

CHAPTER - VIII
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Domestic violence is one of the worst forms of crime committed against the women as in this form women are subjected to violence not from any strangers but from the members of her family. Women are subjected to domestic violence since a very long period but it came into light only after the encroachment of the electronic media in our households. Domestic violence occurs within the four walls of the house and the strangers or the outsiders can not have access to what is going inside the house. This makes it more dangerous as unlike other crimes domestic violence can not be detected. Although in India the issue of domestic violence came into focus in 1980's as a result of spread of mass media which covered incidents of torture of the brides, dowry deaths, female infanticide, foeticide, sexual abuse etc. but it will not be wrong to say that efforts were being made to protect women from domestic violence since the ancient period itself. During the *vedic* period women enjoyed a fair amount of freedom and equality with men especially in the fields of education and religion. Manu in his *Manusmriti* has quoted that -

“Yatra Narayastu Pujayante Ramante Tatra Devta”

It means where women are worshipped God themselves inhabit that place. In other words, where women are respected, divine graces adore that home. How far this is true can be seen from the history of our country. It was only in principle and was hardly in practice. It remained only an ideal and was not practiced in true sense. However, the status and position of women in the Indian society changed from bad to worse with the development and civilization. During this period the other

religion apart from Hindu religion started to flourish in India which gave new lease of life to the women. These religions were Buddhism, Jainism and Sikhism. During the British regime there were numerous social evils existing in the society and the Governor-Generals of India made efforts to eradicate these social evils from the society generated against the women. Policies regarding the emancipation of women during the British regime in India lifted up the status and improved the position of women to certain extent.

In the independent India the framers of the Constitution of India enshrined the principle of equality, liberty and social justice as in order to curb all the social evils against women in our society it is first essential to provide gender equality to women in independent India and to promote education and economic interests of women which in turn can protect women from exploitation and provide social justice. The Constitution has granted certain fundamental rights and freedom to women such as right to equality; freedom of speech and expression; protection of life and personal liberty; prohibition of discrimination on the grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them. Besides the fundamental rights the Constitution also provides certain directives for the States to follow in formulating policies and laws for the protection of women against various forms of atrocities.

Gender discrimination is one of the reasons for inflicting domestic violence upon women. Gender biasness has emerged as a fundamental crisis all over the world. In order to eradicate gender biasness resulting in discrimination and injustice to women, it is essential to empower the women. In the international front the United Nations along with the help of its organs have passed various Conventions and Declarations which promote the rights of women. These Conventions and Declarations provide them empowerment which is essential to challenge gender injustice done against her in the society. These

Conventions and Declarations have helped the member States to frame legislations and policies for protecting women against various forms of atrocities committed against her. One such Convention which is the landmark for the emancipation of women all over the world is the Convention on the Elimination of Discrimination against Women which was adopted in 1979. India was the signatory state of the said Convention and has also ratified it. Recently, the Optional Protocol to the Convention on the Elimination of Discrimination against Women was adopted and signed by the member states in 1999 for the purpose of further pursuing all appropriate means and without delay a policy of eliminating discrimination against women. The Convention sets up a Committee. The Committee seeks to ensure implementation of the Convention through Reporting Procedure. Under the said provision the State parties are required to submit their report on the legislative, judicial, administrative or other measures adopted by them to give effect to the provisions of the present Convention at least every four years or whenever the Committee requests. However, India having ratified the Convention has sent only one report till date. Along with this, despite being the signatory State of the Convention as well as the Optional Protocol India has till now not ratified the Optional Protocol which is sad as it cripples the efforts made by the Convention itself.

Besides the above fact, it can not be denied that no other international instrument unlike CEDAW refer to the problem of domestic violence especially of rural women but one of its drawbacks is that the Committee which has been established under it in unlike the Human Rights Committee under the Protection of Human Rights Act and does not consider individual complaints. Even the monitoring and reporting procedure of CEDAW Committee and Special Rapporteur do not result in legally enforceable remedies but only give non-binding recommendations. CEDAW Committee does not provide immediate relief to the

aggrieved women. The enforcement machinery of CEDAW is extremely weak and it depends entirely upon the State's self-reporting. The member states too have reservations with respect to its different provisions such as India and many other countries have made reservations with respect to Article 29 of CEDAW and as a result of this the countries have stopped intervention of ICJ, depending only upon the domestic Courts involving arbitrary state practices. This has crippled the CEDAW. The approach of the implementation of the provisions of CEDAW is very loose or casual. Committee of CEDAW usually suffers from lack of resources and meet annually only for 2 weeks to consider reports to meet the exigency of the situation, since 1997.¹ CEDAW Committee has second session each year to cope up with the inadequacy of situations.

