1986)**

This Act protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.

**(xii) Family Courts Act (1984)**

This Act provides for the establishment of Family Courts for speedy settlement of family disputes.

**(xiii) Indian Penal Code (1860)**

This Act contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.

**(xiv) Code of Criminal Procedure (1973)**

This Act has certain safeguards for women like obligation of a person to maintain his wife, arrest of woman by female police and so on.

**(xv) Indian Christian Marriage Act (1872)**

This Act contain provisions relating to marriage and divorce among the Christian community.

**(xvi) Legal Services Authorities Act (1987)**

This Act provides for free legal services to Indian women.

**(xvii) Hindu Marriage Act (1955)**

This Act introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to Indian man and woman in respect of marriage and divorce.

**(xviii) Hindu Succession Act (1956)**

This Act recognises the right of women to inherit parental property equally with men.

**(xix) Minimum Wages Act (1948)**

This Act does not allow discrimination between male and female workers or different minimum wages for them.

**(xx) Mines Act (1952) and Factories Act (1948)**

This Act prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.

**(xxi)** The following other legislation's also contain certain rights and safeguards for women:

- (a) Employees' State Insurance Act (1948)**
- (b) Plantation Labour Act (1951)**
- (c) Bonded Labour System (Abolition) Act (1976)**
- (d) Legal Practitioners (Women) Act (1923)**
- (e) Indian Succession Act (1925)**
- (f) Indian Divorce Act (1869)**
- (g) Parsi Marriage and Divorce Act (1936)**
- (h) Special Marriage Act (1954)**
- (i) Foreign Marriage Act (1969)**
- (j) Indian Evidence Act (1872)**
- (k) Hindu Adoptions and Maintenance Act (1956).**

**(l) National Commission for Women Act (1990)**

This Act provided for the establishment of a National Commission for Women to study and monitor all matters relating to the constitutional and legal rights and safeguards of women.

**(m) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal). Act (2013)**

This Act provides protection to women from sexual harassment at all workplaces both in public and private sector, whether organised or unorganised.

**C. Special provisions for women in civil and criminal laws & their effects:**

**(i). Sati Prevention Act, 1987: protect widows from burning alive on the funeral pyre of her dead husband**

Sati (Prevention) Act, 1987 is a law enacted by Government of Rajasthan in 1987. It became an Act of the Parliament of India with the enactment of The Commission of Sati (Prevention) Act, 1987 in 1988. The Act seeks to prevent Sati practice or the voluntary or forced burning or burying alive of widows, and to prohibit glorification of this action through the observance of any ceremony, the participation in any procession, the creation of a financial trust, the construction of a temple, or any actions to commemorate or honour the memory of a widow who committed **sati**.

**(a). Sati system in India**

The Indian custom of a wife immolating herself either on the funeral pyre of her dead husband or in some other fashion soon after his death. Although never widely practiced, suttee was the ideal of womanly devotion held by certain Brahman and royal castes. It is sometimes linked to the myth of the Hindu goddess Sati, who burned herself to death in a fire that she created through her Yogic powers after her father insulted her husband, the god Shiva—but in this myth Shiva remains alive and avenges Sati's death.

The first explicit reference to the practice in Sanskrit appears in the great epic Mahabharata (compiled in its present form about 400 CE). It is also mentioned by Diodorus Siculus, a Greek author of the 1st century BCE, in his account of the Punjab in the 4th century BCE. Numerous Suttee stones, memorials to the wives who died in this way, are found all over India, the earliest dated 510 CE. Women sometimes suffered immolation before their husbands' expected death in battle, in which case the burning was called jauhar. In the Muslim period (12th–16th century), the Rajputs practiced jauhar, most notably at Chitorgarh, to save women from rape, which they

considered worse than death, at the hands of conquering enemies. The hardships encountered by widows in traditional Hindu society may have contributed to the spread of Suttee.

The larger incidence of Suttee among the Brahmans of Bengal was indirectly due to the *Dayabhaga* system of law (c. 1100), which prevailed in Bengal and which gave inheritance to widows; such women were encouraged to committ Suttee in order to make their inheritance available to other relatives. In the 16th century, steps to prohibit Suttee were taken by the Mughal rulers Humayun and his son Akbar. Suttee became a central issue under the British Raj, which first tolerated it, then inadvertently legalised it by legislating conditions under which it could be done, and then finally, in 1829, outlawed it—using the condemnation as one of its justifications for continuing British rule of India.

Suttee was sometimes committed voluntarily, but cases of compulsion, escape, and rescue are known. Scattered instances of it continue to occur, most notoriously in the case of Roop Kanwar, an 18-year-old widow who committed suttee in 1987. The incident was highly controversial, as groups throughout India either publicly defended Kanwar's actions or declared that she had been murdered.

Practice of Sati was followed in India among several communities (generally higher classes among Hindus) since late ancient and medieval era. It was first banned in 1515 by Portuguese in Goa, and then was by Dutch in Chinsura and French in Pondicherry. However, this practice was not much prevalent in these areas. During British era, the Practice of Sati was most common in Bengal and Rajputana. The British permitted it initially; but formally banned the practice in 1798 only in Calcutta. However, it continued in the surrounding areas.<sup>5</sup>

By the dawn of 19<sup>th</sup> century, the British had started collecting facts and figures on practice of Sati. The data showed that only in 1817, 700 widows had been burnt alive in Bengal alone.<sup>6</sup>

Efforts of Raja Rammohan Roy from 1812 onwards, reformers such as Raja Rammohan Roy started fierce campaign against the Sati practice. Raja Rammohan Roy was personally hurt by this practice as his own sister-in-law was forced to commit Sati. He used to visit the Calcutta cremation grounds to persuade widows not to so die. He also formed the watch groups.

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<sup>5</sup> Abolition of Sati by Lord William Bentinck - General Knowledge Today  
<https://www.gktoday.in/gk/abolition-of-sati-by-lord-william-bentinck>

<sup>6</sup> Abolition of Sati by Lord William Bentinck - General Knowledge Today  
<https://www.gktoday.in/gk/abolition-of-sati-by-lord-william-bentinck>



In *Sambad Kaumudi* he wrote articles and showed that it was not written in any Veda or epics to commit this crime.<sup>7</sup>

Ban on Sati Practice by William Bentinck due to fierce campaign and lobbying of Raja Rammohan Roy and others, Sati practice was formally banned in all the lands under Bengal Presidency by **Lord William Bentinck** on 4 December 1829. By this regulation, the people who abetted sati were declared guilty of “culpable homicide.”<sup>8</sup>

Aftermath the ban was challenged in the courts. The matter went to the **Privy Council in London**. The Privy Council upheld the ban in 1832. After that other territories also started following banning, but it remained legal in princely states, particularly in the Rajputana where it was very common. Later, Jaipur banned the practice in 1846.<sup>9</sup>

#### **(b). Current situation:**

There have been 30 cases of *sati* or attempted *sati* over a 44-year period (1943-1987) in India, the official number being 28.<sup>10, 11</sup> A well-documented case from 1987 was that of 18-year-old Roop Kanwar.<sup>12, 13</sup> In response to this incident, additional legislation against *sati* practice was passed, first within the state of Rajasthan, then nationwide by the central government of India.<sup>14, 15</sup>

In 2002, a 65-year-old woman by the name of Kuttu died after sitting on her husband's funeral pyre in the Indian Panna district. On 18 May 2006, Vidyawati, a 35-year-old woman allegedly committed sati by jumping into the blazing funeral pyre of her husband in Rari-Bujurg Village,

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<sup>7</sup> Abolition of Sati by Lord William Bentinck - General Knowledge Today

<https://www.gktoday.in/gk/abolition-of-sati-by-lord-william-bentinck>

<sup>8</sup> Abolition of Sati by Lord William Bentinck - General Knowledge Today

<https://www.gktoday.in/gk/abolition-of-sati-by-lord-william-bentinck>

<sup>9</sup> Abolition of Sati by Lord William Bentinck - General Knowledge Today

<https://www.gktoday.in/gk/abolition-of-sati-by-lord-william-bentinck>

<sup>10</sup> Weinberger-Thomas, Catherine (1999). *Ashes of Immortality: Widow-Burning in India*. Chicago: University of Chicago Press, pp. 182–185. ISBN 9780226885681

<sup>11</sup> Letter, Panduranga Joshi Kulkarni, Women in World History A project of the Center for History and New Media, George Mason University

<sup>12</sup> Weinberger-Thomas, Catherine (1999). *Ashes of Immortality: Widow-Burning in India*. Chicago: University of Chicago Press, pp. 182–185

<sup>13</sup> *The Times of India*, "Woman commits 'sati' in UP village" Archived 2 October 2010 at the Wayback Machine., 19 May 2006

<sup>14</sup> "Commission of Sati (Prevention) Act, 1987 Official text of the Act". Government of India's National Resource Centre for Women (NCRW). Archived from the original on 25 October 2009

<sup>15</sup> Trial by fire, *Communalism Combat*, Special Report, February–March 2004, Volume 10, No.96, Sabrang Communications

Fatehpur district in the State of Uttar Pradesh.<sup>16</sup> On 21 August 2006, Janakrani, a 40-year-old woman, burned to death on the funeral pyre of her husband Prem Narayan in Sagar district; Janakrani had not been forced or prompted by anybody to commit the act.<sup>17</sup> On 11 October 2008 a 75-year-old woman, Lalmati Verma, committed *sati* by jumping into her 80-year-old husband's funeral pyre at Checher in the Kasdol block of Chhattisgarh's Raipur district; Verma killed herself after mourners had left the cremation site.<sup>18</sup>

Scholars debate whether these rare reports of *sati* suicide by widows are related to culture or are examples of mental illness and suicide such as those found among women worldwide.<sup>19</sup> In the case of Roop Kanwar, Dinesh Bhugra states that there is a possibility that the suicides could be triggered by "a state of depersonalization as a result of severe bereavement", then adds that it is unlikely that Kanwar had mental illness and culture likely played a role.<sup>20</sup> However, Colucci and Lester state that none of the women reported by media to have committed *sati* had been given a psychiatric evaluation before their *sati* suicide and thus there is no objective data to ascertain if culture or mental illness was the primary driver behind their suicide.<sup>21</sup> Inamdar, Oberfield and Darrell state that the women who commit *sati* are often "childless or old and face miserable impoverished lives" which combined with great stress from the loss of the only personal support may be the cause of a widow's suicide.<sup>22</sup>

### **(c). How sati system is responsible for domestic violence in modern world :-**

#### **(1):-Meaning of the word sati pressured every woman to remain subordinate in past and till now :-**

As defined by Peter Cain, Mark Harrison in his book 'Imperialism Critical Concept in Historical Studies' define the term sati as:-

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<sup>16</sup> *The Times of India*, "Woman commits 'sati' in UP village" Archived 2 October 2010 at the Wayback Machine., 19 May 2006

<sup>17</sup> BBC News, "India wife dies on husband's pyre", 22 August 2006

<sup>18</sup> "Woman jumps into husband's funeral pyre". *The Times of India*. Raipur. 13 October 2008.

<sup>19</sup> Erminia Colucci and David Lester (2012), *Suicide and Culture: Understanding the Context*, Hogrefe, ISBN 978-0889374362, pages 225-226

<sup>20</sup> D Bhugra and K Bhui, *Textbook of cultural psychiatry*, (Cambridge University Press, 2007, pages xvii-xvii)

<sup>21</sup> Erminia Colucci and David Lester (2012), *Suicide and Culture: Understanding the Context*, Hogrefe, ISBN 978-0889374362, pages 225-226

<sup>22</sup> SC Inamdar et al (1983), A suicide by self-immolation: psychological perspectives, *International Journal of Social Psychiatry*, Vol 29, pages 130-133

The term *sati* was originally interpreted as "chaste woman". *Sati* appears in Hindi and Sanskrit texts, where it is synonymous with "good wife"<sup>23</sup>

#### **According to 'Hindu' custom :-**

Sati was supposed to be voluntary, and often it was seen as the proper finale to a marriage. It was considered to be the signature act of a dutiful wife, who would want to follow her husband into the afterlife.<sup>24</sup>

Who is a '**Sati**' : A chaste woman

A sati is a woman who is so pure that she never has any thoughts of men other than her own husband. She does not get attracted to other men through mind, body and speech.

A chaste woman / Sati has these highest virtues:

Regardless of what may happen to her, whether her husband is by her side or not, or if her husband has run away, she would not run off with another man.

A sati would never even think about another man except her husband, even if her husband were to die immediately after marriage or if he were to run away. She would believe her husband to be the only man for her.

No matter who the other man is, even if God himself comes down as a man, she will still say no, "I have a husband, he is my Lord". This is called a sati. Satis consider their husbands as their Lord.

A woman who is unconditionally devoted to her husband, so much that she would voluntarily give up her life on her husband's funeral pyre.

#### **According to the Lindsey Harlan :-**

Lindsey Harlan,<sup>25</sup> having conducted extensive field work among Rajput women, has constructed a model of how, and why, women having committed *sati* are still venerated today, and how the worshippers think about the process involved.<sup>26</sup> Essentially, a woman on the path to become a *sati* goes through three stages

- being *pativrata* during her husband's life,

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<sup>23</sup> P. J. Cain, Mark Harrison (2001). Imperialism: Critical Concepts in Historical Studies. Routledge. p. 209. ISBN 9780415206303

<sup>24</sup> What Is the Custom of Sati? - ThoughtCo  
<https://www.thoughtco.com> > ... > History & Culture > Asian History > South Asia

<sup>25</sup> "Lindsey Harlan". Connecticut College

<sup>26</sup> This section is based on chapter 4, Harlan, Lindsey (1992). "Satimata tradition: The Transformative process". Religion and Rajput Women: The Ethic of Protection in Contemporary Narratives. Berkeley, Los Angeles, Oxford: University of California Press. pp. 112–153. ISBN 9780520073395.

- who, at his death, makes a solemn vow to burn by his side, gaining status as *sativrata* and
- finally, having endured being burnt alive, achieving the status of *sati mata*.

### **Pativrata**

The dutiful wife, the *pativrata*, is devoted and subservient to her husband, and also protective of him. If he dies before her, some culpability is attached to her for his death, as not having been sufficiently protective of him. Making the vow to burn alive beside him removes her own culpability, as well as within the afterlife, enables her to protect him from new dangers.

### **Sativrata**

In Harlan's model, having made the holy vow to burn herself transforms the woman to a *sativrata*, a transitional stage between the living and the dead, before ascending the funeral pyre. Once a woman committed herself to become *sati*, popular belief thought her to become endowed with many supernatural powers. Lourens P. Van Den Bosch enumerates some of them. The *sati* would gain the powers of prophecy and clairvoyance, as well as the ability to bless women with sons, who had not borne sons before. The gifts from a *sati* were venerated as valuable relics, and in her journey to the pyre, people would seek to touch her garments to benefit from her powers.<sup>27</sup> Lindsey Harlan probes deeper into the *sativrata* stage: As a transitional figure on her path to become a powerful family protector as *satimata*, the *sativrata* dictates the terms, and obligations the family must fulfill in order for her to protect them once she has become *satimata*, by showing reverence to her by observing the conditions. These are generally called *ok*. A typical example of an *ok* is to place a restriction on the type of colours used in the family members's clothing, or to forbid the use of some particular type of clothing.

What can be termed curses, *shrap* is also within the *sativrata*'s power, understood to be a severe teaching to members of her family in how they have failed. One woman cursed her in-laws when they refused to bring neither a horse or a drummer to her pyre, saying that whenever in the future might have need of either (and many religious rituals requires such a presence), it would not be available to them.

### **Satimata**

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<sup>27</sup> Bremmer, Jan (ed.); Van Den Bosch, Lourens P. (ed. and auth.) (2002). "The Ultimate Journey". Between Poverty and the Pyre: Moments in the History of Widowhood. London: Routledge. p. 184. ISBN 9781134888832.

After her death on the pyre, the woman is finally transformed into the shape of the *satimata*, an spiritual embodiment of goodness, with her principal concern of being a family protector. Typically, the *satimata* occurs in the dreams of the family members, teaching for example, the women how to be good *pativratas*, herself through her sacrifice having proved she was the perfect *pativrata*. However, although the *satimata*'s intentions are always for the good of the family, she is not averse to let, for example, children become sick, or the cows' udders wither, if she thinks this is an appropriate lesson to the living wife who had neglected her duties as *pativrata*.<sup>28</sup>

Indeed, the very reference to the widow from the point at which she decided to become a "Sati" (Chaste One) removed any further personal reference to her as an individual and elevated her to a remote and untouchable context. It is little wonder that women growing up in a culture in which they were so little valued as individuals considered it the only way for a good wife to behave. The alternative, anyway, was not appealing. After the death of a husband as Hindu widow was expected to live the life of an aesthetic, renouncing all social activities, shaving her head, eating only boiled rice and sleeping on thin coarse matting (Moore 2004). To many, death may have been preferable, especially for those who were still girls themselves when their husband's died.

**(d) The culture of worshiping sati as a goddess, try to inculcate in women that they are born for their husband and they are nothing without their husband:**

Historically, the practice of sati was to be found among many castes and at every social level, chosen by or for both uneducated and the highest ranking women of the times. The common deciding factor was often ownership of wealth or property, since all possessions of the widow devolved to the husband's family upon her death. In a country that shunned widows, sati was considered the highest expression of wifely devotion to a dead husband (Allen & Dwivedi 1998, Moore 2004). It was deemed an act of peerless piety and was said to purge her of all her sins, release her from the cycle of birth and rebirth and ensure salvation for her dead husband and the seven generations that followed her (Moore 2004). Because its proponents lauded it as the required conduct of righteous women, it was not considered to be suicide, otherwise banned or discouraged by Hindu scripture. Sati also carried romantic associations which some were at

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28 Sati - Wikipedia  
<https://en.wikipedia.org/wiki/Sati>

apparent pains to amplify. Stein (1978) states "The widow on her way to the pyre was the object (for once) of all public attention...Endowed with the gift of prophecy and the power to cure and bless, she was immolated amid great fanfare, with great veneration". Only if she was virtuous and pious would she be worthy of being sacrificed; consequently being burned or being seen as a failed wife were often her only choices (Stein 1978). Indeed, the very reference to the widow from the point at which she decided to become a "Sati" (Chaste One) removed any further personal reference to her as an individual and elevated her to a remote and untouchable context. It is little wonder that women growing up in a culture in which they were so little valued as individuals considered it the only way for a good wife to behave. The alternative, anyway, was not appealing. After the death of a husband a Hindu widow was expected to live the life of an ascetic, renouncing all social activities, shaving her head, eating only boiled rice and sleeping on thin coarse matting (Moore 2004). To many, death may have been preferable, especially for those who were still girls themselves when their husband's died.<sup>29</sup>

**(e). Conclusion :**

Thus the Sati Prevention Act 1987, helps to remove the brutality happened towards the married woman at the time of her husband's death. But some of the signs remains in the society till now which indirectly affected a woman throughout of her life, like some stereotype rules and regulations which were inculcated in every girl that they were only made for to serve her lord means husband, deeply prevails in modern Indian society. Even though she becomes successful she has to serve her children; in-laws and do household chores.

**(ii). Dowry Prohibition Act (1961):**

Prohibits the giving or taking of dowry at or before or any time after the marriage from women or his parents.

The first all-India legislative enactment relating to dowry to be put on the statute book was The Dowry Prohibition Act, 1961 and this legislation came into force from July 1, 1961.<sup>30</sup> It marked the beginning of a new legal framework of dowry harassment laws effectively prohibiting the demanding, giving and taking of dowry. Although providing dowry is illegal, it is still common in many parts of India for a husband to seek a dowry from the wife's family and in some cases, this results in a form of extortion and violence against the wife.

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<sup>29</sup> The Practice of Sati (Widow Burning) - Kashgar

<https://kashgar.com.au/blogs/history/the-practice-of-sati-widow-burning>

<sup>30</sup> "The Dowry Prohibition Act, 1961"

**(a). Essentials components for the relief under 'Dowry Prohibition Act 1961:**

**(1). Dowry.**

**(2). Giving or taking dowry,**

**(3). Demanding dowry,**

**(4). at or after or any time after the marriage,**

**(1). Dowry defined under the act:**

The term “dowry” means any property or valuable security given or “agreed to be given” either directly or indirectly by one party to the marriage to the other party to the marriage “at or before or after the marriage” as a “consideration for the marriage of the said parties” would become “dowry” but does not include Dower and Mahr in Dowry.<sup>31</sup>

In **State of Karnataka v. M.V. Manjunathgowda**,<sup>32</sup> Supreme Court has given the definition of Dowry, that there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third “at any time” after the marriage. The third occasion may appear to be unending period. But the crucial words are “in connection with the marriage of the said parties.” Other payments which are customary payments e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression “dowry”.<sup>33</sup>

In **Sushil Kumar and others v. State of Haryana**,<sup>34</sup> Punjab & Haryana High Court held, that demand of rupees 20,000 and a golden ring at the time of Chhuchak ceremony (Chhuchak is the customary gifts/payments which are given at the time of birth of a male child). It is not a dowry demand under Dowry Prohibition Act- Any payment, which is a customary payment i.e. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression dowry.

In **Pawan Kumar v. State of Haryana**,<sup>35</sup> it was held that agreement is not always necessary. Persistent demand for T.V. and scooter were held to be demand in connection with marriage, hence such demand would fall within the definition of dowry.

**(1)(i) Services demanded by accused from his in-laws also considered as a dowry:**

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<sup>31</sup> section 2 of the Dowry Prohibition Act, 1961.

<sup>32</sup> *State of Karnataka v. M.V. Manjunathgowda*, AIR 2003 SC 809.

<sup>33</sup> *Kamesh Panjiyar v. State of Bihar*, (2005) 2 SCC 388.

<sup>34</sup> *Sushil Kumar and others v. State of Haryana*, 2005(3) RCR (Criminal), 129.

<sup>35</sup> *In Pawan Kumar v. State of Haryana* AIR 1998 SC 958

Services provided by any person is considered as service provider's property that is why if any person demanded services from his in laws it is also taken as demand of dowry and punishable. In **Kamdeo Mehto v. State of Bihar**, (Now Jharkhand), it has been held, that accused demanding service from in-laws- whether demand of service amounts to demand of dowry (yes)- Service is a property and would come within definition of dowry.<sup>36</sup>

**(2). Giving or taking dowry,**

According to the Act if any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more. Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years. All the above things are not applicable on presents which are given at the time of a marriage to the bride without any demand has been made in that behalf they are included in the stridhan of a bride. Provided that such presents are entered in a list maintained in accordance with the rules made under this Act and on the presents which are given at the time of a marriage to the bridegroom without any demand having been made in that behalf. Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given. so, the presents given on behalf of the bride to the without any demand are not come into the definition of dowry.

**(2)(i) Publicizing in the news paper on any where for giving and taking dowry:**

There is ban on advertisement. If any person through any advertisement in any newspaper, periodical, journal or through any other media prints or publishes or circulates any advertisement offers any money or any share of his property or both as consideration for the marriage of his son or daughter or any other relative, shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years , or with fine which may extend to fifteen thousand rupees. any agreement for the giving or taking of dowry shall be void.<sup>37</sup>

**(2)(ii) If any person received dowry for the benefit of the wife or heirs:**

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<sup>36</sup> *Kamdeo Mehto v. State of Bihar*, (Now Jharkhand), 2006(1) RCR (Criminal), 495.

<sup>37</sup> section 4 of the Dowry Prohibition Act 1961



If any person other than the woman receives dowry for the benefit of that woman or her heirs in connection with the marriage, that person shall transfer it to the woman if the dowry was received before marriage, within three months after the date of marriage; if the dowry was received at the time of or after the marriage within three months after the date of its receipt; if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman. If any person fails to transfer the property he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.<sup>38</sup>

**(2)(iii). Agreement for giving and taking dowry is void:**

Under section 5 of this Act any agreement for the giving or taking of dowry shall be void.

**(3).Demanding dowry:**

According to the section 4 of the Act demanding of dowry by any person, directly or indirectly from parents or guardian of bride or bridegroom is also a dowry offence.<sup>39</sup>Under the original Act the punishment for these offences was mild, the maximum punishment was six month's imprisonment, or a fine which could not be beyond a sum of Rs. 5,000, both the punishments could also be awarded. But now the punishment has been enhanced and minimum and maximum punishments have been laid down. The Amending Act of 1986 provides a punishment which shall not be less than five years imprisonment with fine which shall not be less than Rs. 15,000 or the amount of the value of such dowry whichever is more.<sup>40</sup> In regard to the punishment of inflicting fine, if the value of dowry is more than the sum of Rs. 15,000 or vice versa, then, the amount which is more is to be awarded as punishment.<sup>41</sup> If these provisions are considered to have teeth, then the same are blunted by another provision which confers a discretion on the court to impose a sentence of imprisonment for a term of less than five years. In awarding smaller punishment the court is required to record in writing the adequate and special reasons for doing so.<sup>42</sup>

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<sup>38</sup> section 6 of Dowry Prohibition Act 1961 :Dowry to be for the benefit of the wife or heirs

<sup>39</sup> Section 4.

<sup>40</sup> Section 3(1) and Section 4.

<sup>41</sup> Proviso to Section 3(1) and Proviso to Section 4.

<sup>42</sup> Ibid.

Section 4 of the Act aims at discouraging the very “demand” of “dowry” as a ‘consideration for the marriage’ between the parties thereto. The Supreme Court has stated that the definition of ‘dowry’ in the Dowry Prohibition Act not only includes receiving of dowry but also the very demand of dowry before or at the time or after the marriage where such demand is referable to the consideration of the marriage. The Apex Court in *S. Gopal Reddy v. State of A.* P43, expressed its view as follows:

Any “demand” of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of ‘dowry’ under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the “demand of dowry” leads to the ugly consequence of the marriage not taking place at all.

**(4). At or after or any time after the marriage:**

In *State of Himachal Pradesh v. Nikku Ram*<sup>44</sup> the Supreme Court interestingly started off the judgment with the words ‘Dowry, dowry and dowry’. The Supreme Court went on to explain why it has mentioned the words ‘dowry’ thrice. This is because demand for dowry is made on three occasions:

**(i) before marriage;**

**(ii) at the time of marriage; and**

**(iii) after the marriage.**

Any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person. At or before or any time after the marriage in connection with the marriage of the said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.<sup>45</sup>

The Hon’ble Supreme Court has given the definition of Dowry in the instant case, that there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third “at any time” after the marriage. The third occasion may appear to be

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<sup>43</sup> AIR 1996 SC 2184 : 1996 Cr LJ 3237.

<sup>44</sup> *State of Himachal Pradesh v. Nikku Ram* (1995) Cr LJ 4184 (SC).

<sup>45</sup> section 2 of the Dowry Prohibition Act, 1961.

unending period. But the crucial words are “in connection with the marriage of the said parties.” Other payments which are customary payments e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression “dowry”.<sup>46</sup> In another case, Punjab & Haryana High Court held, that demand of rupees 20,000 and a golden ring at the time of Chhuchak ceremony (Chhuchak is the customary gifts/payments which are given at the time of birth of a male child). It is not a dowry demand under Dowry Prohibition Act- Any payment, which is a customary payment i.e. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression dowry.<sup>47</sup>

Under the Act, dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression dowry made punishable under the Act.

In a recent case, decided by Delhi High Court, it has been observed that, A perusal of the complaint would show that as per allegations dowry demand was made even before marriage i.e. at the time of engagement an AC was demanded from her father by her in-laws and her father had assured that AC would be given at the time of marriage. However, she told her father? You have given car and AC at the demand of in laws, what will happen if they demand a flat tomorrow? Despite her this conversation with her father and despite her knowing that dowry demand had already been made, she married in the same family irrespective of the fact that she was well-educated lady and was an engineer and her brother was in police. In fact, these kinds of allegations made after breakdown of the marriage show the mentality of the complainant. I consider where these kinds of allegations are made, the police should simultaneously register a case under Dowry Prohibition Act against the parents of the complainant as well, who married their daughter despite demand of dowry. Section 3 of the Act prohibits giving and taking of dowry. If a woman of grown up age and well educated gets married to a person despite dowry demand, she and her family becomes accomplice in the crime under Dowry Prohibition Act.

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<sup>46</sup> Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388.

<sup>47</sup> Sushil Kumar and others v. State of Haryana, 2005(3) RCR (Criminal), 129.

Now-a-days, exorbitant claims are made about the amount spent on marriage and other ceremonies and on dowry and gifts. In some cases claim is made of spending crores of rupees on dowry without disclosing the source of income and how funds flowed. I consider time has come that courts should insist upon disclosing source of such funds and verification of income from tax returns and police should insist upon the compliance of the Rule under Dowry Prohibition Act and should not entertain any complaint, if the rules have not been complied with. Rule 2 of the Dowry Prohibition (Maintenance of List of Presents to the Bride and Bridegroom) Rules, 1985 reads as under: The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride and the list of presents which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom, both the list shall be prepared at the time of the marriage or as soon as possible after the marriage. Those list shall be in writing and shall contain a brief description of each present; the approximate value of the present; the name of the person who has given the present; and where the person giving the present is related to the bride or bridegroom, a description of such relationship shall be signed by both the bride and the bridegroom.<sup>48</sup>

#### **Demand long after marriage also dowry-**

In **State of Himachal Pradesh v. Nikku Ram**<sup>49</sup>, it is held by the Apex Court:

“We shall first take up the second facet. A perusal of the judgment shows that dowry had been defined at the relevant time as under:

“It means any property or valuable security given or agreed to be given either directly or indirectly:

(a) by one party to a marriage to the other party to the marriage:

(b) by the parents of either party to the marriage or by any other person, to either party to the marriage or to any other person ;

at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahir in the case of persons to whom the Muslim Personal Law (Shariat) applies”.

Despite the aforesaid definition having stated that the property or valuable security given or agreed to be given has to be as “consideration for the marriage”, demands made after the

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<sup>48</sup> Smt. Neera Singh v. The State (Govt. of NCT of Delhi), CRL.M.C. 7262/2006, decided on 23.02.2007(Del.).

<sup>49</sup> AIR 1996 SC 67.

marriage could also be a part of the consideration. according to us, because an implied agreement has to be read to give property or valuable securities, even if asked after the marriage, as a part of consideration for marriage. When the Dowry Prohibition Act was enacted, the Legislature was well aware, of the fact that demands for dowry are made, and indeed very often, even after the marriage has been, solemnized, and this demand is founded on the factum of marriage only. Such demands, therefore, would also be, in our mind, as consideration for marriage.

The definition as amended by the aforesaid two Acts does not, however, leave anything to doubt that demands made after the' solemnization of marriage would be dowry. Because again it has been defined by the Apex Court, "In this Act 'Dowry' means any property or valuable security given or agreed to be given either directly or indirectly-(a) by one party to marriage to the other party to the marriage : or (b) by the parents of either party to marriage or by any other person to either party to the marriage or to any other person .

At or before any time after the marriage in connection with the marriage of the said parties,<sup>50</sup> but does not include dower or mahr in the case of person to whom the Muslim Personal Law (Shariat) applies."

The aforesaid definition makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the un-amended definition. This apart, the addition of the words, "any time" before the expression "after the marriage" would clearly show that even if the demand is long after the marriage, the same could constitute dowry. If other requirements of the Section are satisfied.

#### **(b).Reasons of the failure of the Dowry prohibition Act 1961:**

The 1961 Act remained far from its apparent motive of removing the dowry problem. The penal provisions of the Act demonstrated to be nearly failed. The Act subjected to serious shortcoming which definitely came in the way of its effective execution. This was substantiate by the absenteeism of any kind of impact of the Act on the people. The Act was reprimand for being a dead letter. Despite lots of State amendments and various other attempts by the Central and State Governments to check the system, it persistently grow uninterruptedly obtaining frightening proportions with the passage of time, resulting in many dowry deaths and murders of, and suicides by a number of young married girls. These dreadful events lead the way to considerable agitation by various women and voluntary social organizations with the matter

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<sup>50</sup> Kamesh Panjiyar v. State of Bihar, 2005 (2), SCC 395.

being raised in Parliament. As a result, in 1980 the 1961 Act and the various State amendments were mention to a Joint Committee of both the Houses of Parliament (hereinafter referred to as the Committee) for scrutiny of various imperfection and the compliance of a report.

The Committee in its report, like many other critics, felt that there were two main reasons which could be ascribed to the 1961 Act in be unsuccessful to attain the required objective. First, the Act included an Explanation under Section 2 which makes presents to be interpreted as dowry only if they are made in consideration for the marriage of the said parties. It was extremely impossible to show that the presents so made were a consideration for the marriage for the clear reason that the giver would be resistant and unwilling to set the law in motion because of the daughter being victimised for it. This nullifies the objective of the Act for which it was enacted. The phrase ‘consideration for the marriage’ is interpreted to incorporate property that is given as consideration for the solemnisation of the marriage leading to the conclusion that only giving of presents after marriage was outside the purview of the definition of Section 2. The phrase ‘consideration for the marriage’ thus wrecked havoc with the lives of young women as most demands for dowry continue to be made after the solemnisation of marriage and pressurised parents continue to fulfil them for the sake of the matrimonial happiness of their daughter. An unfulfilled demand would lead to the harassment of the bride but as this demand did not constitute dowry, culprits would go scot free.

This leads to the argument that the law should regulate the various unwritten pre-marital contracts like the reservation of the boy (shagan, tikka etc.) as on these occasions money and property passes from the girl’s side to the boy’s family. In the case of a break of contract, the boy’s family has no legal liability leading to an unjust enrichment. Such ‘reservation’ should be treated as a contract and legal liability on its breach should be clearly defined by law.<sup>51</sup>

Secondly, the Committee observed that the Act virtually lacked enforcement. The fact that both the giver and taker of dowry were held guilty of an offence under Section 3 was highly erroneous. It contemplated the liability of the giver and the taker on the same footing. The ‘giver’ is more sinned against than sinning, his act of giving circumscribed by his desire to see his daughter happy in her conjugal home. He would never entertain the idea of prosecuting the taker and thereby shatter the domestic happiness of his daughter. Again it is difficult to imagine a taker

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<sup>51</sup> Sharma Sudesh Kumar, ‘Dowry System in India: A Socio-Legal Analysis’. In: DN Saraf (ed.): Social Policy, Law and Protection of Weaker Section of Society. Eastern Book Co., Lucknow, 1986, p. 343.

prosecuting the giver, may be for fear of being punished along with the giver or may be because of being the acceptor of dowry, he stands in a beneficial position. The Act is silent on the question as to who would prosecute persons who violate the limits set by law. Thus, dowry continues to be transacted between parties and no notice is taken of it even though there is a blatant commission of an offence under the Act. Cases are likely to proceed to criminal proceedings only where a discord between demand and acceptance leads to open hostilities. The Committee further observed that the Act had no provision to enable the enforcement to curb the practice of dowry except on a complaint made directly by the affected party under Section 7. The result is that Section 2, the key provision in the Act, is most likely to be rendered ineffective. It is very rare that the third party will spend his valuable time and money in litigation to secure conviction.<sup>52</sup> Even if any person violating this Section is booked for the offence, to get him prosecuted, the prior sanction of the relevant State Government under Section 4 is incomprehensive and a handicap in social reform rather than a step forward. Therefore, it is not enough that a legislation is passed, it must be pursued, propagated and implemented. Section 8 of the Act makes every offence non-cognizable, bailable and non-compoundable. It was submitted that this created a potential for a casual approach towards the provisions.

The 1961 Act, therefore, proved to be a dead letter lacking effective enforcement of its provisions. It failed to curb the evil of dowry what to speak of its eradication.

Keeping these shortcomings in view, the Committee recommended certain changes in the provisions of the 1961 Act. First and foremost, it was suggested that the expression 'consideration for the marriage' in the definition provision should be omitted as it would make the definition very wide and drastic, thereby not serving the purpose for which it was intended. It would then include in its ambit anything given whether before, at or after the marriage as amounting to dowry. To ensure that property or valuable security given to the bride are exclusively for her benefit, it was suggested that such items should be listed and registered in the name of the woman. The committee proposed a ceiling on the expenditure incurred at the wedding as well as on the gifts made to the bride and the groom. Since 'dowry' is always given under compulsion and not out of free will, therefore, if the giver was made liable then no one would come forward to lodge a complaint. It was recommended that the giver should be exempted from any liability. The Committee felt that the penal provisions in the Act were

inadequate and suggested more stringent form of fine and punishment to ensure that penalty worked as an effective deterrent. Sanction of State Government prior to taking cognisance of offence was regarded as a delay tactic and proposed to be done away with. It was accepted that the persecution of the women took many more forms than the ones mentioned in the Act. The Committee strongly proposed that denial of conjugal rights to the wife as well as infliction of mental and physical torture should be made a punishable offence. It was suggested that a woman's 'stridhan' was her own and in order to ensure that it should be restored into her custody as quickly as possible, the period of return of dowry to the woman should be reduced to mere three months.<sup>53</sup> The formation of family courts was proposed to ensure speedy and specialised disposal of dowry cases as also the fact that apart from the parents, the police and registered social organisations should be competent to lodge a complaint for which there would be no time limit as in most cases offences come to light only after a long period of continued harassment and torture of the woman. The Committee recommended to make all offences under the Act cognizable but subject to certain conditions of the court. These limitations, it was felt were necessary to prevent undue harassment by the police. Two new provisions by way of appointing Dowry Prohibition Officers to help dowry victims to prosecute their cases and the preparation of an annual report on the working of the Act by both the Centre and the State Governments to be laid before their respective legislative bodies were suggested in order to ensure proper enforcement and monitoring of the provisions.<sup>54</sup>

The Joint Parliamentary Committee felt that besides making certain comprehensive changes in the 1961 Act, there was a need of educating public opinion to combat the dowry problem. It was noticed that the spread of education had not succeeded in curbing dowry, rather the educated youth had become a perpetuator of the system. The Committee recalled the words of Pandit Jawaharlal Nehru, India's First Prime Minister in this context, when he had remarked at the joint sitting of both the Houses of Parliament on the Dowry Prohibition Bill, on May 6, 1961 that:

"Legislation cannot by itself solve deep-rooted social problems. One has to approach them in another way too, but legislation is necessary and essential, so that it may give that push and have

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<sup>53</sup> Diwan, Paras and Peeyushi (1995): Dowry and Protection to Married Women, IIIrd Ed., Deep and Deep Publication, New Delhi

<sup>54</sup> Ibid.



that educative factor, as well as the legal sanctions behind it which help public opinion to be given a certain shape.”

### **Conclusion :**

Aforesaid text demonstrated that the Dowry Prohibition Act, 1961 did not include any provision which deal with the cruelty and harassment suffered by women because of dowry demand which shows that this act only defines punishments for demanding; taking or giving dowry so it does not cover any type of violence created on women. That was the big reason of amendments done in Indian Penal Code; Indian Evidence Act and Criminal Procedure Code, then the new provisions for the protection of married women from the cruelty and harassment faced because of dowry demand came on the screen. Mainly these Section 498A I.P.C; Section 304B I.P.C and 113A of Evidence Act were directly dealing with the problem of dowry harassment and cruelty and dowry deaths.

### **(iii). Section 498A in The Indian Penal Code**

For the protection of women from cruelty because of demand of dowry which they face behind the four walls of their matrimonial home ,Indian Penal Code, 1860 was amended in 1983 and introduced Section 498A which deals with 'Matrimonial Cruelty' to a woman. It is defined in Chapter XXA of I.P.C. and the offence covered under are cognizable, non-bailable and non-compoundable.

The Statement of Objects and Reasons of the Bill introducing the said section reads:

“The increasing number of dowry deaths is a matter of serious concern.

The object of introducing Chapter XX-A containing section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry.<sup>55</sup>

The NCRB report revealed that while the maximum number of FIRs registered in the country are covered under Section 498-A, the conviction rate under this section is 12.1% among all cases of crimes against women, which is the lowest. Of the 3.3 lakh cases of crimes against women registered in 2016, 1.1 lakh cases were related to ‘cruelty by husband or his relatives’ which

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<sup>55</sup> B.S.Joshi v State of Haryana, AIR 2003 SC 1386; 2003 Cr LJ 2028; 2003 (2) SCR 1104; 2003 (4) SCC 675 : 2003 (3) JT 277; 2003 (1) DMC 524.

constitutes Section 498-A. Apart from section 498-A, about 10,000 cases were also registered under the Dowry Prohibition Act in 2016, but conviction rate here too was just over 15%.<sup>56</sup>

**(a) Section 498A read as :**

Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

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

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

**(b). Essentials of the aforementioned provisions are:-**

**(i). Women must be married.**

**(ii). she must be subjected to cruelty.**

**(iii). Cruelty must be of the nature of :** Any wilful conduct as was likely to derive such woman: to commit suicide; cause grave injury or danger to her life, limb, either mental or physical; harassment of such woman: with a view to coerce her to meet unlawful demand for property or valuable security, on account of failure of such woman or by any of her relation to meet the unlawful demand, woman was subject to such cruelty by: husband of that woman, or any relative of the husband.<sup>57</sup>

For proving the offence under section 498A of the Indian Penal Code, the complainant must make allegation of harassment to the extent so as to coerce to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. In absence of any such allegation being made or otherwise can be found out so as to enable the court to arrive

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<sup>56</sup> Section 498A - Cruelty by husband or his relatives: Maximum ... - Times ...  
[www.timesnownews.com/mirror-now/article/section-498a-cruelty-by](http://www.timesnownews.com/mirror-now/article/section-498a-cruelty-by).

<sup>57</sup> ‘Law of Protection of Women from Domestic Violence’ written by ‘Rajat Baijal’ under the publication of ‘Bharat law publications’ PART II ‘Case Law on Cruelty by Husband or his Relative— Section 498A IPC’ Page no 679,

at an opinion that the accused *prima facie* have committed such an offence, prosecution under section 498A cannot be sustained.<sup>58</sup>

**(c) Reasons of Criminal Law second amendment Act 1983 and it's purpose:**

The purpose for which section 498-A IPC came in operation is totally reflected in the statement of objects and reasons while making the criminal law (Second Amendment) Act 46 of 1983. As plainly stated therein that the growing number of dowry deaths is a affair of solemn concern. The dimensions of the wicked has been commented upon by the joint committee of the House to study the working of the Dowry prohibition Act 1961. Cases of cruelty by the husband and relatives of the husband which come to in suicide by or murder of the unfortunate woman concerned, amount to only a small part of the cases involving such cruelty. It is therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry death but also cases of cruelty to married women by their in laws. With a view of providing social justice to the helpless and suppressed class of women suffering in man dominated structure of society. This is meant to eradicate the evil of dowry deaths as well as to reduce the cases of cruelty to women folk of young age. It has created and will continue to maintain the fear complex in the society not to indulge in such malpractices of cruelty or death by suicide.<sup>59</sup>

The Indian Penal Code was proposed to be amended by making cruelty to a woman by her husband, or any relative of her husband, punishable with imprisonment for a term which may extend to 3 years and also with fine. Wilful conduct of such a nature by husband or any relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her and harassing a woman by her husband or any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand of property was to be made punishable as cruelty. That is why Section 498-A came to be inserted in the IPC. A perusal of the said provisions makes it clear that what is made penal is the conduct of the husband or the relative of the husband who subjects such a woman to cruelty. The word 'cruelty' has been defined in the explanation to Section 498-A, IPC. Clause (a) thereof deals with any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Clause

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<sup>58</sup> Bhaskar Lal Sharma v Monica, 2009 (10) SCC 604; 2009 (2) DMC 256; 2009 (10) SCALE 744; 2009 (2) WLC 651; AIR 2010 SCW 2809.

<sup>59</sup> Sobha Menon, Cruelty Against Women, Central Indian Law Quarterly, Vol. IX : 11, 1996.

(b) deals with harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

It is common knowledge that despite prohibition of the pernicious social evil of demand or payment of dowry under the Dowry Prohibition act 1961, number of dowry deaths was escalating. It had become a subject of grave concern to the enlightened section of the society. It therefore, received anxious consideration of the joint committee of both the houses of Parliament. As a result of constant harassment, humiliation etc. at the hands of the husband or his relatives, the married woman used to become helpless and being unable to bear with it, was driven to commit suicide, The existing law was found to be inadequate even though sec. 306, IPC, stood on the statute book and Dowry Prohibition Act 1961 was enacted. It was in this background that Section 498-A was inserted in the Penal Code.<sup>60</sup> Section 498-A was added with a view to punishing husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter productive and would act against interests of women and against the object for which the provision was added. There is every likelihood that non-exercise of inherent power by the court to quash the proceedings to meet the ends of justice would prevent women from setting earlier. That is not the object of section 498-A IPC.<sup>61</sup>

**(d) Ambit of protection of women from cruelty and harassment under this section (498A I.P.C.):**

Section 498-A was inserted in Indian Penal Code specifically to deal firmly and effectively with all cases of cruelty and harassment to women.<sup>62</sup> It is the horrifying number of atrocities committed in the name of dowry and unfortunate number of wife burning incidents that brought Section 498-A of the Indian Penal Code on the statute book. The section, however, is specially worded in order to encompass even the class of cruelty committed through the litigate process.<sup>63</sup> The wilful conduct certainly implies the establishing of a motive to treat such a woman with cruelty. The gravity of such conduct is also reflected in the wording of clause (a) of the Explanation that such conduct should be likely to drive a woman to commit suicide or to cause

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<sup>60</sup> *Balakrishna Pandurang Moghe v State of Maharashtra & Anor* 1998 Cr. L.J. 4496 (Bom) (DB).

<sup>61</sup> *B.S. Joshi v. State of Haryana*, AIR 2003 SC 1386.

<sup>62</sup> *Madhuri Mukundchitnis (Smt) v Mukund Martend Chitnis & anor* 1992 Cr. L.J. 111 (Bom) (DB) (1991) 1 RCR 505 (Bom)(DB)

<sup>63</sup> *Ibid.*

grave injury or danger to life limb or health (whether mental or physical) of a woman. Consequently, the definition under clause (a) cannot be said to be vague as it rules out minor differences between the wife and husband or the relatives of the husband. Clause (b), the definition of cruelty pertains to harassment of a married woman with a view to coercing her or any person related to her to meet the unlawful demand of dowry or for any property or valuable security or on account of her failure of any person related to her to meet such a demand. Thus, on the given facts of a particular case the court has first to form an opinion that as a matter of facts such harassment has close nexus for coercing a married woman to meet the unlawful demand of her husband or relatives of the husband qua any property or valuable security. Thereafter the presumption of treating her with cruelty will arise. Obviously, the legislature has defined the term 'cruelty' while keeping in view the object which was required to be achieved. Thus, the ordinary dictionary meaning of 'cruelty' would not be applicable to hold that it is vague being interpreted in so many ways.<sup>64</sup> This section has no retrospective application<sup>65</sup> and does not violate Art 14 of the Constitution of India.<sup>66</sup> The mens-rea is an essential ingredient of offence under Section 498-A, IPC.<sup>67</sup> The refusal to return 'streedhan' despite repeated requests attracts the continuing offence, so fresh limitation will start running from the day the wife makes a demand from the accused for the return of 'streedhan'.<sup>68</sup> It is not every harassment or every type of cruelty that would attract Section 498-A, IPC. It must be established that the beating and harassment was with a view to force the wife to commit suicide or to fulfil illegal demands of her husband and in-law

**(iv). Dowry death Section 304B of IPC says :**

According to this section when the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in

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<sup>64</sup> *Krishan Lal & ors v UOI* 1994 Cr. L.J. 3472 (P&H) (DB).

<sup>65</sup> *K Subramaniam v State* (1988) 3 Crimes 633 (Mad); *Arvind Dhawean v State of Haryana* (1998) 3 RCR\$ (Cri) 593 (P&H).

<sup>66</sup> *Balkrishana Pandurang Moghe v State of Maharashtra* 1998 Cr. L.J. 4496 (Bom) DB (1998) 3 Mah LJ 331 (Bom).

<sup>67</sup> *Savitri Devi v Ramesh Chand & ors* 2003 Cr. L.J. 2759 (Delhi).

<sup>68</sup> *Renu & ors v State of Haryana* 1991 Cr. L.J. 2049 (P&H).

section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]"The Section 304-B, IPC has been inserted by the Dowry Prohibition Amendment Act, 1986 with a view of combating increased menace of dowry deaths.

**(a). Essential components of 304B:**

**(1) There must be demand of dowry:**

The Supreme Court has stated that the definition of ‘dowry’ in the Dowry Prohibition Act not only includes receiving of dowry but also the very demand of dowry before or at the time or after the marriage where such demand is referable to the consideration of the marriage.

In *S. Gopal Reddy v. State of A.* P69, The Apex Court expressed its view as follows:

Any “demand” of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of ‘dowry’ under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfillment of the “demand of dowry” leads to the ugly consequence of the marriage not taking place at all.

**The Supreme Court expressed its anguish at the alarming increase in dowry deaths:**

“The alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides has always sent shock waves to the civilised society but unfortunately the evil has continued unabated. Awakening of the collective consciences is the need of the day. Change of heart and attitude is needed.”

In the present case the offence alleged against the appellants is under Section 304-B IPC which makes “demand of dowry” itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the grip of law. When Section 304-B refers to “demand of dowry”, it refers to the demand of property or valuable security as referred to in the definition of “dowry” under the 1961 Act. It is contended on behalf of the appellants that mere demand of scooter or fridge would not be a demand or dowry. We find from the evidence on record that within a few days after the marriage, the deceased was tortured, maltreated and harassed for not bringing the aforesaid articles in marriage. Hence the demand is in connection with marriage. The argument

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<sup>69</sup> *S. Gopal Reddy v. State of A.* PAIR 1996 SC 2184 : 1996 Cr LJ 3237.

that there is not demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect.

The definition of the term ‘dowry’ under Section 2 of the Act shows that any property or valuable security given or “agreed to be given” either directly or indirectly by one party to the marriage to the other party to the marriage “at or before or after the marriage” as a “consideration for the marriage of the said parties” would become ‘dowry’ punishable under the Act. Property or valuable security so as to constitute ‘dowry’ within the meaning of the Act must, therefore, be given or demanded “as consideration for the marriage”.

Section 4 of the Act aims at discouraging the very “demand” of “dowry” as a ‘consideration for the marriage’ between the parties thereto and lays down that if any person after the commencement of the Act, “demands”, directly or indirectly, from the parents or guardians of a ‘bride’ or ‘bridegroom’, as the case may be, any ‘dowry’, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 5,000 or with both. Thus, it would be seen that Section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand, if satisfied, would constitute the graver offence under Section 3 of the Act punishable with imprisonment for a term which shall not be less than five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.

The Supreme Court has stated that the definition of ‘dowry’ in the Dowry Prohibition Act not only includes receiving of dowry but also the very demand of dowry before or at the time or after the marriage where such demand is referable to the consideration of the marriage. The Apex Court in *S. Gopal Reddy v. State of A.* P70, expressed its view as follows:

Any “demand” of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of ‘dowry’ under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the “demand of dowry” leads to the ugly consequence of the marriage not taking place at all.

**(2) Demand of dowry must be as consideration for marriage and demanded before, at the time or after marriage:**

The definition of the term ‘dowry’ under Section 2 of the Act shows that any property or valuable security given or “agreed to be given” either directly or indirectly by one party to the marriage to the other party to the marriage “at or before or after the marriage” as a “consideration for the marriage of the said parties” would become ‘dowry’ punishable under the Act. Property or valuable security so as to constitute ‘dowry’ within the meaning of the Act must, therefore, be given or demanded “as consideration for the marriage”.

Demand of dowry after long time of marriage shall also be considered as consideration of marriage:

In *State of Himachal Pradesh v. Nikku Ram*<sup>71</sup>, it is held by the Apex Court:

“We shall first take up the second facet. A perusal of the judgment shows that dowry had been defined at the relevant time as under:

“It means any property or valuable security given or agreed to be given either directly or indirectly:

- (a) by one party to a marriage to the other party to the marriage;
- (b) by the parents of either party to the marriage or by any other person, to either party to the marriage or to any other person ;

at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahir in the case of persons to whom the Muslim Personal Law (Shariat) applies”.

Despite the aforesaid definition having stated that the property or valuable security given or agreed to be given has to be as “consideration for the marriage”, demands made after the marriage could also be a part of the consideration. according to us, because an implied agreement has to be read to give property or valuable securities, even if asked after the marriage, as a part of consideration for marriage. When the Dowry Prohibition Act was enacted, the Legislature was well aware, of the fact that demands for dowry are made, and indeed very often, even after the marriage has been, solemnised, and this demand is founded on the factum of marriage only. Such demands, therefore, would also be, in our mind, as consideration for marriage.

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<sup>71</sup> *State of Himachal Pradesh v. Nikku Ram* AIR 1996 SC 67.



The definition as amended by the aforesaid two Acts does not, however, leave anything to doubt that demands made after the solemnisation of marriage would be dowry. Because again it has been defined by the Apex Court, “In this Act ‘Dowry’ means any property or valuable security given or agreed to be given either directly or indirectly-(a) by one party to marriage to the other party to the marriage : or (b) by the parents of either party to marriage or by any other person to either party to the marriage or to any other person :

At or before any time after the marriage in connection with the marriage of the said parties,<sup>72</sup> but does not include dower or mahr in the case of person to whom the Muslim Personal Law (Shariat) applies.”

The aforesaid definition makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the un-amended definition. This apart, the addition of the words, “any time” before the expression “after the marriage” would clearly show that even if the demand is long after the marriage, the same could constitute dowry. If other requirements of the Section are satisfied.

### **(3). Demand of dowry 'Soon before' her death:**

Section 304-B used the words that it should be shown that ‘soon before’ her death, the woman has subjected to cruelty or harassment by her husband or any relative of her husband. The expression ‘soon before’ would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question.

The expression ‘soon before’ is not synonymous with the term ‘immediately before’. It normally implies that cruelty should not be remote in time to become stale enough not to disturb mental equilibrium of the woman concerned. It should neither be too late nor too stale before the date of death of the victim.

In **A.P. v. Tota Basava Punnaiah and others**<sup>73</sup> it was observed that even the deceased died on account of the hanging within three years after her marriage, still the death comes within the scope of Section 304- B, IPC, if it is shown that she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

### **(4). Directly or indirectly demands dowry from parents or guardian of a bride or bridegroom:**

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<sup>72</sup> Kamesh Panjiyar v. State of Bihar, 2005 (2), SCC 395.

<sup>73</sup> [1989 Cr.LJ 2330 (A.P.)]

In **L. V. Jadhav's case**<sup>74</sup> while interpreting the meaning of 'dowry' under Section 2 of the Act and co-relating it to the requirements of Section 4 of the Act, the Bench observed:

".....Section 4 which lays down that "if any person after the commencement of this Act, demands, directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both". According to Webster's New World Dictionary. 1962 Edn. bride means a woman who has just been married or is about to be married, and bridegroom means a man who has just been married or is about to be married. If we give this strict meaning of a bride or a bridegroom used in Section 4 of the Act. Property or valuable security demanded and consented to be given prior to the time when the woman had become a bride or the man had become a bridegroom, may not be "dowry" within the meaning of the Act. We are of the opinion that having regard to the object of the Act a liberal construction has to be given to the word "dowry" used in Section 4 of the Act to mean that any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of Section 2 of the Act.