Along with certain drawbacks of CEDAW even the procedure of individual complaints available to women under the ICCPR and Torture Convention of 1984 is long and arduous. With regards to the monitoring and reporting procedure only state parties can submit their report. The individual reports will be granted only if it reports systematic nature of violence which does not include complaints of domestic violence. The Human Rights Committee is helpless with regards to the problem arising with respect to domestic violence against women as it can only give recommendations and not restrict the violence as it is not a Court. The Committee of Torture Convention can be used to protect victims of domestic violence under Article 22 of the Torture Convention but till now, this remedy has never been used. The Commission on Status of Women too does not address specific complaints in the manner so as to bring relief to the victims of human rights violation. Even the law enforcement officials lack gender

1. Ashirbani Dutta, *Domestic Violence as Human Rights Violation: A Reality that Bites*, 2005 Cr. L. J. (J)25.

sensitivity to deal with the victims of domestic violence, which increases their sufferings.

These loopholes in the international, regional and national mechanism is leading to immense number of women being subjected to domestic violence. Hence it is better to call upon the international human rights community to recognize its responsibility to address the said problem. Along with this understanding domestic violence as human rights violation will contribute to a new perspective of women as sufferers of this violation. In order to ensure justice to the victims of domestic violence it is suggested that all international human rights instruments should drive their attention towards the problem faced by the rural women to protect them against domestic violence, where the problem is rampant. The time allotted to the Committee of CEDAW for their annual meeting should be extended. The individual complaints mechanism should be made available to the Committee of CEDAW to provide relief to victims of domestic violence. Domestic Violence has taken a gross shape in SAARC nations hence, these nations must come up with a Convention to fight this evil.

Despite the fact that Family Courts Act was passed in 1984 with an aim to make the legal process less technical and speedier unfortunately, family courts have not been established throughout the country. It is suggested that throughout the country family courts should be established and a provision for providing free legal aid should be made therein. The family conciliation agency should also be established in cities as well as rural areas. Apart from this knowledge of legal enactment should be communicated to the masses with the help of media like TV, cinema etc.

The Constitution of India provides provision for free legal aid under Article 39 (A). On this basis the Parliament has enacted the Legal Services Authorities Act, 1987 which provides for free and competent legal services to the

weaker section of the society. Despite it this Act has failed to protect women from bride burning and other forms of atrocities committed against her. It is suggested that with a view to provide legal assistance to needy women the University and the law colleges should set up legal aid centers with regular staff and funds with a view to utilize the resources of the student community in constructive channels for providing legal aid to women. Through clinical legal education law students would learn that besides a means for livelihood it is also an instrument of social engineering. Legal aid cells should be established to generate awareness about ones legal rights. The Central and the state Governments must undertake the financial responsibility for implementing it.

Women in India face various forms of domestic violence and one such violence which she faces is in the name of dowry. Dowry in India was prevalent among Hindus as it was believed that giving away daughters by patriarch in a marriage is considered to be one of the 16 "*sanskars*" as without the "*punya of kanyadana*" a man's life is incomplete. Even in the Dharmashastra it has been laid down that *kanyadana* is incomplete till the bridegroom was given "*vardakshina*". Thus, the concept of dowry originally was voluntary which was given by the parents of the bride to the bridesgroom out of love and affection. Slowly, this system changed into the system of grabbing wealth by the groom's family. The system which was prevalent among Hindus started to capture the attention of other religions too and now it has become an evil concept posing threat to the life of innocent girls. The incidences such as constant demand of dowry even after marriage, beating, torture, cruelty, starving for days, locked up in dingy rooms, burning the bride alive, drowning, strangling, poisoning, shooting, etc have become fad with the money hoggers. Dowry is the deep rooted evil which is the cause of many unfortunate deaths of young women which is brutal and barbarous. The Indian Parliament enacted the Dowry Prohibition Act, 1961, as it

felt it essential for the State to intervene in order to eradicate this social evil which is giving birth to other social evils. Although the Act made an attempt to punish giving and taking of dowry an offence but the Act did not prove to be effective. The Act was amended twice i.e. in 1984 and in 1986. Besides the Act, the Parliament also introduced Section 304-B and 498-A to the Indian Penal Code which relates with the Dowry death and cruelty committed against wife by the husband and in-laws in connection with the demand of the dowry.

The problem of dowry and the evil practices associated with it still prevails in our society. In fact, it has widened its ambit by influencing other communities wherein dowry was not even the traditional practice. The problem of dowry is too complex and involves multi-dimensional analysis and multi-level strategies as it appears that at the base of the problem, the factors responsible are socio-cultural and economic. The dowry demands and cases brought against it has raised the divorce petitions and contributed to an irretrievable breakdown of marriage wherein still the sufferer are the women. The problem of dowry is associated with the institution of marriage where security and placement of a girl in her matrimonial family is involved; hence, it has to be tackled delicately. It is suggested that the dowry related crimes should be treated by the Family Courts which provide a more congenial atmosphere for both the parties to settle their differences amicably. It is also suggested that instead of punishing the husband and the in-laws with imprisonment, he should be deprived of certain civil rights such as disqualification from holding any public office or contesting election etc. or his name should be widely published in local newspaper and the amount of fine imposed upon him should be equivalent to the value of dowry property taken or demanded by him. With respect to the investigation in dowry cases, it should be entrusted to the women police officers as far as possible because they are socially and psychologically more fit to handle such situation. The anti-dowry laws should

be modified with respect to the procedure including evidence to make things easier for the prosecution.

Pandit Nehru has aptly remarked that "*Legislation can not by itself normally solve the deep rooted social problems. One has to approach them in other way too, but legislation is necessary and essential, so that it may give that push and have that educative factors as well as the legal sanctions behind it, which help public opinion to be given a certain shape*". Thus, law alone cannot tackle the problem of dowry as it is a traditional evil and a socio-legal problem. In order to curb this evil the members of the society should come forward and actively cooperate with the law-enforcement agencies to abate this menace. Collectively we can fight against this evil. There is a need to create social awareness and mobilize the public opinion against dowry system through a public legal education at all levels, particularly in rural areas. In order to end this evil from our society we should also take help from the voluntary organizations to educate people to bring revolution against this evil. The government should work towards providing women better economic status, programmes of legal aid to women should be organized and the women facing dowry related problem should be given legal aid, empower the voluntary organizations for preventive and strategic services to victimized women, to develop the family court as the judicial centre for gender justice jurisprudence etc. The children should be made aware of the dowry problems and its menaces in the schools and colleges. The educated boys and girls should discharge their duties as the citizens of India by imparting their services with an oath to reject dowry. The help of the press, media and Television should also be taken for educating the public about the dowry system and the consequences the accused has to undergo, if convicted. Besides this, separate dowry cells dealing with dowry cases in police stations as well as in the voluntary organizations should be set up to deal with the dowry related cases to make the

law efficient. The accused should be socially out caste by the society. Special courts should be established to deal with the cases relating to dowry in addition to the deterrent punishment for such offences. The provision of Section 8-B of the Dowry Prohibition Act dealing with the appointment of the Prohibition Officer be implemented in letter and spirit to achieve the purpose of the Act.

Besides this the Parliament should attach a clause of restitution for the victims or their dependents (children) be added to Section 304-B and Section 498-A of the Indian Penal Code to protect them from further exploitation. Recently allegations have come up with respect to the 'misuse' of Section 498-A of the Indian Penal Code which can lead to new legal terrorism as reported in the **Malimath Committee Report**, the **Singhal Report** and by a sitting Judge of the Delhi High Court in *Savitri Devi vs. Ramesh Chand and others*.² As per the Malimath Committee Report, the Section should be made bailable and compoundable to give a chance to the spouses to come together. The Delhi High Court in *Savitri Devi vs. Ramesh Chand and others*³ has held that the discussion of Section 498-A IPC extensively hits at the foundation of marriage and has not proved good for the health of the society at large. The Supreme Court too in *Sushil Kumar vs. Union of India and others*⁴ agreed that many a frivolous cases were filed by women to harass their husband and in-laws. The Court held that it is the duty of the legislature to plug the loopholes in the law passed by them. The Hon'ble Bench further held that "*the object is to strike at the root of dowry menace. But by misuse of the provisions a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not an assassin's weapon. If (the) cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual wolf appears.*" The Court further held that the

2. 104(2003) Delhi Law Times, 824.

3. *Ibid.*

4. (2005) 6 SCC 281.

investigating agencies should not follow a straight-jacket formula in matters of dowry, torture, dowry deaths and cruelty. Thus, it is essential to make certain amendments to Section 498-A IPC in such a way that the provision is not robbed off its main purpose. The aim should be to circumvent the misuse of the said provision. First of all the definition of cruelty should be amended as cruelty includes more than just physical and mental abuse. The definition should address all forms of cruelty. And secondly, there should be a civil law which can provide emergency protection to the victim in addition to the criminal remedies. It is essential to provide complete protection and safety to women facing violence.