We are also of the opinion that the object of Section 4 of the Act is to discourage the cry demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under Section 3 read with Section 2 of the Act. There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence....."

Therefore, interpreting the expression 'dowry' and 'demand' in the context of the scheme of the Act, Court was of the opinion that any 'demand' of 'dowry' made before at or after the marriage, where such demand is made as a consideration for marriage would attract the provisions of Section 4 of the, Act.

#### **(5) Burden of Proof is on prosecution:**

The prosecution under section 304B of Indian Penal Code cannot escape from the burden of proof that the harassment to cruelty was related to the demand for dowry and such was caused "soon before her death".

#### **(v) Section 113B of Indian Evidence Act 1872:-**

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<sup>74</sup> L. V. Jadhav's case AIR 1983 SC 1219.

**(a) 113B defined under the Act : Presumption as to dowry death.—**

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]

**(b) The utility of Section 113B explained through the illustration of the cases:**

In the case *Shanti v. State of Haryana*,<sup>75</sup> the Supreme Court has made it clear that Sections 498-A and 304-B are distinct offences although they overlap each other. It is perfectly possible to convict the person under Section 498-A and acquit a person under Section 304-B for want of evidence. Therefore, it was pointed out that there was no hesitation in holding that A-2 the father of A-I’ and the father-in-law of the deceased was guilty of an offence under Section 498-A on the evidence of P.Ws. 1, 2, 4, 6 and 7 and under Sections 3, 4 and 6 of the Dowry Prohibition Act and further it is pointed out that there should be five essentials to make out the offence under Section 304-B.

**(c) Essential ingredients of section 304-B**

- (1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (2) Such death should have occurred within seven years of her marriage;
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) Such cruelty or harassment should be for or in connection with demand for dowry;
- (5) To such cruelty or harassment, the deceased have been subjected soon before her death.”<sup>76</sup>

If anyone of these ingredients is not proved to the satisfaction of the Court, then an offence under Section 304-B cannot be made out.

Through the reading of the above ingredients of offence under Section 304B, I.P.C. it would be concluded that death caused by bodily injuries (as in this case) must have been as a result of cruelty or harassment in connection with demand for dowry. If death occurs due to

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<sup>75</sup> AIR 1991 SC 1226: 1991 Cr LJ 1713.

<sup>76</sup> *Kans Raj v. State of Punjab*, (2000) 5 SCC 207 as quoted in *Thakkan Jha v. State of Bihar*, 2006(1) HLR (SC) 599.

cruelty under the wider definition of 'cruelty' under Section 498-A. I.P.C. and is not referable to cruelty in connection with demand of dowry as required under Section 304-B. then it would not be permissible for the Court to convict a person under Section 304-B, I.P.C. although he may be liable for conviction under Section 498A. I.P.C. To put it in the light of the facts of this case, if Court were to hold that the death of the deceased was as a result of the cruelty meted out by the A-I in unreasonably suspecting her virginity, then Court was not sure whether an offence under Section 304-B could be made out against the accused. The Supreme Court has stated that such cruelty or harassment should be for or in connection with demand for dowry. If the death occurs pursuant to such cruelty which is not referable to demand for dowry, then the four ingredients necessary for a Conviction under Section 304-B is not made out.

The Court was then concerned with whether the presumption under Section 113-B of the Evidence Act could apply in the facts of this case. Section 113-B of the Evidence Act reads as follows :“113-B. Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.Explanation.- For the purposes of this Section, 'dowry death' shall have the same meaning as in Section 304B of the Indian Penal Code.”The ingredient necessary for a presumption under Section 113B of the Evidence Act is that just soon before the death, the deceased was subjected to cruelty in connection with the demand for dowry and soon before will depend upon facts and circumstances of each case.

In a recent case of dowry death as per the post-mortem report the deceased was pregnant, therefore suggestion that she might have committed suicide, appears after thoughts- if it was accident, incident should have been reported to police which was not done-As per evidence of father of deceased, accused, appellant had arrived at his house, abused and threatened him that he would see dead body of his daughter because he was not given motor cycle and money- Evidence supported by other witnesses- Death occurred next morning in house of appellant- incident not explained by appellant and they avoided to give true picture of incident-Thus deceased died unnatural death within 3 years of marriage, just after non-fulfilment demand of

motor cycle and money-Presumption under S. 113-B of Evidence Act has to be drawn-Conviction of appellant accused, under Ss. 304-B and 498-A, proper.<sup>77</sup>

So far as the conviction of the two appellants under Section 304B, I.P.C. was concerned, the trial court in an Orissa case had mainly relied upon the presumption available under Section 113B of the Evidence Act. To attract culpability under Section 304B, it must be found that the deaths, of the woman is caused by any burns or bodily injury or under abnormal circumstances. In the present case, there was no dispute that death had occurred within seven years of the marriage. It was also apparent that the deceased had been subjected to cruelty or harassment by the relatives of her husband in connection with demand for dowry. The important question to be considered was whether the death was caused by any burns or bodily injury or under abnormal circumstances.<sup>78</sup> In this connection, the trial court had raised the presumption under Section 113B of the Evidence Act.

Before raising a presumption under Section 113B, a Court is required to come to a conclusion that soon before her death, the deceased had been subjected to cruelty or harassment for, or in connection with, any demand for dowry. If the Court comes to such a conclusion, then it shall presume that the person who has subjected the deceased to such cruelty or harassment has caused the dowry death. In other words, the Court shall presume that the death of the woman has occurred otherwise than under normal circumstances. However, even though the Court is bound to raise such a presumption, as per Section 4 of the Evidence Act, such a presumption is rebuttable one and can be disproved. The Court pointed out that in the present case, there was specific evidence of P.W. 4 that the death of his wife was on account of diarrhoea. The trial court did not think place any reliance upon the evidence of P.W. 4 on the ground that P.W. 4 must have stated so to save his parents. The Supreme Court did not think, it was open to the trial court to reject the specific evidence of a prosecution witness who had not been declared hostile by the prosecution, merely because the effect of such evidence was in support of some of the accused persons. It is not that such a statement was elicited from P.W.-4 by way of cross-examination in some unguarded moment. In fact, such a statement was made in examination-in-chief, P.W.-4 stated:

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<sup>77</sup> Anand Mahato v. State of Jharkhand, 2007 Cr. L. J. 657.

<sup>78</sup> Jai Bhagwan & ors. v. State of Haryana, 2006(1) RCR (Criminal) 149 (P & H).

“.....On next Friday at 4. p.m. Jyotsna suffered from diarrhoea and in the night at about 2 a.m. she expired. ....”

The Court observed<sup>79</sup> that the trial court discarded such statement on the ground that the evidence of P.W.-4 that she was not treated before her death im probabilised the alleged illness. In rural areas, non-treatment of ailing persons is not uncommon. Though the statement of P.W.-4 was made in examination-in-chief, no attempt had been made by the prosecution to cross - examine P.W.-4 on the point. In fact, to clarify doubt as to whether it was an inadvertent omission on the part of the prosecution. P.W.-4 in his statement before the police had also stated that his wife suffered from diarrhoea and died. The categorical statement of a prosecution witness, who being the husband of the deceased had special means of knowledge regarding the cause of death of his wife. could not have been disbelieved merely because the parents of such witness were the accused persons. In such view of the matter, it must be held that the death of J was not unnatural and the presumption, if any, under Section 113-B had been disproved. In the absence of any proof that death of J was not under normal circumstances, the question of convicting the father-in-law and mother-in-law of deceased J under Section 304-B, I.P.C., would not arise. Accordingly, their conviction under Section 304-B, I.P.C. was liable to be set aside.<sup>79</sup> In the instant dowry death case, Presumption under Sec. 113-B, Evidence Act – Death by Burning within 3 years of marriage. Evidence on record shows that deceased was taken to in-laws house after about 10 months of marriage only after intervention of villagers and requests made by father. Deceased had written letter to her brother about ill-treatment given to her and demand of Rs. 30,000/-. Sufficient evidence placed on record regarding ill-treatment and demand of money and Maruti Car made by appellants. Defence plea of accidental burn injuries while preparing tea at 4.30 A.M. Not proved. In circumstances presumption under S. 113-B clearly attracted.<sup>80</sup> Conviction of appellants, husband and in-laws, proper.<sup>81</sup> Where the deceased was found floating in a well located in the house of accused and death occurred otherwise under normal circumstances within seven years of marriage. It is proved that there was dowry demand, torture and harassment by her husband. Under the circumstances presumption under section 113-B attracted. Section 113-B can have relevance only to a prosecution under Section 304-B I.P.C., as it covers, only dowry deaths and no other offence at all. It is mandated that the Courts shall

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<sup>79</sup> Gati Behera v. State of Orissa. 1997 Cr L. J. 4331 (Or) : 1997 (2) Hindu LR 687.

<sup>80</sup> Kailash v. State of M.P., AIR 2007 SC 107.

<sup>81</sup> Gulabi Devi & anr. Etc. v. State of Bihar, 2007 Cr. L.J. (NOC) 126 (Jhar.).

presume that a person (husband or relatives of the husband), who had indulged in cruelty or harassment of the variety described under Section 304-B had caused the dowry death. The expression “shall presume” is defined under Section 4 of the Evidence Act in the following words.

“Shall presume” “Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:”

It is a big issue to discuss: what is the need or scope of the presumption under Section 113-B of the Evidence Act when the substantive penal provision under Section 304-B Indian Penal Code itself deems that the dowry death is caused by the husband or his relatives. When it is once deemed by the substantive provision that the husband or his relative has committed dowry death, why there should be any further presumption under Section 113-B of the Evidence Act? Will the deeming under Section 304-B constitute a conclusive proof under Section 4 of the Evidence Act, in which event Section 113-B would become unnecessary and superfluous.

#### **D. Conclusion:**

As it makes clear that all the legislation provided before "the Protection of women from domestic violence Act, 2005" were made to protect married women who suffered cruelty because of demand of dowry, there were no single way to protect unmarried or married female from other domestic violence. As we all know only dowry demand is not a single violence which make women life miserable but in our society there are so many other ways through which women have to lead or suffer the inferior and discriminatory life. In our society since from ages women are put on subordinate position and serve her as an object before the society and for the service of the society. That is why after marriage every man thought that they have proprietary right upon their wives and manage them according to their comfort. The laws which are explored in this chapter partially deter culprits from committing an offence against women, because of civil nature these laws do not effectively play important role to protect women from domestic violence. The Constitutional privileges for women such as Political rights according to the Constitution of India according to which both man and woman have equal political rights through which they are able to take part in the administration of the country but still involvement of women in Indian active power politics is so minimal. Under Constitution both man and woman have equal economic rights like equal remuneration which improve their condition in matters relating to wages, property right, etc. Constitution provides some special privileges to

women in the form of maternity leave and benefits but lack of economic awareness, education, training and some customary reasons women are still caught behind the doors of their houses and work like a slave and remained financially dependent on man. Social justice requires every person to have human rights to live his or her life without any discrimination in society. Fundamental rights are those human rights which are essential for every human being for the overall development of every human being such as equality before law which state shall not discriminate against any citizen of India on the ground of sex, no citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex. Traffic in human beings and forced labour are prohibited. Right to life and liberty is of utmost importance. Directive Principles are those state policies which are necessary to fulfil the social need but these are not enforceable in any court of law. Under these state has to secure for men and women equally the right to an adequate means of livelihood, equal pay for equal work for both men and women, just and humane conditions of work and maternity relief. Fundamental duties describe that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Other legislations also are not as sufficient and stringent to protect women from the evil of domestic violence because of the complicated procedure prescribed to apply them and very less knowledge of those provisions to women. These anti-dowry laws are not sufficient to curb this malice from the society as these are either misused or if used the people did not attain relief due to lack of knowledge or hesitation to use it. These laws affected adversely woman who use them her situation became more worst. If she used section 498A I.P.C. the end result is divorce which paralyses her life and affected her socially, as divorced women was not accepted by society economically as she does not remain financially sound, and mentally as she had burden of her kids and her own self. Indirectly section 498A I.P.C persisted as a nightmare for women. Other sections like 304B of I.P.C and 113A and 113B of Evidence Act are helping the judiciary to find out whether the suicide is caused by dowry demand or something else. It means the presumptions of dowry demand and dowry death .All the matter is running around the dowry and dowry demand. In cruelty and harassment again reason is dowry demand. While considering the vulnerable situation of women in her parental house or after Marriage in matrimonial house the Act Protection of women from domestic violence was passed,. Although the changes in Indian criminal law reflects a serious effort by legislators to put



an end to dowry-related crimes, and although they have been in effect for many years now, they have been largely criticised as being ineffective.

## **Chapter- 4**

### **Protection of Women from domestic violence under Domestic Violence Act 2005**

#### **I. Scope :**

Violence against women has been recognised by the international community as the most fundamental violation of women's human rights. The United Nations general Assembly adopting the Declaration on the Elimination of Violence Against Women had affirmed that, "Violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms", and expressed its concern about the long standing failure to protect and promote those rights and freedoms in the case of violence against women. The Vienna Conference of 1993 also recognised violence against women as a human rights violation. The Beijing Platform for Action equally recognised violence against women as a violation of women's human rights and fundamental freedoms and violence along with health, education and political empowerment was emphasised as one of the twelve critical areas of concern and the determination of the international community to " prevent and eliminate all forms of violence against women and girls", was emphatically underlined.

In spite of numerous International Instruments pledging to secure women's emancipation with the object of enhancing the dignity of women and protecting her rights, violence against women has continued unabated.

An act of violence may be defined as a conscious and deliberate act that causes or threatens to cause harm. It is a type of coercive behaviour that involves the use, attempted use or threatened use of physical force intended to lead to physical or mental injury or even death, of the victim. The United Nations defines violence against women as any act of gender-based violence that results in physical, sexual and mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty.

#### **Statement of Objects and Reasons of enacting the Act:**

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and Beijing Declaration and the Platform for Action

(1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family. The civil law does not however address this phenomenon in its entirety.

It is therefore, proposed to enact a law keeping in view the rights guaranteed under Article 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

### **(A) Reasons stated by Chattisgarh High Court of enacting of the Act:**

In **Smt. Neetu Singh vs Sunil Singh**<sup>1</sup>honourable High Court in this case stated the reasons of the enactment of the Protection of Domestic Violence Act, 2005 as follows “The Act, 2005 has been enacted, as the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The civil law does not address this problem in its entirety. Even though where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the IPC. Therefore, in order to provide a remedy in the civil law for the protection of women from being victim of domestic violence and to prevent the occurrence of domestic violence in the society for the protection of women from domestic violence, the Act, 2005 has been enacted by the Parliament. Considering the fact that domestic violence is undoubtedly a human right issue and serious deterrent to development, this law has been enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Therefore, in order to grant minimum relief to the aggrieved person who is subjected to domestic violence, the above Act, 2005 has been enacted. Aggrieved person as defined in Section 2(a)

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<sup>1</sup> Chattisgarh High Court **Smt. Neetu Singh vs Sunil Singh** on 28 September, 2007 Equivalent citations: AIR 2008 Chh

of the Act, 2005 is subject of domestic violence as defined in Section 3 of the Act, 2005, she is entitled to move an application before a Magistrate under Section 12 of the Act, 2005 for seeking relief for issuance of the order for payment of compensation or damages without prejudice to right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent”.

## **II. The ACT, *inter alia*, seeks to provide for the following:**

- (1) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner to file a complaint against the wife or the female partner.
- (2) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
- (3) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.
- (4) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.
- (5) It provides for appointment of Protection Officers and registration non-Governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.
- (6) The Bill seeks to achieve the above objects.

### **III. Aim and Object of the Act in detail:**

#### **(A) This act widened the scope of protection of women from domestic violence as under:-**

- (i) This act provides protection not only to the wife or female live in-partnership but every women who is living in household such as sisters, widows or mothers can approach the court for protection against domestic violence.
- (ii) Act seeks to cover those women who are or have been in relationship with abuser. Hence, even those women, who are sisters, widows, mothers, wife and who are living with abuser, are entitled to get legal protection.<sup>2</sup>
- (iii) The act gives expanded definition of abuse:- It includes not merely actual abuse or threat of abuse whether physical, sexual, verbal, emotional or economic but also took into account harassment by way of unlawful dowry demands to the woman or his relatives who would also be covered under this definition.
- (iv) It covers every aspect of protection such as
  - (a) To provide right to shelter
  - (b) The court has power to pass protection order
  - (c) To provide penalty for breach of protection order
  - (d) This act provides for appointment of protection officers and NGO's to provide assistance to the woman with respect to medical examination, legal aid, safe shelter etc.
  - (e) This act gives expanded definition of 'Economic abuse which includes deprivation of all or any economic or financial resources to which the victim is entitled under any law or custom whether payable under an order of a Court or otherwise or which the victim requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by her, payment of rental related to the shared household and maintenance and disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the victim has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or her children or her stridhan or any other property jointly or separately held by the victim and prohibition or restriction to

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<sup>2</sup> Manish Tandon v. State, I(2010) DMC242 (Del); Maran Rama v. State of Tripura, 2010 (90) AIC 833 (Gau) (Agartala Bench).

continued access to resources or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household, "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the victim and includes assault, criminal intimidation and criminal force.

#### **IV. Course of Action to be taken for obtaining reliefs under the Act:**

##### **(A). Inform the Protection Officer about an act of domestic violence.**

To seek relief provided under the Act first and foremost thing is to inform the Protection Officer about an act of domestic violence. Any person providing information to the Protection Officer who has reason to believe that an act of domestic violence has been or being committed. The person who is giving information to the Protection Officer shall be exempted from any civil or criminal liability if he gives information in good faith.<sup>3</sup>

##### **(B) Directly move an application to the Magistrate to seek relief<sup>4</sup>:**

The aggrieved person or Protection Officer or any other person on behalf of the aggrieved person may directly move an application to the Magistrate to seek the reliefs provided under the

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<sup>3</sup> section 4 in the Protection of Women from Domestic Violence Act,2005.

<sup>4</sup> Section 12 in The Protection of Women from Domestic Violence Act, 2005

12. Application to Magistrate.—

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

Act like payment of compensation and damages for the injuries she suffered because of domestic violence committed by the respondent.<sup>5</sup>

**(C) Notice to the respondent and its service:**

It is protection Officer's duty to serve the notice to the respondent or any other person. Notice mention's the date of hearing on an application for relief and the date is mentioned by the Magistrate. The notice shall be served in the manner prescribed in the Act and the time in which the notice shall be served is maximum two days, it may be extended through the direction of the Magistrate for a reasonable time.<sup>6</sup>

**(i). Personal appearance of the respondent is not must on the notice:**

Since the application under section 12 of the Act is meant for certain reliefs under sections 18, 19, 20, 21, 22 & 23, it is not necessary that the 'respondent' has invariably to appear in person. The rules under this act clearly provide that the learned Magistrate may direct that the respondent may appear, either personally or through a duly authorised counsel. Of course, the Magistrate has judicial discretion to direct appearance of a respondent in person provided such appearance is found necessary for adjudication of the dispute. But the matter of fact is that section 12 of the Act does not relate to any offence punishable under IPC 1860. Therefore, personal appearance of a respondent is not must.<sup>7</sup>

**(ii). If notice is not duly served to the respondent and then the Magistrate passes an *ex parte* order against respondent it is a mistake under the law:-**

The Magistrate passed an *ex parte* order against the husband of the complainant without serving notice on him granting monthly maintenance for the complainant and her daughter, appeal where against was dismissed by the Sessions Judge. The order passed by the Magistrate itself showed that the respondent could not be served by the notice. On revision, the High Court held that the Magistrate has erred in law in passing the *ex parte* order without getting notice

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<sup>5</sup> P.K.Das, Protection of Women from Domestic Violence Acts & Rules (Fifth Edition, Universal Law Publication 2016)

<sup>6</sup> Section 13 in The Protection of Women from Domestic Violence Act, 2005  
13. Service of notice.—

(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

<sup>7</sup> Silditya Basak v. State of West Bengal Manu/WB/1218/2009.

served on the revisionist as required under section 13 Domestic Violence Act, 2005, read with rule 12 of Rules framed under the Act. It is further found that the appellate court has also erred in law in ignoring the said provision. the revisionist husband was directed to appear before the trial court and the Magistrate was directed to pass fresh orders after hearing the parties. In case the revisionist fails to appear on the date fixed before the trial court personally or through counsel, or on the next date fixed thereafter by said court, the trial court was left at liberty to pass the appropriate orders after hearing the respondent wife.<sup>8</sup>

**(D) Counselling<sup>9</sup>:**

According to this Act the Magistrate at such stage of the proceedings, direct the respondent and the aggrieved person either singly or jointly to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.<sup>10</sup>

**(i). Appointment of counsellor :**

The person who is appointed as counsellor shall as far as possible be women and the person who is not eligible as counsellor is interested person or connected to the subject matter of the disputes related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing. The legal practitioner who appeared on the side of the respondents is also not eligible as counsellor.<sup>11</sup>

**(E) Magistrate may take assistance of Welfare Expert:-**

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<sup>8</sup> S Viswanathan v. Pushpa, 2011 (74) A Cr C 43:2011(7) RCR (Criminal) 778 (Uttar).

<sup>9</sup> Section 14 in The Protection of Women from Domestic Violence Act, 2005  
14. Counselling.—

(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

<sup>10</sup> Sharda Kumar Pandey v. Mamta Pandey, 171(2010) DLT 565: II (2010)DMC 600 : 2010(118) DJR 625 (Delhi) : 2010(5) CJR 327 18(Delhi).

<sup>11</sup> rule 13 in the Protection of Women from Domestic Violence Rules, 2006.

Appointment of Counsellors.—

(1) A person from the list of available Counsellors forwarded by the Protection Officer, shall be appointed as a Counsellor, under intimation to aggrieved person.

(2) The following persons shall not be eligible to be appointed as Counsellors in any proceedings, namely:—

(i) any person who is interested or connected with the subject matter of the dispute or is related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing.

(ii) any legal practitioner who has appeared for the respondent in the case or any other suit or proceedings connected therewith.

(3) The Counsellors shall as far as possible be women.



Magistrate may take assistance or secure service of any welfare expert in discharging his functions. That person preferably a women whether she is related to the aggrieved person or not. He/she may be the person who is engaged in the welfare of the family.<sup>12</sup>

## **V. Judicial Remedies And Judicial Interventions:**

Under this Act victim can move directly to the Magistrate or through other agencies or such as the Police, Protection Officers, Service Providers, or any other person acting on her behalf for relief for herself or for her children to the Magistrate empowered to pass orders of protection, residence, custody of child, compensation, maintenance and for speedy justice interim and *ex parte* orders in favour of the aggrieved person. In this way judicial intervention and judicial remedies helps an aggrieved person to get justice against domestic violence.

### **(A) Protection order:**

The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, may pass a protection order in favour of the aggrieved person. A protection order may contain an order prohibiting the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, alienating any assets, operating bank lockers or bank accounts belonging to both the parties jointly or to the respondent singly, including her *stridhan* or any other property held jointly or separately by them, causing violence to the dependents other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order.<sup>13</sup>

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<sup>12</sup> Section 15 in The Protection of Women from Domestic Violence Act, 2005

15. Assistance of welfare expert.—In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

<sup>13</sup> Section 18 in The Protection of Women from Domestic Violence Act, 2005

18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

**(i) Two things are required for passing Protection Order :**

- (1) Opportunity of being heard;
- (2) *Prima facie* satisfaction of Magistrate as to occurrence of domestic violence then the protection of orders may be passed by the Magistrate.

**(ii) In protection order the Magistrate may prohibit the respondent**

1. From committing any act of domestic violence
2. Aiding and abetting in the commission of domestic violence
3. From entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person.
4. From making any attempt to communicate in any form what-so-ever, with the aggrieved person, including personal or oral or written or electronic or telephonic contact.
5. From alienating any assets or her *stridhan* or any other property—  
which is held either jointly by the parties or separately by them. Also the respondents can be prohibited from operating bank lockers or bank accounts  
used or held or enjoyed by both the parties by the aggrieved person and the respondents or singly by the respondent  
If at all the respondents want to alienate such property or operate the bank account, he shall have to take permission of the Magistrate.
6. Causing violence to the dependents, their relatives or any person who renders the aggrieved person assistance from domestic violence;
7. Committing any other act as specified in the protection order.

**(B) Right of Residence:-**

The Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order and prevent respondent to cause dispossession or disturbance in the possession of the aggrieved person from the shared household, from alienating or disposing of or encumbering the shared household and from renouncing his right in the shared household except

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(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

with the leave of the Magistrate, and restrain not only respondent but his relatives from entering in the shared household. Magistrate also gives direction to the respondent to secure alternate accommodation for the aggrieved person of the same level as enjoyed by her in the shared household or to pay rent for the same. Under this Act it is also given that no order shall be passed against any person who is a woman directing her to remove herself from the shared household. Under this Act magistrate has power to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. There is a provision of execution of a bond by the respondent for prevention of the domestic violence. Magistrate has power to direct police officer to give protection to the aggrieved person and assisting in the implementation of the residence order.<sup>14</sup>

**(i) Some important things enshrined in the 'Right of Residence' are:**

**(a). Application must be given according to the provision of section 12 of the Act—**

An application before Magistrate under Sec. 12(1) is sine qua none to avail the residence order under the Act. On the application Magistrate has to satisfy himself before passing an order with respect to possession of the household that domestic violence has taken place.

**(b). Locus standi in petition:**

An aggrieved person or a protection officer or any other person on behalf of aggrieved person is entitled to file a petition.<sup>15</sup>

**In V.D.Bhanot v. Savita Bhanot,**<sup>16</sup> where the respondent expressed apprehension of her safety if she were to live alone in a rented accommodation on account of old age, the Court directed the Petitioner to provide a suitable portion of his residence to the respondent for her residence, together with all necessary amenities to make such residential premises properly habitable for the respondent. The said portion of the premises was to be properly furnished according to the choice of the respondent to enable her to live in dignity in the shared household.<sup>17</sup>

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<sup>14</sup>Section 19. Right of Residence in The Protection of women from Domestic Violence Act, 2005.

<sup>15</sup> T.K.Surendran v. State of Kerala, 2009 (83) AIC 312, (Ker).

<sup>16</sup> V.D.Bhanot v. Savita Bhanot, 2012 (1) RCR (Criminal) 834; 2012 (1) KLT 637; AIR 2012 SC 965; 2012 (2) MLJ (Criminal) 361; AIR 2012 SC (Cri) 685; 2012 (2) RLW 1836; 2012 (1) DMC 482 (SC).

<sup>17</sup> section 19 in The Protection of women from Domestic Violence Act, 2005

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

**(c) Police Protection and assistance for implementation of order.—**

The Magistrate has power to pass an order and give direction to the officer-in-charge of the concerned police station to give protection to the aggrieved person or to assist in implementation of the residence order.<sup>18</sup>

**(d) Security for keeping peace and good behaviour.—**

The order to execute a bond, with or without sureties, that order deemed to be given under chapter VII, Cr.P.C.1973 which deals with the provisions relating to Security for keeping peace and good behaviour.<sup>19</sup>

**(ii) Implementation of Residence order:-**

Residence order is one of the orders which the Magistrate is entitled to pass under the Act. To give effect to the provision, the Magistrate has ample power under the Act to give any order to the officer-in-charge to assist him in the implementation of the residence order. It may be possible that to give effect to the order, officer incharge may be directed to have to break open the lock of the house. Though no such provision for the Magistrate to laid down, yet the same is

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(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

<sup>18</sup> section 19 (5) in The Protection of women from Domestic Violence Act, 2005.

<sup>19</sup> section 19 (4) in The Protection of women from Domestic Violence Act, 2005.

legal in circumstances. If the submission that the learned Judicial Magistrate is not empowered to give any order to break open the lock is accepted, then in all cases, the husband will lock the house and walk off and thereby deprive the wife from enjoying the protection order passed under the Act. The order to break open the lock is accordingly valid. There is no impropriety or illegality in the said order.<sup>20</sup>

**(iii) Temporary Remedy:—**

The order passed under this section is a temporary remedy. This remedy is for protection only it does not give rise to any proprietary rights in the matrimonial home. It remains until the parties workout their differences and disputes.

**(iv) Female Respondents:—**

Section 19 while referring to a “Respondent” lays down a limited exception under proviso to 19(1)(b) exempting women from being directed to remove themselves from the shared household.<sup>21</sup>

**(C) Right of Maintenance**

**(i) Maintenance Application:-**

An aggrieved person or a protection officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs. When a Magistrate passes an order he shall receive the Domestic Incident Report from the Protection Officer.<sup>22</sup>

**(ii) Application for maintenance<sup>23</sup>**

The Family Court is not competent to entertain application for maintenance under s.12 of domestic violence act instead the wife-petitioner is entitled to move an application under section 26 of Domestic Violence Act, 2005.before the family court<sup>24</sup>

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<sup>20</sup> P.Basu Venkatesh, Kandayammal & Padmavati v Rani MANU/TN/0612/2008.

<sup>21</sup> Preeti Satija v. Rajkumari, AIR 2014 Del 46:2014 (2) CCC 172: 2014 (2) Rec Civ R 8

<sup>22</sup> M.Palani v. Meenakshi, AIR 2008 Mad 162: 2008 (2) CTC 117: 2008 (3) Mad LJ 855.

<sup>23</sup> Section 26 in The Protection of Women from Domestic Violence Act, 2005

26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

The Family Court is not competent to entertain the application filed before the family court under section 12 of the Domestic Violence Act, 2005. Instead the wife is entitled to move an application under section 26 of the Domestic Violence Act, 2005 before the Family Court in maintenance proceeding said to be pending before court.<sup>25</sup>

**(iii) Monetary reliefs.<sup>26</sup>:—**

Under this Act the Magistrate is empowered to pass orders for grant of monetary relief to the aggrieved person from the respondent. That relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Monetary relief under this Act includes- loss of earning, medical expenses, loss of property and maintenance of the aggrieved person and her children in addition with the maintenance under section 125 of the code of Criminal Procedure, 1973. If the respondent fails to make payments of the monetary relief, the Magistrate may direct the employer and the debtor of the respondent to either pay directly to the aggrieved person and to deposit with the court a portion of the wages or salaries or debt due to or accrued to the respondent.<sup>27</sup>

**In Lalita v M.R.Sunilkumar<sup>28</sup>**:-Under section 20 of the Act not only legally wedded wife but a woman living in a shared household through a relationship in the nature of marriage can also claim all the monetary relief given under the section of the Act.

**(iv) Interim Maintenance and Ex-parte order :-**

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<sup>24</sup> Neetu Singh v. Sunil Singh, AIR 2008 Chh 1.

<sup>25</sup> Neetu Singh v. Sunil Singh, AIR 2008 Chh 1.

<sup>26</sup> section 20 Monetary relief in The Protection of Women from Domestic Violence Act, 2005

.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,— (a) the loss of earnings; (b) the medical expenses; (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force. (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides. (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1). (6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

<sup>27</sup> section 20 Monetary relief in The Protection of Women from Domestic Violence Act, 2005.

<sup>28</sup> Lalita v M.R.Sunilkumar, 2015 AAC540: 2015 (1) AIR Kar R 168 (Karn) (DB).

1. Power of Magistrate to grant Interim-Maintenance and pass *ex-parte* order:- Under this Act the Magistrate has power to grant interim-maintenance or on the basis of affidavits given by the aggrieved person may pass *ex-parte* order in favour of the aggrieved person in terms of section 18 to 22 of the Act.<sup>29</sup>

**In Abhijit Bhikaseth Auti v. State of Maharashtra,**

a perusal of the provisions or sections 20(1)(d) combined with provisions as contained in section 23(1) and 23(2) of the Act makes it clear that the Magistrate is not only empowered to grant monetary relief while finally disposing of an application under sub-section (1) of section 12 of the Act, but empowered to grant maintenance to the aggrieved person as an interim arrangement during the pendency of an application by way of passing an interim order. As such, the learned Sessions Judge, while setting aside the order passed by the learned Trial Magistrate, did not properly appreciate the provisions of section 20 and 23 of the Act, as discussed above. An appeal will lie against orders passed under sub-section (1) and sub-section (2) of the section 23 of the Act which are passed by the Magistrate. However, while dealing with an appeal against the order passed under section 23 of the Act. Appellate Court will usually not interfere with the exercise of discretion by the Magistrate. The Appellate Court will interfere only if it is found that discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.<sup>30</sup>

**(v) Failure to Pay Maintenance: -**

If respondent fails to comply with the protection order or interim protection order it shall be an offence under this Act and respondent shall be punished for this with the imprisonment or with fine or with both.<sup>31</sup>

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<sup>29</sup> Section 23 in The Protection of Women from Domestic Violence Act, 2005

23. Power to grant interim and ex parte orders.—

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

<sup>30</sup> Abhijit Bhikaseth Auti v. State of Maharashtra, 2009 Cr LJ 889: 2009 (1) Mah LJ (Cri) 449: AIR 2009 (NOC) 808 (Bom).

<sup>31</sup> Section 31 (1) in The Protection of Women from Domestic Violence Act, 2005

#### **(D). Child Custody:-**

##### **(i) Magistrate may grant temporary custody of child or children to the aggrieved person:**

Under this Act Magistrate has power to grant temporary custody of child or children to the aggrieved person at any stage of hearing of the application for protection order or for any other relief under this Act and also include the arrangements for visit of such child or children by the respondent if he think it necessary. If Magistrate finds out that such visit is harmful in the interest of such child or children he may refuse to allow such visit.<sup>32</sup>

##### **(ii) General principal behind child custody:-**

**“Welfare and best interest of the child”**

**In re McGrath**, Lindley, L.J., observed:

“The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word ‘welfare’ must be taken in its widest sense. the moral and religious welfare of the child must be considered as well as its physical well being. Nor can the ties of affection be disregarded.”

##### **(iii) Both father and mother be given opportunity of hearing:**

While deciding the custody of child , both parties should be given opportunity of hearing. When the child is in father’s custody, the magistrate should give reasonable opportunity to father to approach forum provided by law for continuance of such custody.<sup>33</sup>

In the case *Ms. Githa Hariharan v. Reserve Bank of India*<sup>34</sup> Supreme Court held that where the person is not in actual charge of the affairs of the minor child because of the inability for any other reason is unable to take care of the minor, mother can act as natural guardian. There is no difference between mother and father under section 6A of the Hindu Minority and Guardianship Act and preferential right, the things being equal, is with the mother to keep the sons particularly

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breach of protection order, or of an interim protection order, by the responded shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

<sup>32</sup> Section 21 in The Protection of Women from Domestic Violence Act, 2005

21. Custody orders.—Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

<sup>33</sup> *Ambula Manoj (Dr) v. Ambula Bhavana* AIR 2010 (NOC) 207 (AP)

<sup>34</sup> AIR 1999 SC 1149: 1999 (2) SCC228: 1999 (1) Scale 490: 1999 (1) JT 524: 1999(1) SCR 669



in the facts and circumstances of the case when the father is not having the charge or exclusive control or actually physical custody of the sons as they are not residing with him.<sup>35</sup>

**(iv) Power of Magistrate to pass interim order:-**

Under this Act Magistrate has power to pass interim order for custody of child as well as the magistrate can pass *ex parte* and interim order.<sup>36</sup>

**(v) Opinion of children before ordering custody order<sup>37</sup>:-**

A direction for forceful custody cannot be given which may cause reaction in the mind of the children detrimental to their health and future. the question is whether issues of custody can be determined based on financial resources of the parents. Aforesaid cannot be sole criteria to determine issue of custody. Each case has to be decided on its facts and therein paramount consideration should be welfare of the children apart from their willingness. In the instant case, both the children are living with father for last two years. When their willingness was asked by the court, both of them desired to live with father only. The allegation of tutoring by father was made. the court at the first instance allowed mother to meet children but it was in the presence of father, thus not taken to be effective. On the request of the counsel of the mother, meeting for three hours was arranged at the residence of the counsel , that too, without presence of the father. The aforesaid effort did not work as was reported by the counsel himself though by repeating allegation of tutoring. A suggestion was given to allow the children to live with mother for few days. The aforesaid suggestion of mother was accepted by the court and accordingly father was directed to bring the children.

As per direction of the court, children were brought and asked to live with the mother for few days. The suggestion was bluntly refused by the children. The counsel for the mother made suggestion for few days custody but it could not have been ordered by exerting pressure on the children to go with mother. The court cannot create such a situation where children may come in depression. The issue of the custody of the children is a sensitive issue and cannot be dealt with in a mechanical manner. The age of the children was also taken up as an issue as one child is at the age of 7 years and would not be in a position to form an opinion. The another child at the age of 13-14 years was also asked about her opinion and she had shown her desire to live with the

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<sup>35</sup> Ms. Githa Hariharan v. Reserve Bank of India SC.

<sup>36</sup> section 23 in The Protection of Women from Domestic Violence Act, 2005.

<sup>37</sup> Rajat Baijal, Law of Protection of Women from Domestic Violence (Fifth Edition, BHARAT LAW PUBLICATIONS, 2016).

father. The court cannot divide the children when they are living together since beginning. It is not disputed by the parties that both the children are pursuing their studies, thus taking the case in totality, the orders passed by the court below are nothing but mechanical in manner. The courts below were not sensitive to issue and passed order of custody as if it can be handled with a stick of magic. the imputed order does not show any effort of the court below to initially arrange meetings of the children with mother so as to tilt their opinion in favour of mother though the aforesaid efforts were made by this court but could not get results.<sup>38</sup>

**(vi) In order to ensure speedy justice the Magistrate is empowered to pass *ex parte* and interim orders:-**

An appeal will lie under Section 29 of the said Act against the final order passed by the learned Magistrate under sub-section(1) of Section 12 of the said Act; Under sub-section(2) of the Section 23 of the said Act, the learned Magistrate is empowered to grant an *ex parte* interim relief in terms of Section 18 to 22 of the said Act. The power under sub-section (1) of granting interim relief in terms of Sections 18 to 22 of the said Act. Before granting an interim relief under sub-section (1), an opportunity of being heard is required to be granted to the respondent. An appeal will also lie against orders passed under sub-section (1) and sub-section (2) of Section 23 of the said Act which are passed by the learned Magistrate. However, while dealing with an appeal against the order passed under Section 23 of the said Act, the Appellate Court will usually not interfere with the exercise of discretion by the learned Magistrate. The Appellate Court will interfere only if it is found that the discretion has been exercise arbitrarily, Capriciously, perversely or if it is found that the Court has ignored settled principals of law regulating grant or refusal of interim relief. An appeal under Section 29 will not be maintainable against purely procedural orders which do not decide or determined the rights and liabilities of the parties.<sup>39</sup>

**(E). Compensation and damages**

In addition to other reliefs which may be granted under the Act, the Magistrate may, on an application by the aggrieved person, pass an order directing the respondent to pay compensation

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<sup>38</sup> Anurag Vashisht v. Preetimala Sinha, 2015 (3) ALL MR 256; 2014 (5) AIR Bom R 528 (Bom)(DB)

<sup>39</sup> Abhijit Bhikaseth Auti v. State of Maharashtra, 2009 Cri LJ 889 (Bombay).

or damages or both to the aggrieved person for the injuries including for the mental torture and emotional distress caused to her by domestic violence by the respondents.<sup>40</sup>

**(i) “Damages” Meaning of:—**

Damages means sum of money given as compensation for loss or harm of any kind.<sup>41</sup>

Legal definition of damages as given in Free Dictionary.— Monetary compensation that is awarded by a court in a civil action to an individual who has been injured through the wrongful conduct of another party.

**(ii) “Compensation” Meaning of:—**

According to the [dictionary. Com](#) the definition of compensation :-“the act or state of compensating, as by rewarding someone for service or by making up for someone's loss, damage, or injury by giving the injured party an appropriate benefit.”

According to the Law Dictionary Meaning of compensation is.—“Indemnification; payment of damages; making amends; that which is necessary to restore an injured party to his former position. An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his Injury”.

**(iii) “Injury” Meaning of:—**

Section 44 of Indian Penal Code, 1860, define injury as: The word “injury” denotes any harm whatever illegally caused to a person, in body, mind, reputation or property. Injury is an act contrary to law. It includes all unlawful acts which cause harm to a person, his property or reputation. Mental torture and emotional distress are also covered within the scope of the definition.<sup>42</sup>

**(iv) To claim or to move application is necessary for compensation:-**

From the pleading of the parties, it is clearly evident that the wife had not moved any application under section 22 of the Act. She has not even claimed for compensation in the relief column of her application filed under section 12 of the Act. In these circumstances, there was no

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<sup>40</sup> Section 22 in The Protection of Women from Domestic Violence Act, 2005.

Section 22. Compensation orders.—In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

<sup>41</sup> A.S.Sharma v. Union of India, 1995 ACJ 493 at 498 (Guj).

<sup>42</sup> Dr. Deepa Dube, Law on Domestic Violence in India (1st edition Asian Law House 2015)

occasion for the learned A.C.J.M. to award Rs.75,000 as compensation to the wife. Learned Appellate Court has also failed to realise this aspect while confirming the order passed by learned Additional Chief Judicial Magistrate “Maxim” *a verbs legit non est recedendum*” ( which means from the words of law, there must be no departure) applied.<sup>43</sup>

## **(F) Role of Protection Officers**

### **(i) Protection Officers:-**

As given in the Act that as far as possible the Protection Officer shall be women. The Protection Officer’s and the other subordinate officer’s terms and conditions ;qualifications and experiences they possess are regulated by the Central Government rules.<sup>44</sup>

### **(ii) Protection Officers considered as a Public Servant:-**

Stated in the Act that the Protection Officer shall be deemed to be public servant with in the meaning of section 21 of the Indian Penal Code (45 of 1860) while acting or pretending to act in effect of any of the provisions of the Act.<sup>45</sup>

### **(iii) State Government has power to appoint Protection Officer:-**

In each district the State Government through notification in Official Gazette, appoint such number of Protection Officer as is necessary. It will notify the area in which they shall exercise their power given under this Act.<sup>46</sup>

### **(a) Provisions related to the appointment of Protection Officer are Mandatory:**

The Government should appoint the protection officer in reality and giving additional charge of protection officer to any other is not proper.<sup>47</sup>

### **(iv) There is no liability of the person who is informing about the act of domestic violence:**

There is no civil or criminal liability when a person informs to the Protection Officer about the act of domestic violence in good faith.<sup>48</sup>

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<sup>43</sup> Sanjeev Kumar Agarwal v Rashmi Agarwal, 2015 (1) HLR 74: 2015 (2) Crimes 142: 2014 (17) RCR (Criminal) 160: 2014 (140) AIC 868: 2015 Cr LJ ( NOC) 472 (ALL).

<sup>44</sup> section 8 in The Protection of Women from Domestic Violence Act, 2005

<sup>45</sup> section 30 in The Protection of Women from Domestic Violence Act , 2005:- Protection Officers and members of service providers to be public servants.—The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

<sup>46</sup> section 8 in Protection of Women from Domestic Violence, 2005.

<sup>47</sup> Shruti Singh, Advocate v. Press Council of India, 2008 (71) AIC 758 (Pat).

<sup>48</sup> Section 4 in The Protection of Women from Domestic Violence Act, 2005  
4. Information to Protection Officer and exclusion of liability of informant.—

#### **(v) Duties and functions of Protection Officer**

As specified in the Act Protection Officer has duty to assist Magistrate in discharge of his /her functions stated in the Act and to make domestic incident report through which Magistrate can decide to give relief to the aggrieved person. If an aggrieved person desires the Protection Officer can file an application to the Magistrate on her behalf praying for the protection order. The Protection Officer has to ensure legal aid; medical facilities which include medical examination of the aggrieved person if she has endured any bodily injures. Protection Officer has duty to ensure the execution of the monetary relief given under section 20 of the Act and the execution must be in accordance of the Code of Criminal Procedure 1973. Protection Officer perform his/her duties under the control and supervision of Magistrate and the Government.<sup>49</sup>

#### **(vi) Power and limitation on power of Protection Officer:**

According to the Sub-rule (3) of the Rule 12 enables the Protection Officer to report the Court that service of notice has been effected and there upon the said provision confers the

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(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

<sup>49</sup> section 9 in The Protection of Women from Domestic Violence Act, 2005.

(1) It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

power of the Court to pass appropriate orders.<sup>50</sup> under this section Protection Officer has no excessive or arbitrary powers.<sup>51</sup>

**(vii) Protection Officer shall be punished or fined for non-performance of duty:**

The Protection Officer shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to twenty thousand or with both if a Protection Officer without any sufficient cause fails or refuse to discharge the duties directed by the Magistrate.<sup>52</sup>

**(viii) No suit against Protection Officer for the action taken in good faith:**

If any damage caused or likely to be caused by any Protection Officer while doing duties in good faith<sup>53</sup> assigned under this Act, no suit, prosecution or other legal proceedings shall lie against him.<sup>54</sup>

**(ix) Complaint against Protection Officer**

Previous sanction of the State Government is required to file complaint against Protection officer if he/she commits any offence under the act otherwise no suit, prosecution or other legal proceedings shall lie against Protection Officer.<sup>55</sup>

**VI. Conclusion:-**

Judicial remedies and interventions do appear on the screen as an umbrella over the heads of aggrieved women because these provisions give her protection during the process of getting relief which strengthen her to raise her voice effectively against domestic violence .Protection of women from Domestic Violence Act 2005 is a civil law, although it does not create a legal or

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<sup>50</sup>Kunhammu v. Protection Officer, 2008 (64) AIC 817 (Ker).

<sup>51</sup> Kunhammu v. Protection Officer, 2008 (64) AIC 817 (Ker).

<sup>52</sup> Section 33 in The Protection of Women from Domestic Violence Act, 2005

33. Penalty for not discharging duty by Protection Officer.—If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

<sup>53</sup> Section 52 in The Indian Penal Code

“Good faith”.—Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

<sup>54</sup> .section 35 in the Protection of Women from Domestic Violence Act, 2005

Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

<sup>55</sup> section 34 in the Protection of Women from Domestic Violence Act, 2005

Cognizance of offence committed by Protection Officer.—No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

absolute right but it gives temporary and emergency remedy such as right to reside in a shared household and prohibiting the respondent from evicting or excluding her from the shared household<sup>56</sup>; restraining the respondent and his relatives from dispossessing and disposing the right of aggrieved person from the shared household<sup>57</sup>; passing an interim order for residence in favour of wife and children to reside in the house and directing to police to provide protection for their peaceful residence<sup>58</sup>; grant temporary custody of any child to the aggrieved person<sup>59</sup>; interim maintenance to minor child living with mother and mother is living separately from her husband<sup>60</sup>; directing the respondent to pay compensation or damages or both to the aggrieved person for the injuries for the mental torture and emotional distress caused to her by domestic violence<sup>61</sup>; directing the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance of the aggrieved person<sup>62</sup>; pass a protection order in favour of the aggrieved person which prohibit the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of

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<sup>56</sup> section 17 in The Protection of Women from Domestic Violence Act, 2005.

<sup>57</sup> section 19 in The Protection of Women from Domestic Violence Act, 2005.

<sup>58</sup> Chandrasekhar Pillai v. Vatsala Chander, I(2008) DMC 83 (Ker).

<sup>59</sup> section 21 in The Protection of Women from Domestic Violence Act, 2005.

<sup>60</sup> Jyotsana Sarda v. Gaurav Sharda, 2010 (92) AIC 490 (Del).

<sup>61</sup> section 22 in The Protection of women from Domestic Violence, 2005.

<sup>62</sup> Section 20 in The Protection of Women from Domestic Violence Act, 2005

#### 20. Monetary reliefs.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

employment of the aggrieved person or if the person aggrieved is a child, its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate<sup>63</sup> etc. This Civil Law converted into Criminal Law when protection order or Magistrate order is violated and this breach of protection order by the respondent shall be an offence and shall be punishable with imprisonment of one year or with fine up to twenty thousand rupees or both.<sup>64</sup>

These provisions not only provide protection to the aggrieved person but under them Magistrate have power to give directions to the service providers<sup>65</sup>; protection officers<sup>66</sup> and police<sup>67</sup> to provide services to the aggrieved person including shelters homes<sup>68</sup>; medical facilities<sup>69</sup>; legal aid; counselling to the respondent and aggrieved person singly or jointly<sup>70</sup> and assist women to avail of these facilities as well as assist her in obtain the appropriate order under the Act.

The procedure given under this Act also gives easy way to obtain the remedies for any harassment and mental torture. Before this Act a woman had to go to the court by approaching police only or Magistrate took case into consideration only from the report submitted by the concerned police officer, some times the procedure was so tormenting that a woman instead of receiving relief or remedy found herself entangled in the never unending web and decided to quit from all. But in this act an aggrieved person may directly move their complaint to the

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<sup>63</sup> section 18 in The Protection of Women from Domestic Violence Act, 2005.

<sup>64</sup> section 31 in The Protection of women from Domestic Violence Act, 2005.

<sup>65</sup> section 5 in The Protection of Women from Domestic Violence Act, 2005.

<sup>66</sup> section 10 in The Protection of Women from Domestic Violence Act, 2005

<sup>67</sup> Section 5 in The Protection of Women from Domestic Violence Act, 2005

5. Duties of police officers, service providers and Magistrate.—A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant: Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

<sup>68</sup> section 6 in The Protection of Women from Domestic Violence Act, 2005.

<sup>69</sup> section 7 in The Protection of Women from Domestic Violence Act, 2005.

<sup>70</sup> section 14 of The Protection of Women from Domestic Violence Act, 2005.



Magistrate either by herself or protection officer or any other person on her behalf for seeking relief against domestic violence.<sup>71</sup>

Above is the full package of protection of women during the process of getting relief from domestic violence which makes her decision sturdy and vigorous to fight for her human rights

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<sup>71</sup> Section 15 in The Protection of Women from Domestic Violence Act, 2005

15. Assistance of welfare expert.—In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

## **Chapter-5**

# **ADVANTAGES AND DISADVANTAGES OF THE DOMESTIC VIOLENCE, ACT,2005**

### **I. Introduction:**

This Act is like a lifeboat for every women who are sinking in the sea of domestic violence and lost the hope to live life as a human being . First time through this act some of the women who were aware of the ‘Protection of women from Domestic violence Act 2005’ in India became successful to grab their human rights from the society. Before the act, if any action was taken or the voice raised against domestic violence it was not heard by anyone, as everybody has taken it as a private matter to be solved within the family . Moving the court was seen like a big mistake or crime and all the responsibility was put on the women by saying that she is not capable enough to protect her family life, she has no guts to deal with such type of daily routine and common for all situations. Only girls had to lead the life with compromises whereas boys were dominating on her but, this act changed all this scenario and gave command of female’s rights in her own hands. This act not only protects her from domestic violence by the respondent and his relatives but, this Act also gives her residence rights, compensation of suffering, custody of her child or children, monetary relief etc. It means, this act gives her back her identity as a human being.

### **II Object of the Act:**

The foremost object of this Act is to provide protection to all females who are related by consanguinity; marriage; relationship in the nature of marriage; adoption and family members living together as a joint family from domestic violence inflicted by any person who is in a domestic relationship with her or her husbands relatives and male partner. The second object of this act is providing protection not only against physical abuse; sexual abuse; verbal abuse but first time women are protected from economic abuse. The significant part of this Act which make it different from other Civil Act is that if respondent breach the protection orders passed by the Magistrate in favour of the aggrieved woman, an action can be taken against the respondent.

### **(III) The Advantages of this act are:**

#### **(A). Only through this Act it has been recognised that domestic violence is a human rights violation.**

“The Prevention of Women from Domestic Violence Act, 2005” recognised that a woman’s right to live in a violence-free home is her human right. To realise this right, the Act includes the right of residence and right to obtain protection orders to aggrieved women.

**The apex court in case “Indra Sharma vs V.K.V Sharma”**<sup>1</sup>in paragraph 15 of the case clearly indicated that ‘ “ Domestic Violence” is undoubtedly a human rights issue, which was not properly taken care of in this country even though Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of all forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman subjected to cruelty by husband or his relatives, it is an offence under sec. 498-A of I.P.C. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guards under the Constitution under Arts. 14, 15 and 21, who are victims of any kind occurring in the family, enacted the Domestic Violence Act.”

#### **(B) Before this Act the Civil Law did not address the phenomenon of domestic violence in its entirety but under this Act it covers every spectrum of life of a woman:**

**In Indra Sarma v. V.K.V. Sarma case**<sup>2</sup>, it was observed by the apex court that as stated in the case before this Act the Civil Law does not address the phenomenon of domestic violence completely. Prior to this Act mainly two provisions of Indian Penal Code were available for the protection of woman from cruelty these are section 498A and section 304B. The essential ingredients of these sections are (1) the woman must be married. (2) She must be subjected to cruelty. (3). Cruelty must be of the nature of (i). Any wilful conduct as was likely to drive such woman to commit. (ii). Harassment of such woman with a view to coerce her to meet unlawful demand for property or valuable security, or on account of failure of such woman or by any of

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<sup>1</sup> Indra Sarma v. V.K.V.Sarma,2014(84)A.C.C. 290 (S.C.)

<sup>2</sup> Indra Sarma v. V.K.V.Sarma,2014(84)A.C.C. 290 (S.C.)

her relations to meet the unlawful demand. (iii). Woman was subjected to such cruelty by husband of that woman or any relatives of the husband. Consequently the stated essentials rendered that these provisions are only for the married woman not for all age group of females and the cruelty defined under the provisions is related to dowry demand only no other aspects of woman's life are touched even though the discrimination which she faced from birth to death. But through this Act first time domestic violence defined in a wide range which covers almost all type of family violence against women whether it is physical, verbal, emotional, sexual even economic abuse too. Section-3 of the Act gives elaborate definition of domestic violence against women which comprise physical abuse, sexual abuse, verbal and emotional abuse and the important one economic abuse.

Economic abuse elucidate in Sec. 3 (iv) a of the Act asserted that if any woman deprived of all or any economic or financial resources to which she is entitled under law or custom whether payable under an order of a court or otherwise amounts as economic abuse<sup>3</sup>. Economic protection not only incorporate household necessities for aggrieved woman or her children but it also include stridhan, property, jointly or separated owned by her, payment of rental related to the shared household and maintenance.

In “**Preetam Singh v. State of U.P.**”<sup>4</sup>: Court said that deprivation to the benefits of a matrimonial home amounts to economic abuse and it generate a continuous cause of action.

**(C) This Act widely defines the expression “domestic violence:**

Under this Act the term “domestic violence” in section 3 has been defined wide enough, it covers any act, omission or commission or conduct of the respondents which shall constitute domestic violence in case it:

- Section 3 (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse

So, this section covers all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person.