Violence against women in the domestic front has many faces. The existing law deals with these crimes. One such crime is bigamy which men commit against their wives. Although the Indian Penal Code and the existing civil laws are enough for preventing and punishing the person committing bigamy yet they are unable to keep a check on men who commit bigamy by changing ones religion which makes it difficult for his wife to bring a case against him under the personal law/civil law which govern them and moreover makes her marriage equal to null and void under her husbands other religion. Even if the wife is able to bring a case against her husband on the ground of bigamy the ultimate result is the breakdown of the marriage which leaves her no where to go as there is always a social stigma attached to a divorced women. Similarly, women are also subjected to cheating and fraud in marriage wherein a man deceitfully induces the women to believe that he is her lawfully wedded husband or fraudulently go through a marriage ceremony without lawful marriage. In these situation the women is aggrieved by the abuser as she is mentally and physically robbed by her abuser and ultimately either have to compromise with her fortune and continuously live with him or leave such person. Again the social stigma of having lived with a stranger gets attached with her, this hampers her reputation in the society and

people start looked down at her as a fallen lady. Thus, either way the women are stigmatized by the society for no fault of her. There should be a concrete solution to this problem and the legislatures should be more sensitive towards this problem.

In the Indian society there exist a peculiar system which is discriminatory to women and robs her of her right to life and personal liberty. This system which is followed in the Indian society is “sati system”. The practice of Sati system has to some extent been curbed due to the enactment of special legislation called the Commission of Sati (Prevention) Act, 1987, which prevent the commission, abetment and glorification of sati. Although there are very few cases of sati in recent years but there are few incidences even in the 21st Century which proves that still the sati is practiced in India. The most controversial case of Sati in independent India is that of Roop Kunwar who burnt alive in the presence of whole village in the name of attaining sati hood. Not only was this but her death glorified wherein people convened public meetings in which they hailed Roop Kunwar. The press photographers covered the event and policemen made recording of speeches of the persons extolling the sacrifice of Roop Kanwar. Almost sixteen years of the incident and filing of the case for glorification of the death of Roop Kunwar on January 31st, 2004, the Special Court on Sati Prevention-cum-Sessions Court in Jaipur gave its judgment acquitting all the accused. The case is an example of how the best cases can be killed by delays, bad presentation of evidence and lastly by convoluted legal interpretations. Thus, it is suggested that the problem of violence against women of which the practice of Sati is an example has to be visualized in a wider context and cannot be viewed in isolation from the status of women in the society. This system is not only discriminatory but in fact endanger a woman’s right to life and personal liberty as this practice makes a woman to burn herself alive at the pyre of her husband which also depict the helplessness and dependence of women upon others. Thus, it is

essential to note here that legislation alone cannot by itself solve deep-rooted social problems. Sati system is a problem which has emerged from the society, hence, to curb this evil altogether it is essential to tackle this problem in some other way along with the legal support such as creating opportunities for economic independence for women, essential education and awareness, alternative accommodation and a change in attitude and mindset of society. The judiciary should also be aware that there should not be delay in giving decisions under these kinds of cases and should feel responsible to curb this evil from the society. Most of all the women herself should change her attitude about herself. Hence, to curb this social evil the need of the hour is to restructuring society in terms of power and role relationship while emphasizing the egalitarian values.

Another crime to which women are subjected is “*marital rape*”. Marital rape is a common crime against a woman but it is being clouded in the veil of family prestige on the one hand and on the other hand the law does not treat it as a crime. The general perception of the society is that rape cannot be committed against one’s own wife as by binding herself into matrimonial ties it is her duty to provide sexual satisfaction to her husband. This implies that having sex anytime, anywhere and of any sort is an implied term of the contract of marriage, and the wife could not breach that term of the contract. Even if a woman brings a case against her husband for marital rape in the court of law, it can actually work against women. There are many cases wherein on the grounds of frigidity, impotency and non-responsiveness women have been served divorce proceedings. Thus, before bringing a case against her husband of marital rape she often is in dilemma that on the one hand she suffers at the hand of her husband and on the other hand she may lose the security and status in the society. Moreover, the Indian Penal Code although recognizes marital rape but only if the wife is below 15 years of age and the punishment prescribed is maximum imprisonment for a

term not more than 2 years or both which is quite less in comparison to the punishment provided for rape outside the marriage. Hence, it is suggested that the Parliament should recognize marital rape as an offence/crime against women which may impose physical as well as mental harm on the victim of the offence because unlike in rape by the stranger the woman has to live with her rapist everyday and which in turn imposes more incidence of abuse. The exemptions in the Indian Penal Code should be removed and marital rape without the consent of one's wife should be criminalized. The punishment for marital rape should be increased or at least be made same as the one prescribed for rape under Section 376 of the Indian Penal Code. Rape is a rape whether it is committed by the stranger or whether by the husband as in both the cases women's dignity is hurt. The fact that the accused is her husband should not make the sentence lighter. It is also suggested that the husband should not make a defense that the wife did not fight back and resisted forcefully or screamed and shouted as there are many factors which stops her from doing so. Thus, there is an immediate need to criminalize marital rape under the Indian Penal Code. It is suggested that if marital rape is proved the women should be given choice whether to bring a case for divorce or whether to continue to live with the husband. There should be corresponding changes in the matrimonial laws. However, mere declaration of a conduct as an offence is not enough. Something more is required to be done for sensitizing the judiciary and the police. The masses should also be educated about this crime and criminalization of marital rape can only be attained if the society acknowledges it and challenges the prevailing myth that rape by ones spouse is inconsequential.

Women also suffer battering at the hands of her husband which is also one of the crimes which a woman faces in her matrimonial home. There are various reasons for not reporting cases of wife battering due to societal

norms and general thinking of the society that it is an internal matter. Although the law in India has tried hard to protect battered women yet there are incidences of marital violence which are on rise. The main reason for this is that the wife battering is generally associated with the demand of dowry, which is not always true as in some of the cases women are battered in the absence of the demand of dowry. Under these circumstances the law is not sufficient; hence, there is a need to enact separate legislation specifically to deal with the problem of wife battering or to amend the Indian Penal Code to introduce a provision punishing the wife battering. It is very difficult to detect the source/reason for such violence which in turn makes it difficult to reduce it. It is observed that if there is legal and punitive action against this family matter it is not effective and results in divorce or separation of the parties, which is not the desired object of any legislation in this age wherein the number of divorce is increasing. Hence, it is essential to deal with the problem of wife battering through the intervention of non-governmental organization or other social institution like the women's organization, Village Panchayat or Jati Panchayat. Another step which the Government can take is to introduce self-defense courses for girls in schools and colleges to make them strong and brave to deal with the problems which they face in their marital life. And above all to launch a social action plan to help women overcome poverty.

Domestic violence is not only generated against the women in the family but sometimes children are subjected to cruelty in the family which is generally known by the name sexual abuse/incest. The child sexual abuse/incest is not only shameful and shocking but also violates the fundamental rights of the children and is responsible in destroying the future of the entire nation. The issue of child sexual abuse is slowly gaining recognition. However, child sexual abuse/incest is not known to the Indian Penal Code as a specific offence. Such offences can be brought under section 375 IPC i.e. rape. Child sexual abuse, as

discussed in the respective chapter, can be of various forms, as a result of this Section 375 of IPC is not sufficient to deal with it. Section 375 IPC covers only the penile penetration of the vagina and the punishment for it ranges from seven years upwards. Unfortunately, Section 375 IPC neglects sexual crimes which include digital, oral or object penetration, as well as sexual crimes against men. This makes the law insufficient to deal with child sexual abuse which can be faced by both the girl child as well as the male child which is evident from the various incidences that have recently come to light through media.

In April 2008 the news which took the world by storm was that of an Austrian man named Josef Fritzl an engineer by profession who kept his daughter Elisabeth locked up in a windowless cellar underneath the house where he lived with his wife Rosemarie and raped repeatedly his daughter in that cell for almost 24 years and have even confessed to fathering seven children by raping his own daughter.⁵ Recently, in March 2009 in Mumbai a woman of 25 years have lodged a complaint against her father that her father was sexually abusing her for the past 9 years. She went to the police when she learnt that he had also started abusing her younger sister. This case is famously called the Mira Road incident.⁶ Another survivor of incest/sexual abuse is a 26 year old Calcutta man who disclosed that he too was sexually abused by his father. Another boy of 19 years of age too revealed that he has incestuous relationship with his mother. At awareness programmes conducted by **Elaan**, a Calcutta-based support group for incest survivors said that 3-4 percent of boys in the campaign had sexual encounters with older women relatives.⁷ Such incidences shows that even in the Indian society children are subject to sexual abuse and even the boys are victims of child sexual abuse/incest in the Indian society. In India child sexual abuse/incest cases are

5. The Telegraph, 29th April 2008, P. 2.

6. The Telegraph, 29th March 2009, P. 12.

7. *Ibid.*

handled under various sections of the Indian Penal Code which are laws meant for adults. Hence, the existing laws are not sufficient to deal with the said problem. We need a separate legislation to deal with the crimes consisting of child sexual abuse/incest.