**The expanded form of abuses in this section are :**

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<sup>3</sup> Maroti Lande v. Sau. Gangubai Maroti Lande 2012 Cr.L.J. 87.

<sup>4</sup> 2012 (95) A.L.R.72 at p. 75(All) : 2013 (1) H.L.R.394(All).

**(i) Physical abuse means:**

Beating, slapping, hitting, biting, kicking, punching, pushing, shoving, and causing bodily pain or injury in any other manner

**(ii) Sexual abuse means:**

Forced sexual intercourse; forces to look at pornography or any other obscene pictures or material; any act of sexual nature to abuse, humiliate or degrade or which is otherwise violative of dignity or any other unwelcome conduct of sexual nature; child sexual abuse.

**(iii) Verbal and Emotional abuse means:**

Insults; name-calling; accusations on character or conduct etc; insults for not having a male child,; insults for not bringing dowry etc; preventing her or child in her custody from attending school, college or any other educational institution; preventing her from taking up a job; forcing her to leave your job; preventing her or child in her custody from leaving the house; preventing her from meeting any person in the normal course of events; forcing her to get married when she does not want to marry; preventing her from marrying a person of her own choice; forcing her to marry a particular person of his/her own choice; threat to commit suicide; any other verbal or emotional abuse.

According to the report of 2012 American College of Obstetricians and Gynaecologists on 'Committee on Health Care for undeserved Women Intimate Partner Violence': Emotional abuse has been gaining more and more recognition in recent years as an incredibly common form of domestic violence ( and therefore a human rights abuse) with in the private home throughout developing nations such as India. Emotional and psychological abuse can include harassment; threats; verbal abuse such as name-calling, degradation and blaming; stalking; and isolation.<sup>5</sup>

**(iv) Economic abuse includes:**

Not providing her money for maintaining her or her children; not providing food clothes medicines etc. for her or her children; stopping her from carrying on her employment; disturbing her in carrying on her employment; not allowing her to take up an employment or taking away her income from her salary, wages etc. or not allowing her to use her salary, wages etc; forcing her out of the house she live in; stopping her from accessing or using any part of the house; not

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<sup>5</sup> 'Universal's Handbook on Protection of Women from Domestic Violence' Fifth edition UNIVERSAL LAW PUBLICATION. Page 4.

allowing use of clothes, articles or things of general household use; not paying rent if staying in a rented accommodation, etc.

**(C) Retrospective effects of the Act:**

**In “V.D. Bhanot Vs. Savita Bhanot”**<sup>6</sup> The Supreme Court while confirming Delhi High Court viewed under the case that:

“even a wife who had shared a household before the Domestic Violence Act came into force would be entitled to the protection of the Domestic Violence Act.”

Hence, the Domestic Violence Act entitles the aggrieved person to file an Application under the Act even for the acts which have been committed prior to the commencement of the Domestic Violence Act.

**In “Shalini v. Kishore”**<sup>7</sup> The Supreme court held that an aggrieved person is entitled to redressal under the said Act who is, or has been, in a domestic relationship and at any period of time lived together by marriage etc., in a shared household with respondent. Even though the aggrieved person is living separately from the date just before the enforcement of the Act.

**(D) Every females have right of protection under the Act who is in domestic relationship with the respondent :**

The definition of ‘Domestic relationship’ gives two fold protection one is to a victim and other is to the persons against whom this Act can be misused by a woman. First of all we have to explore the meaning of domestic relationship to know exactly which type of right we are talking here.

**(i) Domestic Relationship:**

According to the Sec 2 (f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

According to this three things must be there :

- (a). Domestic relationship
- (b). Parties must live or at any point of time lived together in a shared household
- (c). Parties live or at any point of time lived together must be in shared household

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<sup>6</sup> V.D. Bhanot Vs. Savita Bhanot. 2012. S.C Special leave petition (Crl) No. 3916 of 2010, AIR 2012 SC 965.

<sup>7</sup> Shalini v. Kishore, (2015) 11 SCC 718

**(a) Domestic relationships is an essential condition for invoking provisions of the Act:**

The meaning of “aggrieved person” given under section 2(a) of the Act is any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent and the meaning of “respondent” as given under section 2(q) of the Act any person who is, or has been in, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.<sup>8</sup>

In this way Supreme Court expanded the definition of ‘respondent’ now an aggrieved woman can file cases against other females also who are in domestic relationship with the respondent such as , a mother can now file against a daughter and vice versa, a mother in law can file against her brother’s wife.<sup>9</sup>

**(b) Sexual relationship but no marriage is counted as a domestic relationship:**

In **M.Palani v. Meenakshi**<sup>10</sup> the facts of the case are that the petitioner and the respondent had close relationship and at least temporarily lived together. According to the provisions of the Act any women who is or has been in a domestic relationship with the respondent can make a complaint and “Domestic relationships” is a relationship between two persons, who live or have, at any point of time, lived together and provision does not say that they should have lived together for a particular period. So, as per the case of the petitioner, he had consensual sex with her, but there was no promise to marry her. Averments made in the plaint as well as in the counter affidavit make it very clear that the petitioner and the respondent had a close relationship and had sex. Both of them seems to have shared household and lived together at least at the time having sex by them because of that the application is maintainable. thus no specific time or days have been prescribed for proving domestic relationship and just shared household and sex should be proved.<sup>11</sup>

**(ii) From the given definition “domestic relationship” can be categorised in five types:-**

**(a) Related by consanguinity**

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<sup>8</sup> Harsora v. Harsora, Civil Appeal No. 10084 of 2016, decided on 6th October, 2016.

<sup>9</sup> Hiral P. Harsora and Ors. Vs. Kusum Narothamdas Harsora and Ors Civil Appeal No. 10084 of 2016.

<sup>10</sup> M.Palani v. Meenakshi AIR 2008 Mad 162 : 2008 MLR 660 : 2008 (3) Mad) : 2008 AIHC (NOC) 629 (Mad)

<sup>11</sup> “Selected Cases On Protection of Women from Domestic Violence Act, 2005 ‘Nidhi Sharma’(B.a.(Hon.) Pol,Sc.,LL.B, Advocate) Supreme Law House NEW DELHI. Edition: 2011.

Consanguinity has been defined on wikipedia: “Consanguinity is the property of being from the same kinship as another person. In that aspect, consanguinity is the quality of being descended from the same ancestor as another person. The laws of many jurisdictions set out degrees of consanguinity in relation to prohibited sexual relations and marriage parties. Such rules are also used to determine heirs of an estate according to statutes that govern intestate succession, which vary from jurisdiction to jurisdiction. In some places and times”<sup>12</sup>.

Consanguinity relationship includes relation by blood or descended from the same ancestor and are sufficient to claim relief against domestic violence. Thus in this way mother; grandmother; sisters and daughters are the persons who can raise their voice for their right against domestic violence.

**In Jaydipsinh Pabhatsinh Jhala v. State of Gujarat**<sup>13</sup> The Gujarat High Court has held that an aggrieved person not only includes wife or a female living in a live in relationship in the nature of marriage, but also other women members of a household. Thus, a mother, sister, or even a daughter can be an aggrieved person under the Act.

**(b) Related by marriage:**

**In “D. Velusamy v. D. Patchaiammal”**<sup>14</sup> **the Supreme court** While considering the provisions of Section 2(f) of the Act came to the conclusion about “relationship in the nature of marriage” and the court concluded under this case “relationship in the nature of marriage” is similar to a common law marriage which requires that the aggrieved person and the respondent must have lived together in a shared household, along with following conditions which must be fulfilled :

- (1) The couple must hold themselves out to society as being akin to spouses.
- (2) They must be of legal age to marry.
- (3) They must be otherwise qualified to enter into a legal Marriage, including being unmarried.
- (4) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’.

If a man has a “keep” whom he maintains financially and uses mainly for sexual purpose and as a servant it would not be a relationship in the nature of marriage.

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<sup>12</sup> <https://en.wikipedia.org/wiki/Consanguinity>

<sup>13</sup> Jaydipsinh Pabhatsinh Jhala v. State of Gujarat, 2010 Cr. L. J. 2462 at p. 2468 (Guj).

<sup>14</sup> D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469; JT 2010 (11) SC325; (2010) 11 SCALE 112.



**(c) Related by relationship in the nature of marriage:**

**It has been held in “Indra Sharma v. V.K.V.Sarma”<sup>15</sup>** “Relationship in the nature of marriage” is a relationship which has essential features of a marriage but not a marriage legally recognised.

Some guidelines considering when a live-in-relationship will fall into a ‘relationship in the nature of marriage, these are:

- (1) Lived together in a shared household
- (2) Financially supporting each other, or any of them, like sharing bank accounts, long term investments in business, etc.
- (3) Entrusting responsibility as a husband or wife like woman run home or do all household activities or husband play his role.
- (4) Sexual relationship not just for fun but for emotional and intimate relationship.
- (5) Having children
- (6) Socialising with friends, relatives or in public as a husband and wife.
- (7) Intention and conduct of the parties shows their common object to involve or perform responsibilities as a husband or wife.

**(d) Related by adoption:**

**“M. Gurudas v. Rasaranjan,”<sup>16</sup> is a case of adoption of a daughter in ancient Hindu law but after coming into force of the “Hindu Adoption and Maintenance Act,1956” it is now permissible under certain circumstances to adopt a girl child.** According to the Supreme Court adoption of a daughter was Impermissible in law in ancient Hindu law.

While delivering the judgment in the said case S. B. Sinha and Dalveer Bhandari, J.J. held that to prove valid adoption, it would be necessary to bring on record that there had been actual given and taking ceremony. Performance of ‘*dutta homam*’ was Imperative, subject to just exceptions. Above all, the question would raise as to whether adoption of a daughter was permissible in law. The court relied on the law as laid down in *Mulla’s Principles of Hindu Law, 17th edition, page 710*:

“ 488. *Ceremony relating to adoption.*—(1) The ceremonies relating to an adoption are—

- (a) the physical act of giving and receiving, with intent to transfer the boy from one family into another;

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<sup>15</sup> Indra Sharma v. V.K.V.Sarma 2013 (4) KLT 763.

<sup>16</sup> M. Gurudas v. Rasaranjan, AIR 2006 SC 3275

(b) the *Datta homam*, that is, oblations of clarified butter to fire; and

(c) other minor ceremonies, such as *putresti jag* (sacrifice for male issue).

(2) The physical act of giving and receiving is Essential to the validity of an adoption;

As to *Datta homam*, it is not settled whether its performance is essential to the validity of an adoption in every case.

As to the other ceremonies, their performance is not necessary to the validity of an adoption.

(3) No religious ceremonies, not even *Datta homam*, are necessary in the case of *Shudras*. Nor are religious ceremonies necessary Amongst *Jains* or in the Punjab.”

In section 480 of the said *Treaties*, it is categorically stated that the person to be adopted must be a male.

There are numerous types of adoption law which have been focused by the Supreme Court from time to time the discussion of all of which is impossible but it is sure that relationship by adoption is counted as a domestic relationship and can not be neglected while dealing with the topic.

**(e) Family members living together as a joint family:**

**(1) Joint family:**

For the purpose of Protection of Women from Domestic Violence Act 2005 ‘Joint Family’ does not mean ‘Hindu Undivided Family as Gujrat High Court said in the case of **“Pritiben Jiteshbhai Upadhyay v Jiteshbhai Virendrabhai Upadhyay”**<sup>17</sup> But Under this case Gujrat High Court observed that the term ‘Joint Family’ was not defined anywhere in the Protection of Women from Domestic Violence Act 2005. In order to locate a meaning to the term the court cited with approval the definition comprised in *Encyclopaedia Britannica 2008*. That is given here in below:

“*Joint Family*.- family in which members of a unilinear descends group ( a group in which descent through either the female or the male line is emphasised) live together with their spouses and offspring in one homestead and under the authority of one of the members. The joint family is the extension of the nuclear family ( parents and dependents children), and it typically grows when children of one sex do not leave their parents’ home at marriage but bring their spouses to live with them. Thus, a patrilineal joint family might consist of an older man and his wife, his sons and unmarried daughters, his sons’ wives and children, and so forth. for a man in the middle

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<sup>17</sup> Pritiben Jiteshbhai Upadhyay v Jiteshbhai Virendrabhai Upadhyay, 2012 Cri LJ 1187 (Guj)

generation, belonging to a joint family means joining his conjugal family to his family of orientation ( I.e., into which he was born).”

In “**Navneet Arora v Surender Kaur**”<sup>18</sup> In this case court held that Section 1 of the Act prescribes the extent of applicability of the Act makes no reservations based on religion. In addition if the legislature aspire to graft a special provision in the context of Hindus, nothing prevented them from expressly using the term ‘Joint Hindu Family’ or ‘Hindu Undivided Family’, as found in Income Tax Act, 1961 and host of other legislations.

“ **Md. Rajab Ali v Mustt. Manjula Khatoon,**”<sup>19</sup> Is a case where it is held that it is not uncommon that members of a Mohammedan Family live in commensality. However, they do not form a joint family in the sense in which the expression is used in Hindu Law. There is no provision of Mohammedan Law recognising a joint family.

Therefore, bearing in mind the purpose for which the D.V.Act was enacted, which is, to provide more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind as occurring within the family and for matters connected therewith or incidental thereto, the expression “joint family” occurring in definition of “domestic relationship” and “shared household” has to be given an interpretation which will be consistent with the object of the Act for the purpose of maintainability and obtaining certain reliefs under D. V. Act, and therefore, The expression “joint family” would mean a household where members of a family live in commensality and not a “joint family” as discussed in Hindu Law. Any other interpretation has the potential to exclude a vast majority of the stated households in the country, which cannot be the intention of the legislature, having regard to the avowed object of the Act.”<sup>20</sup>

## **(2) Meaning of live or at any point of time lived together: meaning and who are entitled of protection under the Act:**

For getting relief in this Act the foremost thing is that an aggrieved person have to live, or at any point of time lived together in a shared household. It does not mean having relationship at any point of time but denote that living together at any point of time in a shared household. Thus

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<sup>18</sup> Navneet Arora v Surender Kaur, 2015(3) RCR (Criminal) 811: 2014 (213) DLT 611 : 2014 (145) DJR 199: 2015 (3) AD (Del) 337 (Del) (**DB**).

<sup>19</sup> Md. Rajab Ali v Mustt. Manjula Khatoon, 2014 (3) RCR (Criminal) 692: 2014 Cri LJ 2162 (Gau).

<sup>20</sup> Navneet Arora v Surender Kaur, 2015(3) RCR (Criminal) 811: 2014 (213) DLT 611 : 2014 (145) DJR 199: 2015 (3) AD (Del) 337 (Del) (**DB**).

the relationship between respondent and an aggrieved person must be present or alive while an aggrieved person file complaint.<sup>21</sup>

In most of the cases a woman sent to their parents home <sup>22</sup>

**(2)(i) Living together can be either soon before filling of petition or ‘at any point of time’:**

In “**Vijay Verma v. State N. C. T. of Delhi & And.**”<sup>23</sup> It has been held that under the Act “ At any point of time” means where an aggrieved person has been continuously living in the shared household as a matter of right but when a family member lives in shared household to establish his own household and actually establishes his own household the domestic relationship comes to an end.

**(2)(ii) Live or at any point of time lived together must be in shared household**

The term “**Shared Household**” is defined under the Domestic Violence Act: as a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.<sup>24</sup>

In “**S.R. Batra & Another Vs. Smt. Taruna Batra**”<sup>25</sup> The Supreme Court held that under Section 17(1) of the Act wife is only entitled to claim a right to residence in a shared household, and a ‘shared household’ would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In the case, the property in question neither belonged to the husband nor was it taken on rent by him nor was it a joint family property of which the husband was a member. It was the exclusive property of mother of husband and not a shared household.

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<sup>21</sup> Harbans Lal Malik v. Payal Malik, 2010 (94) AIC 439: 2010 (3) Crimes 700: 2010 (7) RCR (Criminal) 1397: 2010 (171) DLT 67: 2010 (2) DMC 202 (Del).

<sup>22</sup> Vandana v. T. Srikanth and Krishnamachari, 2008 (1) RCR (Criminal) 314: 2008(1) RCR (Civil) 365: 2008(1) CivCC 458: 2008(1) HLR 227 (Mad).

<sup>23</sup> Vijay Verma v. State N. C. T. of Delhi & And. 2010 (118) DRJ 520 : 2010 (5) CRJ 338

<sup>24</sup> Section 2(s) of the Protection of Women from Domestic Violence Act, 2005

<sup>25</sup> S.R. Batra & Another Vs. Smt. Taruna Batra, 136 (2007) DLT 1 (SC): 1 (2007) (1) UJ 2 (SC).

Thus any woman who is victim of domestic violence must fulfil all three conditions to attract the protection given under the Protection of Women from Domestic Violence Act 2005.

**(E). Not only aggrieved woman but on her behalf Protection officer or any other person can file complaint under the Act:**

Any woman who is or has been in a domestic relationship with the respondent can file application before the Magistrate, Protection Officer or any other person may also move application on behalf of aggrieved person who has reason to believe that she is or has been suffering domestic violence.

**(F).Domestic violence complaint can be filed against females of household, non-adult males of household, and by extension against non-adult females of household too.**

In **Harsora v. Harsora**<sup>26</sup> civil appeal decided on 6th October, 2016 allowed Domestic Violence complaints on females in household by removing requirement of “adult male” from definition of respondent –this means under DV Act cases can be filed or relief claimed by any woman (wife, mother, sister, daughter, daughter-in-law) against any other male or female residing in the shared household. That respondent male or female can be adult or non-adult, whereas earlier in the original DV Act the requirement was that respondent needs to be both an adult and a male.

Before this judgment of the Supreme Court complaint can be filed only against an adult male of the household, and whether other females could also be included as respondents along with adult male(s) was interpreted differently in different judgments, because the basic definition of word respondent included only adult males under Section 2(q) of the act.

**(G) This Act provides monetary relief not only to a legally wedded wife although it covers every female who is in domestic relationship with respondent :**

In **“Srenderan v Najima Bindu”**<sup>27</sup> **Kerla High court has held that** the important thing brought about by the Act is that the monetary relief of maintenance not only provided for the legally wedded wives but also to the women related to men through relationships in the nature of marriage and it also include those who at any point of time had lived together in such relationship are also entitled to the Monetary relief of maintenance under section 20 of the Act.

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<sup>26</sup> Harsora v. Harsora civil appeal no 10084 of 2016, :2016 (10) SCC 165.

<sup>27</sup> Srenderan v Najima Bindu, 2012 (2) RCR (Criminal) 638 :2012 (2) DMC 548 (Ker) (DB).

In “**Santosh Bai v Gangaram**”<sup>28</sup> Chhatis Garh High court has ruled that the Domestic relationship is not confined to legally wedded wife whereas it would include those who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage or through relationship in the nature of marriage or adoption or are family members living together as a joint family.

**(H) First time under this Act an aggrieved person can approach directly to the Magistrate through complaint:**

In **Milan Kumar Singh v. State of U.P.**<sup>29</sup> Allahabad High Court has held that an aggrieved person can file complaint directly to the concerned Magistrate .It is choice of aggrieved person to directly approach the Magistrate or she can approach the Protection Officer and in case of emergency, the service provider or with their help to the Magistrate concerned.

**(I) This Act provides a woman right of secure housing:-**

In “**Rina Mukherjee v. State of West Bengal**”<sup>30</sup> Calcutta High Court has held that first time through this Act the right to reside in matrimonial home or in shared house hold for women is secured.This right is secured by a residence order, which is passed by a Court. This type of residence order cannot be passed against women.

**(J) Powers of Magistrate under the Act :**

The Act empowers the Magistrate to impose monetary relief and monthly maintenance on the respondent and made him to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person and it also covers loss of earnings, medical expenses, loss of damage to property. Make respondent to pay compensation and damages and emotional distress caused by acts of domestic violence.

**(K) Appointment of Service Provider and Protection Officer has been done to assist :**

To assist women this Act allows for appointment of Protection Officer and describes the role of Service Provider in providing medical, shelter, legal, counselling and other kinds of support services.

**(L) Under this Act there is no need to file a separate case for any relief :**

A significant feature of this Act is that there is no need to file a separate case in order to claim any relief under this Act. Any relief under this Act may also be sought in any legal proceeding

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<sup>28</sup> Santosh Bai v Gangaram, 2015 Cr LJ 3600; 2015 94) RCR (Criminal) 596; 2015 (3) DMC 854 (Chhat).

<sup>29</sup> Milan Kumar Singh v. State of U.P., 2007 Cri LJ 4742 (ALL).

<sup>30</sup> Rina Mukherjee v. State of West Bengal, AIR 2009 (NOC) 2841 (Cal).

before a Civil Court, Family Court or a Criminal Court, affecting the aggrieved person and the respondent, whether such proceeding was initiated before or after the commencement of this Act.

**(M) This Act ensures speedy justice:**

Under the Act court has to start proceedings and have the first hearing within 3 days of the complaint being filed in Court and every case must be disposed of within sixty days of the first hearing .<sup>31</sup>

**(N) First time through this Act ‘Economic abuse and violence’ defined:**

First time in India through this Act women can secure their economic rights like no one can deprive a woman from economic or financial resources to which they are entitled to under any law or custom whether payable under an order of a court or otherwise or which they require out of necessity including but these are not limited to, household necessities for them or for their children. they have right on their *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related the shared household and maintenance. No one have right of disposal of household effects and alienation of assets whether movable or immovable, valuable shares, securities, bonds and the like or other property in which women have an interest or are entitled to use by virtue of the domestic relationship or may be reasonably required by them or their children or their *stridhan* or any other property jointly or separately held by them. No one can restrict or prohibit to use resources or facilities which women are entitled to use because of the domestic relationship.

**(O) There is Provisions in the Act which prevents women to misuse the act such as wife cannot implicate one and all in the family:**

Though the Domestic Violence Act is a beneficial legislation, the same has been many times reported to be misused by women. For instance, in several cases women register complaint under Domestic Violence Act against one and all relatives of husband even without any evidence of abuse against them.

In the case of **Ashish Dixit vs. State of UP & Anr.**<sup>32</sup> the Supreme Court has held that a wife cannot implicate one and all in a Domestic violence case. In this case, the complainant apart from arraying the husband and in-laws in the complaint, had also included all and sundry as parties to the case, of which the complainant didn't even know names.

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<sup>31</sup> section 12 (4) and (5) of the Prevention Women from Domestic Violence Act, 2005.

<sup>32</sup> Ashish Dixit vs. State of UP & Anr. CRIMINAL APPEAL NO. 43 OF 2013  
(SPECIAL LEAVE PETITION (CRL.) NO. 8522 OF 2010)

#### **(IV) Disadvantages : Loopholes in the enactment:**

##### **(A) Not properly implemented :**

###### **(i). Implementation of the Act is not uniform:**

The report prepared by the Delhi based lawyers after two years of the Act came into force, highlighted the great variability in the implementation of the Act. According to the report, while some states did relatively well, others had barely got off the wedges. Where Maharashtra had appointed 3,687 protection officers but Assam had only 27 on its rolls and only 25 in Gujarat. While Andhra Pradesh, with an allocation of Rs 100 million for the implementation of the PWDVA, topped the table, other states like Orissa linger far behind.

##### **(B) Wide Gap between the goals enunciated and the provisions provided in the Act:**

The main aim of the Act at the time of enforcement was to protect women from the beast of domestic violence but steadily comes on the screen that the interpretation of provisions put women on the same footing where she was standing before the Act like all the relief provided under this Act are temporary as custody of children, a woman still have to fight for the custody of her children and face the melodrama of emotional blackmail. If we talk about residence order to live in shared household the interpretation of shared housed in Batra,s case<sup>33</sup> “ ‘Shared Household’ — would only mean house belonging or taken on rent by husband— Or house which belongs to joint family of which husband is a member—Property in question neither belongs to husband nor was it taken on rent by husband nor is it a family property of which humans a member—Property being exclusive property of mother of husband—Hence, it is not a “Shared household”. And added with this if any shared household is self acquired property of parent-in-laws and there is no right or interest of her husband, they can ask son or daughter-in-law to evict house if they don't feel comfortable with them. In India most of the sons are dependent on their parents for their livelihood and do not have self made property so in this situation the Act fails to provide relief to a woman.

Status of a Keep- The Court in the case further stated that if a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or a servant it would not be a relationship in the nature of marriage.

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<sup>33</sup> S.R.Batra and Another. Smt. Taruna Batra.AIR 2007 S.C.118



In this case, the Court also referred to the term “palimony” which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying and is then deserted by him.<sup>34</sup>

**(C). Some words in the definition of Domestic Violence are adversely effecting:**

The word “Insult” also considered as a domestic violence under the Act because of the lack of understanding there may appear differences in a marriage but some how that can be sorted out while some women approach the court even for minor issues which can be easily resolved with the help of the family members. In this way men always feel threatened by the provisions Act. Even though these type of small issues resulted in a divorce therefore leads to more and more family breakdown.

**(D).Inherent defects entice women to wrongly use the provisions and men fear of being prosecuted:**

**(i) No criteria defined to prove verbal and emotional abuse :**

There is no criteria defined to prove verbal and emotional abuse, if a woman says she was abused verbally and emotionally then there is no need to prove it. In this type of situation how can a husband defend his case.

**(ii) Gives extra power to women by including in section 18 the phrase “likely to take place in future”**

According to Section 18 of this Act, a magistrate can take measures to protect the woman from any acts of violence that are even likely to take place in the future. This means that the woman get a upper hand in protection and the person against whom they have complained can be punished, even though he may not have committed any act of violence and there may be only a chance of occurrence of the violence in the future.

This Act also says that the information regarding an act of domestic violence does not necessarily has to be lodged by the woman herself but can be lodged by any person who has reason to believe that such an act has taken place or is being so committed. That is even the neighbors and relatives can take an initiative on behalf of the victim. This is a sheer injustice because anyone can lodge a complaint on behalf of the woman without any authentic proof or evidence.

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<sup>34</sup> The term Palimony was first used by the US Court in the case of Marvin Vs. Marvin (1976) 18 C3d660

The fact that the complaint lodged by a woman will be always treated as true and genuine opens up potential chances of misuse where innocent men will be accused and implicated of false charges.

**(E)Gender specific law:**

As per the provisions of this law only women are victims. Only women have right to file complaint against males and females but man have not a single right to raise his voice against any type of domestic violence he has suffered in his house by male or female. **Section 32 (2) of this act—reads as under:**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.<sup>35</sup>

As given in the section 32 (2) the court concludes that the testimony of the victim (woman) is always true and there will be no need for any supportive evidence to prove that an offence has been committed. In this way this section violates the fundamental right of Equality before law under Article 14 of the Constitution of India

Article 14 in The Constitution Of India 1949 read as:

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth it is genuine to give some special privilege to women to equalise there position as equal to men but by violating fundamental rights is not tolerable.

**(F).Rights given to women under this Act are not adequate to curb domestic violence:**

If it is given thought to from closer quarters, merely spotlighting the rights of women would hardly suffice. The male's mindset has to be changed. And to change this very mindset in this direction for a “break through” one non governmental organization (NGO) is striving hard. The name of their campaign is 'Ring the bell'. You must have seen the advertisement in TV after which, your mind must have stirred up a bit for some moments-coming again back to square one-a naught again. And the violence perpetuate. What is happening with the woman behind the door

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<sup>35</sup> Section 32 in The Protection of Women from Domestic Violence Act, 2005  
<https://indiankanoon.org/doc/1741014>

of the house is helpless. But the person listening to the sounds of violence from outside and ignoring the call of humanity is something to be given a second thought to.

There was a research conducted in Bombay in which, the most of the people were of the opinion, "Why should we interfere in other's matters?" People were hesitate if the beating person concerned shot back after the ringing of the bell that it is his personal matter and others have no concerns in it whatsoever, then what? This is a matter within the family in which outsiders have nothing to do. Nobody wants to get embroiled in police verifications or in a sort of inquiry. There are of course 1001 excuses of how not to help while one needs no excuses to help others.

**(G) legal interpretation of this Act creates confusion and inconsistency:**

**(i) The right of maintenance provided to concubine or live-in-partner is adversely affecting the dignity of legally wedded wife in the society:**

In this way this Act somehow gives sanction to the bigamy because at a time all have equal right of maintenance against the husbands property , the property on which legally a legal wedged wife has right.

**(ii) Including all female members in the definition of respondent put all female of the household on the same foot as in section 498A of IPC:**

**(iii) giving right to in-laws to evict daughter-in-law from their own earned house:**

Makes a woman position same as before this Act when women could be evicted from the house to put her in control or for fluffing unlawful demands.

**(iv) Father-in-law or mother-in-law owned house cannot be called a `shared household**

A married woman is only entitled to claim a right to residence in a shared household, and a `shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. not the property which is owned by father-in-law and mother-in-law.<sup>36</sup>

**(H) This Act gives a naked sword in the hands of women in the form of protection and relief which ruined the very institution of family and marriage:**

The Act "Prevention of Women from Domestic Violence" try to protect women from all angles physical, mental, economical, actually this Act is mostly used by those women who want to take revenge from their matrimonial family members, not to protect herself from the evil. Her

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<sup>36</sup> S.R. Batra And Anr vs Smt. Taruna Batra on 15 December, 2006.:2007(1)RCR(Cri)403 (SC) :2006(13)SCALE 652

main motto is to teach them lesson and by this naked sword she tries to spoil her own family and life because the way she lodges a complaint she tries to make her husband and his family members a kind of beast in front the society whose main task is to harass the woman only or nothing else. Only 10% cases are genuine only.

**(I) This act violates the fundamental rights of men**

Article 13 of the Indian Constitution states that any law, which is in contravention of the Fundamental Rights shall, to the extent of such contravention, be void.

**(J) Protection Officers, are unaware about their responsibility.**

According to the Act, the victim can directly approach the Protection Officer (PO) for justice. But, the truth is that, not a single person has directly approached Protection Officer in any domestic violence case. Most of the time, Protection Officers are informed by police officers when an aggrieved person approached against domestic violence to the police officer .As per the provisions of the Act government has appointed Protection Officers these are mostly senior officers and they already have so many other responsibilities that is why or because of less awareness about the Act they are incapable to fulfil all the requirements of this post. This is the big drawback of the Act that the person who is responsible to act like first aid is not appropriately dealing with their duties.

**(V) Conclusion:**

Protection of women from domestic violence Act, 2005 is the full package of protection of women during the process of getting relief from domestic violence which makes her decision sturdy and vigorous to fight for her human rights. The positive part of this Act is that only through this Act it has been recognised first time that domestic violence is a human rights violation because before this Act the other Civil Laws do not address the phenomenon of domestic violence in it's entirely . It covers every spectrum of life of a woman by widely defining the expression 'Domestic violence' such as it covers all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. The most important thing is retrospective effect of this Act so that an aggrieved women can file an Application under the Act even for the acts which have been committed prior to the commencement of the Domestic Violence Act, 2005. The Act provided protection right to every single female who is in domestic relationship with the respondent. Here domestic relationship includes relationship by

consanguinity; by marriage ; by in the nature of marriage; by adoption; by living together as a joint family. Consanguinity relationship includes relation by blood or descended from the same ancestor and are sufficient to claim relief against domestic violence. Thus in this way mother; grandmother; sisters and daughters are the persons who can raise their voice for their right against domestic violence. Marriage includes legal marriage so it includes wife not “keep” whom a married male maintain financially and uses mainly for sexual purpose or as a servant it would not be a relationship in the nature of marriage. The essentials of ‘Relationship in the nature of marriage’ is both the persons lived together for a reasonable period of time to maintain the relation ship in a shared household and financially supporting each other, or any of them, like sharing bank accounts, long term investments in business and entrusting responsibility as a husband or wife like woman run home or do all household activities or husband play his role or have Sexual relationship not just for fun but for emotional and intimate relationship by which they procure children. Socialise with friends, relatives or in public as a husband and wife. There are numerous type of adoption law which have been focused by the Supreme Court from time to time the discussion of all of which would prove out is impossible but it is sure that relationship by adoption counted as a domestic relationship. Joint Family means family in which members of a unilinear descends group ( a group in which descent through either the female or the male line is emphasised) live together with their spouses and offspring in one homestead and under the authority of one of the members. The best part of the Act is that domestic violence complaint can be filed against a female of household, a non-adult male of household, and by extension against a non-adult female of household too and monetary relief provides not only to a legally wedded wife although it covers every female who is in domestic relationship with respondent. Other things which secure protection of women under this Act are an aggrieved person can approach directly to the Magistrate through complaint, provides a woman right of secure housing, empowers the Magistrate to impose monetary relief and monthly maintenance on the respondent and direct him to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person and it also covers loss of earnings, medical expenses, loss of damage to property, Service Providers and Protection Officers are appointed to assist the victim under this Act and ensures speedy justice Though there are many plus point in this Act but side by side there are some loopholes present in it which makes this Act to some extent useless for women who are victim of Domestic violence such as this Act minor things by

interpretation become major and send the marriage on the path of divorce like insult which is defined as a domestic violence, only because of the lack of understanding there may appear differences in a marriage but somehow that can be sorted out, it's a human behaviour. While some women approach the court even for minor issues which can be easily resolved with the help of the family members. There is no criteria defined to prove verbal and emotional abuse, if a woman says she was abused verbally and emotionally then there is no need to prove it. This Act provides extra power to women by adding a phrase in the Act 'likely to take place in future'. According to this a magistrate can take measures to protect the woman from any acts of violence that are even likely to take place in the future. This means that the woman gets an upper hand in protection and the person against whom they have complained can be punished, even though he may not have committed any act of violence and there may be only a chance of occurrence of the violence in the future. This Act provides protections only to women so it is not for men in this way it is gender specific and does discrimination thus this act violates the fundamental rights of men. Only women have right to file complaint against males and females but men have not a single right to raise his voice against any type of domestic violence he has suffered in his house by male or female. This Act gives a naked sword in the hands of women in the form of protection and relief which ruins the very institution of family and marriage. If we see the Act very closely it comes out that it provides extra power to women on one hand through which they can misuse but on the other side we saw that this Act is futile for victim women. As legal interpretation of this Act creates confusion and inconsistency like the right of maintenance provided to concubine or live-in-partner is adversely affecting the dignity of legally wedded wife in the society, including all female members in the definition of respondent put all female of the household on the same footing as in section 498A of IPC, affecting residence right of women by giving right to in-laws to evict daughter-in-law from their own earned house. If we talk about the authorities which are helping women under this Act are also not well aware of their responsibilities like protection officers. As per the provisions of the Act government has appointed Protection Officers these are mostly senior officers and they already have so many other responsibilities that is why or because of less awareness about the Act they are incapable to fulfil all the requirements of this post.

## **Chapter-6**

### **RECENT JUDICIAL TRENDS IN INDIA**

#### **(I) Act applicable to all communities:-**

The Protection of Women from Domestic Violence Act, 2005 applies to all communities, and was enacted “to provide more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family”. The right to residence and creation of mechanism to enforce the same is a ground breaking measure, which court should be alive to. Restricting the scope of the remedies, including in respect of the right to reside in shared household, would undermine the purpose of this Act.<sup>1</sup>

#### **(A) Retrospective effect of the Act is constitutionally valid:-**

In **Saraswathy v. Babu**,<sup>2</sup> The Supreme court has held that the act of the respondent husband squarely comes within the ambit of Section 3 of the DVA, 2005, which defines “domestic violence” in wide terms. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force of the DVA, 2005 cannot be taken into consideration while passing an order. The wife having been harassed by her husband and in laws since 1998 is entitled for taking shelter of this Act despite of the fact that offence of “domestic violence” as mentioned in section 3, has been committed prior to the coming into force of this Act. She is entitled for protection order and residence order under Sections 18 and 19 of the domestic violence Act along with the maintenance as allowed by the trial court under Section 20(1)(d) of the domestic violence Act. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent husband.

In **Savita Bhanot v. Lt. Col. V.D. Bhanot**,<sup>3</sup> The Delhi high court has expressed its view as follows:-

“It is a historical reality that the women in our society have been subjected to discrimination, misbehaviour and ill – treatment, not only outside but, also inside their house, the main causes

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<sup>1</sup> Smt. Preeti Satija vs Smt. Raj Kumari And Anr. 2014 (1) RCR (Criminal) 1035; 2014 (207) DLT 78; AIR 2014 Del 46 (Del) (DB)

<sup>2</sup> (2014) 3 SCC 712,

<sup>3</sup> (2010) 118 DRJ 391

for their plight being (i) illiteracy (ii) economic dependence on men and (iii) insensitivity to their rights and their dignity. Even a working woman, whether she be a construction worker who works side by side with her husband or a well-educated and a suitably employed professional is not always accorded the dignity and respect, which ought to be given to her on the home front.”<sup>4</sup>

The legislature has from time to time been making efforts to impart justice and fair play to the women by means of various statutory enactments and Protection of Women from Domestic Violence Act, 2005, is a landmark initiative taken by the Parliament to confer certain important benefits including right of residence on a woman and to penalize those, who fail to provide those benefits to the women despite judicial mandate in the form of order passed by a Court under the provisions of the Act.

This Act does not punish for the offence committed under this Act except for the breach of an order of the court. It is a civil remedy provided by the criminal court. Therefore an act of domestic violence however, committed before the coming of this Act shall be taken into consideration by the court and pass appropriate order under this act for protection of woman from domestic violence. Hence, you can file case under this Act irrespective of the fact that act of domestic violence has committed before 2005.

## **(II).Aggrieved person**

In the Act “aggrieved person” defined : means any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

In **Juveria Abdul Majid Patni v. Atif Iqbal Mansoori**,<sup>4</sup> the supreme court has held that apart from the woman who is in a domestic relationship, any woman who has been, in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic violence by the respondent comes within the meaning of “aggrieved person”.

### **(A) Decree of divorce does not absolve the husband from liability under the Domestic Violence Act:- In Juveria Abdul Majid Patni v. Atif Iqbal Mansoori,**<sup>5</sup>

The Supreme Court while deciding a case of domestic violence, where the decree of divorce had been obtained subsequently, the Court held that an act of domestic violence once committed,

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<sup>4</sup> (2015) (1) SCC (Civil) 110: 2015 (1) SCC (Cri) 241: 2015 (2) DMC 422:2014 (10) SCALE 738: 2014 (10) SCC 736.

<sup>5</sup> Ibid



subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Protection of Women from Domestic Violence Act, 2005 (DV Act) including monetary relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or ex parte order under Section 23 of the DV Act.

In the present case, the appellant obtained an ex parte 'Khula' from Mufti under the Muslim Personal Law on 09.05.2008 and filed a petition under Section 12 of the DV Act on 29.09.2009 alleging that the respondent was not providing maintenance to her and her child under Sections 8 to 23 of the DV Act. The bench of Sudhansu Jyoti Mukhopadhaya and S.A. Bobde, JJ, considering the fact that the respondent had challenged the ex parte 'Khula' and had filed a petition for restitution of conjugal rights, held that it cannot be concluded that the decree of divorce was granted on 09.05.2008.

Moreover, the Court was of the opinion that even if after obtaining the decree of divorce, the wife who had shared the household in the past but was no longer residing with the husband, can file a petition under Section 12 of the DV Act if subjected to domestic violence seeking relief under Section 18 to 23 of the DV Act. In the present case, where the parties were represented by Shilpa Singh and KC Dua, the alleged domestic violence took place between January, 2006 and September, 2007. Hence, the Court held that even if it is accepted that the appellant had obtained ex parte 'Khula' under the Muslim Personal Law from the Mufti on 09.05.2008, the petition under Section 12 of the Domestic Violence Act, 2005 was maintainable.

**(B) Divorced women cannot be an aggrieved person:-**

In **Amitabh Upadhyay R.P.Upadhyay v. State of Maharashtra**,<sup>6</sup> the respondent wife had withdrawn herself from the society of her husband way back in the year 2005 and since then there had no domestic relationship between the applicant and the respondent. The alleged act was not committed when the applicant and the respondent-wife were in a domestic relationship, but after two years and five years after they had divorced by mutual consent. Even prior to filling the application under the provisions of Domestic Violence Act, respondent wife had filed several applications before different Courts which were either withdrawn or closed or not prosecuted. Hence, it cannot be said that the applicant had committed any offence while he was in a domestic relationship with the respondent-wife. The domestic relationship between the couple

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<sup>6</sup> 2014 (4) Bom.C.R (Cri.) 545 (Bom).

was only by mutual consent five years prior to their incident dated 11.10.2011. Thereafter, the couple never shared the household. The allegation were not pertaining to the period when they had lived together and, therefore, it cannot be said that the alleged act would be in the nature of domestic violence. Hence, the court was of the opinion the continuation of the proceedings under the Domestic Violence Act would be an abuse of process of law.

**(C) Judicial Separation does not cease the right of wife to be “aggrieved person” :-**

**In Krishna Bhattacharjee v Sarathi Choudhury**<sup>7</sup> The apex court has held

“Divorce and judicial separation defines different status of women though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as husband and wife till their lifetime.<sup>8</sup>In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation; in the former, there is severance of status and the parties do not remain as husband and wife , whereas in the later, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which have been concurred by the High Our that the parties having been judicial separated, the appellant wife has ceased to be an “aggrieved person” is wholly unsustainable.<sup>9</sup>

**(D) If a woman in live in relationship with a married man wouldn't be considered as an “aggrieved person”:**

**In Deepak @ Ganjana Ramrao v. State of Maharashtra,** <sup>10</sup>though it has come in the evidence of respondent that she had conceived and delivered two children out of the relationship with the applicants and though she has stated that they were posing themselves to be married couple, she has not been able to give a single instance where they have appeared as husband and wife in the society on any occasion of marriage and party. The bald statement on behalf of the respondent that she had posed herself to be wife of the applicant and applicant posed himself to a husband of respondent will not be sufficient to come to the conclusion that the relationship

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<sup>7</sup> Krishna Bhattacharjee v Sarathi Choudhury, 2015 (12) SCALE 521: 2016 (1) RCR (Criminal) 152: AIR 2015 SCW 6386: 2015(4) Crimes 384: 2015 Cr LR 1287: 2015 (3) DMC 823: 2016 Cr LJ 330: 2016 (2) **SCC 705(SC)**.

<sup>8</sup> Jeet Singh v. State of U.P., 1993 (1) **SCC**325: 1993 (Sup) JT 389: 1993 (1) All CJ 579:1992 (3) SCALE 233.

<sup>9</sup> Krishna Bhattacharjee v Sarathi Choudhury, 2015 (12) SCALE 521: 2016 (1) RCR (Criminal) 152: AIR 2015 SCW 6386: 2015(4) Crimes 384: 2015 Cr LR 1287: 2015 (3) DMC 823: 2016 Cr LJ 330: 2016 (2) **SCC 705(SC)**.

<sup>10</sup> Deepak @ Ganjana Ramrao v. State of Maharashtra, 2016 (1) DMC 160:2015 CrLJ 4833 (Bom).

between applicant and respondent was in the nature of marriage. Respondent knew that the applicant was a married person and he had children from his wife. Despite that, she had maintained relationship with the applicant. The said relationship can not be relationship in the nature of marriage. Therefore, it cannot be said that respondent was “aggrieved person” with in the meaning of section 2(a) of the Act. she was obviously therefore, not entitled for any relief under Protection of Women from Domestic Violence Act, 2005. If respondent was not entitled for any relief under the Act, it follows that her children are also not entitled for the relief under the said Act. it is another thing that the children may be entitled for relief under section 125 of Code of Criminal Procedure.

**(E) If a married woman in relationship with another man cannot be an “aggrieved person”**

In **Narayan Jangluji Thool v. Mala**,<sup>11</sup> The Bombay High Court has held that a married women living with another man cannot claim protection under section 2 (f)<sup>12</sup> of the Act. In the instant case, the respondent is a married women, who has not obtained any legal divorce from her husband. Therefore, by accepting the case of the respondent as it is, the proceedings initiated under section 12 of the Act, 2005 cannot be sustained in law. Section 2(f) of the Act, 2005 does not require that a women should be a wife and it is enough that she is living with a man in relationship, which is similar to that of marriage. But there is a rider to it. She should be unmarried and be otherwise qualified to marry. The respondent is a married women, whose marriage with her husband is still subsisting and this being the position, her relationship whatever it might be with the petitioner, cannot be termed as domestic relationship under section 2(f) of the Act, 2005.

**(III) Domestic relationship :-**

**(A) Domestic relationship at any point of time means:**

Domestic relationship means relationship between two persons, who live or have, at any point of time, lived together in shared household. The very words “has lived together at any point of time” it covers even the past cohabitation or past living together. So till the time the

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<sup>11</sup> Narayan Jangluji Thool And 2 ... vs Sou. Mala W/O Chandan Wani on 27 January, 2015: AIR2015 Bom.36.

<sup>12</sup> 2 (f) in The Protection of Women from Domestic Violence Act, 2005:-“domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

marital tie subsists and the party, at any point of time had lived together, the application or proceedings under Protection of Women from Domestic Violence Act can survive and are very much maintainable so as to grant the necessary relief<sup>13</sup>

#### **(IV) Live in relationship or relationship in the nature of Marriage:-**

##### **(A) Permissible heterogeneous sex.**

**In Khushboo v. Kanniammal,**<sup>14</sup> Supreme court has pronounced that Live-in-relationship is permissible in unmarried major persons of heterogeneous sex.

##### **(B) Presumption under section 114 of the Evidence Act:**

**In S.P.S.Balasubramanyam v. Suruttayan @Andali Padayachi,**<sup>15</sup> It has been held apex court has held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under section 114 of Evidence Act, that they live as husband and wife and the children born to them will not be illegitimate.

**In Narayan Jangluji thool v. Mala,**<sup>16</sup> Bombay High court has held that provision of DV Act can not be applied against the lover of married women.

##### **(C) When married man was living with another woman in live-in-relationship:**

**In Bharata Matha v. Vijaya Renganathan,**<sup>17</sup> He did not partition his joint family properties and died issueless and intestate, therefore, the question of inheritance of coparcenary property by the illegitimate children, who were born out of the live-in-relationship, could not arise.

##### **(i) Only such live-in-relationship that is in the nature of marriage is considered as domestic relationship:**

The words used in the definition of “Domestic Relationship” are “.....or through a relationship in the nature of marriage” not “live-in-relationship.”

**In V.K.V.Sarma v. Indra Sarma,**<sup>18</sup> The petitioner, a married man having wife and two children of which the respondent was fully aware of and the petitioner and respondent lived

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<sup>13</sup> Dhananjay Ramkrishan Gaikwad v. Sunanda Dhananjay Gaikwad, 2016 (1) AIR Bom R (Cri) 590: 2016 Cr LJ 1482 (Bom).

<sup>14</sup> Khushboo v. Kanniammal, 2010(5) SCC 600, Lata Singh v. State of U.P. AIR 2006 SC 2522:2006(5)SCC 475.

<sup>15</sup> S.P.S.Balasubramanyam v. Suruttayan @Andali Padayachi, AIR 1992 SC 756.

<sup>16</sup> Narayan Jangluji thool v. Mala, AIR 2015 (Bom) 36: 2015 Cr LJ2353: 2015 (3) RCR (Criminal) 413: 2015 (30 Crimes) 253: 2015 (2) HLR 108: 2015 (3) DMC 220 (Bom).

<sup>17</sup> Bharata Matha v. Vijaya Renganathan, AIR 2010 SC 2685:2010(11)SCC483.

<sup>18</sup> V.K.V.Sarmav. Indra Sarma, 2011 AIR Kar R 780: AIR 2012 CC 87: 2012 Cr LJ 592: ILR 2012 Karn 218 (Karn).

together, although their relationship was held to be one of “live-in-relationship” it did not come within the ambit of “relationship in the nature of marriage”.

**In Ratan Deep v Sushma,**<sup>19</sup> Even if it were to be held that the marriage between the parties was not valid, they have admittedly lived together as husband and wife having undergone all ceremonies relating to a marriage and their relationship was in the nature of a marriage. Such relationships and cohabitation is covered within the definition of “domestic relationship” as defined under Section 2(f) of the Act.

**(a) In order to constitute relationship in the nature of Marriage, both parties must be qualified to enter into a legal marriage:**

**In Somarapu Satyanarayana v Vijaya Lakshmi,**<sup>20</sup> As per the principle enunciated in the case of **D. Velusamy v D. Patchaiammal**,<sup>21</sup> in order to constitute relationship in the nature of marriage, both parties must be qualified to enter into a legal marriage. In the instant case, the first respondent-woman is entitled to marry another person or maintain relationship in the nature of marriage provided the other person is also qualified to enter into a legal marriage i.e. being not already married. However, even if the first respondent-woman married the petitioner, who is already married, their relationship will not fall within the ambit of relationship in the nature of marriage as defined under section 2(f) of the Act. Even as per the observations of the Hon’ble apex Court made in D. Velusamy’s case (supra), the relationship between the petitioner and the first respondent will not come within the purview of relationship in the nature of Marriage as defined under section 2(f) of the D.V Act. In the absence of domestic relationship between the petitioner and the first respondent, the first respondent will not be recognised as an aggrieved person as defined under section 2(a) of the Act.

**(b) Concubine relationship does not consider as relationship in the nature of marriage:**

**In Gokal Chand v Praveen Kumari,**<sup>22</sup> The apex Court has held that a concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. The continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which

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<sup>19</sup> Ratan Deep v Sushma, 2016 (2) RCR (Civil) 798:2016 (228) DLT 323 (Del)(DB).

<sup>20</sup> Somarapu Satyanarayana v Vijaya Lakshmi, 2015 (1) ALT (CrI) 306: 2015 (1) HLR 701: 2015 (1) And LD (Criminal) 361 (AP).

<sup>21</sup> D. Velusamy v D. Patchaiammal, 2011 Cr LJ 320: AIR 2011 SC 479: AIR 2010 SCW 6731: 2010 (10) SCC 469: 2010 (4) RCR (Criminal) 746:2010 (4) KLT 384:2010 (96) AIC 65: 2010 (2) DMC 677:2010 (13) SCR 706: 2010 (11) SCALE 112.

<sup>22</sup> Gokal Chand v Praveen Kumari, AIR 1952 SC 231

may be drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them.

In **Indra Sarma v V.K.V.Sarma**<sup>23</sup>, The apex Court has held that If appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a concubine or a mistress, who cannot enter into relationship in the nature of a marriage. Long standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserve protection because that woman might not be financially independent, but D.V.Act does not take care of such relationships which may perhaps call for an amendment of the definition of section 2(f) of the D.V.Act, which is restrictive and exhaustive.

**(c) Bigamous marriage:**

A bigamous marriage can not be said to be a relationship in the nature of marriage. bigamous marriage means marrying someone while already married to another and/ or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife would not fall within the definition of 'domestic relationship' under section 2(f) of the Domestic Violence Act, 2005<sup>24</sup>

**(V) Respondent :**

In **Harsora v Harsora**<sup>25</sup> Supreme Court deleted the words "adult male" in section 2(q) of the Protection of women from domestic violence Act, 2005. Because these words do not square with the Article 14 of the Constitution of India.

Then the definition of "respondent" includes any person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act. It is provided in the definition that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner

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<sup>23</sup> Indra Sarma v V.K.V.Sarma, 2014 (1) RLW 627: 2014 (1) RCR (Criminal) 179:2013 (14) SCALE448: AIR 2014 SC 309:2014 (133) AIC 225:2013(3) DMC 830:2013 (15) JT 70.

<sup>24</sup> Indra Sarma v V.K.V.Sarma, 2014 (1) RLW 627: 2014 (1) RCR (Criminal) 179:2013 (14) SCALE448: AIR 2014 SC 309:2014 (133) AIC 225:2013(3) DMC 830:2013 (15) JT 70.

<sup>25</sup> Harsora v Harsora, Civil Appeal No. 10084 of 2016, decided on 6th October, 2016: 2016(10)SCC 165.

In **Sabana v Mohd. Talib Ali**,<sup>26</sup> The definition of ‘respondent’ incorporated in the Act makes it manifestly clear that a woman victim of domestic violence, an aggrieved person, is entitled to initiate proceedings for various reliefs provided for against the person who is or has been in a domestic relationship with her. That part, the proviso to section 2(q) clarifies that the aggrieved wife or female living in relationship in the nature of marriage may also file a complaint against the relatives of the husband’s or the male partner which obviously includes the female members of the husband or male partner's family. But from the definition it can be inferred that the existence of subsisting domestic relationship between the aggrieved person and the respondent is condition precedent for invoking the various remedial measures provided under the Act.

**(A) Female relatives also considered as respondent under this Act:**

In **Bismi Sainudheen v P.K.Nabeesa Beevi, Shahul Hameed and State of Kerala**<sup>27</sup>, While giving protection to women, a check measure has to be adopted to prevent such women from subjecting the female members of the same family to domestic violence. Hence, under the guise of being ‘wife’ or ‘daughter-in-law’, they cannot be given privilege or be allowed to escape liability under the provisions of the Act, if she has committed any “domestic violence”. Thus, if the second wife or wife, who being the step mother or even if a real mother, meted out domestic violence against a major daughter, they along with her father has to be arrayed as respondents, in an action under the provisions of the Act.

**(B) Whether female can or cannot be respondent:**

In **Sandhya Manoj Wankhade v Manoj Bhimrao Wankhade**<sup>28</sup>, Supreme Court clarified that females can also be made respondent under section 2(q) of the Act. It was observed that if legislature intended to exclude female from ambit of complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in proviso that a complaint could also be filed against relative of husband or male partner. Secondly it was also emphasised by the court that no restrictive meaning had been given to expression been specifically defined in the Domestic Violence Act, to make it specific to male only. Therefore, legislature never intended to exclude female relatives of husband or male partner from the ambit of complaint that could be made under provisions of the Domestic Violence Act.

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<sup>26</sup> Sabana v Mohd. Talib Ali, 2014 Cri LJ 866: 2014 (1) Cri CC 592: 2014 (1) RLW 26:2014 (2) RCR (Criminal) 293: 2014 WLC (Raj) 378 (DB).

<sup>27</sup> Bismi Sainudheen v P.K.Nabeesa Beevi, Shahul Hameed and State of Kerala, 2014Cr LJ 904: 2013 (4) KHC 245:2013 (4) KLT 377 (Ker).

<sup>28</sup> Sandhya Manoj Wankhade v Manoj Bhimrao Wankhade, (2011) 3 SCC 650.

**In Anitha Valarmathy v K. John Hilton Maharaja,,<sup>29</sup>**

Court held that a female relative could also be made a respondent under the Act.

**(C) Respondent can be only family member not extended family members:**

**In Anukriti Dubey v Partha Kansabanik,<sup>30</sup>**

Where the couple were living in rented premises and were required to vacate the premises on expiry of lease agreement, the wife could not obtain a residence order u/s. 19 against the landlord as he can not be made a respondent.