Although there is no central law on the subject but being a capital hub for all the wrong reasons specifically paedophilia the State of Goa has enacted the Goa Children's Act, 2003 which thrives to protect, promote, and preserve the best interests of children in Goa and to create a society which is child friendly. However, this Act fails in certain respect especially in its implementation by the State. One positive development in this regard has been the preparation of a draft by the Ministry of Women and Child Development. The Offences Against Children Bill, 2005 is in circulation since January 2007 which is hailed by child rights activists as a landmark document which specifically aims at protecting children's rights under debate. Rajmangal Prasad, Director of *Pratidhi* (an NGO) has said "*So far there was not a single law aimed at safeguarding children and protecting them against abuse. Offences against children were so far booked under laws under the IPC, which at times failed to result in prosecution and conviction simply for the reason that crimes involving children need to be handled with different tools*"⁸ According to him if the proposed draft does becomes a law, it will go a long way to check the sexual abuse of children.

Despite various legislations and constitutional provisions protecting and preventing the sexual abuse of child there is no stoppage of such types of incidents of exploitation and abuse and the number of such cases are increasing rapidly. Hence, there is a need for judicial intervention as sharply felt in *Vishal Jeet's Case*⁹ and *Gaurav Jain's Case*.¹⁰ However, the intervention of

8. <http://arpancsa.com>[visited on 6th January 2009].

9. AIR 1990 SC 1412.

judiciary is not sufficient due to the lacuna in prosecution. Even due to procedural defect the abusers get acquitted or their sentences are minimized. In the Case of *Sakshi vs. Union of India*¹¹ it was submitted that the statement of the victim should be taken in camera, in fact the whole trial should be taken in camera. With regards to the statement of the victim especially in the child sexual abuse it is now recognized that extra-judicial statements of children is sine quo non for a successful prosecution. Secondly, during the cross-examination the victim should not be exposed to direct confrontation or cross-examination to prevent double victimization and harassment as happened in the case of *Gurmit Singh*.¹² In order to provide fair trial the accused would have the opportunity to attempt to challenge the truth of the statements therein through every method other than direct confrontation of the victim. These techniques include sequestrian screens, late-relay videotaped statement. This way a correct balance can be struck between the rights of the victim and the accused.

In order to combat the evils of child sexual abuse/incest it is essential to teach the children about what is safe touch and what is unsafe touch. The children as well as the adults should be educated about the sexual abuse, the police too should be educated about the subject and laws should be strengthened. The victim of CSA may feel destroyed, face social isolation, lonely and frightened as they don't get family emotional support; hence, in order to take them out of this drudgery it is essential to provide them with medical facilities specifically the psychological treatment. Apart from this the educational institutions should also perform their duties and social obligations by importing the social awareness and proper education to the children, so that they may protect themselves and fight against this social evil. It is said that "*Prevention is better than cure*" thus, the

10. AIR 1997 SC 3021.

11. AIR 2004 SC 356.

12. 2004 Cri. L J 5.

State has the duty to take proper care and give protection to child at all times. Recently, the Criminal Law (Amendment) Bill, 2006 was drafted on the basis of 172nd Report of the Law Commission to amend the laws relating to sexual assault in Section 375, 376, 354 and 509 IPC and the relevant sections of the Cr. P. C. 1973 and the Indian Evidence Act 1872. The said Bill should immediately be enacted and enforced as it will cover all the offences mentioned above i.e. marital rape and child sexual abuse to be precise.

Women face atrocities in the society since her childhood. Female infanticide and foeticide is one such crime which deprives a woman even her right to life i.e. even before she is born. In spite of various stringent provisions in the existing laws, female infanticide and foeticide is on increase which is evident from the decline in the sex ratio of our country as per the latest census. The problem lies not only in the attitude of the people towards the girl child but also due to lack of political will among the policy makers of our country and implementers. Moreover, there are lacunae in our legislations also. The existing laws to prevent female infanticide and foeticide are only an eye wash as there are certain weaknesses in laws and secondly, the laws are not implemented properly. The problem relating to female infanticide and foeticide has moral sanction and societal consent in our patriarchal society which makes the implementation of the existing laws difficult. Mostly, the crime goes unreported as generally the crime is perpetrated on her by the family members. The social support to the practice on top of that makes it difficult to prove. Although the laws prohibit use of technologies such as ultrasonography, amniocenteses and chorion biopsy for the purpose of sex selection of the foetus there has not been a single conviction for female foeticide countrywide although complaints have been registered with the police. Even if the persons were convicted light punishments are given to them. Making mother an offender creates more hurdles as in most of the cases the

mother does not have any say in such cases. She too is subjected to pressure of the society, her husband and in-laws. In fact, she too suffers, her motherhood right is violated. The laws thus, regulate and not eliminate the problem of sex determination and female foeticide. The Pre-conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act is ineffective because of the liberal law of abortion allowing foeticide in certain cases. It excludes a third party to make a complaint thus eliminating voluntary form of vigilance. Though the Act provides for imprisonment and fine but no prosecution has been made under it. Lack of awareness among the people and medical professionals themselves is a big hurdle in implementing the provisions of the Act.

The infanticide and foeticide in our country is somewhere related to our tradition i.e. begetting a son which is must. Due to the development in technological advancement this tradition is creating havoc in the Indian society. Thus, it is observed that there is a great necessity to recognize female infanticide and foeticide as serious crimes. It is much more complex than the any other type of crimes. Hence, it is suggested that first of all it is important to define female infanticide and foeticide in a broader perspective which will include the evolution of terminology which will indicate its all pervasive crimes. The definition should also include the neglect of female child. The crime generally goes unreported as the information of the sex of the foetus takes place behind closed doors, thus, registration of birth, marriage, pregnancies and deaths should be made essential. Above all the complaints by the third parties should also be entertained.

Laws prohibiting female infanticide and foeticide have been recently made more stringent but still it is proving to be ineffective. Law needs more teeth and political commitment. Appropriate Authorities should be constituted at the District level for the strict implementation of the Act. Moreover, help from the professional medical association may help in the enforcement of the

Act. It is suggested to create awareness about the ban on sex determination tests and hazards of repeated abortions. Such awareness should be spread orally, in print or through audio-visual media. The creation of awareness will help build an environment favouring women's rights. The society should encourage their daughters to participate in social and religious rituals which may promote them and raise question regarding the stereotyping of the men and women's role in the society.

The efforts to curb the evils of female infanticide and foeticide will remain distant dream if the men of the society are not involved in the programmes relating to promotion of women's right as their involvement in such programmes will help them develop an understanding about the rights of women. Empowerment of women is the tool with which we can raise the status of women in the society. People should be made aware about providing education to their girl child because to change the social attitude towards the girl child it is essential to revamp the education system which can also elevate the status of women. Women should also be made aware about the sensible use of her reproductive rights which will be helpful in stimulating an environment conducive for the girl child. Women should be encouraged to build self-esteem and pursue higher education which will improve her stand in the society in the long run. All this can be done with the help of the Government, NGO's and other social organizations. The people should be discouraged to continue the dowry system which to certain extent has given rise to this social evil and the Government should ensure strict implementation of existing legislation in this regard.

Giving rise to the evils of female infanticide and foeticide is the advanced technologies which can detect sex of the foetus resulting in sex selective abortions. Although these technologies are neutral but it is us who have used it in such a way that it is hampering the society we are living in. Sex

detection and sex selective abortions are spreading like a disease in our society which has become outside our control despite the legislations and judicial pronouncements. It is suggested that the Central Government and the State Government should take the implementation of the Pre-conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act seriously and ensure that the Boards, Authorities and Committee is constituted in each State and Union Territories. The Government should also ensure to select only those persons as the members of these bodies who are sensitive to the issue, have sufficient time to spare for the cause and are serious in their endeavour to ensure the implementation of the Act. The functioning of the enforcement machinery has to be periodically and effectively monitored. Besides this the Government should widely publicize the provisions of the said Act; workshops should be organized to create awareness why there is necessity to ban the sex determination tests; steps should be taken to maintain the list of centre wherein such techniques are used and inspect their records periodically for detecting any violation of the provisions of the Act; the Government should also employ decoy agents to check whether sex determination is being conducted in any of the said centre or not; there should not be any delay in taking actions and prompt action should be taken in case of any violation of the provisions of the Act. In order to curb the practice, the imperative is to sensitize the society about the gender issues. The Government should also start policies like the Tamil Nadu Governments “*Girl Protection*” Program wherein the government open a bank account in the name of the girl child at her birth, depositing between Rs. 15,000/- to Rs. 22,000/- during her childhood, depending on the number of girl child in the family.¹³ Another problem which came up before us the right of the foetus and the right of the mother to abort specifically in the case of *Harish Mehta*

13. http://www.catholic.org/international/international_story.php?id=269198page=1&2 [Visited on 15/01/09].