The term “Domestic Violence” has to be understood in context of ‘domestic relationship’ and ‘shared household’. However, it has become an unfortunate trend to implead even distant relatives of the respondent. Impleading non-family members is clearly an abuse of process of law.<sup>31</sup>

**(D) Near relatives living far away not to be consider as a respondent :**

**In P.Sugunamma v State of A.P,** Court held that near relatives living far away not deemed to behaving domestic relationship and do not be considerd as a respondent.

**(VI) Shared household<sup>32</sup>:**

An aggrieved person can claim a “shared household” if at any stage has lived in a domestic relationship with the respondent.

**(A) Meaning of Shared household**

**In S.R.Batra v Taruna Batra<sup>33</sup>**Supreme Court has given its verdict regarding ‘shared household’ in the following words

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<sup>29</sup> Anitha Valarmathy v K. John Hilton Maharaja, 2015 (147) AIC 398: 2015 (3) Crimes 247: 2015(sup) Cri CC 500 (Mad).

<sup>30</sup> Anukriti Dubey v Partha Kansabanik,2016 (2) DMC 1 (Del).

<sup>31</sup> Anoop v Vani shree, 2015 (2) RCR (Criminal) 989:2015 (2) HLR380: 2016 (1) DMC351 (P&H).

<sup>32</sup> Section 2 (s) in The Protection of Women from Domestic Violence Act, 2005“shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

<sup>33</sup> S.R.Batra v Taruna Batra, 2007 (3) SCC 169: AIR 2007 SC 1118: 2006 (13) SCALE 652; 2006 (Sup 10) SCR 1206: AIR 2007 SCW 1088: 2007 (2) MLJ 69:2007 (1) Cal LJ 132:2007 Cri LR 113:2007 (51) AIC 488: 2007 (136) DLT 1 : 2007 (1) DMC 1 (SC0; Relied on in T. Saritha Reddy v T. Obireddy, 2009 (77) AIC 273: 2009 (1) ALT 481 (AP).



“A shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is the member”

The Supreme Court further opined:

“No doubt, the definition of ‘shared household’ in section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.”

Supreme Court held in this case that the property related to mother of the respondent could not be called a “shared household”.

**(B) 'Shared household' does not include the exclusive property of parent-in-laws:**

In **S.R.Batra v Taruna Batra**<sup>34</sup> The apex Court has held that If house owned by mother-in-law not by the aggrieved woman's husband then there is no right of residence in that property.

In **Preeti Satija v Raj Kumari**<sup>35</sup> Division Bench of Delhi High Court has held that shared household has been defined widely in the Act giving right of residence in such premises by virtue of section 17 of the Act. Under section 26 of the Act, the rights contained in D.V.Act could be invoked before any court along with any Civil or Criminal proceedings at any stage of the proceedings. The shared household will include any house owned or taken on rent. It is not necessary that parties should have stayed there together.

**(C) A woman cannot claim to live in a house which she never shared with man**

In **Manmohan Attavar v. Neelam Manmohan Attavar**,<sup>36</sup> The Hon'ble Supreme Court has held that according to the Protection of Women From Domestic Violence Act, 2005 Sections 17, 12 and 2(f) a woman cannot claim to live in a house which she never shared with man - In this case a man and a woman having relationship for number of years but the man kept the woman at different places. They never married because relations between both became sour. Then woman initiated proceedings under Domestic Violence Act, wherein interim order was passed permitting the woman to occupy the premises of the man. But Supreme Court set aside the judgment by giving reason that 'the respondent woman has never stayed with the man in

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<sup>34</sup> S.R.Batra v Taruna Batra, 2007 (3) SCC 169; AIR 2007 SC 1118; 2006 (13) SCALE 652; 2006 (Sup 10) SCR 1206; AIR 2007 SCW 1088; 2007 (2) MLJ 69; 2007 (1) Cal LJ 132; 2007 Cri LR 113; 2007 (51) AIC 488; 2007 (136) DLT 1 : 2007 (1) DMC 1 (SC0; Relied on in T. Saritha Reddy v T. Obireddy, 2009 (77) AIC 273; 2009 (1) ALT 481 (AP).

<sup>35</sup> Preeti Satija v Raj Kumari, 2014 (1) RCR (Criminal) 1035; 2014 (207) DLT 78; AIR 2014 Del 46 (Del) (DB).

<sup>36</sup> Manmohan Attavar v. Neelam Manmohan Attavar, (SC) Civil Appeal No. 2500 of 2017. D/d. 14.7.2017.

the premises in which she has been directed to be inducted. The "domestic relationship " as defined under Section 2(f) of the D.V. Act refers to two persons who have lived together in a "shared household". A "shared household" has been defined under Section 2(s) of the D.V. Act - In order for the woman to succeed, it was necessary that the two parties had lived in a domestic relationship in the household.'

**(VII) . “Domestic Violence”under the Act:**

The term “Domestic Violence” encompasses a variety of criminal offences. These intra-family offences are, however, generally between immediate family members but not extended family members or non-blood relatives. The phrase “Domestic Violence” has to be understood in context of ‘domestic relationship’ and ‘shared household’, and therefore, the reliefs are meaningful only against the persons with whom the person aggrieved shares a ‘domestic relationship’ and a ‘shared household’.<sup>37</sup>

In **Saraswathy v Babu**,<sup>38</sup>: The apex court held that in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant wife to reside in the shared household matrimonial house, there is a continuance of domestic violence committed by the respondent husband against the appellant wife. In view of such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term “domestic violence” as defined under section 3 of the Act, 2005. It was held that act of the husband fell within the ambit of Section 3 of the DV Act, 2005. The appellant wife is entitled to protection order and residence order along with maintenance and compensation for mental torture and emotional distress to the tune of Rs. five Lacs.

**(A) Liability of domestic violence of husband sustained even after subsequent divorce:**

In **Juveria Abdul Majid Patni v Atif Iqbal Mansoori**,<sup>39</sup> The apex court held that even if it is presumed that the appellant has taken ‘Khula’ (divorce) on 9th May, 2008 and the 1st respondent is no more the husband, the question raised that in such case whether the erstwhile-wife can claim one or other relief as prescribed under 18, 19, 20, 21, 22, and the interim relief

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<sup>37</sup> Anoop v Vani shree, 2015 (2) RCR (Criminal) 989; 2015 (2) HLR 380; 2016 (1) DMC 351 (P&H).

<sup>38</sup> Saraswathy v Babu, AIR 2014 SC 857; 2014 Cri LJ 1000; 2013 (14) SCALE 370; 2014 (133) AIC 20; 2013 (15) JT 129 (SC)

<sup>39</sup> Juveria Abdul Majid Patni v Atif Iqbal Mansoori, 2015 (1) SCC (Civil) 110; 2015 (1) SCC (Cri) 241; 2015 (2) DMC 422; 2014 (10) SCC 736

under 23 of the Domestic Violence Act, 2005, if domestic violence had taken place when the wife lived together in shared household with her husband through a relationship in the nature of marriage. The question was answered by the Supreme Court that ‘even if it is accepted that the appellant during the pendency of the SLP before the Supreme Court has obtained ex parte khula (divorce) under the Muslim Personal Law from the Mufti on 9th May, 2008, the petition under section 12 of the Domestic Violence Act, 2005 is maintainable.

**(B) Second marriage solemnised by husband counts as Domestic Violence against first wife:**

In **Prakash Nagadas Dubal-Shaha v Sau. Meena Prakash Dubal shah**,<sup>40</sup> The facts disclosed that the Magistrate found out that the appellant-husband had performed second marriage, was living with the other woman and was therefore guilty of domestic violence as affirmed by the High Court was also upheld by the Supreme Court. Such act was held to be cruelty on the wife and would constitute mental domestic violence.

**(VIII) Economic abuse:**

**(A) Demand of dowry counts as economic abuse:**

In **Ratesh Ratilal Jain v Sandhya**,<sup>41</sup> if husband demanded dowry and for that treated his wife with cruelty and left her in her maternal home and was not providing any financial support to her it was economic abuse under section 3(1) (d) (iv) of the Domestic Violence Act, 2005.

**(B) Depriving a woman from the benefits of matrimonial home considered as economic abuse under the Act: In V.D.Bhanot v Savita Bhanot, Supra** The apex court observed that the High Court rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the D.V.Act, 2005 and depriving a wife from the benefits of matrimonial home, which she shared with the applicants till the date she was driven out of her matrimonial home, as well her stridhan, amounts as economic abuse.

**(IX) Complaint against Family members:**

**(A) Effect : Absence of necessary averments in complaint:**

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<sup>40</sup> Prakash Nagadas Dubal-Shaha v Sau. Meena Prakash Dubal Shah, 2016 (4) SCALE 260.

<sup>41</sup> Ratesh Ratilal Jain v Sandhya, 2014 (1) RCR (Criminal) 813: 2013 (5) AIR Bom R355:2013 Cri LJ 3909: 2013 ALL MR (Cri) 3233 (Bom).

**(i) Omnibus allegation against family members:**

**In Geeta Mehrotra v State of Uttar Pradesh**, the apex court categorically held that “casual names of the family members in a matrimonial dispute without an allegation of active involvement in the matter would not justify in taking cognizance against them over looking the fact borne out of the experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute”

Same view is given by the court in **Ashish Dixit v State of U.P.**<sup>42</sup>, that unnecessary parties not be impleaded.

**(X) Domestic relationship continues so long as the parties live under the same roof in a shared household :**

**In Om Prakash Syngal v Shimla Garg**,<sup>43</sup> It was held by the Punjab And Haryana High Court that ‘Domestic relationship’ continues so long as the parties live under the same roof and enjoy living together in a shared household. However when living together is given up the domestic relationship comes to an end but a relationship of being relatives of each other survives.

**(A) When a married woman settled in her matrimonial home she can not claim domestic relationship with her parents and siblings:**

**In Arun Sharma v State of U.P.**<sup>44</sup>; it was held that even if the claim of the complainant is considered to the effect that for sometimes she lived with her brother and his wife even then it cannot be held that the complainant has been living in domestic relationship with either of the accused. The complainant was married three decades back and ordinarily can be considered to be in domestic relationship only with her husband or relatives of her husband. In such circumstances, it is clearly evident that the complainant has not been living in domestic relationship with either of the accused and, therefore, the impugned complaint could not have been entertained at the instance of the complainant.

**(XI) Complaint not to be thrown out on technical ground:**

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<sup>42</sup> Ashish Dixit v State of U.P., 2013(2) SCC (Cri) 337: 2013 (2) RCR (Criminal) 340: 2013 (2) All LJ 231: AIR 2013 SC 1077:2013 Cr LJ 1178:2013 (4) SCC 176:2013 (1) Crimes 216:2013 (1) Cri LR

<sup>43</sup> Om Prakash Syngal v Shimla Garg, 2015 (5) Law Herald 4673 (P&H)

<sup>44</sup> Arun Sharma v State of U.P., 2015 (10) ADJ 540 (ALL)

In **Krishna Bhattacharjee v Sarathi Choudhry**,<sup>45</sup> The apex court held that It should be borne in mind at the thresholds that helpless and hapless “aggrieved person” approaches the court under this act under some compelling circumstances. So, it is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct.

**(A) Complaint maintainable against female relatives:**

In **Kaniz Fatima v State of Rajasthan**<sup>46</sup>, The Rajasthan High Court following the decision of the Hon’ble Apex court in Sandhya Manoj. Wankhade<sup>47</sup> case held that legislature never intended to exclude female relatives of the husband or male partner from the ambit of complaint that can be made under the provisions of 2005 Act. It is true that expression “female” has not been used in the proviso to section 2(q) also, but, no restrictive meaning can be given to expression “relative” nor has said expression been defined to make it specific to males only.

**(B) Even where violence is committed prior to commencement of Act complaint is maintainable:**

In **Juveria Abdul Majid Patni v Atif Iqbal Mansoori**<sup>48</sup>, the alleged domestic violence took place between January, 2006 and 6th September, 2007 when FIR No. 224 of 2007 was lodged by the appellant-wife under section 498A and 406 IPC against the 1st respondent-husband and his relatives. In a writ petition filed by 1st respondent the High Court refused to quash the said FIR against him observing that prima facie case under section 498A was made out against him. Even if it is accepted that the appellant during pendency of the SLP before the court has obtained ex parte Khula (divorce) under the Muslim Personal Law from the Mufti on 9th May, 2008, the petition under section 12 of the Domestic Violence Act, 2005 is maintainable.

**(XII) Maintenance :**

**(A) Strict proof of marriage should not be a pre-condition for maintenance under section 125 Cr PC :**

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<sup>45</sup> Krishna Bhattacharjee v Sarathi Choudhry, 2015 (12) SCALE 521; 2016 (1) RCR (Criminal) 152; Air 2015 SCW 6386; 2015 (3) DMC 823; 2016 Cr LJ 330; 2016 (2) SCC 705 (SC)

<sup>46</sup> 2011(2) DMC 847

<sup>47</sup> (2011) 3 SCC 650

<sup>48</sup> 2015(2) DMC 422

In **Chanmunya v Virendra Kumar Singh Kushwaha**<sup>49</sup> Hon'ble Supreme Court viewed that the act gives a very wide interpretation to the term 'domestic relationship' so as to take it outside the confines of a marital relationship, and even includes living relationship in the nature of marriage within the definition of 'domestic relationship' under section 2 (f) of the Act. therefore, women in living relationship are also entitled maintenance under section 125 of Cr PC. The Court was further of the view that this is also confirmed by section 26 of the Protection of Domestic Violence Act, 2005.

**(B) The provisions of maintenance under section 20 of Domestic Violence Act and 125 Cr.P.C are independent monetary relief in DV Act can be granted even if some maintenance has been allow to wife under section 125 CrPC:**

**Shome Nikhil Danani vs Tanya Banon Danani**<sup>50</sup>

In this recent judgment delivered by the Honourable High Court of Delhi delivered on 11th April 2019 it has been held "Clearly the scope of section 20 of the DV Act is much wider than that of Section 125 Cr. P. C.. While section 125 Cr PC talks only of maintenance, Section 20 DV Act stipulates payment of monetary relief to meet the expenses incurred and losses suffered as a result of loss of earning, medical expenses, loss caused due to destruction, damage or removal of any property from the control of aggrieved person".

It further observed by citing section-20 (1d) of DV Act as "This Court clearly erred in not appreciating the distinction between the two provisions and the reasoning is clouded by an impression that the respondent-Wife in the application under section 23 of the DV Act, the respondent wife has inter-alia sought residence rights under Section 19 and protection under Section 18 apart from the monetary relief under Section 20".

The High Court also observed "Further, it may seen that proceeding under the DV Act and under section 125 Cr.P.C are independent of each other and have different scope, through there is an overlap. In so far as the overlap is concerned, law has catered for that eventuality and laid down that at the time of consideration of an application for grant of maintenance under DV Act, maintenance fixed under section 125 Cr.P.C shall be taken into account".

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<sup>49</sup> Chanmunya v Virendra Kumar Singh Kushwaha, 2010 (95) AIC 40 : 2011 (1) SCC

<sup>50</sup> Shome Nikhil Danani vs Tanya Banon Danani, Judgement Delivered by Delhi High Court on: 11th April, 2019 Latestlaws.com

### **(XIII) Joint Hindu Family :**

#### **(A) Joint hindu family does not include 'Hindu Undivided Family' for the purpose of the Protection of women from domestic violence Act, 2005**

In **Jiteshbhai Upadhaya v Jiteshbhai Varendrabhai Upadhaya**<sup>51</sup> the Gujarat High Court noticed the fact that the term 'Joint Family' was not defined under the Act, the court cited with approval in order to assign a meaning to the joint family the definition contained in *Encyclopaedia Britannica 2008* "Joint family - family in which members of a unilineal descent group ( a group in which descent to either the female or the male line is emphasised ) live together with their spouses and off-spring in one homestead and under the authority of one of the members. the joint family is an extension of the nuclear family ( parents and dependent children), and it typically grows when children of one sex do not leave their parents home at marriage but bring their spouses to live with them. Thus, a patrilineal joint family might consist of an older man and his wife, his sons and unmarried daughters, his sons' wives and children, and so forth. For a man in the middle generation, belonging to a joint family means joining his conjugal family to his family of orientation ( i.e., into which he was born)."

So, the Gujarat High Court did not contain any reference to ' Hindu Undivided Family ' in the meaning of the term 'Joint Family' relating to the protection of women from Domestic Violence Act, 2005.

**Navneet Arora v Surender Kaur**<sup>52</sup> in this case court held that the protection of women from domestic violence Act is a secular legislation and has been enacted for the benefit of women n India, irrespective of their religious affiliations. In addition the court said that if the legislature intended to engraft a special provision in the context of Hindus, nothing prevented them form expressly using the term ' Joint Hindu Family ' or ' Hindu Undivided Family', as found in Income Tax Act, 1961. Thus the above discussion reveals the recent judicial trends of the Courts including the apex court in the administration of law under the 'Domestic Violence Act, 2005.

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<sup>51</sup> Jiteshbhai Upadhaya v Jiteshbhai Varendrabhai Upadhaya, 2012 Cri LJ 1187 (Guj)

<sup>52</sup> Navneet Arora v Surender Kaur, 2015 (3) RCR (Criminal) 811: 2014 (213) DLT 611 : 2014 (145) DRJ 119 : 2015 (3) AD (Del) 337 (Del) (DB).

# **CHAPTER 7**

## **DOMESTIC VIOLENCE AGAINST WOMEN**

### **: A SOCIO-LEGAL SURVEY**

#### **Introduction:**

Every type of discrimination on the basis of gender should be counted as domestic violence against women. It is a bitter truth that it prevails everywhere in our society but, we are not taking it seriously whereas, we are avoiding it by saying that it is necessary for the family and it is natural that men and women are not equal because men are superior and stronger than women. There are many laws in India for the protection of women from domestic violence since before the independence till now but, the Protection of women from domestic violence Act, 2005 is the most important and elaborated one. Which cover all significant aspects of domestic violence against women and incorporated ways through which women can be protected from domestic violence and seek redressal for the damages perpetrated by domestic violence against them.

This 'Empirical study' has been executed considering in mind the phenomenon of gender discrimination and to find out why the Protection of women from domestic violence Act, 2005 is necessary to stop domestic violence. How much women know about it? Do women use it for their protection against domestic violence ? If yes, what are the after effects of its usage, to which extent it became successful to stop domestic violence against women. This field work covered in rural areas, some villages of Gharaunda and in urban areas two cities one is Gharaunda and other is Karnal. The questionnaire consists twenty-one questions on which the data collection is based. All the questions are related to the 'protection of women from Domestic Violence Act, 2005'. The total number of females surveyed are 300.

**(II) The survey is divided into Rural area and urban area which further divided into :**

**(A) Income groups :**

(a). low-income group,

(b). Middle-income groups and



(c). High-income groups.

**(B) Education groups :**

**(a). Highly educated:** This category covers those females who have passed senior secondary schools and those females who have done higher studies.

**(b). Semi-literate:** This category included those females who have passed class three to class tenth of school.

**(c). Illiterate :** This category includes those women who have never seen the face of school or those who have attended school upto 3rd class.

**(C) Working and Non-working :**

**(II) The questionnaire consists of 20 questions, which are accumulated in 10 parts :**

**Part ( 1 ) : Do women generally know what is domestic violence?**

In this part we try to search out that how many women know about domestic violence in different groups of rural and urban areas.

**Q.No.i Do you know what is Domestic Violence<sup>1</sup>?**

Total number of women answered this question are 174 in which 88 women are from rural area and 86 women are from urban area, which are divided in different income group

**(A) Different income groups**

**Rural area :** In this category 31 women are related to low-income group, 28 women are related to middle-income group, 19 women are related to high-income group.

**(a). Low-income group:**

In this group out of 31 women only 10 said that they are aware of domestic violence and 21 said that they are not. This data clearly indicates that 68% women do not know about domestic violence.

**(b). Middle-income group:**

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<sup>1</sup> Physically, mentally, verbally and economically abuse of a woman by the persons who are in domestic relationship with her.

When we go in the middle income group in rural area out of 28 women 8 said they are well informed about domestic violence and 20 said they are not. It means 72% women in middle income group do not know what is domestic violence.

**(c). High income groups :**

In this group out of 19 women only 6 said that they are aware of domestic violence and 13 said that they are not . This data clearly indicates that only 30% women do not know about domestic violence.

**Urban area:** In this category 20 women are related to low-income group, 36 women are related to middle-income group, 32 women are related to high-income group.

**(a). Low income group:**

Out of 20 women 12 said that they are acquainted with domestic violence and 6 said that they do not know about domestic violence. It means 30% women of low income group are not aware of domestic violence.

**(b). Middle income group:**

Out of 36 women 31 said that they know what is domestic violence whereas 5 said that they don't know about domestic violence. It point out that 14% women of this group do not know about domestic violence.

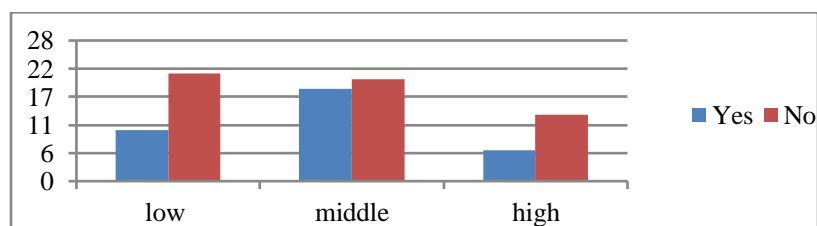
**(c). High income groups :**

Out of 32 women 30 said that they are acquainted of domestic violence and 2 said that they are not. It means 7% women of high income group are not aware of what is domestic violence.

**Data collected in different income groups:**

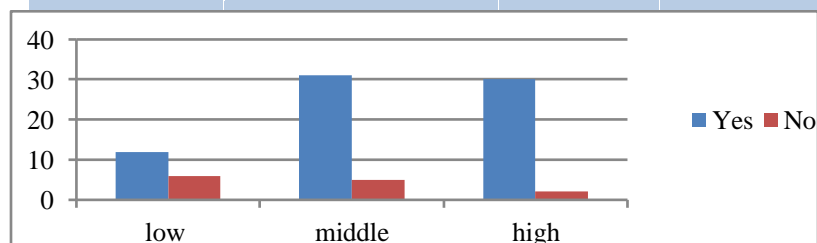
## Rural area

	Income Group	Yes	No
Rural	low	10	21
	middle	18	20
	high	6	13



## Urban

	Income Group	Yes	No
Urban	low	12	6
	middle	31	5
	high	30	2



**Conclusion:** Above data demonstrates that women in rural area are not much aware of domestic violence and women related to middle income group of rural area are most ignorant of

domestic violence. Maybe this is the big reason that women in rural area are suffering more domestic violence silently as compare to urban area.

**(B) Different education groups**

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:** Total number of women surveyed in rural and urban area are 174 in total. 89 women in rural area and 85 women in urban area.

**Rural area:** Total number of women surveyed in rural area are 89 women, in which 25 women are highly educated, 34 women are uneducated literate, 29 women are illiterate.

**(a). Highly educated:**

Total number of women surveyed in rural area are 89 women, in which only 25 women are highly educated and they respond the question as only 17 said yes they know what is domestic violence, 8 said they don't know what is domestic violence. It means 32% women of this group are not cognisant with domestic violence.

**(b). Semi-literate:**

In this category out of 34 women only 12 women said yes they know what is domestic violence whereas 22 said they do not know what is domestic violence. It means 64% women are not well acquainted with the domestic violence.

**(c). Illiterate :**

Out of 29 women only 7 women said yes they know what is domestic violence whereas 22 women don't know what is domestic violence. The data explains that 76% women are not aware of domestic violence.

**Urban area:** Total number of women surveyed in rural area are 85 women, in which 73 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.

**(a). Highly educated:**

In this group out of 73 women 68 women said that they are aware of domestic violence and only 5 said that they do not know what is domestic violence. This data indicates that only 7% women of this group do not know about domestic violence.

**(b). Semi-literate:**

Out of 8 women only 2 said yes they know what is domestic violence and 6 women said no they don't know about domestic violence. The data shows 75% women of this category have no knowledge of domestic violence.

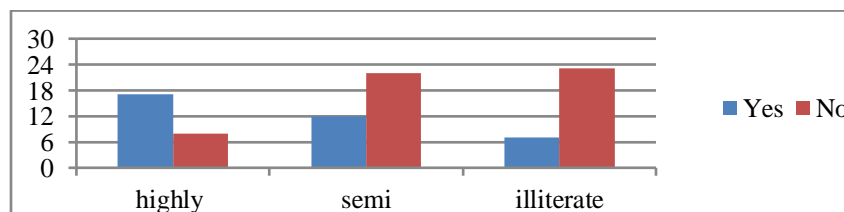
**(c). Illiterate :**

In urban area only 1 women said yes, she knew what is domestic violence out of 4 women while 3 said no they do not know what is domestic violence. Here percentages of women who are ignorant of domestic violence is 75%.

**Data collected in different education groups:**

**Education (Rural)**

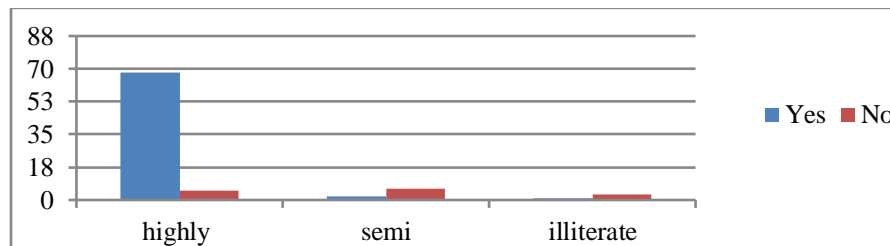
	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	17	8
	Semi-literate	12	22
	Illiterate	7	23



	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	68	5
	Semi-literate	2	6

	Illiterate	1	3
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### Education (Urban)



**Conclusion:** The data shows that only highly educated women of urban area are well known about domestic violence but, not sufficient. But, in rural area women are not well-aware of domestic violence.

### (C) Working and Non-Working

**Answer given by working and non-working women of rural and urban areas:**

Total number of women surveyed in rural and urban areas combined is 175 women. In which 80 are working and 95 are non-working.

#### (a). Working women:

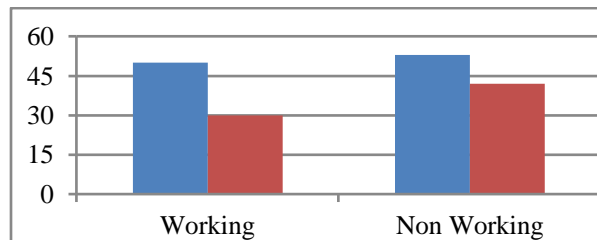
Out of 80 women 50 said, they know what is domestic violence whereas 30 women don't know what is domestic violence. The data explains that 38% women are not aware of domestic violence.

#### (b). Non-Working:

Out of 95 women 53 said, they know what is domestic violence whereas, 42 women don't know what is domestic violence. The data explains that 45% women are not aware of domestic violence.

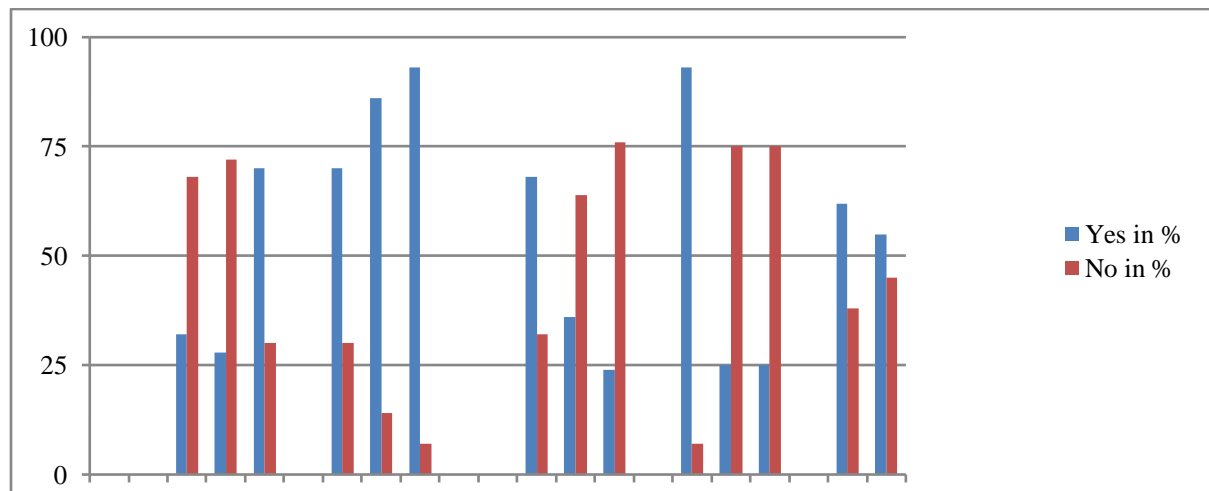
**Data collected in Working/Non working:**

	Yes	No
Working	50	30
Non Working	53	42



**Conclusion:** The data shows that non-working women are more in percentage who do not know what is domestic violence compare to working women but, the difference is negligible between the two group.

### Comparative study



### ANALYSIS:

Above data proves that, highly educated women in urban area, who are aware of domestic violence, are in the highest percentage but in all other category women are not much acquainted with domestic violence. It is ironical of the modern world that the knowledge of women about domestic violence is meagre.

**Q.No.ii Have you witnessed domestic violence around you?**

When we asked this question most of the female's reaction was shocking. On one hand they said no they did not see any domestic violence but on the other hand they end up their answer with the dialogue "GHAR GHAR KI KHANI HE JI".

Total number of women who answered this question are 196 in which 91 are from rural area and 105 are from urban area, which are divided in different income group.

**(A) Different income groups:**

**Answer given by different income groups women:**

**Rural area :**

In this category 35 women are related to low-income group, 37 women are related to middle-income group, 19 women are related to high-income group.

**(a). Low-income group:**

In this group out of 35 women 17 said that yes they witnessed domestic violence around them and 18 said that they do not witnessed any type of domestic violence around them. This data clearly indicates that almost 50% women notice domestic violence around them.

**(b) Middle-income group:**

When we go in the middle income group in rural area out of 37 women 26 said yes they saw domestic violence in their neighbourhood and 11 said they do not saw any kind of domestic violence around them. 71% women witnessed domestic violence around them.

**(c) High income groups :**

In this group out of 19 women only 11 said yes they saw many incidences of domestic violence against women in their nearby areas and 8 said they do not witnessed domestic violence around them . This data clearly indicates that only 57% women saw domestic violence in their close areas.

**Urban area:**

In this category total 18 women are related to low-income group, 37 women are related to middle-income group, 50 women are related to high-income group.

**(a). Low income group:**



Out of 18 women 13 said that they witnessed domestic violence around them and 5 said that they do not see any domestic violence in their neighbouring areas. It means 72% women are witness of domestic violence in their areas.

**(b). Middle income group:**

Out of 37 women 23 said yes they saw many incidences of domestic violence against women in their nearby areas and 14 said that they do not witness any type of domestic violence around them. It points out that 62% women are witness of domestic violence around them.

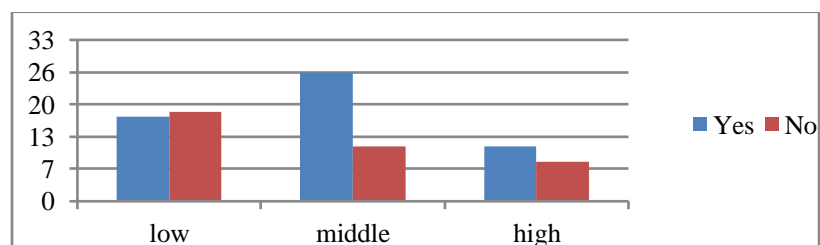
**(c). High income groups :**

Out of 50 women 25 said yes they saw domestic violence against women in their nearby areas and 25 said no they do not see any kind of domestic violence against women in their neighbourhood. It means 50% women are witness domestic violence against women in their areas.

**Data collected in different income groups:**

**Rural**

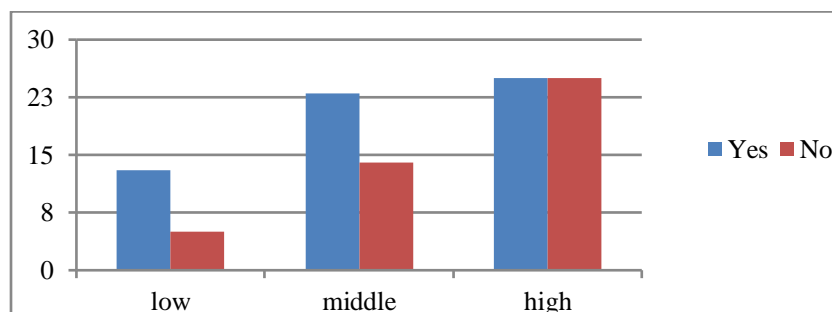
	Income Group	Yes	No
<b>Rural</b>	low	17	18
	middle	26	11
	high	11	8



**Urban**

	Income Group	Yes	No
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<b>Urban</b>	low	13	5
	middle	23	14
	high	25	25



**Conclusion:** Above data demonstrates that total percentage of women who witnessed domestic violence against women around them is 59% and in urban area also the percentage of women who witnessed domestic violence against women in their areas is 59%. The percentage signifies that either we are talking about rural area or about urban area domestic violence against women is still a big issue to solve.

### **(B) Different education groups**

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:**

Total number of women surveyed in rural and urban area are 173 in total. In rural area 85 women and urban area 88 women

**Rural area:** Total number of women surveyed in rural area are 85 women in total in which 25 women are highly educated, 28 women are uneducated literate, 32 women are illiterate.

#### **(a). Highly educated:**

Out of 25 women 17 said yes they have witnessed domestic violence against women in their areas and 8 said they didn't see any type of domestic violence against women in their nearby areas. It means just 68% women witnessed domestic violence against women around them.

#### **(b). Semi-literate:**

In this category out of 28 women only 15 women said yes they witness domestic violence against women around them whereas 13 said they do not saw domestic violence against women in their area. It means 54% women are witness domestic violence around them.

**(c). Illiterate :**

Out of 32 women only 21 women said yes they witnessed domestic violence against women in their area whereas,11 women said they don't saw any kind of domestic violence in their area. The data explains that 66% women are witness of domestic violence in this group.

**Urban area:**

Total number of women surveyed in rural area are 88 in total in which 76 are highly educated, 8 are semi-literate and 4 women are illiterate.

**(a). Highly educated:**

In this group out of 76 women 44 said yes they saw domestic violence around them and only 32 said they do not. This data indicates that 57% women of this group saw domestic violence in their nearby areas.

**(b). Semi-literate:**

Out of 8 women 6 said yes they witnessed domestic violence against women around them and 2 said no they don't saw domestic violence in their neighbouring areas. The data shows that 75% women witnessed domestic violence around them.

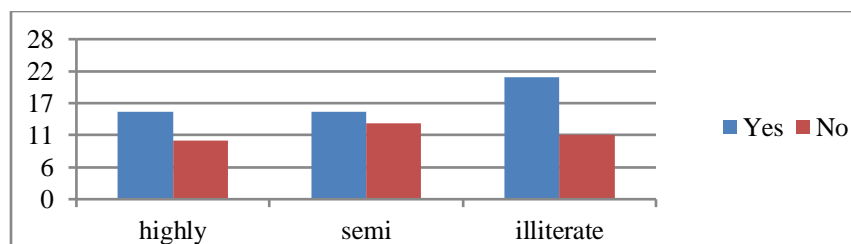
**(c). Illiterate :**

All 4 women said yes they saw domestic violence against women in their nearby areas.

**Data collected in different education groups:**

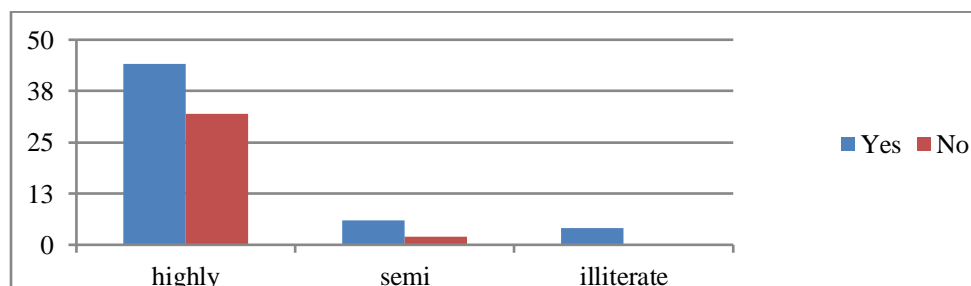
**Education (Rural)**

	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	15	10
	Semi-literate	15	13
	Illiterate	21	11



### Education (Urban)

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	44	32
	Semi-literate	6	2
	Illiterate	4	0



**Conclusion:** The data shows that more than 60% women are witnessed domestic violence against women in their nearby areas. It means more than 60% women are victim of domestic violence in the area where we had done field work.

### (C). Answer given by working and non-working women of rural and urban areas:

Total number of women surveyed is 175 in which 80 are working and 95 are non-working.

#### (a). Working women:

Out of 80 women 50 said yes they witnessed domestic violence around them whereas 30 said they do not saw domestic violence against women around them. The data explains that 63% women said yes they saw domestic violence against women in their nearby areas.

**(b). Non-Working:**

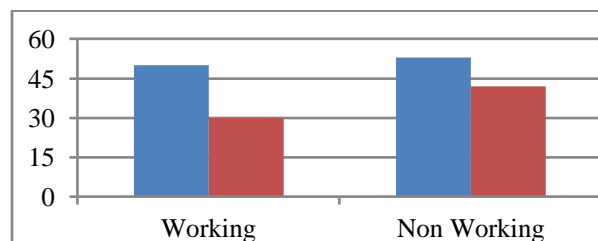
Out of 95 women 53witnessed domestic violence against women in their neighbouring areas whereas 42said they do not saw domestic violence against women around them. The data explains that 55% women said yes they saw domestic violence against women in their areas.

**Conclusion:** The data shows that domestic violence against women is still prevailing in our society because 63% of working women and 55% women of non working witnessed domestic violence against women

**Data collected in Working/Non working:**

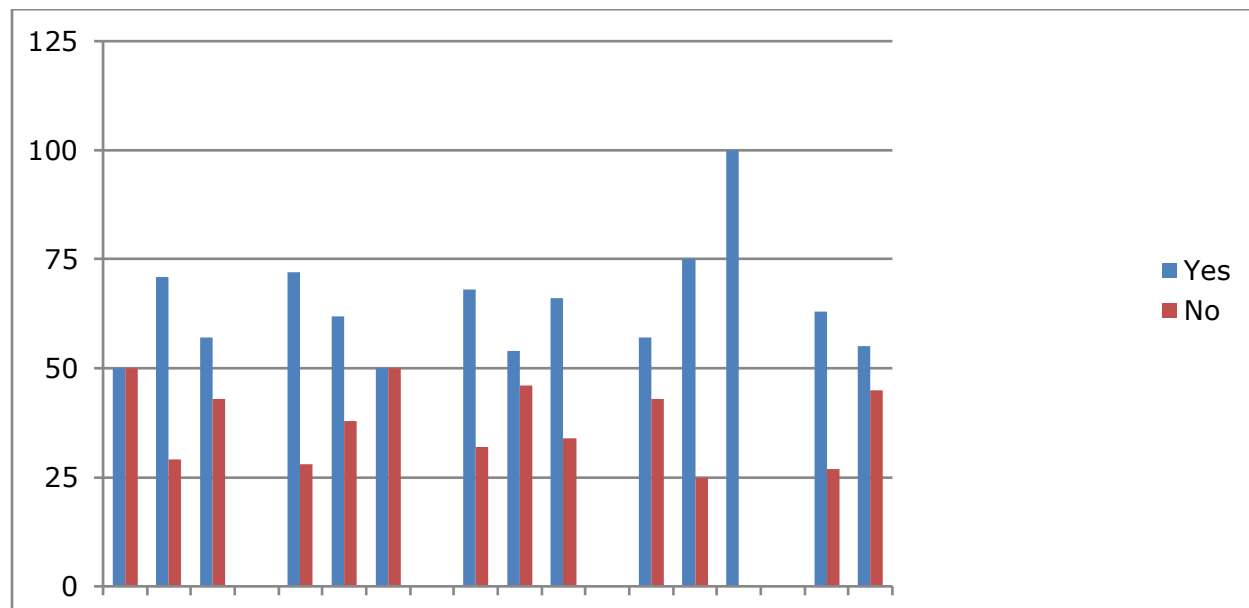
**Working/Non working**

	Yes	No
Working	50	30
Non Working	53	42



**ANALYSIS:** Above data signifies that the number of women who suffers domestic violence is more than 60% and the laws for the protection of women are not as much strong or capable to finish this evil from the society.

### Comparative study



**ANALYSIS:** Above data shows that answer in ‘Yes’ are more than answers in ‘No’ it means the percentage of women who are victim of domestic violence is still high in our surroundings.

### Part: 2 Do women have enough knowledge about the Protection of women from domestic violence Act, 2005 and its provisions?

This is the most important part of this empirical study because women are privileged with many laws or acts for their protection against domestic violence but the question arises, ‘Does she know about all these laws and the procedures of using it?’. This curiosity makes my field work more interesting and important because the data that came out, clears the picture that laws and acts alone are not capable to bear the burden of stopping this heinous crime from the society, along with the laws, we have to do lots of developments for the welfare of women.

**Q.No.iii According to you “What is Domestic violence?”**

**(a). Beating:**

10% women said when a husband or family members beat a woman or girl to dominate her or run her according to his decisions is included in domestic violence against female.

**(b). Taunting:**

2% women accepted that if in a house a husband or his family members taunts her for not bringing enough dowry, not cooking good food, not giving enough time to the family, or saying what your parents have taught you (*kya sikhaaya tere maa baap ne*) etc, to a married woman and before marriage parents says to their daughters that “*apne agle ghar karna jo karna he*” are included in domestic violence.

**(c). Given threat to be beaten:**

5% women accepted that giving threat to be beaten is also included in domestic violence against women.

**(d).Ridicule her in front of others:**

If a husband or his family members ridicule her in front of others it also included in domestic violence against women this truth is accepted by 3% of women surveyed.

**(e). All of the above:**

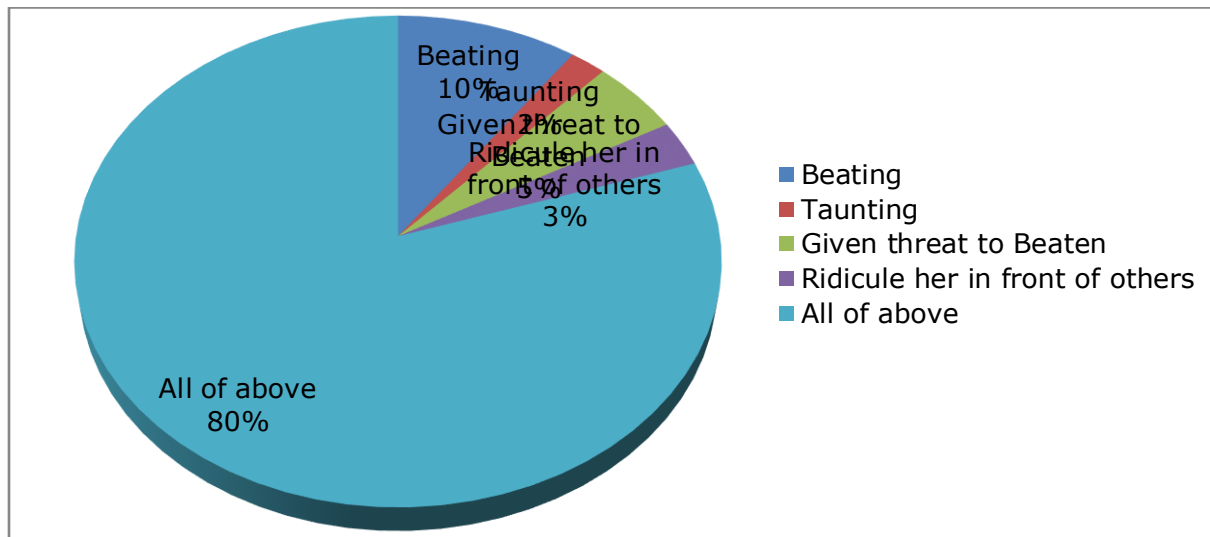
It is an amazing fact that 80% of when surveyed said that all the things stated above are included in domestic violence against women whether it is beating or threat ing of beating and taunting or ridiculing her in front of others.

Beating	10%
Taunting	2%
Given threat to Beaten	5%
Ridicule her in front of others	3%

All of above

80%

**(A) Data collected:**



**Conclusion:** Above stated fact open the truth that a woman suffers ,a lot till the date, all type of domestic violences in her so called safest place, her own home.

**Q.No.iv Do you know that there is a law in India ,named –“PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT,2005” to protect women from domestic violence?**

**Answer given by women related to different income groups of rural area 88 women and urban area 88 women:**

**(A) Different income groups**

**Rural area**

**(a). Low income group:**

In this group out of 32 women only 2 said yes, they know that there is a law in India, named– “Protection of women from domestic violence Act,2005” to protect women from domestic



violence and 30 said no that they do not know about this law. This data clearly indicates that only 6.25% women know about this Act which protect women from domestic violence.

**(b). Middle income group:**

In this group out of 38 women only 6 said yes they know that there is a law in India, named–“Protection of women from domestic violence Act,2005” to protect women from domestic violence and 32 said no that they do not know about this law. This data clearly indicates that only 16% women know about this Act which protect women from domestic violence.

**(c). High income groups :**

In this group out of 18 women only 5 said yes they know that there is a law in India, – “Protection of women from domestic violence Act,2005” to protect women from domestic violence and 13 said no that they do not know anything about this law. This data clearly indicates that only 28% women know about this Act which protect women from domestic violence.

**Urban area:**

**(a) Low income group:**

Out of 19 women only 11 said yes they know that there is a law in India, named–“Protection of women from domestic violence Act,2005” to protect women from domestic violence and 8 said no that they do not know about this law. This data clearly indicates that only 58% women know about this Act which protect women from domestic violence.

**(b). Middle income group:**

Out of 38 women only 32 said yes they know that there is a law in India, named–“Protection of women against domestic violence Act,2005” to protect women from domestic violence and 6 said no that they do not know about this law. This data clearly indicates that only 85% women know about this Act which protect women from domestic violence.

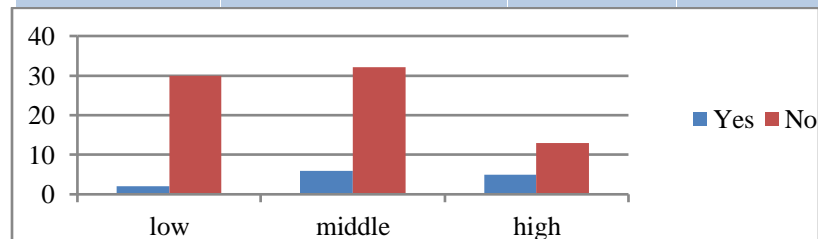
**(c). High income groups :**

Out of 31 women only 27 said yes they know that there is a law in India, named–“Protection of women from domestic violence Act,2005” to protect women from domestic violence and 4 said no that they do not know about this law. This data clearly indicates that only 87% women know about this Act which protect women from domestic violence.

#### Data collected in different income groups:

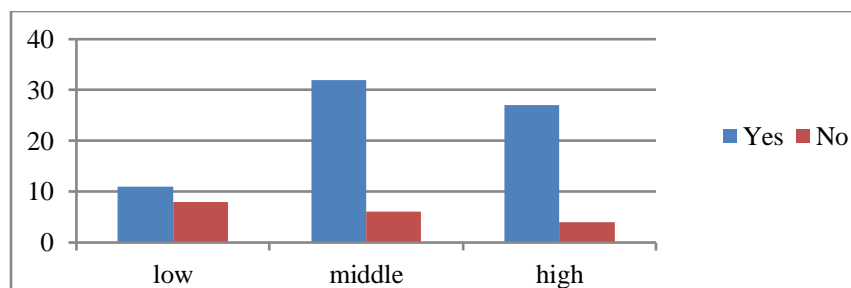
##### Rural area

	Income Group	Yes	No
<b>Rural</b>	low	2	30
	middle	6	32
	high	5	13



##### Urban area

	Income Group	Yes	No
<b>Urban</b>	low	11	8
	middle	32	6
	high	27	4



**Conclusion:** Above data shows that in rural area the percentage of women who know about this law is too small and also in urban area low income group women are less aware about this law that is Protection of women from domestic violence Act, 2005. Only high income group or middle income group women of urban area have knowledge about this Act. The question arises if women don't know about any law 'How can they use it for their benefit?'.

### **(B) Different education groups**

**Answer given by highly educated, Semi-literate and illiterate women of rural and urban areas:**

#### **Rural area:**

Out of 87 rural women, 75 are highly educated, 8 are semi-literate and 4 are illiterate.

##### **(a).Highly educated:**

Out of 75 women only 67 said yes they know that there is an Act in India for the protection of women from domestic violence and the name of the act is 'Prevention of women from Domestic violence Act, 2005' and 8 said they don't know. It means just 90% women are well aware with the Act of domestic violence against women in India.

##### **(b). Semi-literate:**

Out of 8 women in this category only 2 women said yes they know about the Act for the protection of women from domestic violence whereas, 6 said they do not know what is this Act and how it is helpful for the protection of women from domestic violence. It means only 25% women are well acquainted with this Act.

##### **(c).Illiterate :**

Out of 4 women, all 4 women said they know about the Act. Maybe, it was a coincidence that we approached to those women who knew about the Act.

**Urban area:****(a) Highly educated:**

In urban area out of 26 women, 18 women said yes they have knowledge of the Act that is Protection of women from domestic violence Act, 2005 and 8 said that they do not know about the Act. This data indicates that 70% women know what is the Act for the protection of women from domestic violence.

**(b). Semi-literate:**

Out of 28 women only 25 said yes they know about the Act that is for the protection of women from domestic violence which is known as 'Protection of women from domestic violence Act, 2005' and 3 women said no they don't know about such type of Act. It means 90% women of this category have knowledge of the Act that is 'Protection of women from domestic violence Act, 2005'.

**(c). Illiterate :**

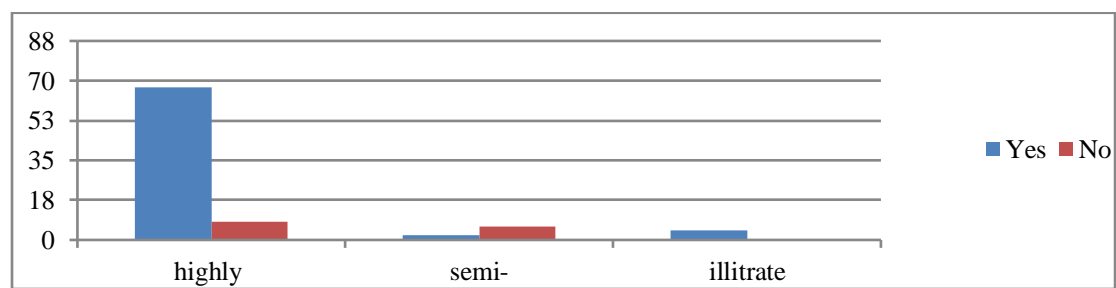
In urban area, out of 34 women only 2 women said yes, they know about the Act i.e 'Protection of women from domestic violence Act, 2005' while, 32 said no they do not know such type of any law which helps women against domestic violence. It means only 6% women of this category have knowledge of the Act that is 'Protection of women from domestic violence Act, 2005'.

**Conclusion:**

The data shows that in rural area in highly educated group women are much aware about the Act as compare to urban area highly educated women. The situation is reverse when we see the semi-literate groups of both areas, in urban area the percentage of women who know about the act is much higher than the rural area. Again in illiterate group women of urban area are less aware about the Act as compare to rural area.

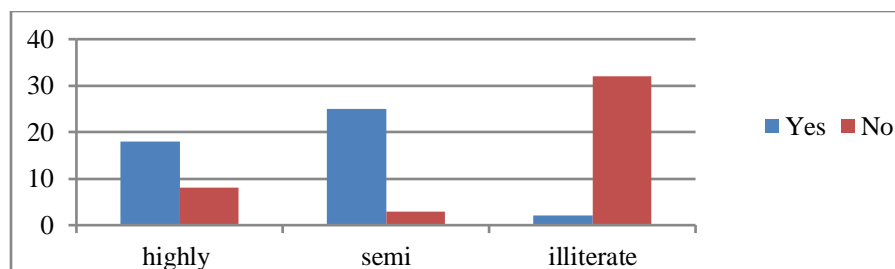
**(B) Data collected in different education groups:****Rural**

	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	67	8
	Semi-literate	2	6
	Illiterate	4	0



## Urban

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	18	8
	Semi-literate	25	3
	Illiterate	2	32



### Conclusion:

The data shows that in rural area, highly educated group women are much aware about the Act as compare to urban area highly educated women. The situation is reverse when we see the semi-literate groups of both areas, in urban area the percentage of women who know about the act is much higher than the rural area. Again in illiterate group women in urban area are less aware about the Act as compare to women in rural area.

### (C) Answer given by working and non-working women of rural and urban areas:

Total number of women surveyed in rural and urban area combined are 200 women.

#### (a) Working women:

Out of 100 women 65 women said they know about the Act that is for the protection of women from domestic violence and named as Protection of women from domestic violence Act, 2005 whereas, 16 women said no they do not know such type of any law which helps women against domestic violence don't know what is domestic violence and 19 women denied to answer the question.. The data explains that 65% women are aware of domestic violence.

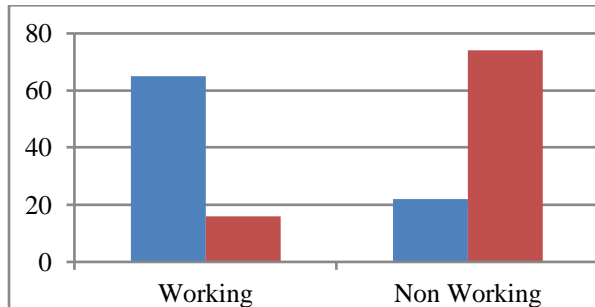
#### (b). Non-Working:

Out of 100 women 22 women said yes they know about the Act for the protection of women from domestic violence that is Prevention of women from domestic violence Act, 2005 whereas, 74 women said that they do not know about the Act and 4 women denied to answer the question. The data explains that 22% women are aware of domestic violence.

	Yes	No
Working	65	16

Non Working	22	74
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#### **Data collected in Working/Non working:**

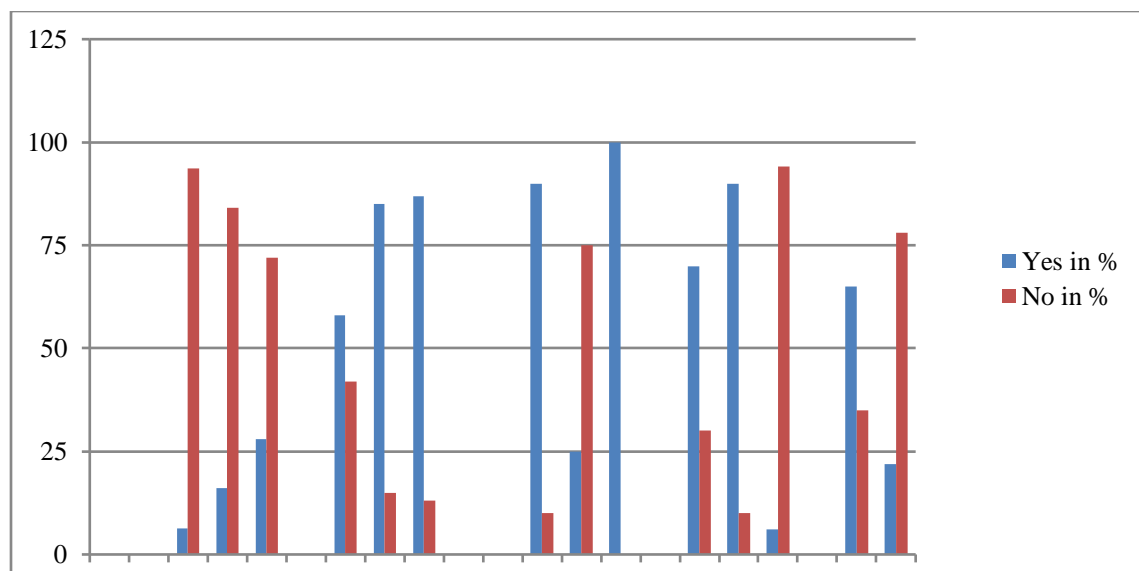


#### **Conclusion:**

The data shows that the women who know about the Act is 65% in working group and 22% in non-working group it means the percentage is not satisfactory, we have to take major steps in order to make women aware about the laws in India for the protection of women from domestic violence.

Above data signifies that making of laws are important to stop this crime from the society but, proper knowledge is also necessary that is why major steps must be taken in order to spread the knowledge about the Acts and laws in such a way that it reaches to women in every section of India. Then we can say these Acts are good for the society to eradicate the evil that is happening consistently in women's own homes that is domestic violence.

#### **Comparative study**



**ANALYSIS:** Above data explains that in rural area women in all income groups are not well acquainted with the Protection of women from domestic violence Act, 2005. Total percentage of women who have knowledge of this Act is also not satisfactory for the results which legislature wants to achieve from the Act.

**Q.No.v Not only husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act,2005?**

Total number of women answered this question are 174 in which 88 women are from rural area and 86 women are from urban area, which are divided in different income group

### **Different income groups**

#### **Rural area :**

In this category 31 women are related to low-income group, 26 women are related to middle-income group, 5 women are related to high-income group.

#### **(a). Low-income group:**

In this group out of 31 women, 26 women means 84% among the women who surveyed in low income group said yes a woman has to face not only of her husband's but his relative's misbehaviour if she used the law protection of women from domestic violence to protect herself from domestic violence.

#### **(b). Middle-income group:**



In middle income group also 24 women out of 36 means 67% women of the total women surveyed are accepted that not only husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act, 2005?

**(c). High income groups :**

In this group out of 19 women 17 said yes when a woman uses domestic violence Act for her protection against domestic violence her husband and his family members misbehaved her. It means 90% women of this group accepted that a woman is faced bad behaviour not only of husband but his family members too on using the protection of women from domestic violence Act, 2005.

**Urban area:**

In this category 20 women are related to low-income group, 36 women are related to middle-income group, 32 women are related to high-income group.

**(a). Low income group:**

Among 20 women of this group, 15 women means 75% of the total women surveyed said that not only husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act, 2005?

**(b). Middle income group:**

Out of 36 women 24 women said yes and 13 said no in the answer of the question 'Is not only husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act, 2005?' This indicates that 67% women accepted it.

**(c). High income groups :**

Out of 32 women 9 said no and 22 means 69% women said yes a woman has to face not only of her husband's but his relative's mental and psychological harassment and misbehaviour when she uses the Protection of women from domestic violence Act, 2005 to protect herself from domestic violence.

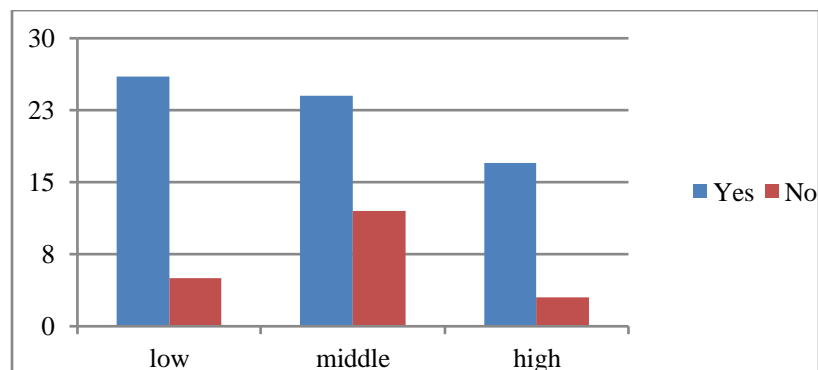
**Conclusion:**

Above data demonstrates that 70% women in rural area and 70% women in urban area are accepted that women have to face bad behaviour not only of her husband but her husbands family members too if they raise their voice against domestic violence. Situation of women is same in rural as well as in urban area.

#### Data collected in different income groups:

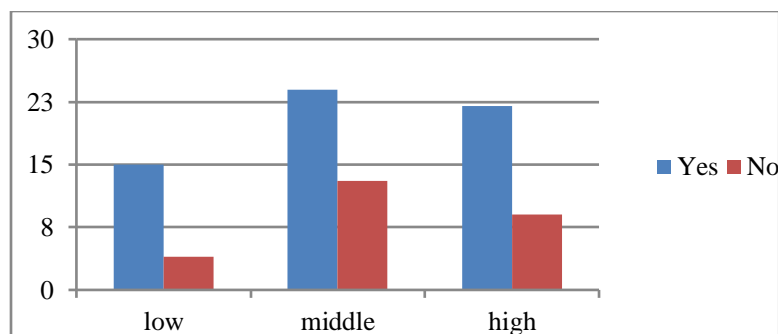
##### Rural

	Income Group	Yes	No
<b>Rural</b>	Low	26	5
	Middle	24	12
	High	17	3



##### Urban

	Income Group	Yes	No
<b>Urban</b>	low	15	4
	middle	24	13
	high	22	9



### **(B) Different education groups**

#### **Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:**

Total number of women surveyed in rural and urban area are 174 in total. In rural area 87 women and urban area 88 women

#### **Rural area:**

Total number of women surveyed in rural area are 87 women in total in which 26 women are highly educated, 27 women are semi-literate, 34 women are illiterate.

#### **(a) Highly educated:**

Out of 26 women, 20 women means 77% of total women surveyed in highly educated group are agree with this that if a woman take stand against the perpetrator of domestic violence through Protection of women from domestic violence Act, 2005, not only of her husband but her husband's family members also misbehave her or treat her badly.

#### **(b). Semi-literate:**

In this category out of 27 women, 20 women means 75% of total women in this group accepted that women have to face ill-treatment and misbehaviour of their husband and his family members if they raise voice against domestic violence or use the Act in the way to protect themselves from domestic violence.

#### **(c). Illiterate :**

Out of 34 women, 27 women means almost 80% of the total women surveyed are agree with that not only husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act, 2005.

**Urban area:**

Total number of women surveyed in rural area are 88 women in total in which 76 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.

**(a). Highly educated:**

In this group out of 76 women 53 women means 70% of the total women surveyed in this group are acknowledged that not only her husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act,2005.

**(b). Semi-literate:**

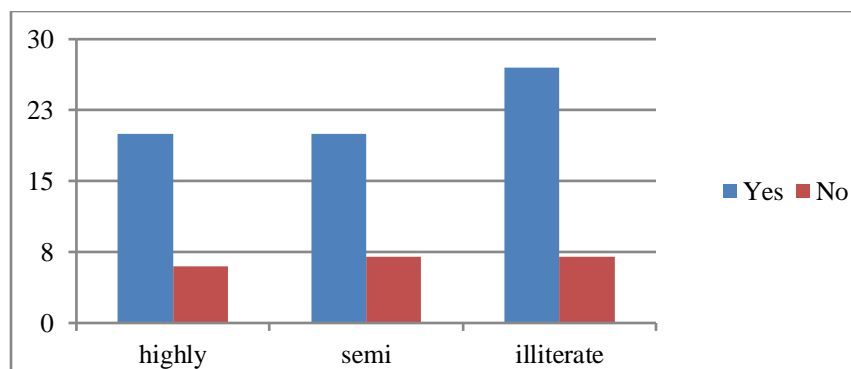
Out of 8 women only 5 women admitted that not only husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act,2005. It means 62.5% women accepted that women are misbehaved not only by husband but his family members also behave badly with the women who are raising their voice against domestic violence.

**(c). Illiterate :**

In urban area out of 4 women, 3 women accepted that women have to face ill-treatment and misbehaviour of their husband and his family members if they raise voice against domestic violence or use the Act in the way to protect themselves from domestic violence. This indicates that 75% women gave answer in yes.

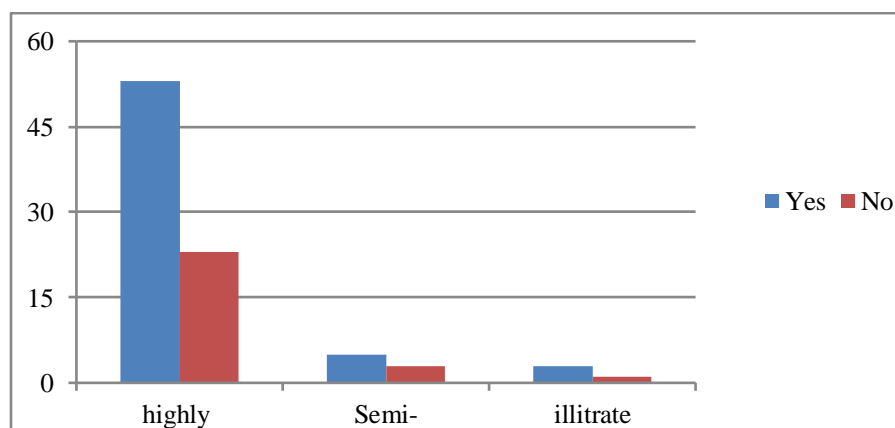
**Data collected in different education groups:****Rural**

	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	20	6
	Semi literate	20	7
	Illiterate	27	7



### (Urban)

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	53	23
	Semi-literate	5	3
	Illiterate	3	1



**Conclusion:** The data concluded that not only in rural area but in urban area also women are agree with that not only husband but his family members also misbehave to a woman who raises her voice against domestic violence under the Protection of women from domestic violence Act,2005.

### (C) Working and Non-Working

**Answer given by working and non-working women of rural and urban areas:**

Total number of women surveyed in rural and urban areas combined is 201 in total. In which 91 are working and 110 are non-working.

**(a). Working women:**

Out of 91 women 73 women means 80% women among the surveyed women in this category said yes woman who uses the Protection of domestic violence act to protect herself from domestic violence is misbehaved not only by her husband but her husband's family members are also harassed her mentally and physically.

**(b). Non-Working:**

Out of 110 women 72 women said yes a woman faces misbehaviour not only of her husband but also of his family members if she raise her voice against domestic violence. It means 66% women accepted that not only a woman's husband but his family members also misbehaved with the woman who raise her voice against domestic violence under this Act.

**(C) Data collected in Working/Non working:**

	<u>Yes</u>	<u>No</u>
<u>Working</u>	<u>73</u>	<u>18</u>
<u>Non Working</u>	<u>72</u>	<u>38</u>



**Conclusion:** The data verifies that a woman not only harassed by a husband but misbehaved by her husband's family members too, if she came out and raise her voice against domestic violence and the data shows that working women are more prey of this type of misbehaviour because they are expected not only to do job outside but also to do household chores.

### **Comparative study:**

**ANALYSIS:** Above data makes clear that most of the women are facing bad behaviour not only of their husbands but his family members also, if they withstand against domestic violence. This makes clear that in this way women are suffering two fold domestic violence, one is in the form of discrimination in which she is treated as inferior to man and second is, if she resist this subordination, she has to face again domestic violence in the form of misbehaviour and ill-treatment by the hand of her husband and his family members. The second form of domestic violence discussed here is more worst then the first one because females are become habitual of discrimination but misbehaviour of loved ones is intolerable for a female which make life miserable and lead her to do suicide.

### **Q.No.vi Do you know that under this Act,a husband and his family members can be stop to exercise domestic violence against his wife?**

Total number of women answered this question are 175 in which 87 women are from rural area and 88 women are from urban area, which are divided in different income group

#### **(A) Different income groups**

**Rural area :** In this category 31 women are related to low-income group, 36 women are related to middle-income group, 20 women are related to high-income group.

**(a). Low-income group:** In this group out of 31 women only 6 said yes we know that through this act a husband and his relatives can be stop to exercise domestic violence against his wife and 25 women said no they do not know that through this act a husband and his relatives can be stop to exercise domestic violence against his wife. This data clearly indicates that 81% women have no knowledge that a man or his relatives can be stop to exercise domestic violence against his wife.

**(b). Middle-income group:**In this group out of 36 women 17 women said yes we know that through this act a husband and his relatives can be stop to exercise domestic violence against his wife and 19 women said no they do not know that through this act a husband and his relatives can be stop to exercise domestic violence against his wife. This data clearly indicates that 53% women have no knowledge that a man or his relatives can be stop to exercise domestic violence against his wife.

**(c). High income groups :**

Out of 20 women 9 women have knowledge that under this Act a man and his relatives can be prevented to perpetrate domestic violence against his wife while 11 denied that they do not know about any provisions which are helpful to stop a husband and his relatives to do domestic violence against his wife. 55% women who related to high income group are ignorant to the laws provided under the Act Protection of women from domestic violence Act ,2005 to deter a man and his relatives to execute domestic violence against his wife.

**Urban area:**

In this category 19 women are related to low-income group, 38 women are related to middle-income group, 31 women are related to high-income group.

**(a). Low income group:**

Out of 19 women 16 women are aware of the provisions provided under the Act,2005 through which a woman can be protected to stop a man or his relatives to commit domestic violence against his wife whereas 3 women said that they do not know that a man or his relatives can be stop to exercise domestic violence against his wife. It means low income groups women of urban area are much aware of the laws which prevented a man or his relatives to do domestic violence against his wife because the percentage of women who have no knowledge about the above stated law is only15%.

**(b). Middle income group:**

Out of 38 women 33 women have knowledge that a man or his relatives are prevented to exercise domestic violence against his wife and 5 said that they do not know that there is any law or provision which put off a man to execute domestic violence against his wife.This group women are also more aware of the laws which prevail in the Act Protection of women from domestic violence Act, 2005 which use to stop a man to exercise domestic violence against his wife because only 15% women are ignorant of the law which is helpful to prevent a man to do domestic violence against his wife.

**(c). High income groups :**

Out of 31 women 27women are acquainted of the provisions in the Act Protection of women from domestic violence Act,2005 under which a woman can be protected from domestic violence by preventing a husband or his relatives to exercise domestic violence against his wife .Only 4 women have no knowledge that a man or his relatives are prevented to exercise domestic



violence against his wife The women related to high income groups are much aware of that a man or his relatives can be stop to perpetrate domestic violence against his wife because 93% women have knowledge that a woman can be protected from domestic violence by deterring a man or his relatives to do domestic violence against his wife.

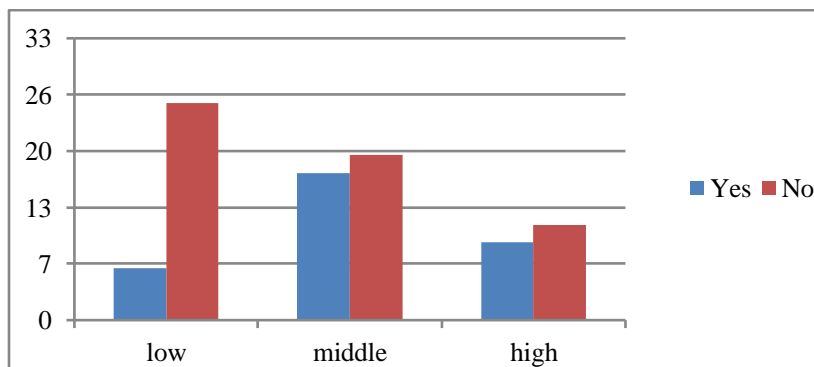
### Conclusion:

Above data demonstrates that women in urban area are well-aware of the provisions of the domestic violence Act 2005 under which a man or his relatives can be stop to exercise domestic violence against his wife.

### Data collected in different income groups:

#### Rural

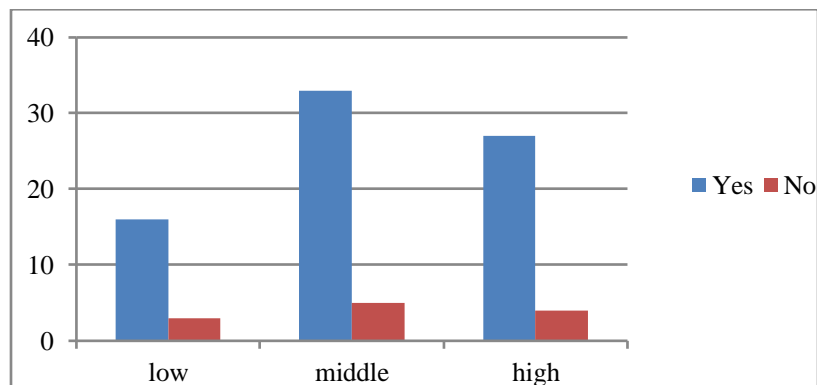
	Income Group	Yes	No
<b>Rural</b>	low	6	25
	middle	17	19
	high	9	11



#### Urban

	Income Group	Yes	No
<b>Urban</b>	low	16	3
	middle	33	5

	high	27	4
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### (B) Different education groups

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:**

Total number of women surveyed in rural and urban area are 174 in total. In rural area 86 women and urban area 88 women

#### **Rural area:**

Total number of women surveyed in rural area are 86 women in total in which 25 women are highly educated, 30 women are semi-literate, 31 women are illiterate.

**(a) Highly educated:** Only 25 women are highly educated among the women who surveyed in which 18 women are acquainted with the fact that a man or his relatives can be stop to do domestic violence against his wife. Among the total women of this group 72% women have knowledge about the provision of this Act under which a husband or his family members can be deter to do domestic violence.

**(b). Semi literate:** In this category out of 30 women only 7 women means only 24% women said yes they know that through this Act a woman can be protected from domestic violence from the hands of her husband or his family members by stopping them not to do domestic violence

against her. Almost 80% women are ignorant of this law. This is unacceptable and shows the lack in the implementation of the Act.

**(c). Illiterate :** Out of 31 women only 5 women said yes they know about the provisions of the Act Protection of women from domestic violence Act, 2005 through which a husband or his relatives can be stop to perpetrate domestic violence against his wife .The data explains that 84% women are not aware of that a man or his relatives can be stop to exercise domestic violence against his wife.

**Urban area:** Total number of women surveyed in rural area are 88 women in total in which 76 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.

**(a). Highly educated:**

In this group out of 76 women 70 women have knowledge that a man or his relatives are prevented to exercise domestic violence against his wife and 6 women among the total women of this group said no they have no knowledge about the provision of this Act under which a husband or his family members can be deter to execute domestic violence against his wife. This data indicates that 92% women are aware of the law.

**(b). Semi literate:**

In this group out of 8 women 4 women said yes we know that through this act a husband and his relatives can be stop to exercise domestic violence against his wife. This data clearly indicates that 50% women have no knowledge that a man or his relatives can be stop to exercise domestic violence against his wife.

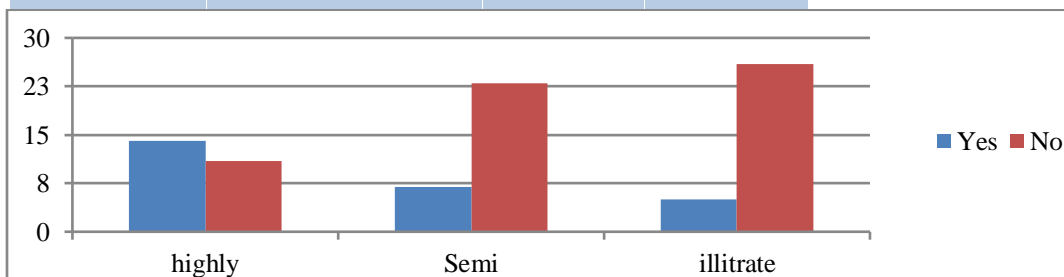
**(c). Illiterate :**

In urban area only 4 women among the surveyed women are illiterate in which 2 said yes and 2 said no in the answer of the question that Do you know that under this Act, a husband and his family members can be stop to exercise domestic violence against his wife? it means 50% are aware of the law and 50% are ignorant of the law that under Protection of women from domestic violence a man or his relatives can be stop to exercise domestic violence against his wife.

## Data collected in different education groups:

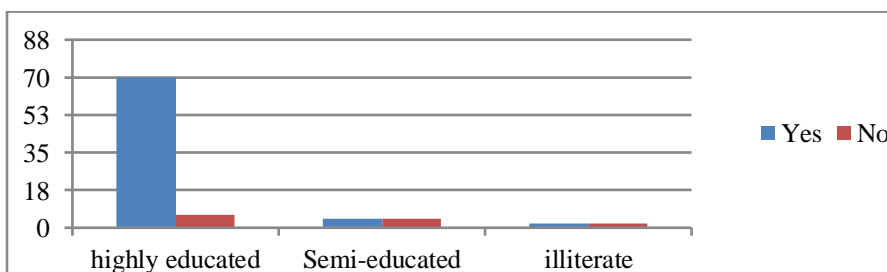
### Rural

	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	14	11
	Semi-literate	7	23
	Illiterate	5	26



### Urban

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	70	6
	Semi-literate	4	4
	Illiterate	2	2



**Conclusion:** The data shows that in rural area 70% women and in urban area only 13% women

have no knowledge about the law through which a man or his relatives can be held to create domestic violence against his wife. It means urban area women are more ignorant of the provision of Protection of women from domestic violence Act, 2005 which is used to deter a husband or his relatives from doing domestic violence against his wife. Data also makes clear that in both groups the women who are highly educated are much aware of the law provided under Protection of women from domestic violence Act, 2005 which is available to stop a man or his relatives from perpetrating domestic violence against his wife.

**Answer given by working and non-working women of rural and urban areas:**

Total number of women surveyed in rural and urban areas combined is 178 in total. In which 72 women are working and 106 are nonworking.

**(a). Working women:** Out of 72 women 61 women said yes they know about the provision under the Act Protection of women from domestic violence Act, 2005 which thwarts a man or his relatives from executing domestic violence against his wife whereas 11 women said no they do not know such type of any law which helps women to cease her husband and his relatives from accomplishing domestic violence against her. The data explains that 16% women are unaware of the laws made for the protection of women which restrain a man or his relatives from creating domestic violence against her.

**(b). Non-Working:** Out of 106 women only 38 women said yes they know about the provisions of the Act Protection of women from domestic violence Act, 2005 through which a husband or his relatives can be stopped to perpetrate domestic violence against his wife while 68 women said no they have no knowledge of the provision under this Act, 2005 which are meant for deterring a man or his relatives from executing domestic violence against his wife. The data explains that 64% women are not aware of that a man or his relatives can be stopped to exercise domestic violence against his wife.

**Conclusion:**

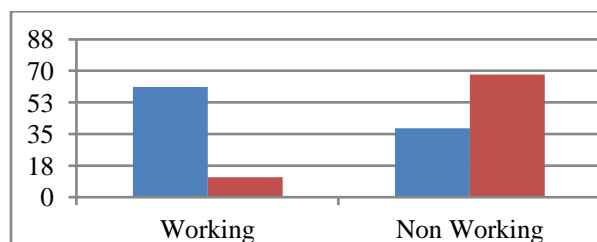
The data shows that 45% women are not acquainted with that a man or his relatives can be

stop to exercise domestic violence against his wife and that can be done through the provision under the Protection of women from domestic violence Act, 2005.

**Data collected in Working/Non working:**

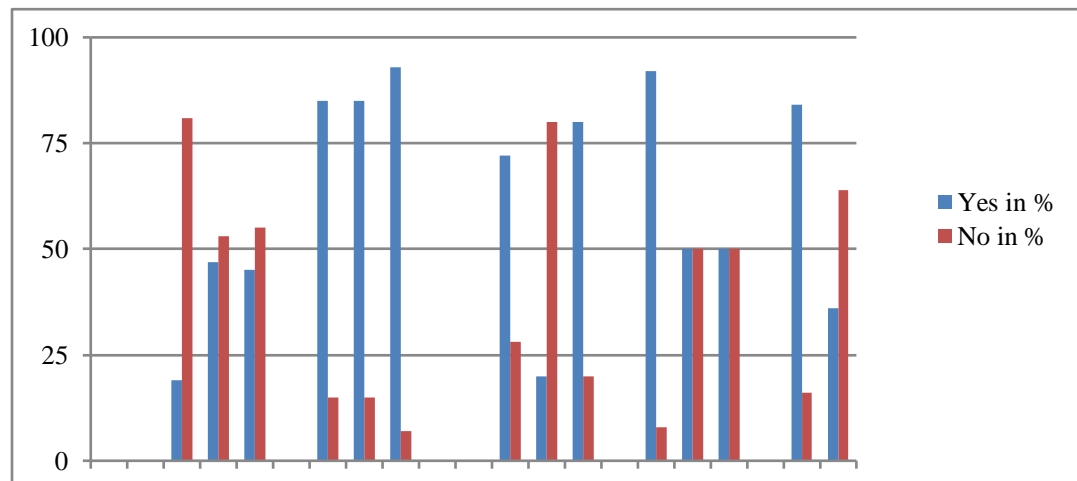
**Working/Non working**

	Yes	No
Working	61	11
Non Working	38	68



**Conclusion:** The data shows that 45% women are not acquainted with that a man or his relatives can be stop to exercise domestic violence against his wife and that can be done through the provision under the Protection of women from domestic violence Act, 2005.

### Comparative Study:



### ANALYSIS:

Above data evidenced that women are not much aware of the fact that a man or his relatives can be stop to exercise domestic violence against his wife under the Act protection of women from domestic violence Act, 2005. It might be possible that education plays a vital role to stop domestic violence against women because in the above data women who are highly educated are well aware of the laws for the protection of women from the hands of her husband or his relatives.

	Income Group	Yes	No
Rural	low	17	15
	middle	28	9
	high	16	4

**Q.no.vii Do you know that every women in a domestic relationship shall have right to reside in the shared household ?**

Total number of women answered this question are 176 in which 89 women are from rural area and 87 women are from urban area, which are divided in different income group

#### (A) Different income groups

**Answer given by women related to different income groups of rural and urban area:**

**Rural area :** In this category 32 women are related to low-income group, 37 women are related to middle-income group, 20 women are related to high-income groups.

**(a). Low income group:** In this group out of 32 women only 17 said yes they know that every women who is in domestic relationship shall have right to reside in the shared household and 15 said they do not know about this law. This data clearly indicates that 47% women have no knowledge that every women in a domestic relationship shall have right to reside in the shared household.

**(b). Middle income group:** In this group out of 37 women , 28 women said yes they know that under “Protection of women from domestic violence Act,2005” every women in a domestic relationship shall have right to reside in the shared household. It means only 75% women know about the law under which every women in a domestic relationship shall have right to reside in the shared household while 25% women are still ignorant .

**(c). High income groups :** In this group out of 20 women, 16 women means 80% women said yes they know that there is a provision in “Protection of women from domestic violence Act,2005” under which a woman who is in domestic relationship with the respondent has right to live in shared household.

**Urban area**

**(a) Low income group:** Out of 19 women only 11 women which is 58% of the total women surveyed in this group are acquainted with the provision through which every women who is in domestic relationship have right to reside in shared household.

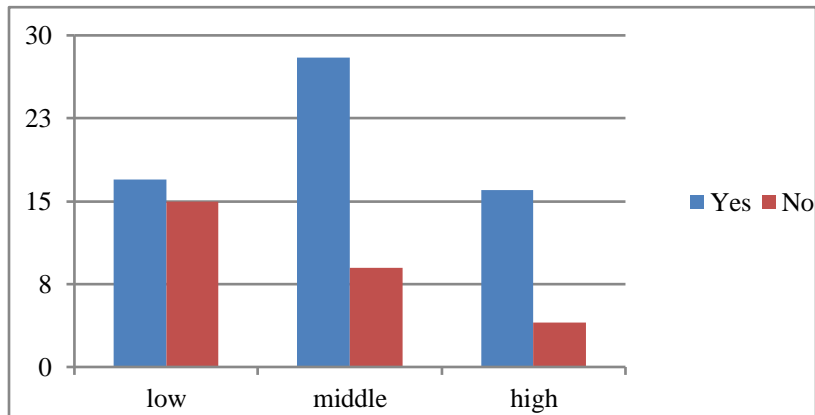
**(b). Middle income group:** Out of 38 women, 32 women means 85% women of this group know that a married women have right to reside in the shared-household.

**(c). High income groups :** Out of 31 women, 27women means 87% women said yes they know that every women who is in domestic relationship with the respondent have right to reside in the shared-household.

**Data collected in different income groups**

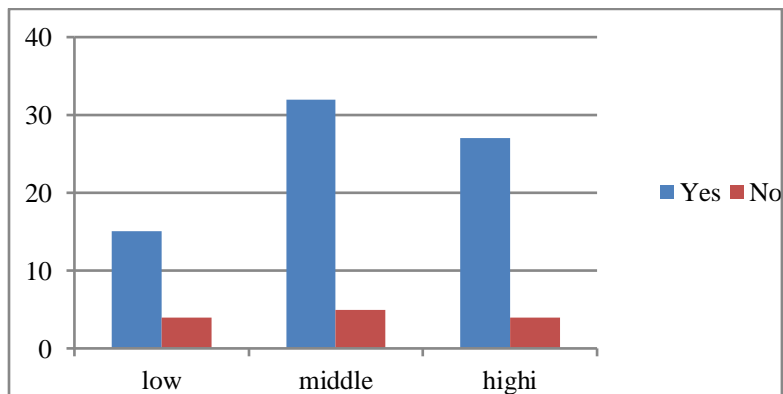


## Rural



## Urban

	Income Group	Yes	No
Urban	low	15	4
	middle	32	5
	high	27	4



**Conclusion:** Above data shows that rural women and urban women both areas females are equally aware of the right to live in share-household but this data is not sufficient to realise that all women are aware of their rights.

## (B) Different education groups

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:** Total number of women surveyed in rural and urban area are 175 in total. In rural area 88 women and urban area 87 women

**Rural area:**

Total number of women surveyed in rural area are 88 women in total in which 29 women are highly educated, 29 women are uneducated literate, 30 women are illiterate.

**(a). Highly educated:** Out of 29 women, 25 women of highly educated group which are equal to 86% of the total women surveyed in this group have knowledge that a woman who is in domestic relationship has right to reside in shared-household.

**(b). Semi-literate:** In this category out of 29 women, 20 women which means 86% of the total women of this category said yes they know that a woman has right to reside in the shared-household if she is in the domestic relationship with the respondent.

**(c). Illiterate :** Out of 30 women only 17 women said yes they know that a woman who is in the domestic relationship has right to reside in the shared-household. The data explains that 56% women are aware of domestic violence.

**Urban area:**

Total number of women surveyed in rural area are 87 women in total in which 73 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.

**(a). Highly educated:** In this group out of 73 women, 68 women or say 93% women said that they are aware of the right in which every woman who is in the domestic relationship have right to live in shared-household.

**(b). Semi-literate:** Out of 8 women, 5 women which is 62% of the total women of this group have knowledge the right to reside in the shared-household.

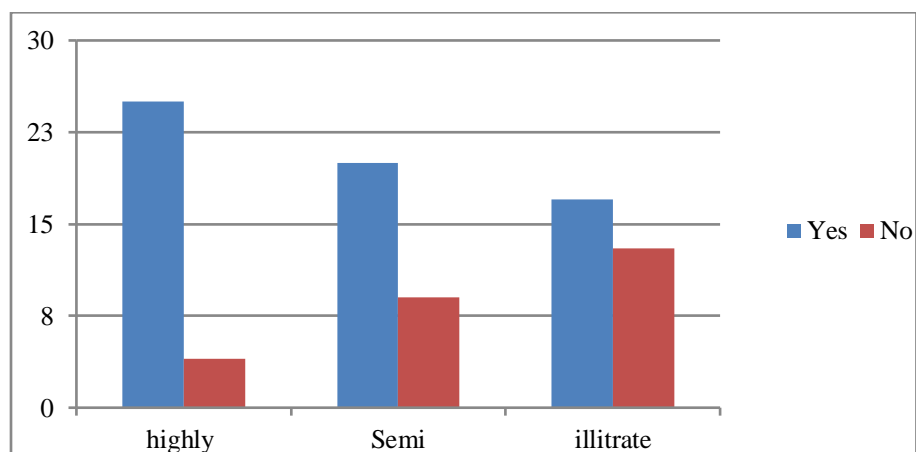
**(c). Illiterate :** In this category total women surveyed are 4 in which 2 said yes and 2 said no means 50% women are acquainted and 50% women are not acquainted with the right to reside in the shared-household.

**Data collected in different education groups:\**

**Education (Rural)**

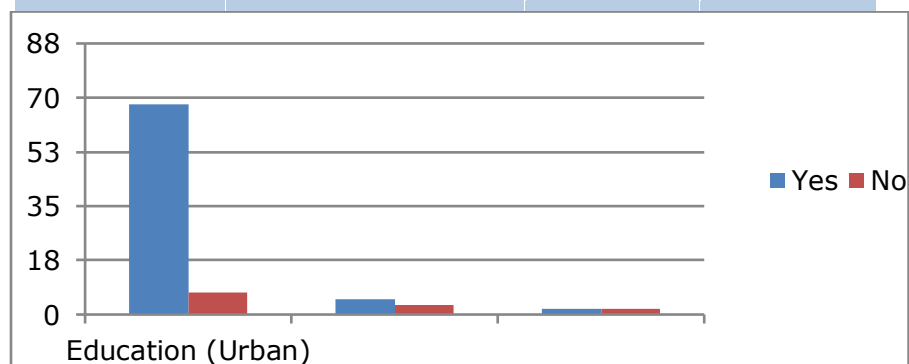
	Education	Yes	No
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<b>Education (Rural)</b>	Educated/ Highly Educated	25	4
	Semi-literate	20	9
	Illiterate	17	13



#### Education (Urban)

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	68	7
	Semi-literate	5	3
	Illiterate	2	2



**Conclusion:** The data shows that highly educated and semi educated are more aware of the right

to reside in the shared house-hold whereas women who are illiterate have less knowledge of the right. So the calculation indicates that education is must for the empowerment of women because knowledge of rights is must to for the development of human being.

**Answer given by working and non-working women of rural and urban areas:**

Total number of women surveyed in rural and urban areas combined is 176 in total. In which 78 women are working and 98 are nonworking.

**(a). Working women:** Out of 78 women, 89% of the total women of this group which is total 70 women said yes they know about the provision under the Act Protection of women from domestic violence Act, 2005 which provided a woman right to reside in the shared-household.

**(b). Non-Working:** Out of 98 women, 70 women are well aware of the right to reside in the shared-household. This is 71% of the total women surveyed in this group.

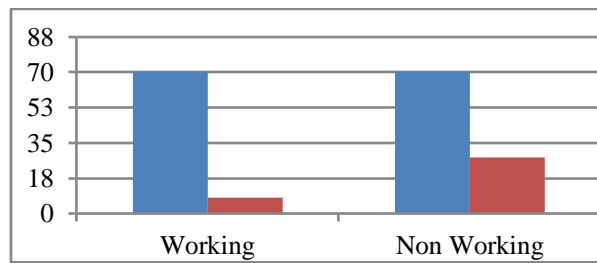
**Conclusion:**

The data shows that as compare to non-working women, working women are much aware of the provisions of the Act, 2005 under which women is privileged with the right to reside in the share-household if she is in the domestic relationship with the respondent.

**Data collected in Working/Non working:**

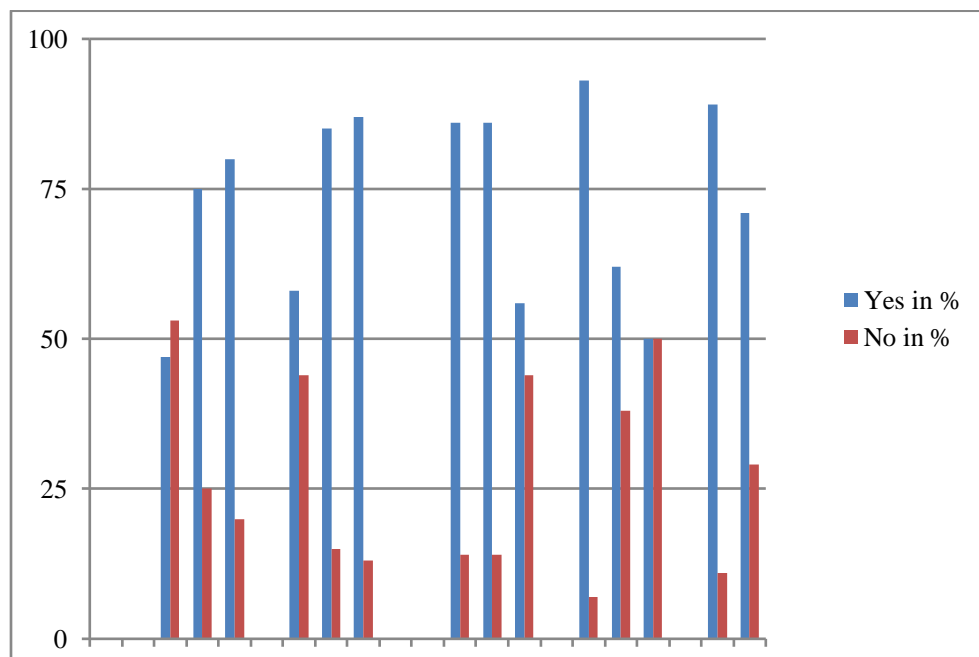
**Working/Non working**

	Yes	No
Working	70	8
Non Working	70	28



**Conclusion:** The data shows that as compare to non-working women, working women are much aware of the provisions of the Act, 2005 under which women is privileged with the right to reside in the share-household if she is in the domestic relationship with the respondent.

#### Comparative study:



**ANALYSIS:** Above the bar graph explains that women who are highly educated are highest in percentage who have knowledge that a woman who is in domestic relationship have right to reside in the shared-household. Women related to low income group and illiterate group are more ignorant with the provisions of the Protection of women from domestic violence Act, 2005. Working women have more knowledge of the provision as compare to non-working women. The

conclusion came out from the data is that having education as well as doing work make a women more vigilant to their rights which is necessary for their development.

**Q.No.viii Do you know that, under this Act, the sufferer has right to get compensation<sup>2</sup> for her livelihood?**

We asked this question to know whether victims of domestic violence have knowledge that there is a provision in India under which they have a right to get compensation for their livelihood.

**(A) Different income groups Answer given by women related to different income groups of rural and urban areas:**

Total number of women surveyed in rural and urban area are 166 in total. In which 88 women are related to rural area and 78 women are related to urban area.

**(a) Rural area total women 88 surveyed :**

**Low income group:** In this group out of 32 women 17 said that they know that there is a provision in the Act through which they can get compensation and damages and 15 women said no they do not know about the provision under which a woman who is victim of domestic violence get compensation or damages. It means 47% women are not aware with the provision under which they get compensation if they become victim of domestic violence.

**(b). Middle income group:** When we go in the middle income group in rural area out of 36 women 28 said they are well acquainted with the provision through which a victim of domestic violence get compensation and damages not for herself but also for her children. It means women in middle income group are much aware about their rights because only 22% women of this income group are not acquainted with the provision of the Act under which a victim women has right to get compensation and damages.

**(c).High income group :** In this group out of 20 women, 16 women are aware of the provision through which women get compensation and damages if she faces domestic violence and

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<sup>2</sup> **Compensation includes:** Expenses incurred and losses suffered by the aggrieved person and also includes loss of earnings, medical expenses, loss or damage to property etc . Under Sec 22 magistrate can make the respondent pay compensation and damages for injuries including mental torture and emotional distress caused by act(s) of domestic violence.

become victim of domestic violence. It means in this group only 22% are not aware of the provision of the Act.

### **Urban area**

**(a) Low income group:** Out of 19 women 15 said that they are acquainted with the right given under the Act, 'Protection of women from domestic violence Act, 2005' out of which a victim of domestic violence can get damages and compensation. The data shows that 22% are not aware of the right to get compensation and damages under the Act.

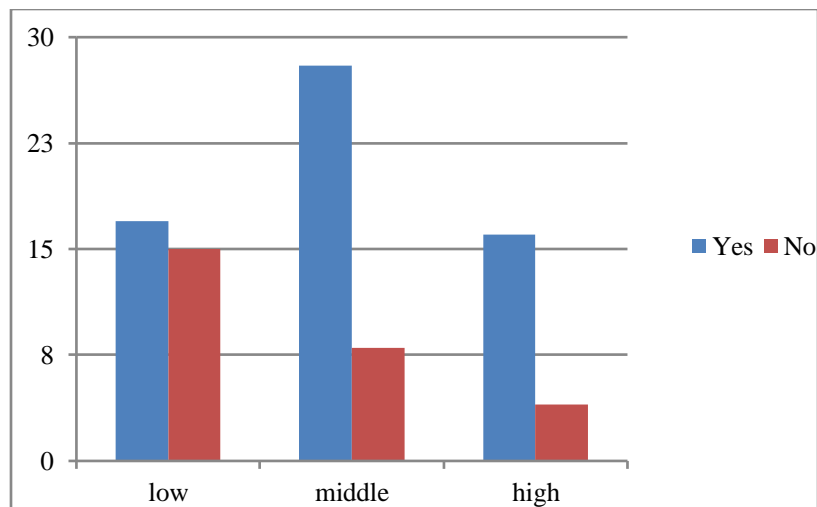
**(b). Middle income group:** Out of 38 women 30 women said that they are aware of the provision through which women get compensation and damages if she becomes a victim of domestic violence. It means 22% women are not aware of the right to get compensation and damages under the Protection of women from domestic violence Act, 2005.

**(c). High income group :** Out of 31 women 20 women said that they are acquainted with the right given under the Act, 'Protection of women from domestic violence Act, 2005' out of which a victim of domestic violence can get damages and compensation. The statistics clearly show that 36% are not aware of the right to get compensation and damages under the Act.

### **Data collected in different income groups:**

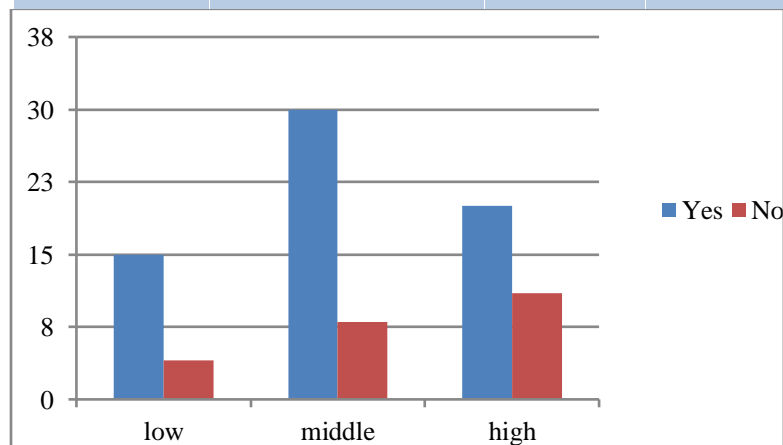
#### **Rural**

	Income Group	Yes	No
<b>Rural</b>	low	17	15
	middle	28	8
	high	16	4



### Urban

	Income Group	Yes	No
Urban	low	15	4
	middle	30	8
	high	20	11



### Conclusion:

According to the above data if we calculate in total the percentage of women who know or who do not know about the right under which they get compensation on becoming victim of domestic violence. The percentage come out that 75% women have knowledge and 25% have no



knowledge that a victim of domestic violence has a right under the Act 2005 to get compensation for herself and for her children. This calculation shows that 1/4 women are not aware of their rights given under the Act which is for the protection of women from domestic violence.

### **(B) Different education groups**

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:**

Total number of women surveyed in rural and urban area were 177 in total.

#### **Rural area:**

In this area total 89 women are surveyed out of which 24 are highly educated, 30 women are uneducated literate and 35 women are uneducated.

**(a). Highly educated:** Out of 24 women only 22 said that they know that there is a provision in the Act through which they can get compensation and damages. It means 9% women are not aware with the provision under which they get compensation if they become victim of domestic violence.

**(b). Semi-literate:** Out of 30 women 21 said they are well acquainted with the provision through which a victim of domestic violence get compensation and damages not for herself but also for her children. It signifies that only 30% women are not acquainted with the right given under the Act, 'Protection of women form domestic violence Act,2005' out of which a victim of domestic violence can get damages and compensation.

**(c). Illiterate :** Out of 35 women 20 women said that they are aware of the provision under which victim of domestic violence get compensation and damages. It means illiterate women of rural area are less aware as compare to other groups about the provision of the Act because total percentage of women who do not know about the provision is 43% women.

#### **Urban area:**

In this area total 88 women are surveyed out of which 76 are highly educated, 8 women are uneducated literate and 4 women are uneducated.

**(a) Highly educated:** Out of 76 women only 70 said that they know that there is a provision in the Act through which they can get compensation and damages. Data explains that only 8% women are not aware with the provision under which they get compensation if they become victim of domestic violence.

**(b). Semi-literate:** Out of 8 women 5 said they are well acquainted with the provision through which a victim of domestic violence get compensation and damages not for herself but also for her children. It means only 38% women are not acquainted with the right given under the Act, ‘Protection of women form domestic violence Act,2005’ out of which a victim of domestic violence can get damages and compensation.

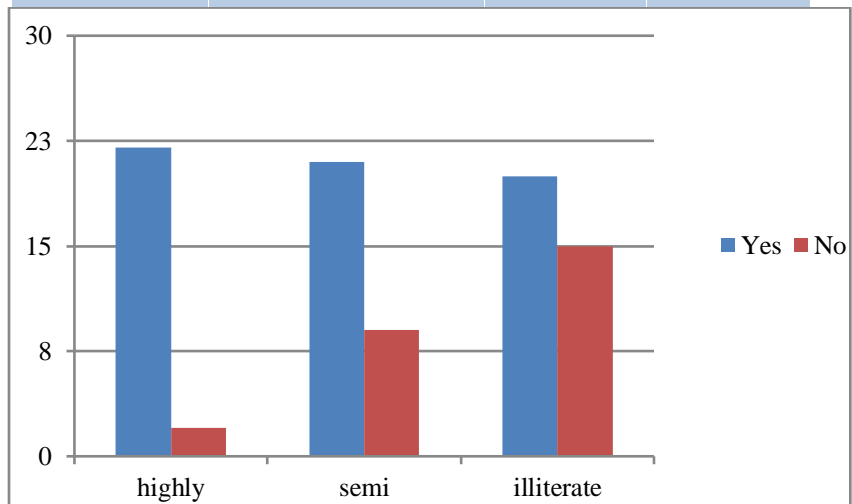
**(c). Illiterate :** Out of 4 women 2 women said that they know and 2 said they do not know the provision through which women get compensation and damages if she faces domestic violence . It means illiterate women of rural area are less aware as compare to other groups about the provision of the Act because total percentage of women who do not know about the provision is 50% women.

#### **Data collected in different education groups:**

##### **Education (Rural)**

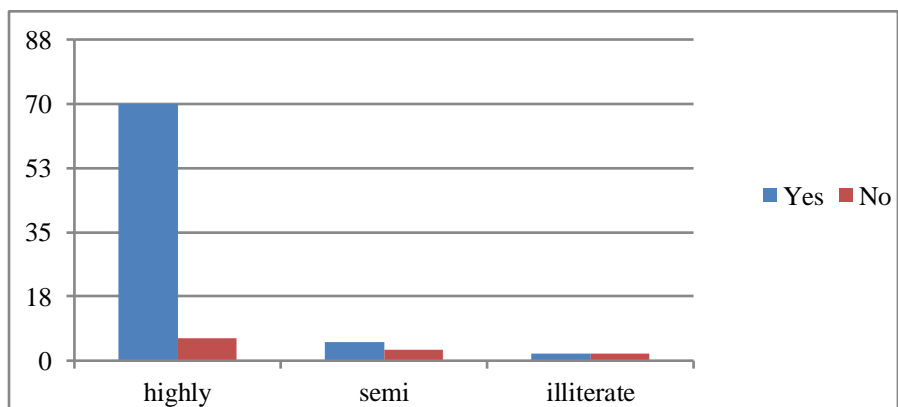
	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	22	2
	Semi-literate	21	9

	Illiterate	20	15
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	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	70	6
	Semi-literate	5	3
	Illiterate	2	2

### Education (Urban)



**ANALYSIS:** The situation is same in both areas either it is rural area or urban area, almost 1/4

women are ignorant of the right to get compensation and damages under the Act, 'Protection of women from domestic violence Act,2005'.

**(C) Working/Non working**

**Answer given by working and non-working women of rural and urban areas:**

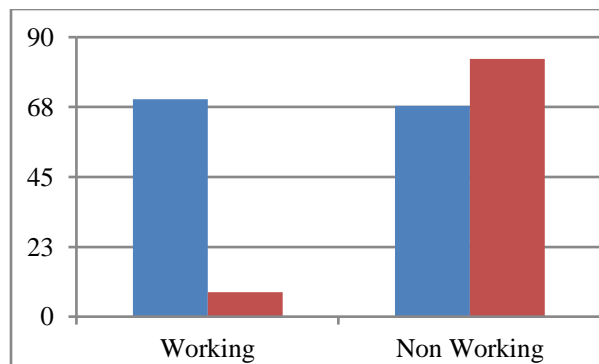
Total number of women surveyed in rural and urban areas combined is 173 in total in which 78 are working and 95 non-working.

**(a) Working women:** Out of 78 women 70 said they are well acquainted with the provision through which a victim of domestic violence get compensation and damages not for herself but also for her children and 8 women answered no they do not know about the provision of the Act which helps in getting compensation and damages to the victim of domestic violence. It means only 12% women are not acquainted with the right given under the Act, 'Protection of women from domestic violence Act,2005' out of which a victim of domestic violence can get damages and compensation.

**(b). Non-Working:** Out of 95 women 68 women said that they know that there is a provision in the Act through which they can get compensation and damages and 27 women said no they do not know about the provision under which a woman who is victim of domestic violence get compensation or damages. It means only 29% women are not aware with the provision under which they get compensation if they become victim of domestic violence.

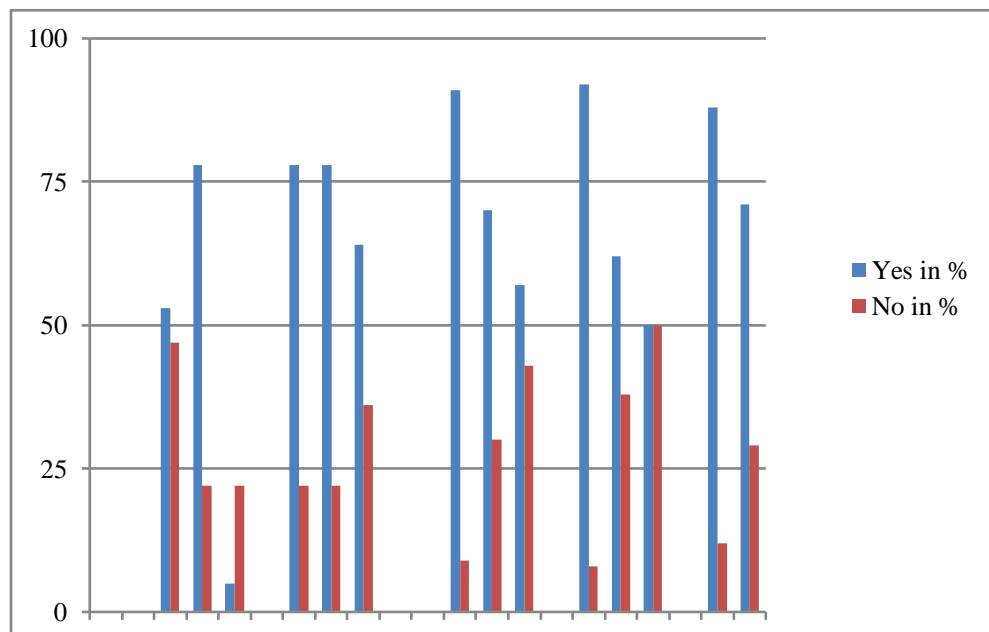
**Data collected in Working/Non working:**

	Yes	No
Working	70	8
Non Working	68	27



**Conclusion:** The data shows that working women are much aware about the Act 2005 as compare to non working women that a women who is victim of domestic violence has right to get compensation and damages under Protection of women from domestic violence Act, 2005.

### Comparative Study:



### ANALYSIS:

Almost 1/4th women are ignorant of the right to get compensation and damages under the Act, 'Protection of women from domestic violence Act,2005'. As according to the above data if we calculate in total the percentage of women who know and the women who do not know about the provision which is given under the Act, 'Protection of women from domestic violence Act,2005' for the victim of domestic violence that helps them to get compensation and damages. The percentage come out is 78% women have knowledge that a victim of domestic violence has a

right under the Act 2005 to get compensation for herself and for her children and 22% women are not aware of this right which helps a victim of domestic violence to get compensation under the Act, 'Protection of women from domestic violence Act,2005'.

**Part: 3: Do women have enough knowledge of the concerned authorities which can help them to obtain relief against domestic violence?**

**Q.No. ix Do you know any Non-governmental organisation (NGO's) that helps the women to raise her voice against domestic violence?**

**The survey divided into (a) rural and urban income groups, (b)rural and urban highly educated; uneducated literate; illiterate and (c) working and non-working.**

**Total number of women surveyed in rural and urban area are 194 in total.**

**(A) Answer given by women related to different income groups of rural and urban area :**

**Rural area :**

Total women surveyed in low income group are 32, in middle income group are 37 and in high income group are 23.

**(a). Low-income group :** Out of 32 women only 7 women said yes they know non-governmental organization which helps in raising voice against domestic violence whereas 25 women said no they do not know about any type of non-governmental organisation which actually helping a woman to raise her voice against domestic violence. It means 79% women have no knowledge about the helping groups or NGO's which help her to raise their voice against domestic violence.

**(b). Middle-income group:** Only 8 women out of 37 have knowledge about the NGO's which can help them to raise their voice against domestic violence and 29 women are not aware of any kind of NGO's which helps a woman who is victim of domestic violence to raise her voice against domestic violence. It means 79% women do not know about Non-governmental organization which help a victim of domestic violence to raise her voice against domestic violence.

**(c). High income group:** Out of 23 only 5 women said yes they know about this type of NGO's which help a victim of domestic violence to raise her voice against domestic violence and 18 women do not know about the NGO's that help a woman to raise her voice against domestic

violence. This makes clear that 79% women have no knowledge about this type of helping non-governmental organizations.

### **Urban area:**

Total women surveyed in low income group are 19, in middle income group are 32 and in high income group are 51.

**(a). Low income group:** Total number of women surveyed is 19 in which 5 women answered that they know the NGO's which are helping a victim to raise her voice against domestic violence and 14 women said no they are not aware of this type of NGO's which are helping a woman to her voice against domestic violence. Data shows that 74% women in this group are ignorant of this type of NGO's.

**(b). Middle income groups:** Only 12 women out of 32 have knowledge about the NGO's which can help them to raise their voice against domestic violence and 20 women are not aware of any kind of NGO's which helps a woman who is victim of domestic violence to raise her voice against domestic violence. It means 62% women do not know about Non-governmental organization which help a victim of domestic violence to raise her voice against domestic violence.

**(c). High income group:** Out of 51 only 29 women said yes they know about this type of NGO's which help a victim of domestic violence to raise her voice against domestic violence and 22 women do not know about the NGO's that help a woman to raise her voice against domestic violence. This makes clear that 43% women have no knowledge about this type of helping non-governmental organizations.

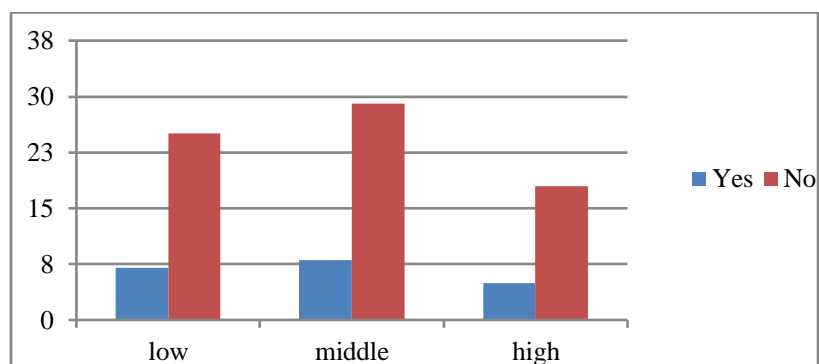
### **Conclusion:**

The above data manifests that in rural area only 20% women have knowledge of NGO's which are helping a woman to raise her voice against domestic violence which she is facing in her own home but the percentage of women who know about the NGO's in urban area is almost 45% which is also not satisfactory.

### **Data collected in different income groups:**

#### **Rural**

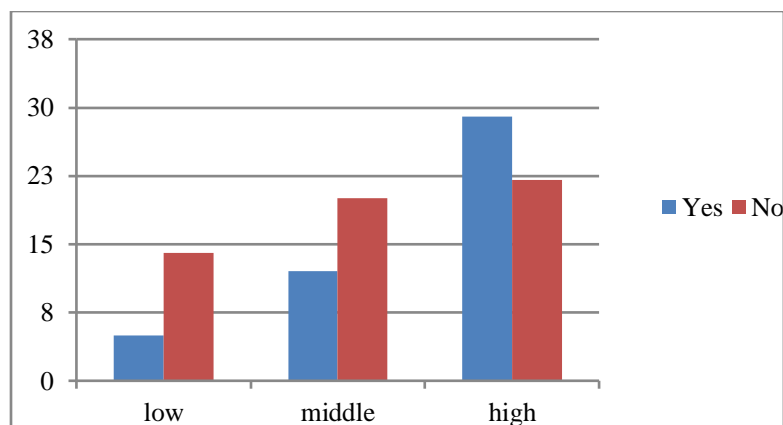
	Income Group	Yes	No
<b>Rural</b>	low	7	25
	middle	8	29
	high	5	18



## Urban

	Income Group	Yes	No
<b>Urban</b>	low	5	14
	middle	12	20
	high	29	22





**(B) Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:**

Total number of women surveyed in rural and urban area were 177 in total.

**Rural area:**

In this area total 83 women are surveyed out of which 25 are highly educated, 22 women are semi-literate and 36 women are uneducated.

**(a). Highly educated:** Out of 25 women only 7 women said yes they know the NGO's which are helping a victim to raise her voice against domestic violence women and 18 said no in the answer given for the question Do you know any Non-governmental organization (NGO's) that helps the women to raise her voice against domestic violence? Given data proves that though the women related to this group are highly educated but they have also not much information about the NGO's. Only 30% women know about this type of non-governmental organizations. This information is not up to the mark or sufficient to help a woman to come out from domestic violence.

**(b). Semi-literate:** Out of 22 women 2 said yes and 20 women said no in the reply of the question, the question is Do you know any Non-governmental organization (NGO's) that helps the women to raise her voice against domestic violence? The data clears that 91% women are not acquainted with the Non Governmental Organizations which can help a woman to raise her voice against domestic violence.

**(c). Illiterate :** Out of 36 women 3 women answered that they know the NGO's or helping groups which are helping a woman who is victim of domestic violence to raise her voice against domestic violence and 33 women said no they are not apprised of this type of NGO's which are

assisting a woman to raise her voice against domestic violence. Data shows that 91% women in this group are uneducated of this type of NGO's.

### **Urban area:**

In this area total 88 women are surveyed out of which 76 are highly educated, 8 women are uneducated literate and 4 women are uneducated.

**(a). Highly educated:** Out of 76 women, 53 said yes and 23 said no in the answer of this question. This data explains that highly educated women of urban areas are also not sufficiently educated about the NGO's which can help a woman to raise her voice against domestic violence. Because in this group 31% women are not aware of NGO's.

**(b). Semi literate:** Out of 8 women 5 said yes and 3 women said no in the reply of the question, the question is Do you know any Non-governmental organization (NGO's) that helps the women to raise her voice against domestic violence? The data clears that 37% women are not acquainted with the Non Governmental Organizations which can help a woman to raise her voice against domestic violence

**(c). Illiterate :** Out of 4 women 3 women have knowledge of NGO's which are helping a woman to raise her voice against domestic violence and 1 have no knowledge of any type of NGO's which are helpful to support a women in raising her voice against domestic violence. It means 75% women have knowledge and 25% women of this group have no any information about NGO's.

### **Conclusion:**

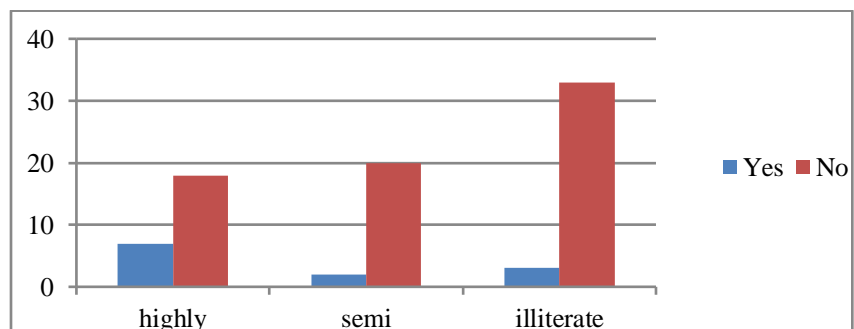
According to the above data in rural area only 14% women and in urban area 70% women have knowledge of NGO's which are helping a woman to raise her voice against domestic violence. It means in rural area these type of NGO's are not approachable as compare to in urban areas.

### **Data collected in different education groups:**

#### **Education (Rural)**

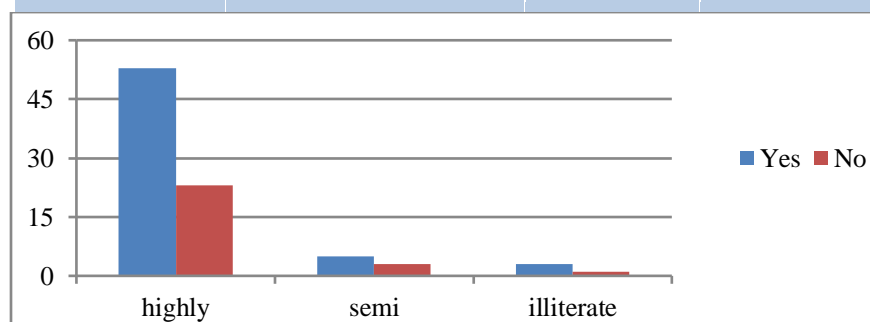
	Education	Yes	No
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<b>Education (Rural)</b>	Educated/ Highly Educated	7	18
	Semi-literate	2	20
	Illiterate	3	33



### Education (Urban)

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	53	23
	Semi-literate	5	3
	Illiterate	3	1



### (C) Working and Non-Working

	Yes	No
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Working	40	39
Non Working	15	83

**Answer given by working and non-working women of rural and urban areas:**

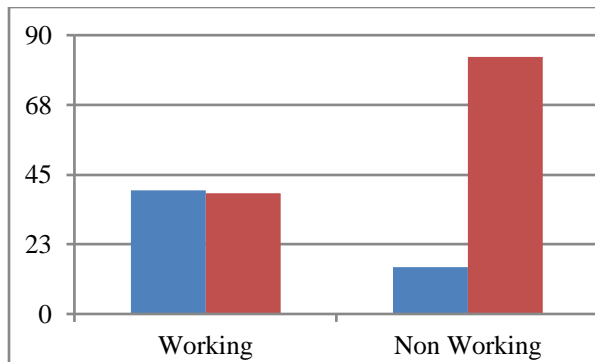
Total number of women surveyed in rural and urban areas combined is 177 in total in which 79 are working and 98 non-working.

**(a). Working women:** Out of 79 women 40 said yes they know about this type of NGO's which help a victim of domestic violence to raise her voice against domestic violence and 39 women do not know about the NGO's that help a woman to raise her voice against domestic violence. This makes clear that 50% women have no knowledge about this type of helping non-governmental organizations.

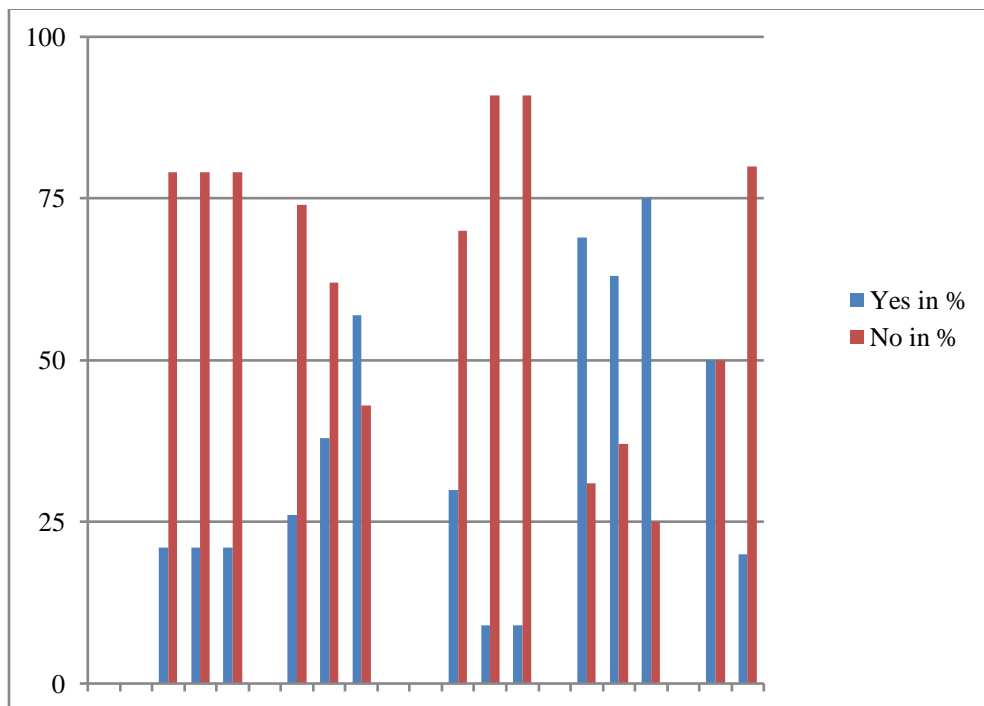
**(b). Non-Working:** Only 15 women out of 98 have knowledge about the NGO's which can help them to raise their voice against domestic violence and 83 women are not aware of any kind of NGO's which helps a woman who is victim of domestic violence to raise her voice against domestic violence. It means 85% women do not know about Non-governmental organization which help a victim of domestic violence to raise her voice against domestic violence.

**ANALYSIS:** The data shows that working women are much aware about the NGO's which are helping a woman to raise her voice against domestic violence if she suffered domestic violence as compare to non working women. The percentage of non-working women is 85% who do not know about any non-governmental organization which helps a woman to raise her voice against domestic violence.

**(C) Data collected in Working/Non working:**



### Comparative study



**ANALYSIS:** Data demonstrated that most of the women are unknown about the supporting groups which would help them in raising their voice against domestic violence. The calculation also shows that as compare to urban women, rural women are less aware of the helping groups. As shown in the figures education plays a vital role in making women aware of their rights.

**Q.No.x Do you believe that the woman who faces domestics violence has right to file a report in the police station or If you face domestic violence ever in your life time would you go to the police station to report about it?**

Total number of women answered this question are 172 in which 87 women are from rural area and 85 women are from urban area, which are divided in different income group

## **(A) Different income groups**

### **Rural area :**

In this category 31 women are related to low-income group, 36 women are related to middle-income group, 20 women are related to high-income group.

**(a). Low-income group:** In this group out of 31 women, 20 women means 65% women strongly said yes a woman who is victim of domestic violence must have a right to go to the police station to report against domestic violence and they would also report to the police if they suffer domestic violence.

**(b). Middle-income group:** In middle income group out of 36 women, 32 means 88% of the women who surveyed in this group said yes a woman must have a right to file a report in the police station against domestic violence and they would also go to the police station against domestic violence if they face it.

**(c). High income groups :** In this group out of 20 women, 16 women means 80% women yes a woman who faces domestic violence have right to file a report in the police station and they also complaint to the police station if they suffer domestic violence ever in their life.

### **(b).Urban area:**

In this category 18 women are related to low-income group, 36 women are related to middle-income group, 31 women are related to high-income group.

**(b) i. Low income group:** Out of 18 women, 15 women means 83% of the total women who surveyed in low income group of urban area said yes a woman who is victim of domestic violence must have a right to file against it to the police station and if any time they suffer domestic violence they would also complaint to the police station against it.

**(b)ii. Middle income group:** Out of 36 women, 32 women means 88% women said yes a woman who faces domestic violence have a right to file report to the police station against it and they also file report to the police station against domestic violence if they ever face domestic violence in their life.

**(b)iii. High income groups :** Out of 31 women, 28 women (90%) accepted that a woman who faces domestic violence has right to file a report in the police station and If they face domestic violence ever in their life time they would also go to the police station to report about it.

### **Conclusion:**

Above data demonstrates that women in urban area as well as in rural area accepted that a

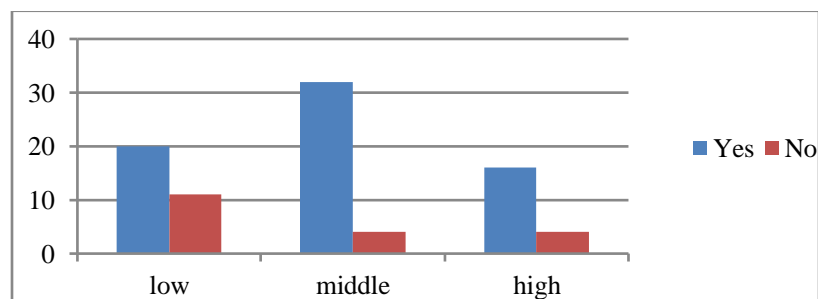
woman who is victim of domestic violence must have right to file complaint to the police station and 84% women of rural and urban area accepted that they would go to the police station if they face domestic violence ever in their life.

**(A) Data collected in different income groups:**

**Rural**

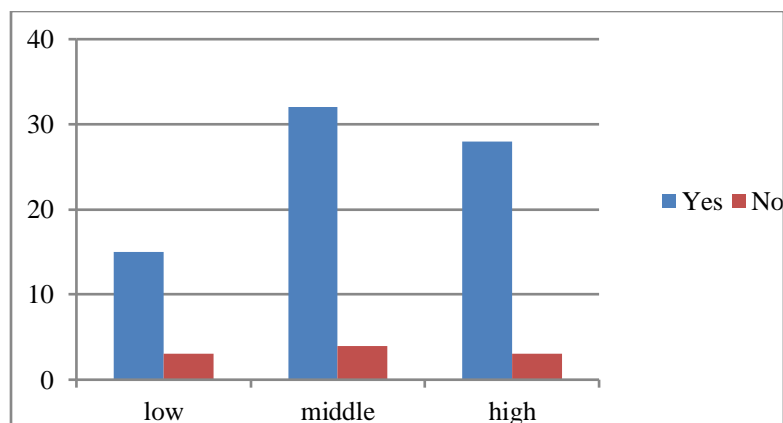
	Income Group	Yes	No
<b>Rural</b>	low	20	11
	middle	32	4
	high	16	4

1)



**Urban**

	Income Group	Yes	No
<b>Urban</b>	low	15	3
	middle	32	4
	high	28	3



### (B) Different education groups

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:**

Total number of women surveyed in rural and urban area are 175 in total. In rural area 87 women and urban area 88 women

#### **Rural area:**

Total number of women surveyed in rural area are 87 women in total in which 25 women are highly educated, 29 women are uneducated literate, 33 women are illiterate.

**(a) Highly educated:** Out of 25 women, 23 women means 92% women of highly educated group stated that yes a woman who faces domestic violence must have a right to report against domestic violence to the police station and they also said that yes if they face domestic violence ever in their life they would also complaint to the police station against it.

**(b) Semi-literate:** In this category out of 29 women, 22 women means 76% women of semi literate group are accepted that a woman who faces domestics violence has right to file a report in the police station and If they face domestic violence ever in their life time they would also go to the police station to report about it.

**(c) Illiterate :** Out of 33 women, 23 women means 70% women are agree with that a woman who is victim of domestic violence must have a right to file report to the police station and these 70% women said yes they would go to the police station if they face domestic violence in their life.

#### **Urban area:**

Total number of women surveyed in rural area are 88 women in total in which 76 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.



**(a) Highly educated:** In this group out of 76 women 65 women means 85% of the total women surveyed in this group said yes women said yes a woman who faces domestics violence has right to file a report in the police station and they accepted that they would go to the police station to file report if they faces domestic violence ever in their life.

**(b) Semi-literate:** Out of 8 women,7women means 87% of the women surveyed in semi literate group said yes every women must have a right to go to the police station to file report against domestic violence and they also accepted that they would go to the police station if they face domestic violence ever in their life time.

**(c) Illiterate :** Out of 4 women,2 women means 50% accepted that a woman who faces domestics violence has right to file a report in the police station and If they face domestic violence ever in their life time they would also go to the police station to complaint against domestic violence.

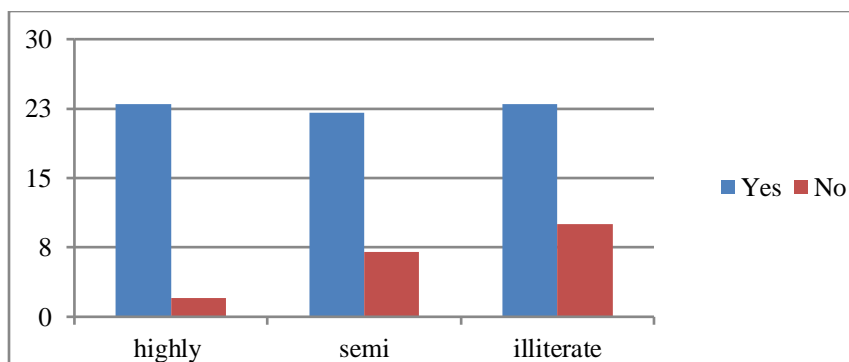
#### **Conclusion:**

The data explains that women related to both areas whether it is urban or rural are standing steadfast against domestic violence but as shown in the figure that education plays a vital role because educated women have more awareness about their rights which are provided under the Act 2005.

#### **(B) Data collected in different education groups:**

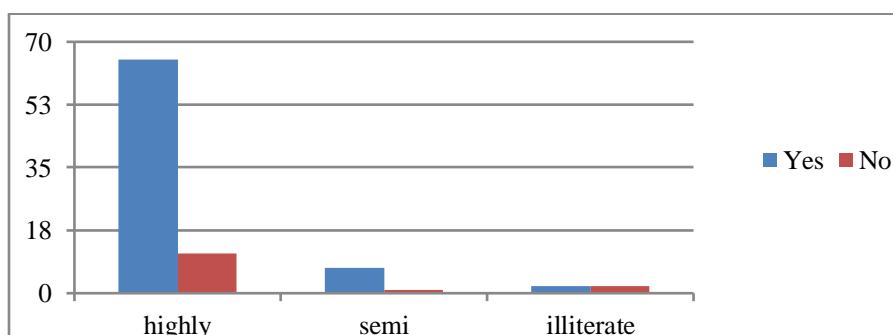
##### **Rural**

	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	23	2
	Uneducated literate	22	7
	Illiterate	23	10



### Urban

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	65	11
	Semi- literate	7	1
	Illiterate	2	2



### (C) Working and Non-Working

#### Answer given by working and non-working women of rural and urban areas:

Total number of women surveyed in rural and urban areas combined is 175 in total. In which 78 are working and 84 are non-working.

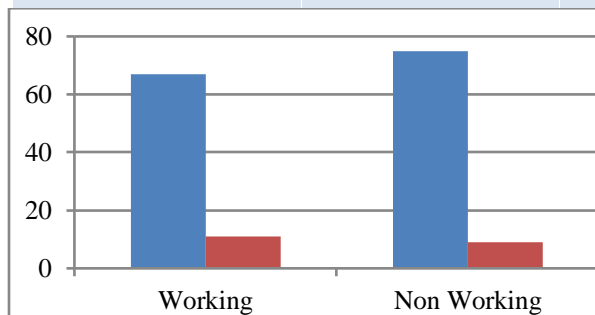
**(a). Working women:** Out of 78 women, total 67 women means 85% of the total women surveyed in this group said the every women must have a right to go to the police station if they are victim of domestic violence and they also agree with that if they face domestic violence ever in their life they would definitely go to the police against it.

**(b). Non-Working:** Out of 84 women, 75 women means 89% women of this group agree with that if any woman who suffers domestic violence must have a right to go to the police station and they also accepted that they would surely go to the police station if they become victim of domestic violence ever in their life.

**(C) Data collected in Working/Non working:**

**Working/Non working**

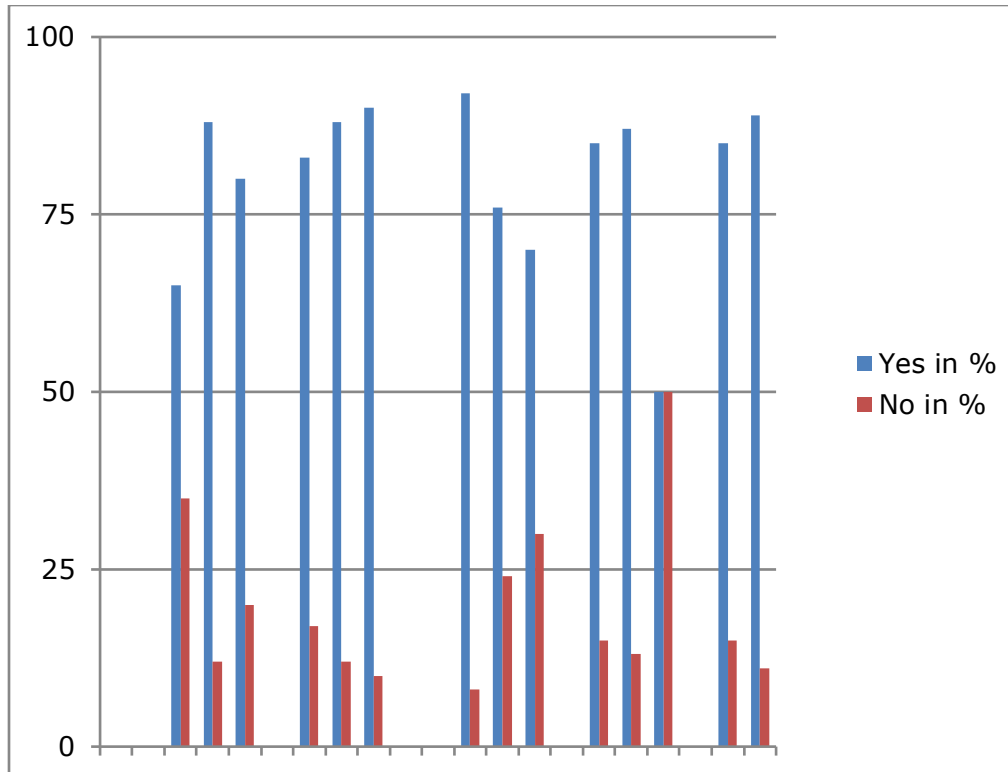
	Yes	No
Working	67	11
Non Working	75	9



**Conclusion:**

Above data indicates that women in working or nonworking areas are know their rights and ready to approach to the concerned authority if they become victim of domestic violence

**Comparative study**



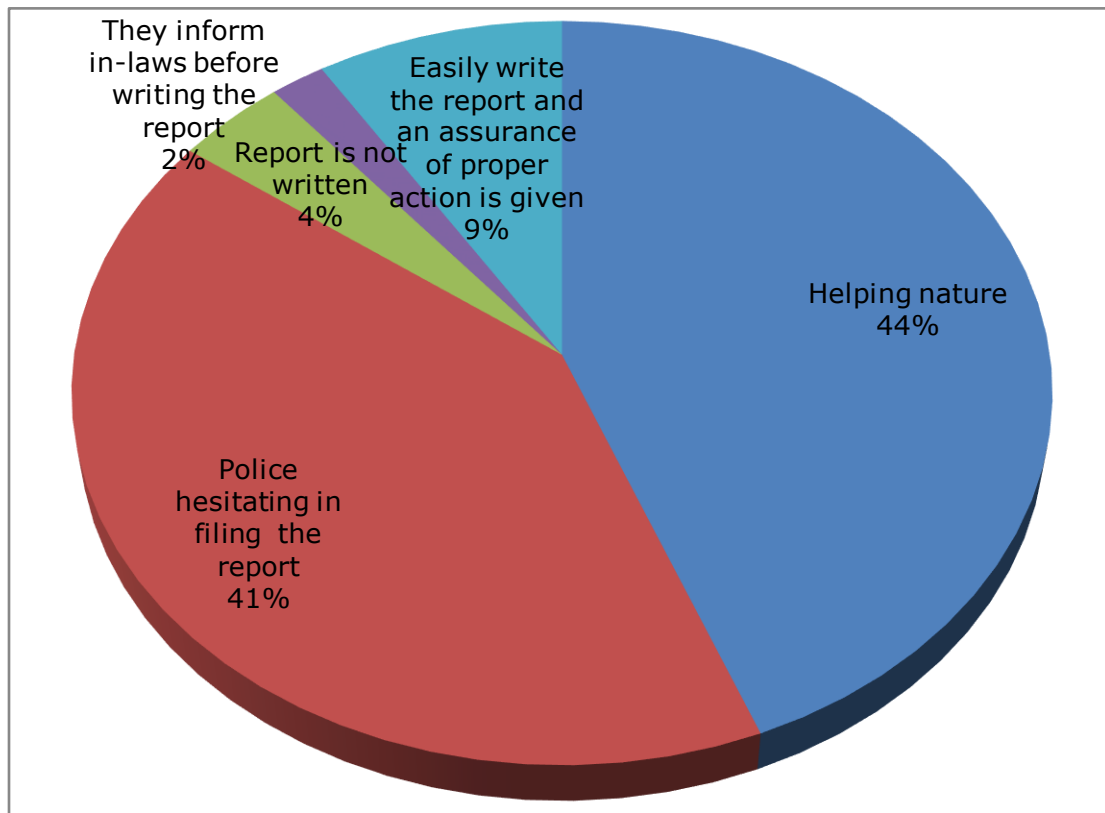
**ANALYSIS:** The data shows that women of every single area surveyed here are enthusiastically and firmly stand to grab their rights and to fight against domestic violence because most of the women are agree to file complaint to the police station if they faces domestic violence ever in their life.

Column1	Column2
Helping nature	44%
Police hesitating in filing the report	41%
Report is not written	4%
They inform in-laws before writing the report	2%
Easily write the report and an assurance of proper action is given	9%

**Part: 4 : Do police play its role properly?**

**Q.No.xi What type of attitude had the police officer at the time of lodging a report of Domestic Violence:**

- (a) Helping nature**
  - (b) Police hesitating in filing the report**
  - (c) Report is not written**
  - (d) They inform in-laws before writing the report**
  - (e) Easily write the report and an assurance of proper action is given**
- (A) Data collected :**



**ANALYSIS:**

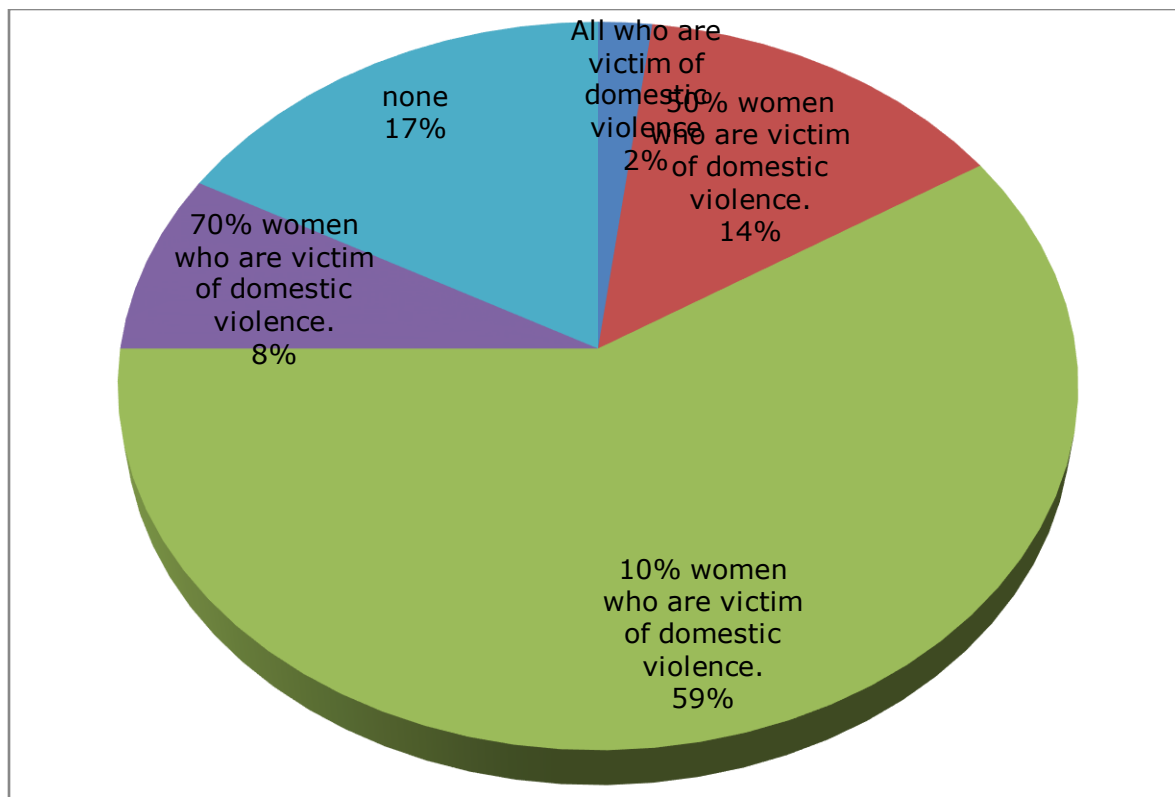
When we asked this question to women who surveyed, the answer came out was that 44% women said when they go to police to report against domestic violence, police's attitude towards them is very helping. But on the contrast 41% women said that police hesitated to file the report. 9% women said that when they go to the police, police easily write the report and give an assurance of proper action. Whereas, 2% said that on filling report against domestic violence, police informed the victim's in-laws about the report and 4% said that police didn't wrote their report. After considering all this data we found out that even though the domestic violence Act 2005 clearly mentions that a police officer has to write report no matter who come to them, as a

victim, for against the domestic violence. But here 50% women clearly divulges that police do not work according to the provisions that are given in the Act.

**Q.No.xii How many women go to police station or to a magistrate for lodging report against Domestic violence?**

**DATA:**

Column1	Column2
All women who are victim of domestic violence	2
50% women who are victim of domestic violence.	14
10% women who are victim of domestic violence.	59
70% women who are victim of domestic violence.	8
none	17



### ANALYSIS:

The question how many women go to police station or to a magistrate for lodging report against domestic violence is further divided in five parts in which percentage of women asked like according to them is all women who are victim of domestic violence go and file report in police station or only 50% women or only 10% women or 70% women or no women can go and lodge report against domestic violence.

The answer given by total 100 women is: According to the 2% women surveyed all women who are victim of domestic violence are reporting to police station or to magistrate against domestic violence. 14% women said only 50% women who are victim of domestic violence are reporting to police station or to magistrate against domestic violence. 59% women said only 10% women who are victim of domestic violence are reporting to police station or to magistrate against domestic violence. 8% women said only 70% women who are victim of domestic violence are reporting to police station or to magistrate against domestic violence. 17% women said not a single women who is victim of domestic violence is reporting to police station or to magistrate against domestic violence. This indicates that most of the women bear domestic violence silently.

**Part:6 : Do women use the Protection of women from domestic violence Act, 2005 if yes then what are the consequences of using it.**

**Q.No.xiii Have you ever faced domestic violence ?**

Total number of women answered this question are 170 in which 86 women are from rural area and 84 women are from urban area, which are divided in different income group

**(A) Different income groups**

**Rural area :**

In this category 32 women are related to low-income group, 36 women are related to middle-income group, 18 women are related to high-income group.

**(a). Low-income group:** In this group out of 32 women only 15 said that they faced domestic violence and 17 said no they do not faced domestic violence ever in their life. This data clearly indicates that 46% women faced domestic violence in their life.

**(b). Middle-income group:** In the middle income group in rural area out of 18 women 3 said yes and 15 said no in the answer of the question Have you ever faced domestic violence ? It means in middle income group 17% women faced domestic violence in their life.

**(c). High income groups :** In this group out of 19 women only 6 said yes they faced once or twice domestic violence in their life but 13 said no they do not faced domestic violence ever in their life. The data makes clear that 32% women of this group faced somehow domestic violence in their life .

**Urban area:**

In this category 19 women are related to low-income group, 36 women are related to middle-income group, 32 women are related to high-income group.

**(a). Low income group:** Out of 19 women 5 said yes and 14 said no in the reply of the question 'have you ever faced domestic violence in their life'. The data express that 27% women of this category sooner or later faced domestic violence in their life.

**(b). Middle income group:** Out of 36 women 4 said yes they faced domestic violence in their life but 32 denied and said no they do not faced domestic violence in their life. Data declares that 12% women are sufferer of domestic violence in their life.

**(c). High income groups :** Out of 29 women 4 said that they faced domestic violence in their life whereas 25 women said that they never faced domestic violence in their life. The data explores that 14% of high income group faced domestic violence in their life.



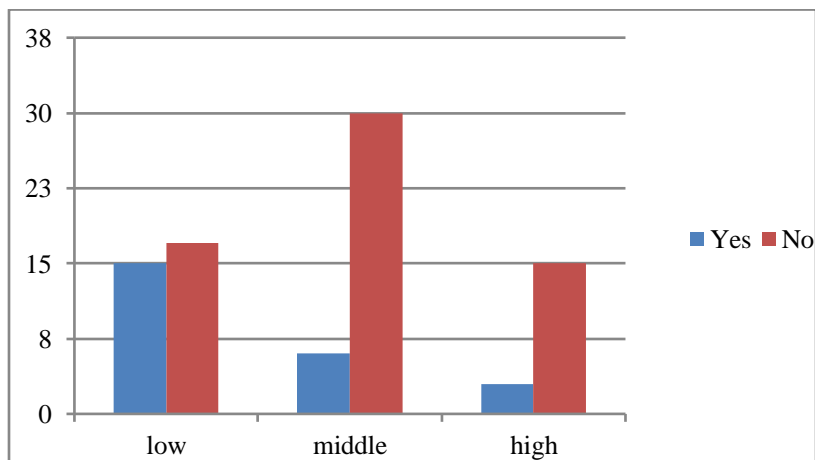
### Conclusion:

Above data demonstrates that 28% women in rural area and 16% women in urban area have faced domestic violence in their life. Now it is easy to perceive that in rural area women faced more domestic violence.

### Data collected in different income groups:

#### Rural

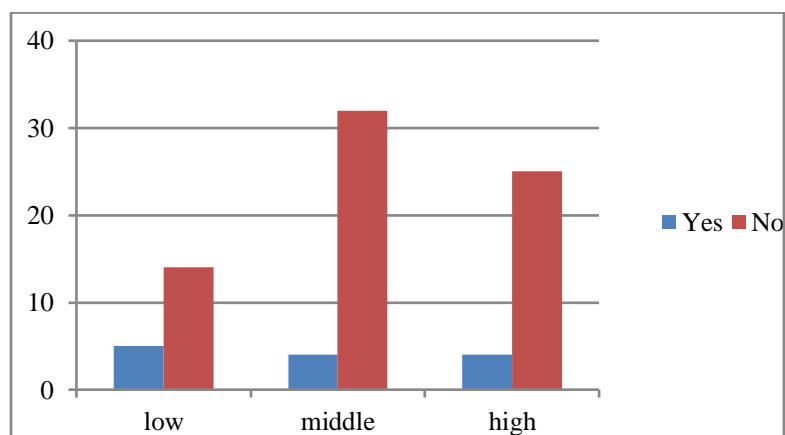
	Income Group	Yes	No
Rural	low	15	17
	middle	6	30
	high	3	15



#### Urban

	Income Group	Yes	No
Urban	low	5	14
	middle	4	32

	high	4	25
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### (B) Different education groups

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:** Total number of women surveyed in rural and urban area are 175 in total. In rural area 88 women and urban area 88 women

#### **Rural area:**

Total number of women surveyed in rural area are 88 women in total in which 25 women are highly educated, 29 women are uneducated literate, 33 women are illiterate.

**(a). Highly educated:** Out of 25 women 20 said yes and 5 said no for the question Have you ever faced domestic violence ? It indicates that 80% women of this group faced domestic violence in their life.

**(b). Semi literate:** In this category out of 29 women 22 women said yes they faced domestic violence in their life and 7 said no they never face domestic violence in their life. The data makes clear that the percentage of women who faced ever domestic violence in their life in this category is 76%.

**(c). Illiterate :** Out of 33 women 23 women said yes they faced domestic violence in their life and 10 women said no they never faced domestic violence in their life. The data concluded that 70% women of this group faced domestic violence in their life.

**Urban area:**

Total number of women surveyed in rural area are 88 women in total in which 76 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.

**(a). Highly educated:** In this group out of 76 women 7 women said yes they faced domestic violence in their life but 69 said no they never faced domestic violence in their life. Here the percentage of women who faced domestic violence is 10%.

**(b). Semi-literate:** Out of 8 women 4 said yes and 4 said no in the response of the question 'Have you ever faced domestic violence in their life'. This comes out from the data that 50% women have faced domestic violence in their life.

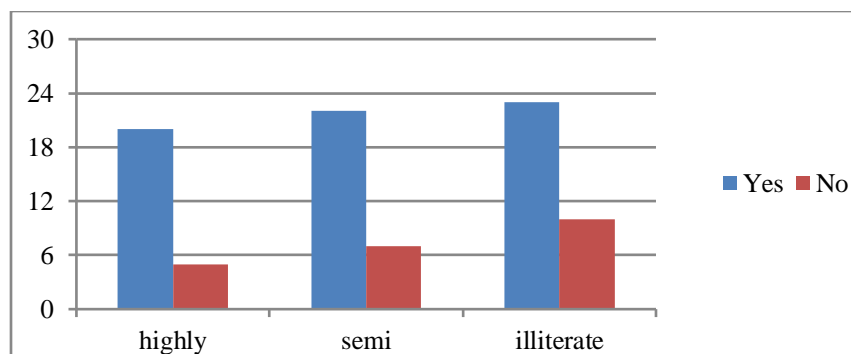
**(c). Illiterate :** Out of 4 women 2 said yes and 2 said in the reply of the question which is 'Have you ever faced domestic violence in their life'. The data stated that 50% women faced domestic violence in this group.

**Conclusion:**

The data shows that in rural area women faced more domestic violence as compare to women in urban area but more or less the situation is equal.

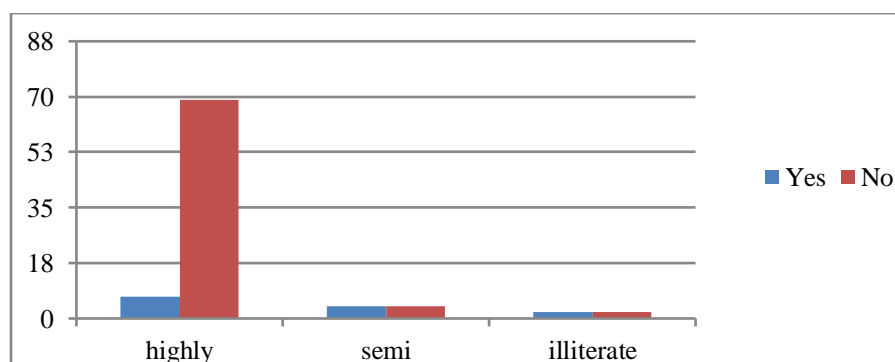
**Data collected in different education groups:****Rural**

	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	20	5
	Semi-literate	22	7
	Illiterate	23	10



## Urban

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	7	69
	Uneducated literate	4	4
	Illiterate	2	2



## (C) Working and Non-Working

**Answer given by working and non-working women of rural and urban areas:**

Total number of women surveyed in rural and urban areas combined is 171 in total. In which 76 are working and 95 are non-working.

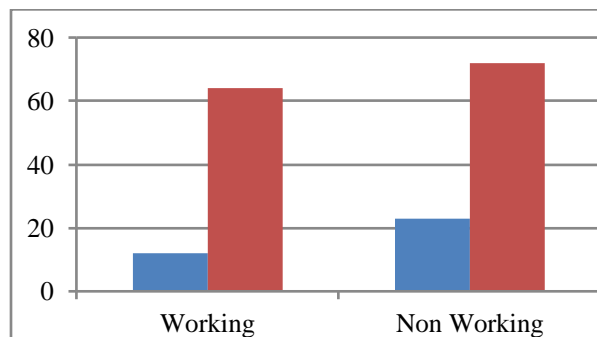
**(a). Working women:** Out of 76 women 12 women said yes they faced domestic violence in their life while 64 women make clear that they never faced domestic violence. The data proves that 16% women of working group faced domestic violence in their life

**(b). Non-Working:** Out of 95 women 23 women faced domestic violence and 72 are not ever faced domestic violence in their life. The data concluded that 45% women of the non-working group are faced domestic violence in their life.

**Data collected in Working/Non working:**

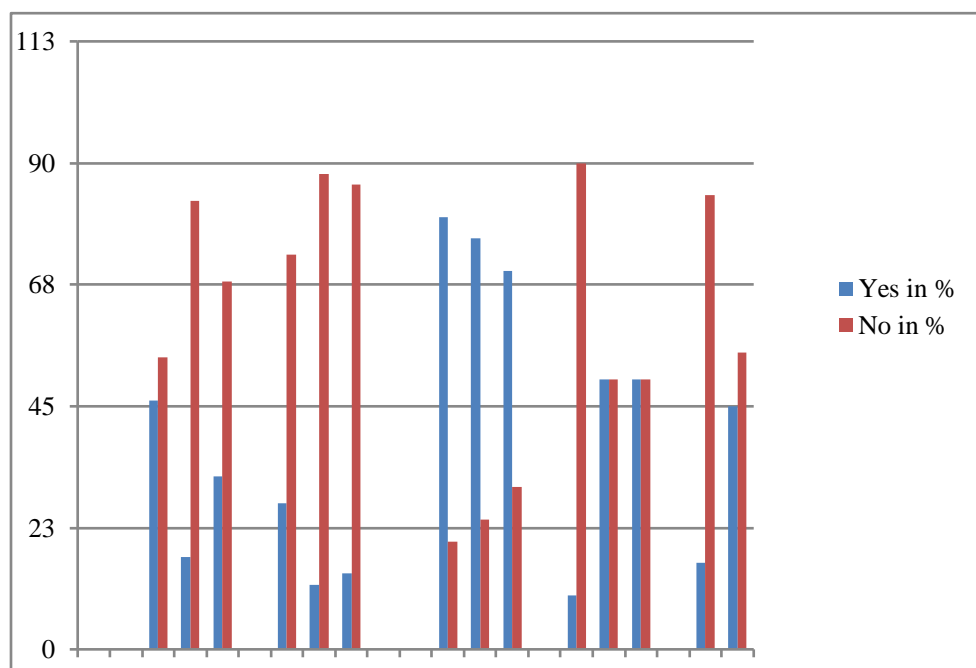
**Working/Non working:**

	Yes	No
Working	12	64
Non Working	23	72



**Conclusion:** This data concluded that non-working women are faced more domestic violence as compare to working women and also proves that the number of women who suffers domestic violence is not as decreases as it should be happened after the implementation of the Act.

**Comparative study:**



**ANALYSIS:** Above chart shows that women faces domestic violence till now even after the implementation of many laws for the protection of women from domestic violence. The number of victim in education group is high, may be because of education they are much aware of their human rights.

#### **Q.No.xiv Have you ever used this law?**

Total number of women answered this question are 166 in which 85 women are from rural area and 81 women are from urban area, which are divided in different income group

##### **(A) Different income groups**

**Rural area :** In this category 31 women are related to low-income group, 36 women are related to middle-income group, 18 women are related to high-income group.

**(a). Low-income group:** In this group out of 31 women 28 said yes they used this law and 3 said no they do not used this law. This indicates that 90% women are used this law i.e.

**(b). Middle-income group:** In the middle income group out of 36 women 4 said yes they used the provisions of this Act i.e. Protection of women from domestic violence Act, 2005 and 32 said they never used this law. This makes clear that 12% women of this group used this law.

**(c). High income groups :** In this group out of 18 women only 3 said they used this law i.e. Protection of women from domestic violence Act,2005 and 15 denied that they do not used this law. The data provided that just 17% women used domestic violence Act, 2005.

**Urban area:**

In this category 18 women are related to low-income group, 35 women are related to middle-income group, 28 women are related to high-income group.

**(a). Low income group:** Out of 18 women 2 said that yes they used the law which is provided in India for the protection of women from domestic violence and 16 women said no they never used this law. This proves that only 12% women related to low income group have used the protection of women from domestic violence Act, 2005.

**(b). Middle income group:** Out of 35 women only 5 women have used this domestic violence Act for their protection from domestic violence and 30 said they never used this law. This data opens the truth that only 15% women among the women surveyed related to middle income group have used this protection law i.e. Protection of women from domestic violence Act, 2005.

**(c). High income groups :** Out of 28 women 3 women said yes and 25 women said no in the answer for the question that is 'Have you ever used this law?'. This data indicates that only 11% women of this group used the protection of women from domestic violence Act, 2005.

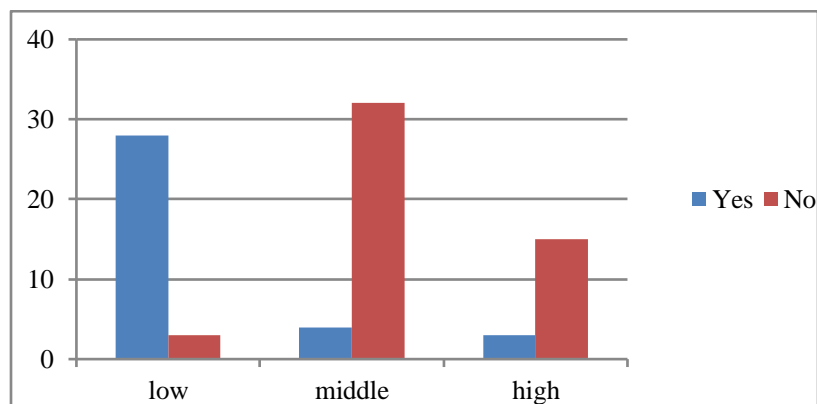
**Conclusion:**

Above data demonstrates that women rural area specially related to low income group are the highest in percentage that is 90% who used for their protection from domestic violence this 2005 Act or it's provisions. This data gives us two conclusions may be women are hesitating to use this law or may be there is less domestic violence in India.

**Data collected in different income groups:****Rural**

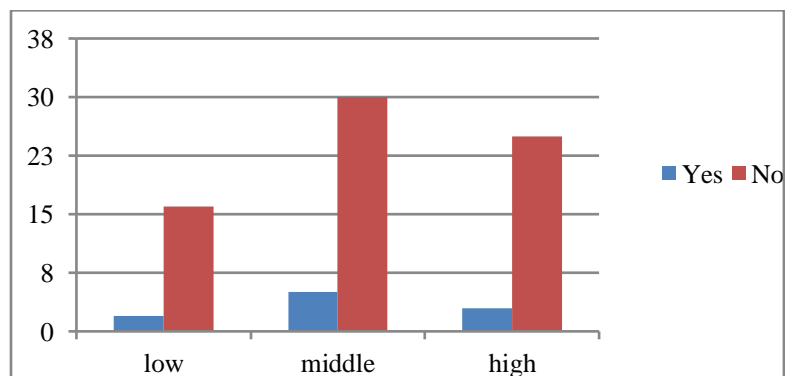
	Income Group	Yes	No
<b>Rural</b>	Low	28	3
	middle	4	32
	high	3	15

1)



### Urban

	Income Group	Yes	No
Urban	low	2	16
	middle	5	30
	high	3	25



### (B) Different education groups

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:** Total number of women surveyed in rural and urban area are 174 in total. In rural area 89 women and urban area 88 women

#### Rural area:



Total number of women who surveyed in rural area are 69 women in total in which 14 women are highly educated, 23 women are uneducated literate, 32 women are illiterate.

**(a) Highly educated:** Out of 14 women only 2 women said yes they used the law that is Protection of women from domestic violence Act, 2005. 12 women among the surveyed women of this category said they never used this law. the data clears that only 15% women ever used this law.

**(b). Uneducated literate:** In this category out of 23 women only 2 women said yes and 21 said no for the question 'Have you ever used this law?' . The data shows that only 8% women ever used this law.

**(c). Illiterate :** Out of 32 women only 2 women said yes they used this law but 30 women denied that they never used this law. Data explains that only 6% women are used this law in this group.

#### **Urban area:**

Total number of women surveyed in rural area are 88 women in total in which 76 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.

**(a). Highly educated:** In this group out of 76 women only 2 women used this law whereas 74 women never used this law. Data explores that only 3% women ever used this law in their life time.

**(b). Semi-literate:** Out of 8 women only 1 women used this law and 7 said no they do not ever used this law for their protection against domestic violence . The data tells that 13% women said that they used this law against their husbands and in-laws to fulfil the purpose of protection from domestic violence.

**(c). Illiterate :** In urban area only 1 women said yes and 3 said out of 4 women in the answer of the question 'Have you ever used this law?'. Data illustrated that only 25% women ever used this law.

#### **Conclusion:**

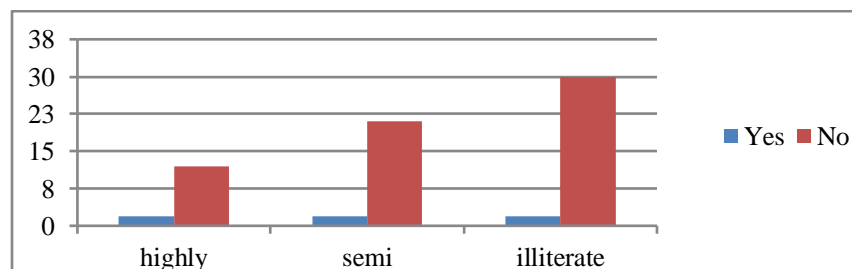
The data shows that either women have no proper or sufficient knowledge about the law that is Protection of women from domestic violence Act, 2005 or they are not felling themselves as

strong as to raise voice against domestic violence and faces the repercussions of their complaints. That is why the use of this law is so less as compare to the data where women said they faced domestic violence in their life time.

#### **Data collected in different education groups:**

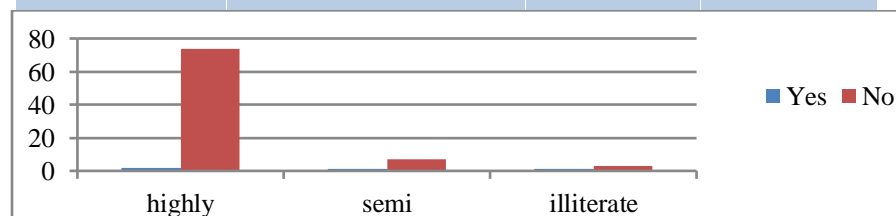
##### **Rural**

	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	2	12
	Uneducated literate	2	21
	Illiterate	2	30



##### **Urban**

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	2	74
	Semi-literate	1	7
	Illiterate	1	3



#### **(C) Working and Non-Working**

Answer given by working and non-working women of rural and urban areas:\

Total number of women surveyed in rural and urban areas combined is 174 in total. In which 79 are working and 95 are non-working.

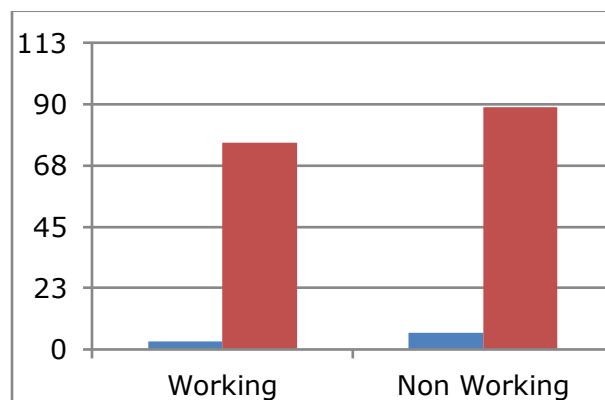
**(a). Working women:** Out of 79 women 3 women said yes they used this law while 76 women said no they never used the law Protection of women from domestic violence Act, 2005. The data define that only 4% women ever used the law for their protection from domestic violence.

**(b). Non-Working:** Out of 95 women 6 women said yes and 89 women said no they never-ever used the domestic violence Act 2005. Data demonstrates that only 7% women ever used the Protection of women from domestic violence Act, 2005 against their in-laws or husband to protect themselves against domestic violence.

**Conclusion:** The data shows that the women who used Protection of women from domestic violence Act, 2005 are very less in number.

**(C) Data collected in Working/Non working:**

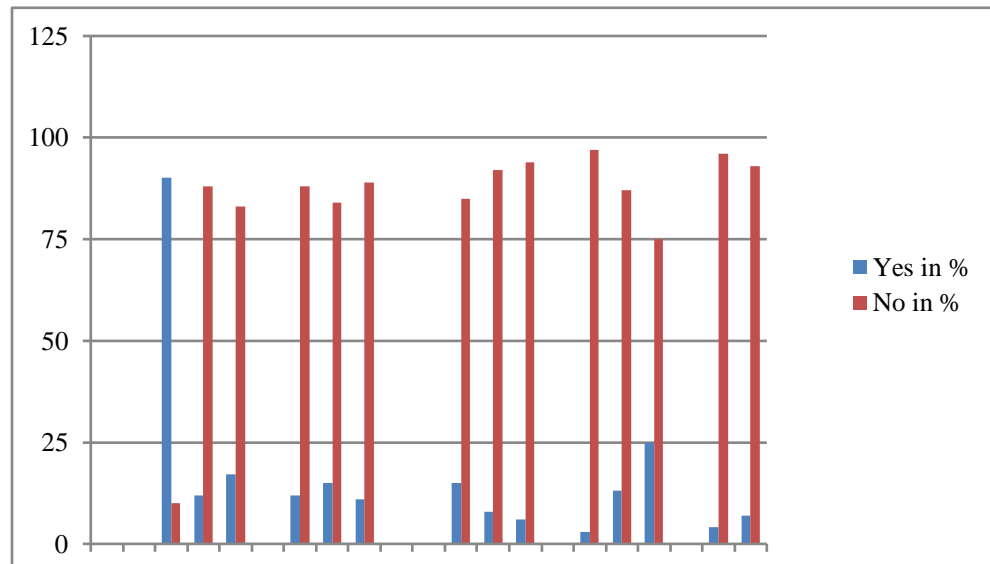
	Yes	No
Working	3	76
Non Working	6	89



**ANALYSIS:** Above data explains that only women related to low income group of rural area are high in percentage who used the protection of women from domestic violence Act, 2005 for their protection against domestic violence. Otherwise the percentage of women who used domestic

violence is very low in numbers.

### Comparative Study:



**ANALYSIS:** Above data explains that only women related to low income group of rural area are high in percentage who used the protection of women from domestic violence Act, 2005 for they protection against domestic violence. Otherwise the percentage of women who used domestic violence is very low in numbers.

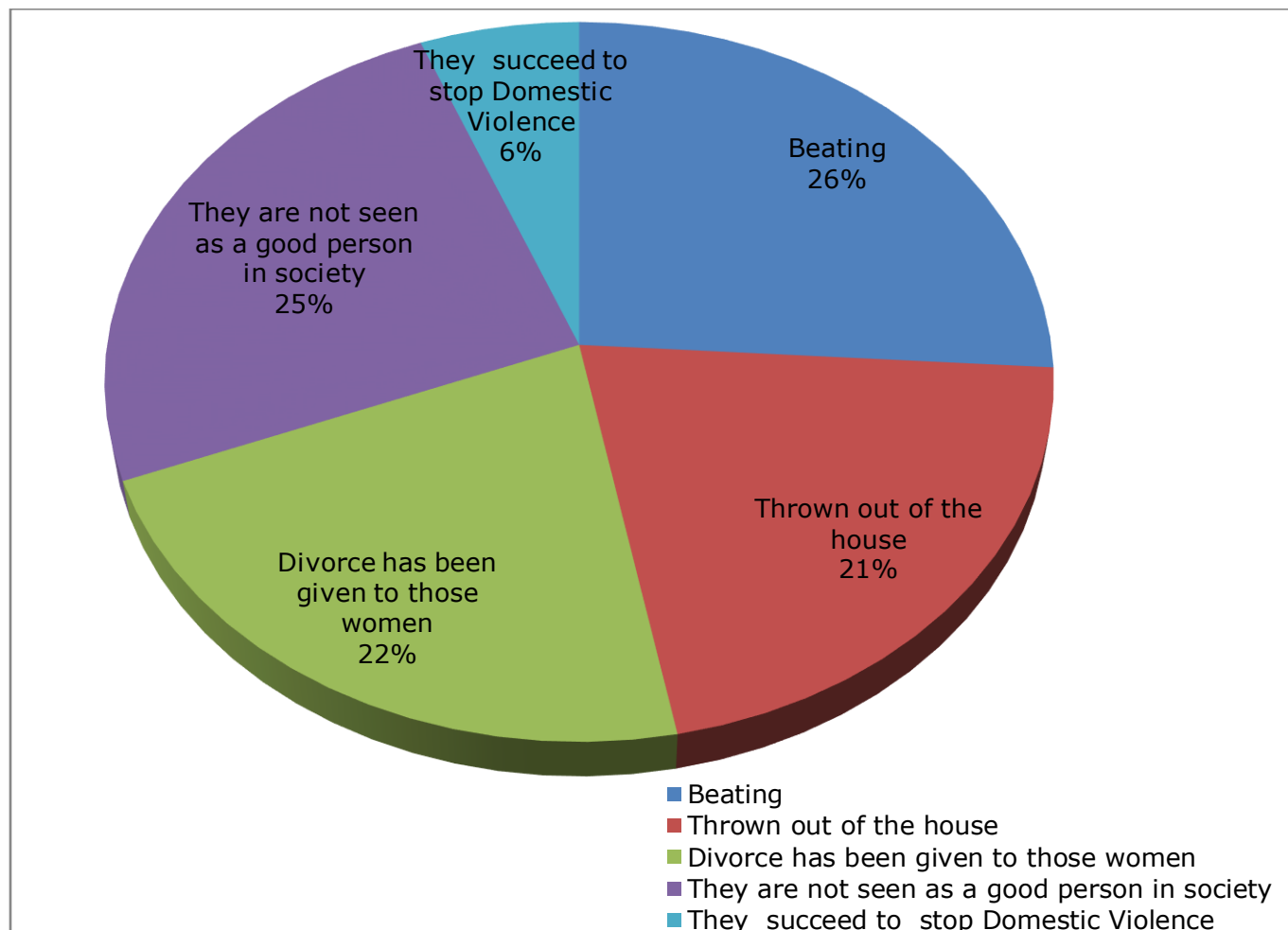
**Q.No.xv What are the effects on the women when they use this law and has this Act been successful in stopping domestic violence against women?**

**(A) Data collected:**

Column1	Column3
Beating	26%
Thrown out of the house	21%
Divorce has been given to those women	22%
They are not seen as a good person in society	25%

They succeed to stop Domestic Violence

6%



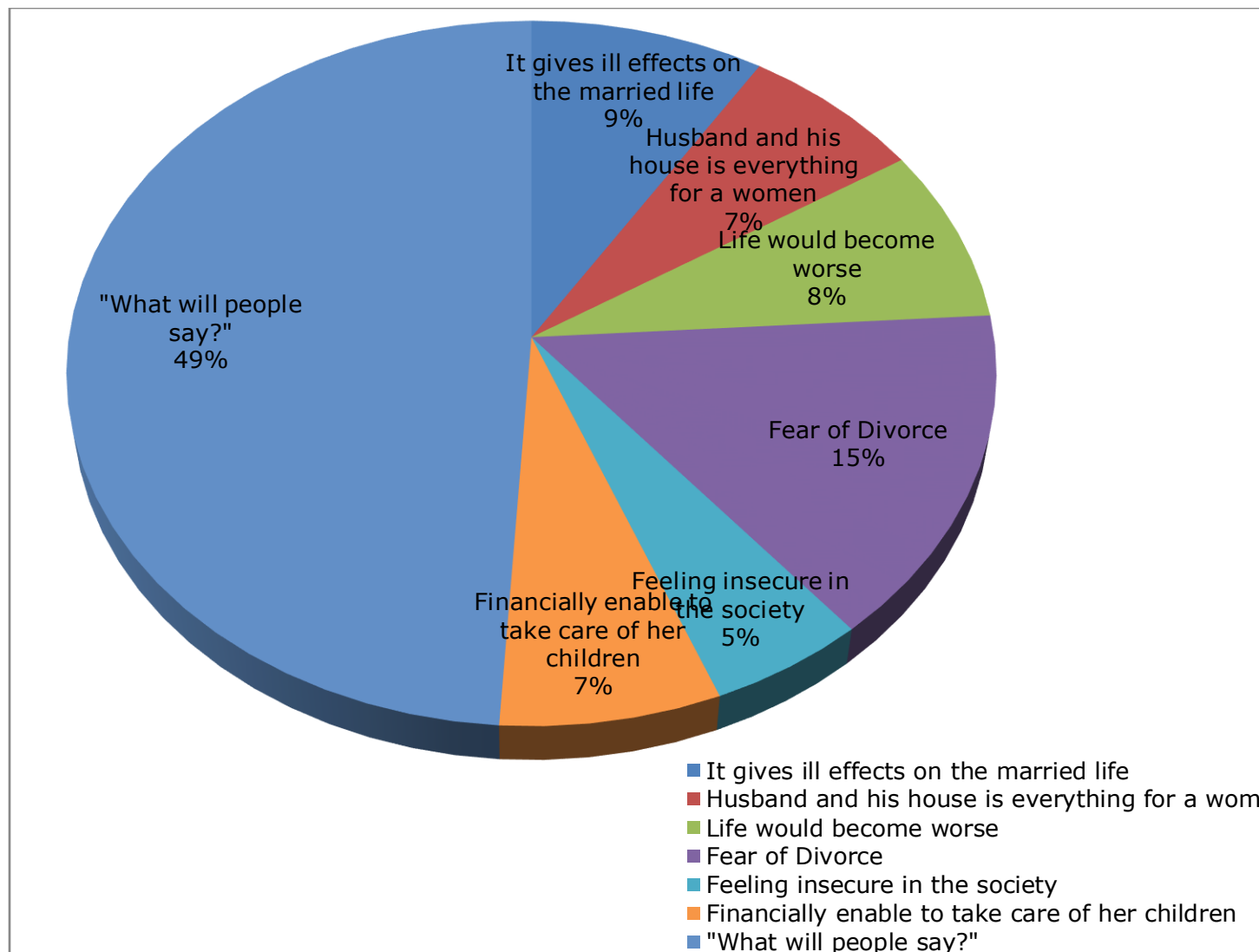
**ANALYSIS:** The situation of women when they use this Act i.e. prevention of women from domestic violence Act 2005:-Among 100 women, 26% women said that the woman who file complaint against domestic violence is beaten by her husband or her family members. 21% said that the woman, who uses this Act, must be thrown out of the house. 22% said that those women who use this Act are given divorce. 25% said any women who complaints against domestic violence or use the provision of this Act is not seen as a good person in society. Only 6% women said that this Act has been successful in stopping domestic violence against women.

**Part: 6 : Why women hesitate to lodge report against domestic violence?**  
**Q.NO.xvi Due to which reason victim of domestic violence has hesitate to approach concerned authorities:**

- (a) It gives ill effects on the married life;**
- (b) Husband and his house is everything for a women;**
- (c) Life would become worse;**
- (d) Fear of Divorce;**
- (e) Feeling insecure in the society;**
- (f) Financially enable to take care of her children;**
- (g) What will people say?**

**(A) Data collected:**

Column1	Column2
It gives ill effects on the married life	9%
Husband and his house is everything for a women	7%
Life would become worse	8%
Fear of Divorce	15%
Feeling insecure in the society	5%
Financially enable to take care of her children	7%
"What will people say?"	49%



**ANALYSIS:** According to the data 49% women not tell or approach to the concerned authority against domestic violence, just because the fear of ‘what will people say’ in society about them or their family. 15% women hesitate to approach because the fear of divorce. 9% said ‘it put adverse effect on their married life’, 8% women said that ‘life would become worse’ after complaining to the police station and 5% women quoted reason that they feel insecure in the society if they report to the police station. for 7% women who are not going to police to file report against domestic violence is ‘husband and house is everything for them’.

The given data shows that 50% women hesitate to approach the concerned authority against domestic violence only because of the fear that what would people say in the society and community and if any woman jump from this thought and file complaint, against her in-laws or husband, the other fear which makes her weak, at that point, is what will happen after this

complaint? Will she be capable to handle all the problems like education of her children? Who will take care of her daily needs? Who will support her financially and mentally? Because the end result of the complaint is divorce. This is because most of the women in India are not financially strong to bear all expenditures of her and her children either employed or unemployed. It means that most of the women view themselves as someone who is weak and not capable to handle all the responsibilities of family alone. This perspective of women not only hinders the path of eradicating the evil from the society but also helps in the nourishment of it in the society.

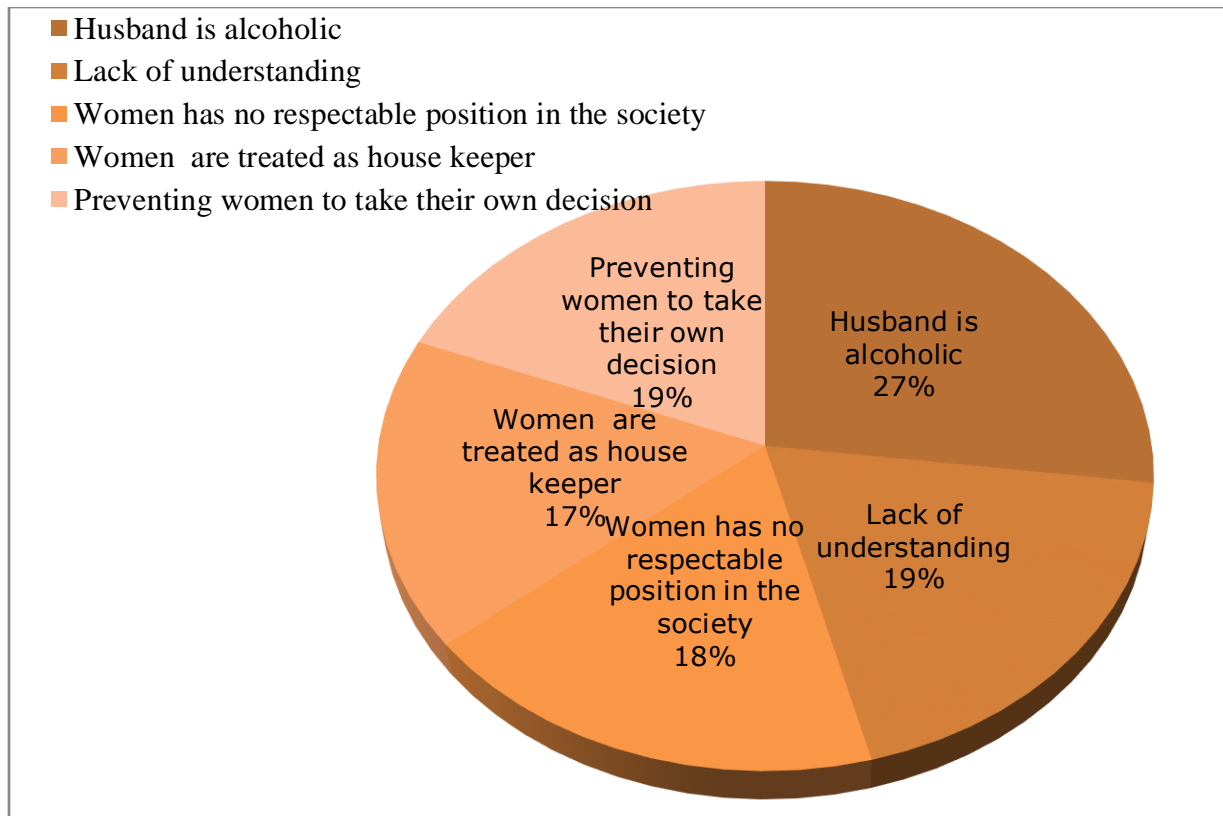
**Part:7 : What are the reasons of domestic violence according to the women surveyed?**

**Q.No.xvii What are the reasons of domestic violence?**

**(A) Data collected :**

Column1	Column2
Husband is alcoholic	27
Lack of understanding	19
Women have no respectable position in the society	18
Women are treated as house keeper	17
Preventing women to take their own decision	19





**ANALYSIS:** Reasons of domestic violence stated by 100 women who surveyed are:

**(a). Husband is alcoholic:**

27% women said that alcohol is the major reason of domestic violence against women. Mainly males in rural area in low income groups are most likely to get addicted to alcohol because of this addiction they spent major portion of their income for buying alcohol and tend to neglect their responsibilities towards their family.

**(b).Lack of understanding between husband and wife:**

19% women said lack of understanding between husband and wife is also a significant cause of malevolent behaviour of husbands towards their wives.

**(c). Women have no respectable position in the society :**

18% women said because societal norms women have not given respectable position in the society as like man. So, this behaviour infringes the rights of women given by constitution of India through fundamental rights that is 'right of equality article 16'.

**(d).Women are treated as house keeper :**

17% women said it is stereotype behaviour of our society that women have to do household chores and take care of family members and only this thought process of society stuck a female in the four walls of house and her in-laws or her husband do not want that she goes outside and do other work.

**(d). Preventing women to take their own decision :**

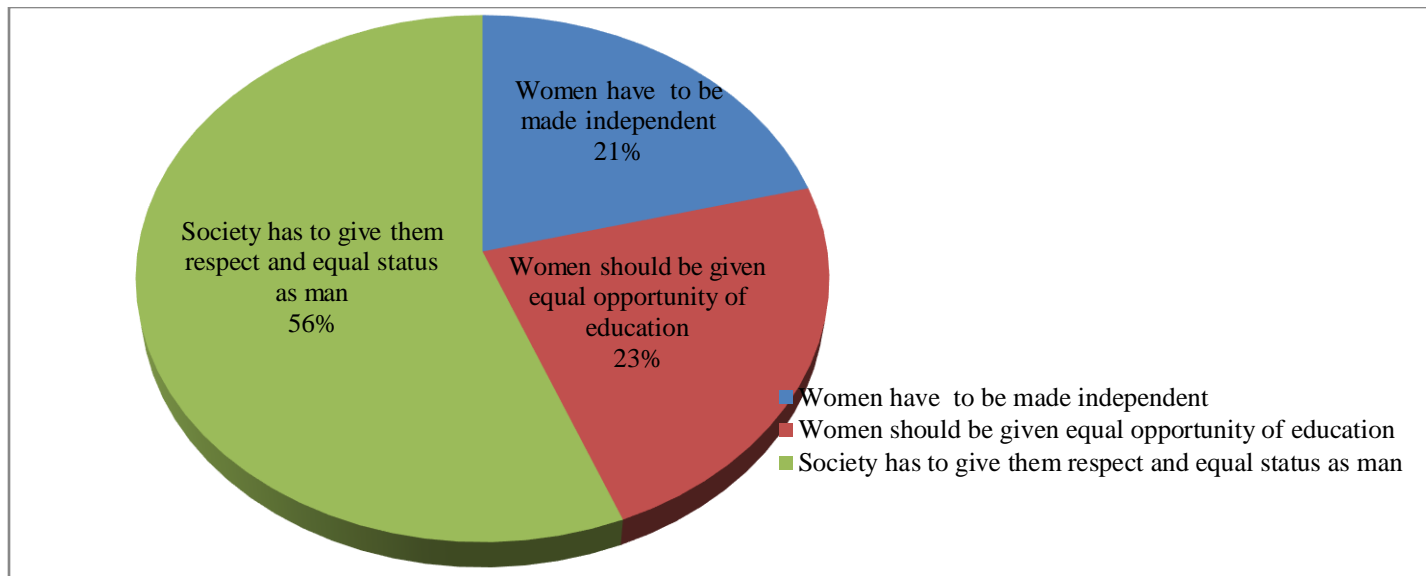
19% women said women are treated like a thing for the comfort of the family or special for the males, that is why when she wants to take decision for herself and that decision if disturb the comfort of family or males.

**Part: 8: Measures of stopping domestic violence**

**Q.No.xviii Which Measures are helpful to stop domestic violence.**

**(A) Data collected :**

Column1	Column2
Women have to be made independent	21
Women should be given equal opportunity of education	23
Society has to give them respect and equal status as man	56



### ANALYSIS:

Measures specified by 100 women to stop violence under the process of survey 56% women said if society gives respect and equal status as like man only then this violence comes to end. 21% women said if we make women independent then we can stop domestic violence from society whereas 23% said without giving them equal opportunity of education we are not become capable to eradicate domestic violence against women

Above data shows that along with equal opportunity in education in other field to make women independent we have to give a woman equal status as like man then only the violence which happens against four walls of home can be stop.

**Part: 9: Is really the Protection of women from domestic violence Act, 2005 or other laws are become successful to stop domestic violence against women ?**

**Q.No.xix As per your knowledge, all the Acts made to stop domestic violence against women have become successful to stop domestic violence against women?**

Total number of women who answered this question are 163 in which 80 women are from rural area and 83 women are from urban area, which are divided in different income group

#### **(A) Different income groups**

##### **(a). Rural area :**

In this category 31 women are related to low-income group, 34 women are related to middle-income group, 15 women are related to high-income group.

**(a)i. Low-income group:**

In this group out of 31 women only 12 said yes more or less all the Acts made to stop domestic violence against women have become effective to stop domestic violence against women in India whereas 19 women give opposite answer and according to them these laws are not effective or sufficient to stop domestic violence against women. The data tells us that only 39% women accepted that the laws made for the women to protect them from domestic violence are successful but 61% women are not favoured that these laws are as effective as to become helpful to stop domestic violence against women.

**(a)ii. Middle-income group:**

Out of 34 women 16 acknowledged that these Acts which are made to protect women from domestic violence are efficacious but 18 disagree with that these laws have become successful to scrub domestic violence from the society. Data cleared that 53% women are not agree that these Act are effective.

**(a)iii. High income groups :**

In this group out of 15 women only 8 are answered yes and 7 replied no for the question that is 'As per your knowledge, all the Acts made to stop domestic violence against women have become successful to stop domestic violence against women?' So the data demonstrate that 47% women have not accepted that the laws made to stop domestic violence from society are sufficiently effective to stop domestic violence against women.

**(b).Urban area:**

In this category 18 women are related to low-income group, 36 women are related to middle-income group, 29 women are related to high-income group.

**(b)i. Low income group:**

out of 18 women 7 women are agree and 11 are disagree with that the Acts made to stop domestic violence against women have become successful to stop domestic violence against women. 62% women of this group are not in favour of that the laws made for the protection of women from domestic violence are helpful to eradicate domestic violence against women.

**(b)ii. Middle income group:**

Out of 36 women 9 women shows their acceptance and 27 women shows their non acceptance that the Acts implemented for the protection of women from domestic violence are so effective to stop domestic violence against women. From the data the finding comes out is that 75%

women totally denied that these laws which are made to protect woman from domestic violence are actually helps a woman to put an end domestic violence against her.

**(b)iii. High income groups :**

out of 29 women 9women favoured and 20 women disfavoured that Acts and laws are really helpful to curb domestic violence against women from the society. The data concluded that said that according to 69% women these Acts and laws are not effective to deter domestic violence against women from the society.

**Conclusion:**

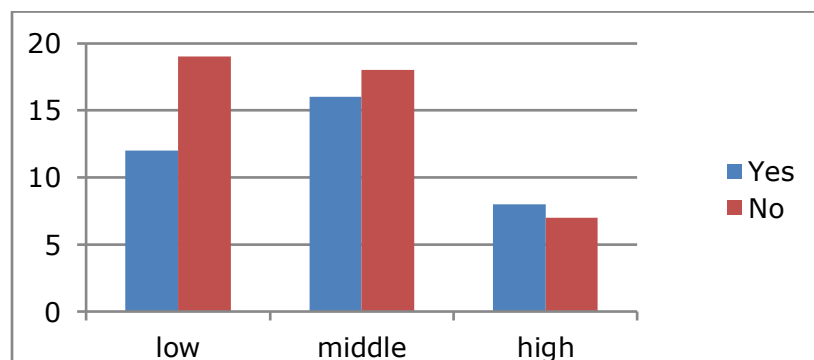
Above data demonstrates that all income groups women either from urban are or rural area are strongly appealed that these Acts and laws made for the protection of women are not successful to stop domestic violence against women.

**Data collected in different income groups:**

**Rural**

	Income Group	Yes	No
<b>Rural</b>	low	12	19
	middle	16	18
	high	8	7

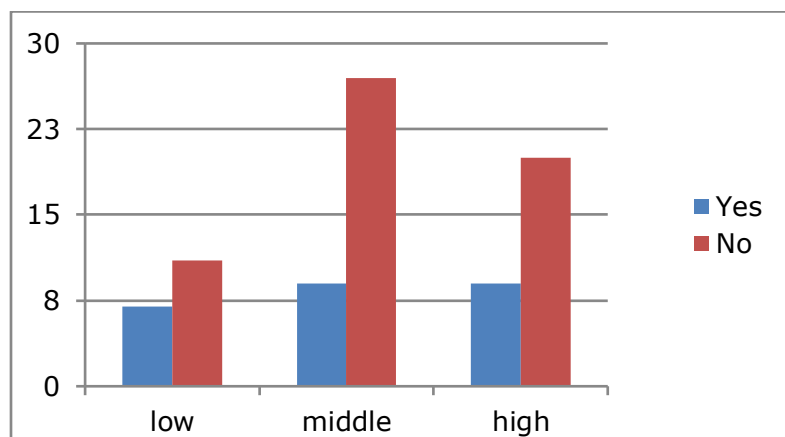
1)



**Urban**

	Income Group	Yes	No
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<b>Urban</b>	low	7	11
	middle	9	27
	high	9	20



### (B) Different education groups

**Answer given by highly educated, uneducated literate and illiterate women of rural and urban areas:** Total number of women surveyed in rural and urban area are 170 in total. In rural area 82 women and urban area 88 women

**(a).Rural area:** Total number of women surveyed in rural area are 82 women in total in which 25 women are highly educated, 27 women are uneducated literate, 30 women are illiterate.

#### **(a)i. Highly educated:**

Total number of women surveyed in rural area are 82 women in total in which only 25 women are highly educated and they respond the question as only 12 said yes and 13 women said no in the answer of the question 'As per your knowledge, all the Acts made to stop domestic violence against women have become successful to stop domestic violence against women?'. The data indicates that 52% women are not in favour that these laws are capable to stop domestic violence against women.

#### **(a)ii. Semi-literate:**

In this category out of 27 women only 13 women support that the laws in India for the help of women from domestic violence are really stop domestic violence against women and 14 said no

these laws are not helping women to stop domestic violence against them. The data declared that 51% women played that these Act are not effective to stop domestic violence against women.

**(a)iii. Illiterate :**

Out of 30 women 10 women agreed and 20 women disagreed that the Acts and laws made for the protection of women from domestic violence are stop domestic violence against women. The data explains according to 67% women of this group these Acts are not stopping domestic violence against women.

**(b)Urban area:**

Total number of women surveyed in rural area are 88 women in total in which 76 women are highly educated, 8 women are uneducated literate, 4 women are illiterate.

**(b)i. Highly educated:**

In this group out of 76 women 68 women are accepting that the Acts and laws made for the protection of women from domestic violence are help in bringing to end domestic violence against women whereas only 8 women of this group said that no these Acts and laws are not eliminate domestic violence against women. The Data above stated expires that only 10% women of this group are not agree that the laws and Acts made to stop domestic violence are actually do the same job.

**(b)ii. Semi-literate:**

Out of 8 women only 7 said yes and 1 said no these laws and Acts are become successful to stop domestic violence against women. The data clears that only 10% women viewed that these laws are not help to remove domestic violence against women.

**(b)iii. Illiterate :**

In urban area only 2 women accepted and 2 women not accepted that the laws made for the protection of women from domestic violence are sufficient effective to erase domestic violence against women. It means 50% women shows their denial about the view that the laws made for the protection women are actually help to finish domestic violence against women.

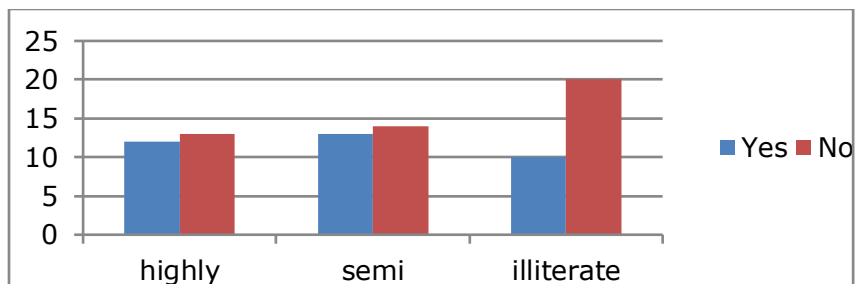
**Conclusion:** The data shows that in rural area 43% women are not accepting that the laws made to stop domestic violence are effective one. In urban area women related to highly educated or

semi educated category are great in percentage who put their view that these Acts and laws are effective to stop domestic violence against women.

**(B) Data collected in different education groups:**

**Rural**

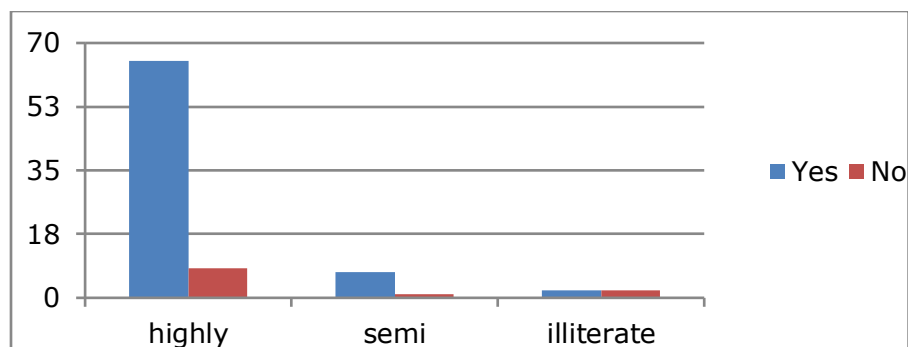
	Education	Yes	No
<b>Education (Rural)</b>	Educated/ Highly Educated	12	13
	Uneducated literate	13	14
	Illiterate	10	20



**Urban**

	Education	Yes	No
<b>Education (Urban)</b>	Educated/ Highly Educated	68	8
	Semi- literate	7	1
	Illiterate	2	2





### (C) Working and Non-Working

#### Answer given by working and non-working women of rural and urban areas:

Total number of women surveyed in rural and urban areas combined is 169 in total. In which 74 are working and 95 are non-working.

#### (a). Working women:

Out of 74 women, 19 women are agree and 55 women are disagree that the law made to protect women from domestic violence are become successful to emitted domestic violence against women from society. Data interpret that according to 75% women laws or Acts made to stop domestic violence against women are effective.

#### (b). Non-Working:

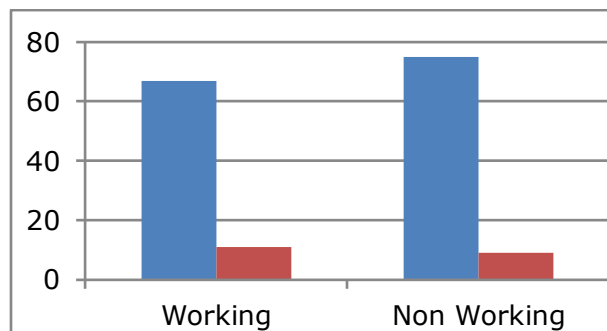
Out of 95 women 40 women gives their views in the support that the laws and Acts made for the protection of women from domestic violence are so effective to put an end domestic violence against women and 55 women are not in favour that these laws are as powerful as to stop domestic violence against women totally from the society. Data proves that 58% women are denied that these laws are not effective to stop domestic violence against women.

### Conclusion:

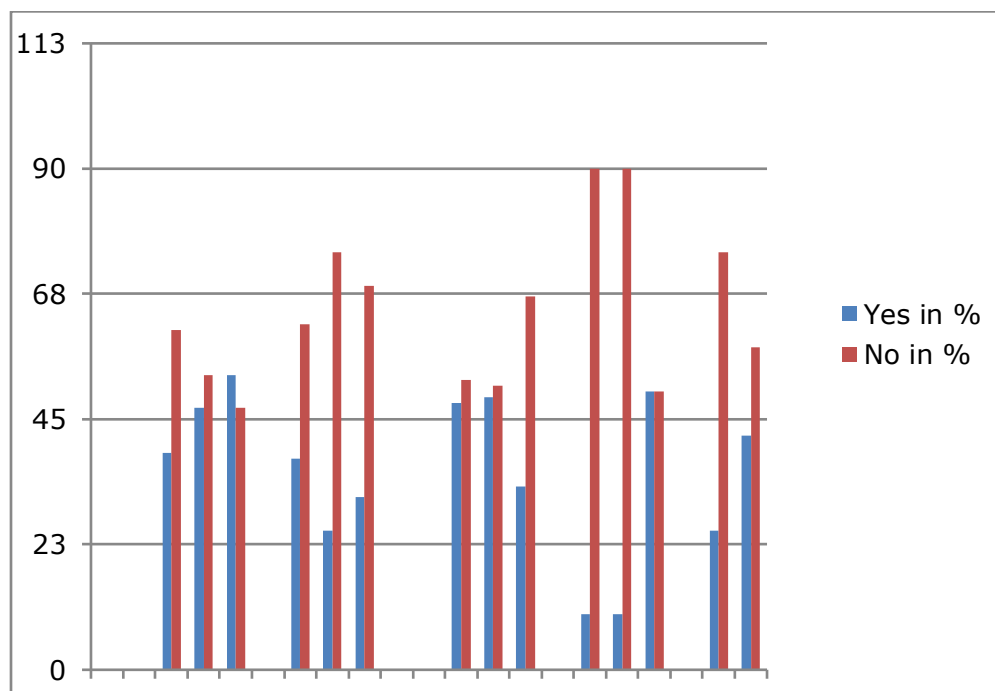
The data shows that the working women are higher in number who say that the laws made for the protection of women from domestic violence are helping to throw out domestic violence against women form the society.

### (C) Data collected in Working/Non working:

	Yes	No
Working	19	55
Non Working	40	55



#### Comparative study:



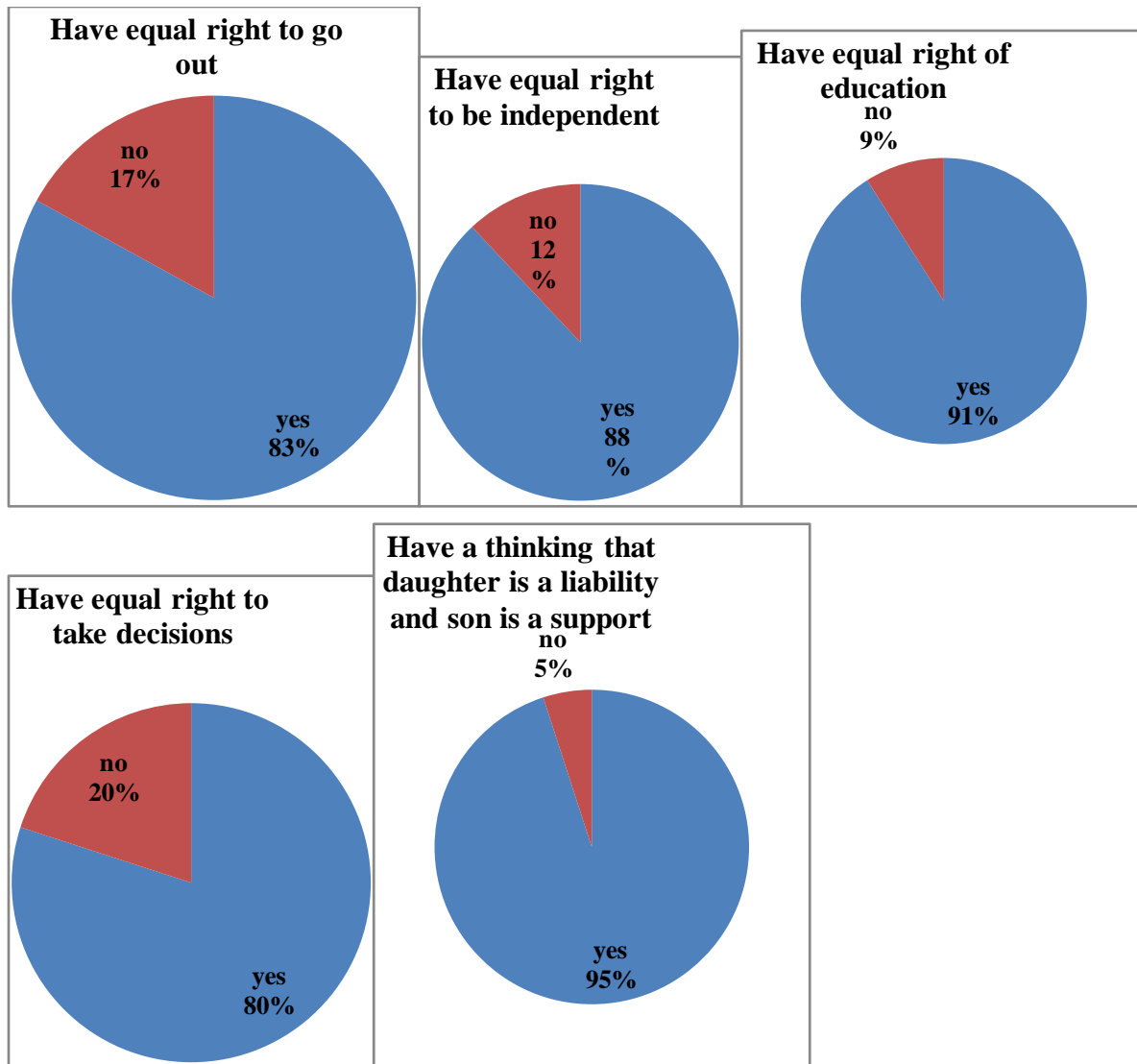
**ANALYSIS :** Above data post a picture in mind that the laws and Acts made for the protection of women from domestic violence are not strong and stringent that help to eradicate domestic violence against women totally from the society. To eliminate domestic violence it should be obligatory to take there measures too.

**Part:10: Why this Act and other laws for the protection of women in India are not sufficient to stop domestic violence from society?**

**Q.No.xx According to you is son and daughter treated equally at home?**

**Data collected in different income groups:**

Column1	yes	no	Total
Have equal right to go out	143	28	171
Have equal right of education	156	14	170
Have equal right to take decisions	145	35	180
Have equal right to be independent	153	19	172
Have a thinkingthat daughter is a liability and son is a support	167	7	174



#### ANALYSIS:

When we go between the women and asked them that according to your knowledge is in a home a girl and boy are equal in every field. They replied the questions as:

(a). Is sons and daughters have equal right to go out: Out of 171 women, 143 women said yes daughters have equal right to go out as like a son but 28 said no' they don't have equal right to go out. The data clears that 82.5% daughters got their right to go out.

(b) Is sons and daughters equal right of education: Out of 170 women, 156 said yes daughters have equal right of education as like sons. Only 14 women said no they don't have equal right of education. It means in present world 92% female got the equal right of education.

(c). Is sons and daughters have equal right to take decisions: Out of 180 women 145 women said yes in a house a daughters have equal right to take decisions but 35 women said no they do not have equal right to take decisions as like a son. It means only 80.5% daughters got the equal right to take decisions as like their brothers in a house whereas 19.5% daughters are bereft from their rights.

(d). Do sons and daughters have equal right to be independent: Here independent means to stand on their feet or go out for employment. Out of 172 women, 153 said yes daughters have equal right to be independent as like their brothers in a house but 19 women said no they do not have equal right to go out and do jobs. It means 88.5% daughters got their right to be independent but 11.5% daughters are deprived from their rights.(e). Parents have a thinking that daughter is a liability and son is a support: The answer given by women for this question was shocking because on one hand they said daughters have equal right of education; equal right of taking decisions; equal right of to be independent as like the sons of a house but on the other hand out of 174 women, 167 said yes daughters are liability for the parents and sons are supporters only 7 women said no daughters are not liability for them. It means till now 95% girls are treated like a liability in their own parent's house. It is an irony that having all types of rights an opportunity in the present world still daughters remain a liability for their parents. It is the main cause of discrimination in a house between a daughter and son and this discrimination hinders the path of removing domestic violence against women from our society.

**IV. CONCLUSION:** First thing which came out from this survey is that women have meagre knowledge about domestic violence. Some women thought that if a husband beats his wife; say something bad about her or her parents; ridicule her in-front of any person or abuse her mentally and physically is not wrong. They do not consider those actions as domestic violence because according to them these are the husband's right over his wife and it is only a personal matter between wife and husband. This indicates that they have no general knowledge that physical, mental, verbal and economic abuse of a woman is contemplated as a domestic violence against women. The data has been exploring that most of the women are not as sufficiently aware of the Protection of women from domestic violence Act, 2005 and it's provisions because (i) 42% women do not know that through the provisions of this Act a husband and his family members can be stop to exercise an act or acts of domestic violence against his wife, (ii) they do not have

sufficient knowledge about the right to live in shared household and right to get compensation for their livelihood, (iii) they have inadequate knowledge of the supporting authorities in their district like NGO's and women protection officers who help them to fight against domestic violence. The best thing which came out from the survey is that some women reported that because of women police station and helping nature of the police, filing against domestic violence become easy that is why 80% women accepted that if they suffer domestic violence ever in their life they would definitely report against it in the police station. During the survey we come to know that women do not feel comfortable to talk about their own suffering because at the time of interaction their family members were present or listening the whole conversation. But when we compare answers of three questions we concluded that women has been suffering domestic violence till to the present day, these three questions are 1. Do you witness domestic violence against women around them 2. Do you ever faced domestic violence in their life 3. Do you take shelter of Protection of women from domestic violence Act, 2005 to resist against domestic violence.

The answers of these questions are (i) 60% women accepted that they witnessed domestic violence around them, (ii) 40% women faces domestic violence ever in their life (iii) only 30% women accepted that they report against domestic violence. The data shows that if 60% women witnessed domestic violence it means 60% women faced domestic violence at that time and 40% women accepted they face domestic violence, this clearly indicates that most of the women are still endure domestic violence but hesitate to report against it. The reasons of hesitation reported under the data are (i) if they complaint against domestic violence people say bad about them or their family members, (ii) have threat of beating by the hand of their husbands or his relatives, (iii) they are thrown out of the house, (iv) the worst thing is that people do not see those women as a good person, (v). in most of the cases the outcome of the report is divorce which make their life more measurable. Some specific reasons of domestic violence against women obtained from the data are (i) husband is alcoholic, (ii) lack of understanding between husband and wife or do not match temperament of the spouses, (iii) the top most in the list is not giving equal respect to her or her decisions in the family. Last out come of the survey shows ineffectiveness of the Act Protection of women from domestic violence Act, 2005 because only 6% women acknowledged that they become successful to stop domestic violence against them by the application of the Act. It means 94% work is left to be done to curtail domestic violence from the society. Only laws

and Act are not sufficient to stop domestic violence from the society until we change this deepened believe system of discrimination from the society which takes girls as a responsibility and boys as a support.

# **CHAPTER 8**

## **CONCLUSION AND SUGGESTIONS**

### **I CONCLUSION**

#### **(A) Introduction:**

It is ironical of our world that in the era in which we plan to touch not only sky but the universe, through new developing methods, the situation of female is stagnant. This half of the world population faces discrimination in their entire life which started from the womb and goes up to tomb. Only discrimination is the root cause of every type of violence perpetrated on a woman, it may be physical ,sexual, mental and economical. If we put all these violence in a pocket they took the shape of domestic violence, which is the most worst crime of the world.

Usually domestic violence is the crime which is happened in the four walls of home. But, the truth is that the domestic violence has spread in the air of our environment, just like pollution, in the form of discrimination and which is automatically inhaled by us. We become so habitual to hear that boys have to do this and girls have to do that. These are not constitutionally defined rules but our customs pressurise us to believe on these stereotype rules, which proclaim man as a superior or head of the family and woman as an inferior and a type of slave or server for the family. Man have all the power to take decisions but, woman can't walk a single step without the permission of a man.

#### **(B) Domestic violence is defined as:**

In the journey of the whole thesis the conclusion came out is that the 'Domestic Violence' is a denial of all and every human rights of women. It is perpetuated by her family members or dear ones. It is a habitual and repeated pattern of behaviour in which abuser abuses a victim by battering, by demanding dowry, through marital rape and sexual abuse, female genital mutilation, etc which means domestic violence includes physical, sexual, psychological, verbal, emotional and economical abuse. It is totally violation of human rights. The perpetrator of domestic violence is not a mad person or not having depressed personality but because of man ego he thinks that he is free to control his intimate partner and the partner has to act according to the wishes of the perpetrator. Sometime abuser is not intimate partner but a family member like



in-laws or parents, they are under pressure of the society or traditions and customs, because of that influence they do not allow or give equal treatment to their daughter and daughter in-laws.

### **(C) Types of abuse:**

Domestic violence is not a single violence it is a string of violence which start with the birth of a female child and end up with her death. It is near to impossible to define domestic violence fully because it is endless torture of a female's life, in which some violence are defined but some are not defined till now. The defined violence included in domestic violence are ***physical abuse*** it start with slapping and end with suicide and death, in between slapping and suicide all the things which harm or hurt a body is included in physical abuse. ***Sexual abuse*** it starts with the stalking and unwelcoming touch and end up to marital rape and rape. In between all type of violence are considered as sexual abuse. ***Verbal abuse*** is not just saying bad about someone but it consists those gestures also which are given at the time of verbal abuse. Those gestures are more insulting and harming one's emotions and dignity. Sometimes only verbal abuse become the lead cause of suicidal deaths in which the victim is hurt emotionally deep into the heart and goes into a deep depression. ***Emotional abuse*** includes the love and care which is expressed by the perpetrator after strangling the body or scattering the mind of a victim. This emotional blackmail pressurises a victim of domestic violence to be in the relationship which is full of domestic violence. ***Economic abuse***, to put all the things on the name of a man then showing by giving different laws or acts that women have right in property, right on stridhan, right of maintenance, right of monetary relief, right of compensation, right of coparcenery in the property of her father and ancestor, all these laws show the real picture of economic abuse against women of India.

Hence “Domestic Violence” is a physical, psychological and sexual violence which is inflicted by one person to another person who lives in domestic relationship. It is a type of discriminatory behaviour towards females which surely violates her human rights, by any act of physical, emotional and sexual injury or damages and prevented or restricted her to enjoy her human rights; her equal opportunities of education, right of proper nourishment, right to pursue her carrier or take decisions for her life, to enjoy right on her body, to be economically strong and well sufficient, equal property rights, etc. All these are social barriers which give power to a man over women.

## **(D) Situation of women in different eras:**

### **(i) Ancient time:**

Women suffer domestic violence from ancient times to the present day because most of the Verses of **Manusmriti's** show that women were taken as an inferior and they were under the control of male persons of the family and society. Their duties were to spend whole life for the welfare or comfort of their husbands if they did not do this they had to face repercussions of their actions. Some verses indicated that women's appearance was also considered as a criteria which decided how they would be treated in the society like if she had red eyes; reddish hair, redundant parts of body she would not be good to marry with. All in whole is that women had not an equal position according to the Manusmriti's laws. Not only in Manusmriti but our sacred books like **Sriman Bhagwat Gita** also describes women as a lower birth. In this book lower means if in gender, lower to male and if in caste, lower to higher castes like Rajputs and Pandits. In numbers of chapters in **Sriman Bhagwat Geeta** women were signified as untrustworthy; stupid and hinderer. It means even in **Sriman Bhagwat Geeta** men are the superior then women. **Tulsidas ji** who had written 'The **Ramayana**' a book which illustrates the best ways how to be a good person and how to lead a meaningful life also put women on the position equal to animal and said that they deserve a beating to straighten up and get the acts together. All this conveyed that women were treated as a subservient. When we found these type of words in our sacred books it makes sure that ,that time women were put on second pedestal and seen as a disrespectful member of our society. If we think about all together it contemplated that in ancient times the situation of women did not justify human rights. It means, they had not had right even on her own body, all decisions relating to them were taken by male members or by the society which was dominated by males. It also indicates from the above examples that domestic violence against women prevailed and happened on the name of spiritual duties. In medieval period our own societal norms made women's situation vulnerable. Women were treated like a commodity which was used for the welfare of the males.

### **(ii) Medieval period:**

This vulnerable situation of women became more worst in medieval period that time declared as a dark age for women because at that time women were not just treated as inferior to man but according to the most of the quotations they were considered as a curse on the earth. Among these quotations a quotation of **Chanakya's** describe seven natural flaws of women which are:

untrustworthy; guile; rashness; avarice; stupidity; uncleanness; and cruelty, an another quotation gave definition of 'Good woman' according to that women had their life only to please their husbands and even they had no religious rights. In this period some other evils were also seen on the screen like sati system; child marriage; restriction on the education of girls etc . If we see definition of domestic violence given in the 'Prevention of Women from Domestic Violence Act 2005' all the things stated above for women are included in domestic violence. So, it is crystal clear that women were victims of domestic violence even in medieval period too.

### **(iii) Modern period:**

Even after declaration of so many acts and laws for the protection of women from domestic violence, the situation of women remains same till now in the modern period. Also our **Indian Constitution** try to make man and woman equal by providing several provisions for the protection of women through which women become able to enjoy the right of equality and right to dignified life . Legislation like Section **498A**, **304B** of Indian Penal Code, Section **113A** and **113B** of The Indian Evidence Act, 1872, **Protection of Women from Domestic Violence Act, 2005** and so on are equally important in safeguarding the interest of the women despite these series of stringent laws the situation of women has not become so satisfactory or good enough. It shows till now women needed protection of laws to enjoy their human rights equal to men and it must be noted that without these deterrent legal provisions the position of women is totally same as in ancient time. Because only those women who know their rights or take shelter of these Acts shall be able to take equal rights to men otherwise, in one form or another every women suffers domestic violence in the four walls of their safest heaven, means house.

### **(E) Co-relation between Socio-Economic strata and Domestic violence:**

It is not wrong to say that this problem has affected every women whether woman is rich or poor, educated or uneducated, housewife or working she is victim of domestic violence.

We are committing an err by saying that only married woman has been a victim of domestic violence, whereas the truth comes out behind the veil is that any female member of the family may become victim of domestic violence and the meaning of abuser is also not restricted to male members only, females are also considered as an abuser . It depends upon circumstances. It comes out from various surveys that victims have no definite age; time period; class and caste and religion but, at any stage of life whether rich or poor or belonging to upper caste or lower

caste or profess Hindu religion, Muslim religion, Sikh , Parsi or Jews religion, literate or illiterate can be sufferer of domestic violence. So, Domestic violence is a psychological phenomenon to control or dominate someone to fulfil or satisfy their interest or ego. It is not necessary that the abuser has violent behaviour all around society, he may be nice with his neighbours; his colleagues or in relations but behind the walls of his house his behaviour is violent and intolerable, not in every moment but sometimes when he finds that the person with whom he is related does not walk or talk according to him. Therefore, Domestic violence starts from homes and then run to the streets.

### **(F) Causes of domestic violence:**

If we want to remove domestic violence against women we have to find out hidden causes which are normally acknowledged by the society as the part of life, like other universal truths as 'Sun rises in the East and sets in the West', Similarly men are superior and 'Karta' of families and women are inferior and have to obey always orders of men. It is unbreakable string which starts with our customs and traditions and end up with our modern laws. Consequently, the foremost significant cause of domestic violence is our custom and traditions which always put women on the second pedestal and man on the first, by defining their role in the family like role related to marriage, inherent rights, religious identities, etc. Our customs and traditions gave birth to many causes of domestic violence against women . **First cause** is that our customs and traditions define importance of boys and girls in the society as, if a boy born in a family, it is treated like a lottery for the family and if a girl child born it is treated like a liability for a family. Our customs and traditions say that girls are 'Parayadhan' (property of other person) and father have to do her 'Kanyadan' (give her in gift to other person) at the time of marriage, only then he will go in heaven after his death. This type of behaviour called gender socialisation which refers to the learning of behaviour and attitudes considered appropriate for a given sex. Boys learn to be boys and girls learn to be girls. Parents are the first teachers who tell every child how to behave according to their gender in the society or say they influence children's gender development include role modelling and encouraging different behaviours and activities in sons and daughters. This type of modelling and encouragement is the conduit design which inculcate authoritative behaviour in boys and domestic helper behaviour in girls, creates boss and employee relationship between man and woman and that develops unwanted violence against women. **Second** adverse effects of culture and traditions on women is shown in the special and

major rights given to men in property and women have less rights in property. Because of not giving her equal right in agriculture land indirectly proved that she is not capable to handle farming or production on fields so she needed male support to handle this. This not only visualises that women are physically and mentally weaker but made them economically dependent over men for their livelihood. These type of traditions leads other causes like inherent rights in property, though the Hindu Succession Amendment Act of 2005 provides equal inheritance rights to ancestral and jointly owned property, but this law is not properly and uniformly implemented in India. Reason of this is our orthodox customs which do not favour to transfer property on the name of daughters they justify these norms by saying that after marriage a daughter becomes a part of her husbands family so, her responsibility is transferred on her husband and make father free from all the responsibility of his daughter, then there is no need to give her share in the property of her father or from ancestral property. That is why after legally provided property rights to women they still do not enjoy the fruits of their property rights. If any woman approaches for her property rights is often criticised for being greedy and materialistic in nature. Even parents force their daughters to relinquish their shares in Joint Hindu family coparcenary in favour of brothers, this system is prevalent in Northern India and other parts of India. Despite property right provided in the Hindu Succession Act, the lives of women continue to be governed by the age-old practices and norms that only ensure that women live a life of inequality, discrimination, injustice and exclusion. The women in actual practice neither get the property from parents side nor from husband side till his death.

**Third** disadvantageous outcome of our customs and traditions is that religion or identity of a woman is defined by the name or faith of a man. Even after a recent judgment of Supreme Court declaring that wife's religion does not merge with husband's after marriage.<sup>1</sup> Even after this pronouncement the religious identity of women is static. There is no change shown at the platform of the society because it's not only a court fight in real but it's a fight of women with herself believing that she has a separate identity to her husband because she is so habitual to live in the shadow of her husband only because of our traditions and customs.

**Fourth** the custom of 'Devadasi' ( sacred prostitution) which still prevailed in south Indian states mainly in Karnataka, Tamil Nadu, Andhra Pradesh, Maharashtra, Telangana, Assam,

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<sup>1</sup> Wife's religion does not merge with husband's after ... - Times of India <https://timesofindia.indiatimes.com> › News › India News › Wife 7th December 2017

Odisha despite banning through many laws. Parents himself pushed their minor female child before their puberty forcefully on the sake of customs and traditions in the hellish life of prostitution which they called marriage to the god. This is the worst form of domestic violence against female children in India only on the name of customs.

**Fifth** child marriages are also favoured by our customs and traditions, this is the worst repercussion of our customs and traditions because it is not only a barrier between the growth of females but arrests her mental, physical, and economical development and lead towards suffering domestic violence.

**Sixth** because of our customs and traditions a system prevalent in our society which forces women to commit suicide is 'dowry'. In spite of many laws to ban dowry system, it still prevails in our every single marriage solemnized in India, on the name of traditions.

**Seventh** these orthodox traditions and customs put all responsibility of honour of family on the shoulders of females. Due to this the woman and her husband are brutally beaten and murdered, by woman's family members, if she does marriage against the customary rules and regulations. This way all the fundamental rights from the woman, provided by the Constitution of India, are taken away from her.

**Eighth** customs and traditions give birth to patriarchal nature of society in which man dominate over women and treat them like a commodity for their comfort. Women have no right to take decision even related to her. Men are superior and women are made to do services for them. Because of patriarchal society women are not given their rights thus making it main cause of domestic violence.

**Ninth** since childhood parents inculcate in their daughters that it is a notion that family matters should be solved within the private sphere and that they should not talk about the violence, done by their husband and his family members, in public. Hence, suppressing the voices of many women who are victims of domestic violence.

**Tenth** because of all the above beliefs if women try to raise their voice against domestic violence and enjoy their personal rights given by Constitution of India or by other laws they have to face conflicts in their houses. In order to avoid these conflicts they remain quite and suffer domestic violence silently.

So custom and traditions are the root cause of domestic violence against women in India. Other than customs and traditions there are other causes such as economic, political and legal

which also prevail in our society which makes the ground of domestic violence against women. Economic causes include dependence of women on men for their livelihood because of lack of formal ownership of material assets, limited access to employment in formal and informal sectors, lack of education and training. Because of all this, she remains economically weak, financially insecure and incapable to fulfil hers and her children's daily needs. Political causes such as under-representation of women in power and politics, in policy decisions, limited participation of women in organised political system keeps women unaware of the modern policies and programs of government and their benefits and because of under-representation in power and politics women voice and their pain do not reach to the ear of policy makers. Lower legal status of women related to marriage, adoption and maintenance makes women situation more vulnerable in the society. All because of above reasons she has to face domestic abuses like physical injury, intimidation, sexual assault, emotional abuse, economic abuse, etc. Which shatter her identity and deteriorate her situation in the society. To change the scenario of the world towards women it is utmost compulsory that women must be empowered not only socially but economic empowerment can lead the fight against domestic violence and gives equal status to the women in India.

To change the scenario of the world towards women it is utmost compulsory that women must be empowered not only socially but economic empowerment can lead the fight against domestic violence and gives equal status to the women in India.

### **(G) Ambit of protection of women from domestic violence in India:**

Our Constitution manifested the concept of gender equality in its Preamble, Fundamental Rights, Fundamental Duties and in Directive Principles. Constitution not only accord gender equality, but also authorise the State Governments to adopt measures towards positive determination in favour of women to eliminate the mounting socio-economic, political and educational disadvantages faced by them. Other than constitution some other safeguards are also available in India for protection of women from domestic violence such as [Dowry Prohibition Act \(1961\)](#), [Commission of Sati \(Prevention\) Act \(1987\)](#), [Section 498A in The Indian Penal Code](#), [Dowry death Section 304B of IPC](#), [Section 113B of Indian Evidence Act 1872](#), all the legislation before 2005 were made to protect married women who has suffered cruelty because of demand of dowry, there were no single way to protect unmarried or married female from

domestic violence because ,only dowry demand is not a single violence which make women life measurable but the actual cause is not treating woman and man alike. Our society since from ages put women on subordinate position and serve her as an object before the society. That is why after marriage every body thought that they have proprietary right upon the woman and manage her according to their comfort. Above stated laws partially deter culprits from committing an offence against women because of the complicated procedure involved to apply them and very less knowledge of those provisions to women. These anti-dowry laws are not sufficient to curb this malice from the society as these are either misused or if used the people did not attain relief because of lack of knowledge or hesitation to use it. These laws affected adversely and the situation of women became more worst. If she used section 498A the end result is divorce which paralyse her life and affected her socially. As divorced women was not accepted by the society and she does not financially remain sound, to bear burden of her kids and her own self. Indirectly section 498A I.P.C persisted as a nightmare for women. Other sections like 304B of I.P.C and 113A and 113B of Evidence Act are helping the judiciary to find out, whether the suicide is caused by dowry demand or something else? It means the presumptions of dowry demand and dowry death. All of the matter is running around the dowry and dowry demand , cruelty and harassment , again reason is dowry demand.

## **(H) Protection of women from domestic violence Act, 2005:**

While considering the vulnerable situation of women in her parental house or after marriage in matrimonial house the ‘Protection of women from domestic violence Act, 2005’ was passed. Which provide an umbrella over the heads of aggrieved women because the provisions of the Act give her protection during the process of getting relief which strengthen her to raise her voice effectively against domestic violence.

### **(i) This Act is a civil law:**

Protection of women form Domestic Violence Act 2005 is a civil law,

### **(ii) Protection provided under the Act:**

Right to reside in a shared household and prohibiting the respondent from evicting or excluding her from the shared household; restraining the respondent and his relatives from dispossessing and disposing the right of aggrieved person from the shared household; passing an interim order for residence in favour of wife and children to reside in the house and directing the



police to provide protection for their peaceful residence; grant temporary custody of any child to the aggrieved person; interim maintenance to minor child living with mother and mother who is living separately from her husband; directing the respondent to pay compensation or damages or both to the aggrieved person for the injuries for the mental torture and emotional distress caused to her by domestic violence; directing the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance of the aggrieved person, pass a protection order in favour of the aggrieved person which prohibit the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child, its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, etc.

### **(iii) This Civil Law converted into Criminal Law**

When protection order or Magistrate order is violated and this breach of protection order by the respondent shall be an offence and shall be punishable with imprisonment of one year or with fine upto twenty-thousand rupees or both.

### **(iv) Magistrate powers under the Act, 2005:**

These provisions not only provide protection to the aggrieved person but under them Magistrate have power to give directions to the service providers; protection officers and police to provide services to the aggrieved person including shelters homes; medical facilities; legal aid; counselling to the respondent and aggrieved person singly or jointly and assist women to avail of these facilities as well as assist her in obtain the appropriate order under the Act.

### **(v) Procedure to get relief under the Act:**

The procedure given under this Act also gives easy way to grab the remedies with any harassment and mental torture. Before this Act a woman had to go to the court through approaching police only or Magistrate took case into consideration only from the report submitted by the concerned police officer, some times the procedure was so tormenting that a woman instead of receiving relief or remedy she found herself entangled in the never untangle web and decided to quit from all. But in this Act an aggrieved person directly move their complaint to the Magistrate either by herself or through protection officer or any other person on her behalf for seeking relief against domestic violence.

### **(vi) Advantages of the Act:**

Protection of women from domestic violence Act, 2005 is the full package of protection of women during the process of getting relief from domestic violence which makes her decision sturdy and vigorous to fight for her human rights. The positive part of this Act is that only through this Act it is recognised first time that domestic violence is a human rights violation because before this Act the other Civil Laws do not address the phenomenon of domestic violence in it's entirety . It covers every spectrum of life of a woman by widely defining the expression 'Domestic violence' such as it covers all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. The most important thing is application of act with retrospective effect of Act so that an aggrieved women can file an Application under the Act even for the acts which have been committed prior to the commencement of the Domestic Violence Act, 2005. The Act provided protection right to every single female who is in domestic relationship with the respondent. Here domestic relationship includes relationship by consanguinity; by marriage ; by the nature of marriage; by adoption; by living together as a joint family. Consanguinity relationship includes relation by blood or descendent from the same ancestor. Thus in this way mother; grandmother; sisters and daughters are the persons who can raise their voice for their right against domestic violence. Marriage includes legal marriage so it includes wife not a "keep" whom a married male maintains financially and uses mainly for sexual purpose or as a servant, it would not be a relationship in the nature of marriage. The essentials of 'Relationship in the nature of marriage' is both the persons lived together for a reasonable period of time to maintain the relationship in a shared household and financially supporting each other, or any of them, like sharing bank accounts, long term investments in business and entrusting responsibility as a husband or wife like woman running home or do all household activities or husband play his role or have Sexual relationship not just for fun but for emotional and intimate relationship by which they procure children. **Socialise** with friends, **relatives** or in public as a husband and wife. There are numerous type of adoption laws which have been held by the Supreme Court from time to time the discussion of all of which is not possible but it is sure that relationship by adoption counted as a domestic relationship. Joint Family means family in which members of a unilinear descendent group ( a group in which descent through either the female or the male line is emphasised) live together with their spouses and offspring in one homestead and under the authority of one of the members. The best part of

the Act is that domestic violence complaint can be filed against a female of household, a non-adult male of household, and by extension against a non-adult female of household too and monetary relief to be provided not only to a legally wedded wife but also every female who is in domestic relationship with respondent. Other things which secure protection of women under this Act are that an aggrieved person can approach directly to the Magistrate through complaint, provides a woman right of secure housing, empowers the Magistrate to impose monetary relief and monthly maintenance on the respondent and made him to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person and it also covers loss of earnings, medical expenses, loss of damage to property, Service Provider and Protection Officer are appointed to assist the complainant women. This Act ensures speedy justice.

### **(vii) Disadvantages of the Act:**

Though there are many plus point in this Act but side by side there are some loopholes present in it . While some women approach the court even for minor issues which can be easily resolved with the help of the family members. There is no criteria defined to prove verbal and emotional abuse, if a woman says she was abused verbal and emotionally then there is no need to prove it. This Act provides extra power to women by adding a phrase in the Act ‘likely to take place in future’. According to this a magistrate can take measures to protect the woman from any acts of violence that are even likely to take place in the future. This means that the woman get an upper hand in protection and the person against whom they have complained can be punished, even though he may not have committed any act of violence and there may be only a chance of occurrence of the violence in the future. This Act provides protections only to women so it is not for man in this way it is gender specific and do discrimination thus this act violates the fundamental rights of men. Only women have right to file complaint against males and females but man have not a single right to raise his voice against any type of domestic violence he has suffered in his house by male or female. This Act gives a naked sword in the hands of women in the form of protection and relief which ruined the very nature of family and marriage. If we see the Act very closely it comes out that it provides extra power to women on one hand through which they can misuse but on the other side we saw that this Act is futile for victim women. As legal interpretation of this Act creates confusion and inconsistency like the right of maintenance provided to concubine or live-in-partner is adversely affecting the dignity of legally wedded wife in the society, including all female members in the definition of respondent put all female of

the household on the same footing as in section 498A of IPC, effecting residence rights of women by giving right to in-laws to evict daughter-in-law from their own earned house. If we talk about the authorities which are helping women under this Act are also not well aware of their responsibility like protection officers. As per the provisions of the Act government has appointed Protection Officers these are mostly senior officers and they already have so many other responsibilities that is why or because of less awareness about the Act they are incapable to fulfil all the requirements of this post and because of lack of women protection officers it become nearly impossible to implement this Act effectively in the Man's society. Hence rights given to women under this Act are not adequate to curb domestic violence.

### **(I) Judicial trends in India:**

Now we have to take a look on the landmark judgments on domestic violence. The wife having being harassed by her husband and in laws since 1998 is entitled for taking shelter of this Act despite of the fact that offence of “domestic violence” as mentioned in section 3, has been committed prior to the coming into force of this Act.<sup>2</sup> This shows the *retrospective effect of the Act*. Then the definition of "respondent" includes any person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act. It is provided in the definition that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner. Female relatives also considered as respondent under this Act such as if the second wife or wife, who being the step mother or even if a real mother, meted out domestic violence against a major daughter, they along with her father has to be arrayed as respondents, in an action under the provisions of the Act. The definition of ‘respondent’ incorporated in the Act makes it manifestly clear that a woman victim of domestic violence, an aggrieved person, is entitled to initiate proceedings for various reliefs provided for against the person who is or has been in a domestic relationship with her. An aggrieved person means any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. If a woman in live in relationship with a married man or with another man cannot be an “aggrieved person. Divorced women cannot be an aggrieved person because she is not in the continuation of the domestic relationship whereas 'Judicial Separation' does not cease the right of wife to be “aggrieved

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<sup>2</sup> (2014) 3 SCC 712,(

person. As domestic relationship continues so long as the parties live under the same roof in a shared household thus when a married woman settled in her matrimonial home with her parents and siblings, she can't claim domestic relationship. But husband is liable for domestic violence even after subsequent divorce so, decree of divorce does not absolve the husband from liability under the Domestic Violence Act. The term "Domestic Violence" cover a variety of criminal offences and these intra-family offences, however, are generally between immediate family members but not extended family members or non-blood relatives. It means domestic violence has to be undressed in context of 'domestic relationship' and 'shared household', and therefore, the reliefs are meaningful only against the persons with whom the person aggrieved shares a 'domestic relationship' and a 'shared household'. therefore complaint is maintainable against every person with whom an aggrieved person is in domestic relationship. Domestic relationship means relationship between two persons, who live or have, at any point of time, lived together in shared household. It covers even the past cohabitation or past living together. So till the time the marital tie survive and the party, at any point of time had lived together, the application or proceedings under Protection of Women from Domestic Violence Act can survive and are maintainable so as to grant the necessary relief. Only such live-in-relationship that are in the nature of marriage are considered as domestic relationship so, in order to constitute relationship in the nature of Marriage, both parties must be qualified to enter into a legal marriage. First time in India economic abuse is considered as a domestic violence as held by Bombay high court in *Ratesh Ratilal Jain v Sandhya*<sup>3</sup> Demand of dowry counts as economic abuse under section 3(1) (d) (iv) of the Domestic Violence Act, 2005 and depriving a woman from the benefits of matrimonial home also considered as economic abuse.

But Supreme Court in the case *S.R.Batra v Taruna Batra*<sup>4</sup> has made it clear that a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is the member, thus a daughter-in-law has no right on the house owned by father-in-law and mother-in-law, they can evict them from their house if they do not feel comfortable with them. According to the social legal survey on

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<sup>3</sup> *Ratesh Ratilal Jain v Sandhya*, 2014 (1) RCR (Criminal) 813: 2013 (5) AIR Bom R355:2013 Cri LJ 3909: 2013 ALL MR (Cri) 3233 (Bom).

<sup>4</sup> *S.R.Batra v Taruna Batra*, 2007 (3) SCC 169: AIR 2007 SC 1118: 2006 (13) SCALE 652; 2006 (Sup 10) SCR 1206: AIR 2007 SCW 1088: 2007 (2) MLJ 69:2007 (1) Cal LJ 132:2007 Cri LR 113:2007 (51) AIC 488: 2007 (136) DLT 1 : 2007 (1) DMC 1 (SC0; Relied on in *T. Saritha Reddy v T. Obireddy*, 2009 (77) AIC 273: 2009 (1) ALT 481 (AP).

domestic violence against women conducted by the research scholar in order to find-out the actual position of women after the implementation of the Protection of women from domestic violence Act, 2005, that though this Act touches all aspects of the life of women but do not give as satisfactory results as at the time of implementation predicted by learned persons of this field. Those women who are aware of this Act to some extent become successful to raise their voice but those who are not aware of it remains out of reach of the reliefs provided under it.

**The provisions of maintenance under section 20 of Domestic Violence Act and 125 Cr.P.C are independent monetary relief in DV Act can be granted even if some maintenance has been allow to wife under section 125 CrPC:**

**Shome Nikhil Danani vs Tanya Banon Danani<sup>5</sup>**

In this recent judgment delivered by the Honourable High Court of Delhi delivered on 11th April 2019 it has been held "Clearly the scope of section 20 of the DV Act is much wider than that of Section 125 Cr. P. C.. While section 125 Cr PC talks only of maintenance, Section 20 DV Act stipulates payment of monetary relief to meet the expenses incurred and losses suffered as a result of loss of earning, medical expenses, loss caused due to destruction, damage or removal of any property from the control of aggrieved person".

It further observed by citing section-20 (1d) of DV Act as "This Court clearly erred in not appreciating the distinction between the two provisions and the reasoning is clouded by an impression that the respondent-Wife in the application under section 23 of the DV Act, the respondent wife has inter-alia sought residence rights under Section 19 and protection under Section 18 apart from the monetary relief under Section 20".

The High Court also observed "Further, it may seen that proceeding under the DV Act and under section 125 Cr.P.C are independent of each other and have different scope, through there is an overlap. In so far as the overlap is concerned, law has catered for that eventuality and laid down that at the time of consideration of an application for grant of maintenance under DV Act, maintenance fixed under section 125 Cr.P.C shall be taken into account".

## **(J) Analysis of the survey:**

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<sup>5</sup> Shome Nikhil Danani vs Tanya Banon Danani, Judgement Delivered by Delhi High Court on: 11th April, 2019 Latestlaws.com

If we talk about women awareness regarding the true meaning of domestic violence , the result came out from the survey is that in rural area and urban area women related to low income and middle income group, illiterate and semi-literate are not much aware of the rightful meaning of domestic violence and the application of the Protection of women from domestic violence Act, 2005. Because of absence of awareness about their human rights those women do not realize that it is wrong and infringement of their basic rights, if their husbands beat them; say something bad about them or their parents; ridicule them in-front of any person or abuse them mentally and physically. They thought this is their husband's right over them and it is only a personal matter between wife and husband. This is the reason they do not consider these actions as domestic violence. This shows that they have no general knowledge that physical, mental, verbal and economic abuse of a woman is contemplated as a domestic violence against women. But situation is different for highly educated and working women of both areas, they, because of education and appropriate channel to go out and see the world's activity are much aware of domestic violence, yet they are also not on satisfactory position or say do not face domestic violence in their homes. Data reveals that women working and highly educated and belonging to rich family too face equally domestic violence in their sweet homes, difference is that they know well about domestic violence. For the reason of lack of awareness they do not know about their right of residence, protection, maintenance, compensation, etc. They suffer domestic violence silently in their whole life. The survey reveals the fear of society in the mind of females, all because of our customs and traditions which are deeply rooted in our belief system. So if we want some miraculous changes in the situation of women and want to eradicate domestic violence we have to take certain measures so as to change the mindset of the society at large.

## **(II) SUGGESTIONS**

We do so many seminars; meetings; debates etc on domestic violence against women and these are only for discussion because we are not focus on the main or sole cause of violence against women in the closed four walls. We make one by one new laws and after some time came to the conclusion that these laws are not sufficient or effective one, we have to make another new law. Then again a cycle of discussions and debates start in the legislative assemblies to make a new law. We are not centre ourselves on the main cause of domestic violence against

women which generate the habit of committing crime against women in the society. In this way we only run round and round on the ways of punishing culprits of domestic violence whereas we are not concentrating on to remove 'why' behind the domestic violence. We all know that precaution is better than cure, so we have not to talk about what we do if a husband slap his wife or a mother in law or father-in-law misbehave with their daughter-in-laws we have to make them equal and important in the society that automatically halt these type of situations. Today's necessity is not to make new laws or high standard laws. The need is to eliminate the causes of violence against women. For this we have to start from our own homes in which we have to stop to grow female child with the feelings of inferior then a male child. In this father and mother have to play a significant role. First of all we have to identify the concerned problematic areas which are directly or indirectly has reasoned for domestic violence against women then step forward to solve the problem of Domestic violence against women. Research scholar had conducted a survey on various aspects of reason and effects of domestic violence against women in the society. According to the survey the survey conductor reveals some suggestions which are helpful to eradicate domestic violence against women from the society . These suggestions are:

**(A) First of all burn the books and thoughts which make man and woman unequal and produce new culture and traditions or customs which make man and woman equal in all aspects of life:** Our cultures and traditions are the big reason of the vulnerable situation of women in our society. In our culture husband is god for a wife; father is whole sole incharge of the house or say *karta*; brother is protector of his sister it does not matter whether sister is younger or older than him. So, in every situation the charge of females is always in the hands of male members of the family. Daughters are treated as a *parayadhan* and daughter-in-laws are not accepted as a family member in their in-laws house. This mean females have no one house is her own house. This is the most unsafe situation for a woman which inculcate a feeling of insecurity in her mind that is why she silently bear domestic violence against her and do not try to raise voice against it. Because she grow with the mindset that husbands house is everything for you, a most popular old phrase that a girl enters in her in-laws house in *doli* and remains their till her death. These type of phrases are enchanted at the time of seven steps taken during marriage. Our Culture and traditions are shackles for a woman which bounded a woman to suffer silently. So, first of all these traditions which are main reason of discrimination must be eliminated from the



society only after that this gap of inequality between man and woman can be filled and will proved helpful to remove domestic violence from the society.

**(B) Women must have to know that they are not anyones property :** Since the old ages times woman has been contemplated before marriage as the property of her father and after marriage property of her husband. Actually females are designed to cook, clean and care for their husband and children. Naturally the role of man is to be protector and provider and women role is as a server that is why they have to bear child and raise them and take care of elders of the family. Because of these traits women are prone to be subservient and man as dominant in the society. Most of the women thought that it is their pious obligation to serve, obey and respect their husbands because they are head of the family and master of them. They have to act; walk; talk; wear clothes; even think according to their husbands desires. According to the data provided on [debate.org](https://www.debate.org/are-women-the-property-of-their-husbands/) Are women the property of their husbands? 57% people says Yes and 43% says No.<sup>6</sup> This type of mindset which thought that a woman is a property of her husband, provokes a man to dominate her or if she does not work according to her husband he has right to beat her or harass her in any way. This behaviour leads a husband to do domestic violence against his wife. So, first of all this set of attitude of males and females towards women have to be changed accept that women are not slaves they are human beings and they are free from the control of any person then they feel free and develop themselves in this modern world and become successful to curb domestic violence from the society.

(4) spread knowledge of the act and their provisions which are helping to eradicate domestic violence from the society as like polio drops :I don t think so that I am over exaggerating anything.

**(C) Media can play a significant role to spread knowledge about this act to the general public :**

Today the role of media is very consequential in every aspect of life. In India, most of women don't know the provisions and grounds provided in the Protection of women from Domestic violence Act, 2005 through which they can seek redressal or raise their voice against domestic

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<sup>6</sup> Are women the property of their husbands? | Debate.org  
<https://www.debate.org/.../are-women-the-property-of-their-husbands>

violence. The media should play its role to conscious the masses about this pivotal issue. Media both electronic and print media should create awareness among women whether they belong to rural or urban area. Most of the Indian population live in rural part of the country because of that women in that areas have no knowledge about new technicalities of life either because of illiteracy and many other reasons. The media should make efforts to aware those women about their rights prevalent to protect them from domestic violence, either through television or radio or newspapers. When women would be aware of these rights than it would surely help in decreasing the practice of domestic violence against women in India.

**(D) Police have to leave the conventional thinking that ‘women have to try to adjust or compromise with the abuser and go back to the abuser’:** Because of this thinking without knowing or investigating the incidence, at the time when a woman approach to police, police refuses to file her report and said to her that she has to adjust with her husband or compromise and bear some bits of her matrimonial home. According to the survey conducted by survey conductor, 44% women said that police officers nature was helping when they approached to the police station but it is contradictory that 41% women divulge that when they went to the police station to report against domestic violence, police hesitated to write their report whereas 2% women said police inform their parents-in-laws or their husbands about their report and it was agonising to hear that only 9% women said their report was written by police officer. The conclusion came out from the survey is that notwithstanding that the police has helping nature but the results which is needed after the implementation of the Protection of women from domestic violence Act, 2005 is not upto the mark or say very unsatisfactory on the part of police responsibilities and duties towards victim of domestic violence. Consequently the noteworthy step which should be taken by the police department is that they have to do their duty sincerely and according to the law not according to the orthodox belief system of the society in which women have to run their life for others wants and wishes. Women police have to participate actively in order to help women victim to fight against domestic violence. This not only helps a woman but strengthen her psychologically to raise her voice against women.

**(E) The provisions of this Act should be so interpreted that they give justice to victim not mere seen as beneficial to women but in real they provide security and support to her.**

The interpretation of shared household indirectly become a big reason of perpetrating domestic violence against a daughter-in-law:

Most of the marriages in Indian communities are solemnised at or between the age of 18 to 25 this is the age when they have just completed their education and try to start their career, many of them are unemployed and depend for their livelihood on their parents. It means that they don't have their own house or they are not financially strong to buy their own house. In a SC judgment of *Batra vs Batra* which clarified that mother-in-law's house couldn't be claimed to be shared household under DV Act by daughter-in-law it is clearly states that parents at any time can tell their daughter-in-law and son to leave their house if they are not feeling comfortable with them. This type of judgements automatically gives a stick in the hands of in-laws that if daughter-in-law does not behave according to their wishes, they have right to throughout them from their houses. The situation of wife become worst when her husband himself depends on his parents and have no financial independence then it is natural that he will always behave as his parents demand him and will force his wife to do so. These type of judgements in which in-laws are out of the picture to protect; support and maintain the residence rights of their daughter-in-law itself help to create violence against women in their matrimonial home because matrimonial home not only includes husband but it also includes all the members who live with the husband i.e. his parents and relatives. As per the survey 26% women said if a woman raise her voice against domestic violence she would face beating by the hands of her husband and 22% women said if they resist against domestic violence they would be given divorce but the ironical part of the survey is that 21% women said if any woman withstand against domestic violence they would be thrown out from their houses by their in-laws or by their husbands. It is a big threaten to every married women that if they do not live according to the will of their in-laws or raise voice against domestic violence they will have to face bad consequences of their act. Therefore in order to protect women from domestic violence, it is necessary that until a son or daughter-in-law become economically strong enough to buy their own house, they should have the right to live in the house of his parents. It means Act must provide a woman right to live in the shared household owned by her in-laws and shared household should also include father-in-law's or mother-in-law's owned house. Some limitation must be added with this right which are : 1. Both son and daughter-in-law have no right to give that property on rent. 2. They do not have right of

possession over the property of his parents. 3. They have only right to live whilst they become sufficiently capable to buy their own house. In this way, whenever the parents of the son wants him to marry, they should try to make him economically independent so that he could buy his own house. This type of provisions not only help to stop domestic violence but also put stop on child marriages or early marriages. This kind of provisions help in economic progress of our nation as well. As the marriageable age increases that may go up to 30 or above, hence both man and woman after completing their studies would have chance to pursue their career and become capable to handle the responsibilities of married life.

**(F) Change in property rights:** Some changes yet needed in the property rights of women in India, like:

**(i) Give property right to women in agriculture land:**

To make women economical powerful as like man it is necessary that she has equal right in agriculture land too because agriculture land in northern India is the main source of income in most of the families if we want to empower women and make her equal to man it is obligatory to make women owner of agriculture land. Indian legislature gives equal right to daughters as their sons in their fathers property. On February 2, 2018 Supreme court has made a general rule that a daughter, living or dead, on the date of amendment will be entitled to share in fathers property, thus making her children too claim this right. Equal coparcener right as like males: a woman have coparcenar right in the ancestral property means gives by birth right of property in ancestral property and self acquired property and have a right to demand the partition of her father's property.<sup>7</sup> But this law is not uniformly implemented in the Indian. Because daughters do not inherit in agriculture land in Haryana, Himachal Pradesh, Jammu and Kashmir and Punjab. This is because of customs which are deeply rooted in peoples that they resist to give equal right they place the reason that before marriage it is acceptable that a girl child has equal rights as a boy but not after marriage because after marriage she would claim her property right in her husbands property so there is no need to give right in their fathers property.

**(ii) Women must get equal share in the property of her husbands joint family property or in his own property if husband divorced her or live with other women in live-in**

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<sup>7</sup> Danamma @ Suman Surpur vs Amar on 1 February, 2018 IN THE SUPREME COURT OF INDIA CIVIL APPEAL NOS. 188-189 OF 2018

**relationship:** It is truth of every female life that they will be transplanted after marriage in their husbands house, they have to spend their whole life as a member of their husbands family. So it must be put in consideration that her property right must be created after marriage in the property of their husbands joint family property equal as the share of their husbands.

**(iii) Government has to take following steps:**

**(a)** Uniformly apply the property rights of women all over India.

**(b)** Custom and Customary rights must not allow to influence the property rights of females.

**(c)** It is universal truth that woman is transplanted after marriage in the husband's house accordingly she has equal property right as like her husband and other siblings of her husband in the joint property of her husband's side.

**(d)** Strictly implementing women rights in property in India.

**(e)** After her death if she has no child then her property must be divided in her parents side and in her husbands side accordingly as she gain property from the each side.

**(f) Do not talk about dowry and compensation or alimony but find or support the ways of her financial empowerment:** Gender discrimination is the root cause of inferior and insecure position of women in society and in houses. This discrimination starts with the birth of a female child and continue till her death. The main beasts during her life journey are:

**(f)(i) Thinking of parents towards their female child before her marriage:** That there is no need to give good education and proper nutrition to their daughters because they have to go and serve other people after her marriage. Hence her nurturing faces malnutrition and lack of education and this discrimination not only make her physically weak but emotionally distress too.

**(f)(ii) The system of marriage:** Through whole process of marriage it is demonstrated that man is superior and woman is made for his comfort. If we start with 'search of bride' it is like choosing or selecting a cattle or domestic animal for the benefit and wellbeing of man and his family. There are so many do's or don'ts for the Indian bride like, how she talk, walk, eat, wear clothes, does household chores, take care of elders and of in-laws after marriage. It is must for her to fulfil all the criteria fixed by groom's family. There is no place for girl's wishes and preferences. We inculcate the qualities in our daughters to be a good wife, child bearer and family server but we forget her human rights to be free to take decision and live

life for herself . However marriageable age is defined under Indian law<sup>8</sup> but still India has the highest number of child brides in the world<sup>9</sup>.It is estimated that 47% of girls in India are married before they turn 18. These incidences are more prominent in rural India than urban. Early marriage not only affects her health badly but halt her growth and possibility of good life. It indicates that we don't think about her well being but treat her as a burden.

**(f)(iii) Third beast is dowry :** In every single marriage dowry is must, even when there are so many Anti-dowry Acts<sup>10</sup>, but it is ironically footed in our society , the reason behind is that our culture gives it sanction in the way of ceremonies of marriage like gifts for grooms family and for his relatives at the time of 'Roka' (the ceremony to fix a boy for marriage); 'Sagai' (ceremony to do engagement of girl and boy); 'Milnies' (welcoming grooms family at the time of marriage by giving gifts ) so on. There are almost no ceremonies in which the grooms family is burdened with the task of giving gifts to the bride family. These ceremonies of giving gifts again continue even after the marriage. Dowry system makes a female burden on her parents and after marriage dowry becomes a cause of other crimes related to it like: beating her; taunting her; torturing her mentally or physically; burning her; and the extreme of it forcing her for suicide because of not bringing sufficient dowry as the grooms family demanded. All this happens because we make difference between the position of male and female in the family.

**(f)(iv) Other beast is compensation before and after desolation of marriage:** When a woman resist against the system which dominate her or realise her that she is inferior to man want to come out from the knot of marriage, we calculate the damages which is done because of domestic violence and demand for compensation.

Most of the women realise that this compensation make them more inferior to man because even after divorce they are bound to live on the alms given by her abuser. Women remains vulnerable even after she moves out from the awful marriage only because she is not financially; physically and emotionally strong enough to lead her life independently, parent and society are responsible for this condition of a woman. So stop fighting for demand of

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<sup>8</sup> The Hindu Marriage Act, 1955- Wikipedia  
<https://en.m.wikipedia.org/wiki/the....>( female age for marriage is 18 or above )

<sup>9</sup> India-Child Marriage Around The World.  
Girl Not Brides

[www.girlsnotbrides.org](http://www.girlsnotbrides.org)> child-marriage

<sup>10</sup> Dowry Prohibition Act, 1961 | Ministry Of Women & Child Development | Go|  
[wed.nic.in/act/dowry-prohibition-act.....](http://wed.nic.in/act/dowry-prohibition-act.....)

dowry or dowry deaths; compensation or alimony; residence right or child custody etc. make them equally powerful as male member of society, give them proper nutrition, good education, equal status and respect or say all and every opportunities without gender discrimination and give them equal customary rights. If we work on the reasons of her vulnerability and labour on to eliminate them, then there is no need of any protection of women from domestic violence Act needed.

**(G) Government's More Attention Required to empower women:** With the positive efforts of government it can be possible to make some stringent laws not to provide remedy for domestic violence but make some preventive measures to remove domestic violence from the society like pass mandatory rules for equal status of man and women in the society, right to better health and higher education and equal pay for equal work and equal number of employments etc. Some mandatory provisions are :

**(i) Right of good and equal nutrition( health):** Malnutrition, pregnancy complications, inadequate health access and care are the problems which effect women in high numbers in India. According to the Global Nutrition Report 2017, India is facing a serious threat of under-nutrition where more than half of the women of reproductive age suffer from anaemia.<sup>11</sup> According to NFHS-3, 48 per cent of children under the age of five, are stunted due to chronic undernutrition, with 70 per cent being anaemic. The reason behind is the under-nutritional situation of women. NFHS-3 indicates that 36 per cent of Indian women are chronically undernourished and 55 per cent are anaemic.<sup>12</sup> Nutrition deprivation among women keep alive an intergenerational cycle of nutrition deprivation in children because undernourished girls grow up to become undernourished women who give birth to a new generation of undernourished children. Hence malnutrition not only effects women but indirectly whole population of India. Proper nutrition is her human right and it is duty of the parents and government that they have to provide them proper nutrition without gender discrimination. In order to provide nutrition to women governments and parents can take following measures:

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<sup>11</sup> Global Nutrition Report 2017: India Carries a Serious Burden of ...  
[www.ndtv.com](http://www.ndtv.com) >

<sup>12</sup> Child Undernutrition in India: A Gender Issue | UNICEF  
[www.unicef.in/Story/108/Child-Undernutrition-in-India-A-Gender-Issue](http://www.unicef.in/Story/108/Child-Undernutrition-in-India-A-Gender-Issue)

(a) Parents have to realise their responsibility toward their girl child and provide them good and proper nutrition as like their boy Childs.

(b) Government can help poor parents by providing their children free and compulsory healthy diet in schools as well as in those places where children are not interested or forced not to go schools. Because most of the girls are drop out from the school to do household chores and toggle helping hand to their mother at home or in field.

(c) Government provide on minimum price best food to those women who recently give birth to child and who are related to economically poor section of the society.

(d) Government give food security to every single women who are not capable to earn and are not financially capable to fulfil their daily needs like women workers who are doing labour in road construction and in like tasks etc.

(e) The most important step which government have to take is to take responsibilities of the nutrition of the newly born girls up to the age five. Reason behind is girls are not warm heartedly accepted by parents and society because of that they are not cared by their mothers properly as like a boy child.

**(ii) Girls have right to free and compulsory primary, secondary and higher level education**

: Article 21(A) of Indian Constitution states that the states of India shall provide free and compulsory education to all children of the age of 6 to 14 years.<sup>13</sup> It is essential for the states that school must have qualified teachers and basic infrastructure.<sup>14</sup> This right should not be restricted to free and compulsory education but it should be extended to have quality education without any discrimination on the ground of their economic, social and cultural background.<sup>15</sup> This 'Right to Education' right does not help to empower females as such that they become capable to fight with the evil i.e domestic violence because it gives only some basic education as in modern education system studies starts from the pre-nursery at the age of 3 but our government provides free education from the age of 6 till to 14 means from first class to tenth class. There is no room for the higher level education. In my opinion secondary education is not sufficient to justify the right of education. Government must have to provide free and compulsory primary, secondary and higher education for girls and side by side make compulsory

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<sup>13</sup> Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002, sec. 2 (w.e.f. 1-4-2010)

<sup>14</sup> Environmental and Consumer Protection Foundation v. Delhi Administration, 2012 (4) SCALE 243

<sup>15</sup> State of Tamil Nadu v. K. Shyam Sunder, AIR 2011 SC 3470: (2011) 8 SCC 737: JT 2011 (9) SC 166: (2011) 8 SCALE 474.



to every single parent of India to send their girl child without gender-discrimination to school, only then this right actually become worthy. The reason behind this type of right is that in our society parents happily give higher education to their boys but for girls they thought it is wastage of money because their education benefits their in-laws or the family where she will be married. Now-a-days some parents are aware that education is must for both girls and boys but still most of the orthodox parent's thoughts that school is far away or school does not have separate toilet for girls are become hindrance in the way of grasping middle, secondary or higher education for girls and that is why females are pressurised to dropout from the school. This is the reason that the dropout rates of girls child are much higher than boys. Some time parent's and in-law's conventional thinking towards their daughters and daughter-in-laws hamper their education, that thinking is '*Kya karagi itna padhke GHAR or bacho ko sambhal apne*'. According to the study which is conducted by NGO Child Rights and You (CRY) in which at least 90 per cent of over 3,000 girls in 1,604 households across four states of Haryana, Bihar, Gujarat and Andhra Pradesh were interviewed and which is released on the occasion of International Women's Day on March 8, 2019. One of the biggest reasons girls drop out of schools is that they have to depend on someone to accompany them during the commute and many parents hinted at the need for girls to stay at home for household chores, leading to discontinuation of studies. Marriage (66 per cent) emerged as the chief factor that hinders girls' education, followed by household chores (65 per cent) and cost of education (62 per cent).<sup>16</sup> To eradicate domestic violence from the society first of all the thinking of the parents and parent-in-laws must be change because if a female become educated she not only empowered herself but do some other betterments in the society like contributes towards health and well-being of the family or indirectly society at large, help in increasing country's economic development.

**(iii) Government has to make following steps in order to give free and compulsory primary, secondary and higher education to females in India:**

- (a)** Make penalty laws for those parents who are restricting their daughters and daughter-in-laws from taking education.
- (b)** Government provide all the girl students free and secure transport facilities so that they are not stop to take education from the institutes which are far away to their houses. In order to

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<sup>16</sup> 'Need to be accompanied biggest reason for girl student drop outs'  
<https://www.downtoearth.org.in/news/lifestyle/need-to-be>.

provide secure transport government can run special buses in which women driver and conductors are appointed.

(c) Government have to improve quality of the schools and institutes and put some mandatory criteria which every school and institutes have to follow and if they do not follow government make some rule to punish them.

**(iv) Fifty percent reservation in all areas of employment or say absolute right to work:** Our constitution states that it is mandatory for the states to provide 'safe' working conditions, which is a part of the fundamental right to life ( Article 21); Equality (Article 14,15) and the Right to carry on any occupation, trade or profession (Article 19). It must be added in our Fundamental rights 50% reservation in all areas of employment then the other rights provided under fundamental rights in which gender discrimination is prohibited have become real worth. Our constitution gives 30 to 40 percent reservation to SCs, STs and BCs (who are in minority, economically weaker section and treated inferior in the society) in government jobs and public institutions in order to make them equal to the other castes of the society. Why our constitution not give 50 percent reservations to women who are 50 percent of our total population and most vulnerable or discriminatory section of the society? If we want to stop all type of violence against women our government, our constitution and our judiciary have to provide them not only equal opportunity in papers but have to make environment in which it become compulsory for every family that they have to treat male and female child equally. Only mandatory rules helps to cross the bridge of discrimination that is made between males and females personality and status. This type of rules would become helpful to eradicate all type of violence whether in house or outside of the house like discrimination in the societal status, infanticide, Rape, Sexual harassment at work place and so on. Because if in every area proportion of men and women is equal and equal status is accepted by all then every place become automatically safe for women. So 50 percent reservation is must for women in every field.

**(v) Draw new infrastructure in formal sector so as women get more and more employment or jobs:** Government has to take responsibility to empower women in formal sectors because her participation in formal sector is less or so minimal as equal to nil and this also a cause of her economic dependence over man. Government has to invest more on job creations and on the mechanism which can help to give training to women so as they become capable to enter in the world of formal sector efficiently. By doing this government not only empowered women

economically but enhance the economic of nation also. For this government should take following measures:

**(a)** Invest more on the women owned businesses in order to give them opportunity to become entrepreneur.

**(b)** Award public contracts to female entrepreneur

**(c)** Provide secure environment on workplace so as women are feel secure to attend meetings not only in offices in their city but also in offices which are outside their city . Because, because of sexual harassment most of the women avoid to attend meetings and discussions in their offices and they are remained out from the important decisions taken for the businesses in their offices so their role or participation in formal sectors effects.

**(d)** Expand networking opportunities for women so as women are become aware or access to socioeconomic business activity by which businesspeople and entrepreneurs meet to form business relationships and to recognise, create, or act upon business opportunities, share information and seek potential partners for ventures.

**(vi) Access to technology:** Technology can be a terrific stepping stone for women to participate in the formal economy and it is important because then women work can be recognised and they get tremendous opportunity from economic resources, financial inclusion, access to education, access to health care etc. P arenas can play an important role in this as they encourage their daughters to study hard and choose ICT as their career and government too put an enabling policies to facilitate women and girl to study stem and access to ICT.

**(vii) 'Equal pay for equal work' must be implemented effectively:** Not only in India but in all over world women are paying less as compare to men for equal work. For example the most renowned world Hollywood and Bollywood female actor are get less money for their work as compare to male actor. So it is important that government have to implement the provisions related to equal pay for equal work without sender discrimination.

**(H) Some changes in Hindu marriage Act, has to be done to make men and women equal:**

**(i) Marriageable age should be 21 for girls and 21 for boys or equal for both:** This is because of age difference at the time of marriage (that is girl is 18 years and boy is 21 years) the feeling of equality is absent and they at any stage of marriage man thought that he is older then his wife and wife have to obey her orders because she is younger then her and he is more knowledge and capability to handle responsibility of family and other things like finance or

property and taking decisions. If the age of marriage will become equal for boy and girl then this difference can be easily removed and the master and servant drama also come on end.

**(I) Some changes needed in the divorce provisions in Hindu marriage act and other marriages acts:**

A recent judgment of the supreme court is a big jolt for all women i.e. Hindu son can divorce his wife for the cruelty of trying to pry him away from his 'Pious obligation' to live with his aged parents and provide shelter to them." The reason given by Justice Dave, who wrote the judgment was 'Insisting her husband to live separately from his parents is a western thought alien to our culture and ethos.'<sup>17</sup> This judgment makes crystal clear that to what extent our orthodox traditional thoughts suppress women's every aspect of life. Hindu Marriage Act says man and woman have almost equal rights relating to marriage but when we come to the ceremonies of marriage we find that these adversely affect women's rights, such as giving and taking of gifts on the name of rituals called dowry. '*Mohammad Ahmed Khan v/s Shah Bano Begum*' Supreme Court has set a new law in the case of Muslim divorced lady even if a muslim woman has been divorced, she would not be entitled to claim maintenance from her husband after the expiry of period of *Iddat*. Under muslim personal law we call it *nikah* which cannot be performed without the free consent of the bride. However, the issue is that how to ensure the free consent of the Muslim women because in most of the cases consent is given under duress or force of the family. So the main purpose behind the free consent doesn't fulfil and end result ruined the life of the bride. All personal laws whether it is Hindu, Muslim, Christian, Parsi etc are made to dominate women in every sphere of her life on the name of traditions or customs.

Above stated facts shows that even judgments of our Honourable Supreme Court are deeply influenced by our orthodox traditions and customs because if court provides ground of divorce to husband against wife if his parents are not well treated by his/her. In my opinion if husband got the right to divorce his wife if his parents are not well treated by her then wife must have equal right of the ground for divorce against husband. It must be added in the judgment: 'Hindu daughter can divorce her husband for the cruelty of trying to pry her away from her 'Pious obligation' to live with her aged parents and provide shelter to them' then this right become equal. Because in our Indian society parents of bride are not seen as equal as groom's parents, they face insult and degrading behaviour by the side of her parent-in-laws, when they go to her

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<sup>17</sup> Narendera v K.Meena, 2016 NewDelhi, Article in THE HINDU October 07, 2016

daughters house to meet her. Women already suffer a lot by the hand of her husband and his parents or relatives this type of judgements are helping to dominate her or resultant of running her life. So, it is my appeal to the honourable court through this thesis that please do not make culprit to women by pronouncing this type of judgments. Without giving equal status to women there is no worth of Acts which are passed to the protection of women from domestic violence.

**(J) . Involvement of women in laws making procedure:** All the issues which are related to the women's empowerment and their full and equal participation in public life are human rights issues. According to the norms and standards guaranteed by human rights to women their must not be discrimination in all aspects of political, economic, and social life, and full and equal participation in decision-making and access to power at all levels. But in India the involvement of women in law making procedure is meager . If women are involved in law making procedure then it can be possible that the laws made to protect them from domestic violence and for their empowerment would be more effective and fruitful. In this way we can involve women equally as man in shaping and implementing decisions and policies which are affecting women themselves, their families, communities, and societies, at the local, national and international levels.

**For achieving this target it is necessary that:**

- (i) There must be mandatory 50% reservation for women not only in panchayats but also in parliament and legislative assemblies in India.
- (ii) Equal access to public services.
- (iii) Women have to take initiative to come out from the boundaries of their houses and actively participate in political and social field.
- (iv) Women's suggestions must be taken by the government bodies seriously and importantly.
- (v) Government itself provide necessary help to every woman who want to come in political world without any gender discrimination.

**(K) Religious Leaders have to realise their responsibilities:**

Since from the Ancient time, India is recognised for its traditions, customs and religious beliefs. All communities take the words of their religious leaders as the words of God and follow them in letter and sprits. In Hindu religion khap panchayats pronouncements and in Islam fatwas issued by the Shahi Imam is considered as word of superior God and the people related to these religion follow it even without thinking about it. Today there is a need that these all religion leaders

should realise their responsibilities towards their daughters, sisters; mothers and daughter-in-laws and release some statements that, “Females must be created equal to male member of the society and any type of violence whether in streets or in home cannot be spare in any way”. It is sure that these type of statements will help in reducing or totally eradicate gender discrimination which is the main and sole cause of domestic violence against women in India.

**(L) We have to teach our male child to respect and treat females equal:**

Children behave what they saw. They learn by example and reflect the attitudes and behaviour what their parents and family members do. They learn bullying only because they saw this in their family for example, through exposure to family conflict, saw parental use of drugs and alcohol, do domestic violence, and child abuse, etc all these are root cause of a greater likelihood of that children will bullying others and also being bullied by peers. So first of all parents mainly male members of the family and old females have to treat female child of their family equally and give her equal opportunities in life. Elders of family have to give respect and free of gender discrimination environment to their daughters and daughter-in-laws. male members have to respect their female partners and their identity. Only then the children of families would respect and treat females equal in the society.

**(M) Women itself play an important role to empower women of the society by helping each other to come out from the fetters of the orthodox norms and customs of the society:** This is not the one female or one day fight but it is sure that one day domestic violence against women would be totally eliminated from our families and society if woman herself take the responsibility to not to suffer domestic violence from this very moment and do not accept it against other woman too. It is the demand of the time that women have to take their stand and fight against it not for them but for the coming generation. Every women must reach out and help other women in distress, instead of mocking them or calling them intolerant and unable to manage their husbands or marriage.

**(N) Judiciary have to play effective role into implementation of this Act:** Legislature alone is not sufficient to curb this manic from the society while judiciary strictly takes decision against the culprits of domestic violence. In the context of the present Act, it is apt to remember the words of the apex your in State of Kerela v Kurissum Moottil Antony<sup>18</sup>: “ It is unfortunate that

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<sup>18</sup> State of Kerela v Kurissum Moottil Antony, 2007 (1) SCC 627; 2006(10) JT 370; 2006 (12) Scale 94; 2007 Cr LR 82 : AIR 2007 SC (supp) 1828.

respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if courts deal strictly with those who violate the social norms”.

### **(O) Uniform Civil Code and Protection of Women Rights :**

My opinion on personal laws is that all are made to suppress women whether its muslim personal law ;Hindu personal law or any other personal law. These laws are impede the way of development of women so its the demand of today that personal laws has to be removed and a strong Uniform Civil Code apply on all the citizen of India. we have to correct the mistake which was done by learned constitution makers and now the time comes when we all have to stand with the great egalitarian of our country ‘Dr. Ambedkar’ who advocated to insert Uniform Civil Code in our Consti- tution. he said that personal laws are hinder the progress of our society .His words on personal laws are:-

“ The religious conception in this country are so vast that they cover every aspect of life from birth to death. There is nothing which is not religious and if personal law is to be saved I am sure about it, that in social matters will come to stand still..... It is therefore, quite impossible for anybody to conceive that the personal laws shall be excluded from the jurisdiction of the state.”

Now the question arises which type of civil rights Uniform Civil Code will protect and why we see Uniform Civil Code as a guard of women rights?

As we all know civil code refers :- 1.contract law, 2.Torts, 3.Property law, 4.Family law etc. Here we are talking about family law which comprises marriage, divorce, inheritance, etc which has been governed by personal laws of all religion till now. To clarify the topic first we have to define personal law; uniform civil code : the position of women in all personal laws and status of women after implementing uniform civil code :-

**I. Personal laws refers:-** “Law that applies to a particular person or class of persons only whenever situated — distinguished from territorial law.”<sup>19</sup>So Personal laws are those laws which deals matters relating to person and his or her family.

**II. Uniform Civil Code:-** means common law for all the people of India. There is no any barrier of religions or personal laws.

**III. Position of women in all personal laws:-**

#### **A. Hindu Personal law**

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<sup>19</sup> <https://www.merriam-webster.com>

### 1.Hindu Marriage Act<sup>20</sup> :-

A recent judgment of the supreme court is a big jolt for all women i.e “ Hindu son can divorce his wife for the cruelty of trying to pry him away from his “pious obligation” to live with his aged parents and provide shelter to them.” The reason given by Justice Dave, who wrote the judgment was ‘ Insisting her husband to live separately from his parents is a western thought alien to our culture and ethos.’<sup>21</sup>

This judgment makes Cristal clear that on which extent our orthodox traditional thoughts suppress women invert aspect of her life. Hindu Marriage Act said man and woman have almost equal rights relating to marriage but when we come to the ceremonies of marriage we find that these adversely affect women rights, such as giving and taking of gifts on the name of rituals called dowry.

### 2.(a) Hindu Succession Act :-

The good face of this act it gives daughters absolute right in her parents property as equal as son has.<sup>22</sup>Unfortunately there is no any right till now in in-laws or husband’s property during her hus-

band’s life time. She became member of husband’s family after marriage as Supreme Court said in a recent divorce case of Karnataka based couple in2016, but she doesn't find any right in the property as equal as male member of her husbands family. Because of that she remains dependent on her husband .

### 3. Hindu Adoption and Maintenance Act<sup>23</sup> :-

According to the section of 3(b) of the Hindu Adoption and Maintenance Act right include:- (i) in all cases, provision for food ,clothing, residence, education and medical attendance and treatment, (ii) in the case of unmarried daughter, also the reasonable expenses of an incident to her marriage, (c) ‘ minor’ means a person who has not completed his or her age of eighteen years. Under section 18<sup>24</sup>wife has right of separate residence and maintenance during life time of her husband. She has right of interim maintenance and pendent lite maintenance.

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<sup>20</sup> Hindu marriage act 1955

<sup>21</sup> THE HINDU October 07, 2016 NewDelhi

<sup>22</sup> Hindu succession act 1956; Amendment Act 2005: Amendment 2017

<sup>23</sup> Hindu Adoption and Maintenance Act 1956

<sup>24</sup> Section 18 of The Hindu Adoption and Maintenance Right Act 1956



Under section 19<sup>25</sup> widowed daughter-in-law is entitled to maintenance by her father-in-law. Under section 21 dependents are entitled to maintenance by his or her hire. Section 22 deals with the amount of maintenance. This is the significant part of this Act because to give right is good but is this availability of right actually become fruitful or not ? depends on the suffice amount which helps in the fulfilment of daily needs.

## **B. Muslim Personal Law:-**

### **1. Property right :-**

(a) Daughter get one share whereas son get double of her means two share. (b) widow entitled to one eighth share (when there are children) and one fourth share (if there are no children). (c) mother have right of one sixth share of her dead child if her son is a father as well. In the absence of grandchildren one-third share. The distribution of shares clearly indicates that there is a gender discrimination which indirectly curtails women rights.

### **2. Marriage :-**

Under muslim personal law we call it nikah which cannot be performed without the free consent of the bride . However , the issue is that how to ensure the free consent of the Muslim women because in most of the cases consent is given under duress or force of the family. So the main purpose behind the free consent doesn't fulfil and end result ruined the life of the bride.

### **3. Talak :-**

Supreme Court of India declared the practice of Triple Talaq as unconstitutional. Justice Nariman held:

“....This being the case, it is clear that this form of Talk is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution India...”<sup>26</sup>

### **4. Polygamy:-**

In a judgment in February 2015, the Supreme Court of India stated that “ polygamy was not an integral or fundamental part of the Muslim religion, and monogamy was a reform within the State under Article 25<sup>27</sup>.

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<sup>25</sup> Section 19 of The Hindu Adoption and Maintenance Right Act 1956

<sup>26</sup> Supreme court judgement on Triple Talaq 22nd Aug 2017

#### 5. Maintenance:- **Mohammad Ahmed Khan v/s Shah Bano Begum**

Supreme Court has set a new law in the case of Muslim divorced lady even if a muslim woman has been divorced, she would be entitled to claim maintenance from her husband under section 125 of Cr. P. C. After the expiry of period of Iddat also, as long as she does not remarry. All personal laws whether it is Hindu, Muslim, Christian, Parsi etc are made to dominate women in every sphere of her life on the name of traditions or customs.

#### **IV. Status of women after application of uniform civil code:**

Its must that uniform civil code of India won't based on personal laws of India. Main motto of it must be equalising the status of man and woman. Only then it will emerged as a incredibly strong tool for the development of society. Egalitarians always advocates this type of rights for the society. If uniform civil code will present in this way then definitely a women will live her life with human dignity. Some changes which will came out after implementing Uniform Civil Code are:-

1. Women and men should have equal status while considering civil rights :-

(a) equal status at the time of marriage then girl child will not have remained a liability for the par- ents. Most probably the burden of dowry will have removed from the shoulders of father of a girl child.

(b) definitely there will not have any need of laws relating to Female Foeticide and Feticide in India because when son daughter become equal why any body think about to know the sex of unborn child.

(c) girls will have equal opportunities of education; nutrition; health; to work outside the house.

(d) in short she will get all human rights which are not available for her in personal laws.

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<sup>27</sup> <http://timesofindia.indiatimes.com/india/polygamy-not-integral-part-of-Islam-SC/articleshow/46180105.cms>



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