and *Nikita Mehta* wherein the couple wanted to abort their child due to the complete heart blockage of the foetus which can lead to abnormality if the child is born. They contended that the Medical Termination of Pregnancy Act and the Pre-conceived and Pre-natal Diagnostic Technique Act both violate their fundamental right to abort the child. Keeping their condition in mind a new Bill proposing amendment in the Medical Termination of Pregnancy Act which will permit abortion even after 20 weeks of pregnancy provided that the foetus will be born with abnormalities or severe heart diseases was introduced in Rajya Sabha on 19th December, 2008.¹⁴ If the bill is passed it will bring landmark changes in the abortion laws in India. It will end unwanted pregnancies and benefit lots of mother provided that the bill should seriously follow the proposed provision of following the termination of pregnancy as mandatory conducted only under the supervision of a medical board so that the provision is not misused. Above all it is essential to create an environment which is pro-women which can only be achieved through stringent law combined with the determined will. The problem of female infanticide and foeticide should be seen from a wider perspective and needs the change in the attitude and the mind set of the society towards women. Above all feeling has to be culminated in the heart of the people that women are an important part of this society without which the world cannot function.

The violence against women was on rampage in spite of the above legislations. Thus, the need for a separate law on crimes committed against women in domestic domain was felt. Ultimately the Protection of Women from Domestic Violence Act, 2005, was brought into force on 26th October 2006 which was the result of some consistent campaign by the women's movement. A law on domestic violence was due for a long period and the present Act is in fact a

14. http://news.indiainfo.com/2008/12/210812210826_new_abortion_bill_rajya_sabha.html
[Visited on 7th April 2009].

comprehensive law dealing with domestic violence. As soon as the Act came into force more than 7,913 cases have been filed across India.¹⁵ However, it's only been two years of passing of this Act and it suffers from some inadequate resource allocation and implementation. The question with respect to its efficacy has come up for consideration. Although the present Act covers crimes such as marital rape, child sexual abuse, and wife battering and provides punishments for it but it appears that the framers of the Act completely lost their way and ended with drafting more a penal law thus, it has become another penal law which deals with the offenders than a law dealing with the social problems of our society.

It is also contended that the implementation of the provisions of the Act is not uniform and there is clearly great variability in the implementation of the law. There are some states which have relatively done well in comparison to the others such as Maharashtra had appointed 3,687 Protection Officer, Assam had only 27 and Gujarat only 25. Andhra Pradesh had allocated Rs 100 million for the implementation of the Act, but there are other states like Orissa which lagged far behind. The role of the protection officer, who plays a central role in facilitating women's access to justice under the Act, came in for a lot of attention. Question was raised with respect to the qualification of the persons qualified to be the protection officer as the Act is silent with respect to the educational qualification necessary for the post of protection officer. This question was raised because although the protection officers have been appointed at the district levels in all the states, they were actually government officials from various departments vested with this additional charge. This affected their capacity to intervene effectively into the matter of domestic violence. Hence, it is suggested to appoint those personnel's only who are not government officials from various

15. Sidharth Luthra, *The Domestic Violence Act: Can We Make a Success of it?*, Halsbury's Law monthly, April 2008, P. 24.

departments so that they can discharge their duties fruitfully. Also the educational qualification of the person to be appointed as the protection officer should be laid down because educational qualification is important in understanding the nature of violence committed on women and will also help in implementing the provisions of the Act more effectively. Moreover, in some cases it has been found that the Protection Officers appointed under Section 8 of the Act are usually fresh graduates from the University and appointed on ad-hoc basis. Their inexperience becomes an obstacle in discharging their duties effectively. They also do not have the infrastructure and the support staff to assist them. Hence, it is suggested that the persons who are appointed as the Protection Officer must be given training which is essential for implementation of the Act and sensitization programs for functionaries should be arranged. They must be provided with adequate staff and help. Even the police should be directed to cooperate and recognize their authority. Another thing which must be kept in mind while appointing Protection Officer is that being the Second most populated country the Protection Officer's should be appointed keeping in view the population and local needs of jurisdictions. The Protection Officer's should be given specialized training/orientation must be given to Protection Officer to enable them to implement and meet the objects of the Act. To avoid the excess workload and ensure efficiency there must be adequate number of Protection Officer allocated. Even the Service Providers should be monitored routinely and evaluated to ensure the standards the Act seek.

Right now there have been only 22 cases filed in various High Courts under the said Act as reported by the Lawyers Collective Women's Right Initiative which is an NGO working with the assistance of UNIFEM's South Asia Office for monitoring the implementation of the Act. The reason for this is that most of the cases are filed in the lower courts whose judgment are not available for the public as they are not in computerized form. Moreover, there are certain

groups which have labeled the Act as a law which propagate inequality as only the women are protected under this Act. The history is evident that there are incidents wherein even men are subjected to domestic violence. In fact, there are about five petitions in various High Courts which argue that the Act violates the constitutional right to equality because it provides relief only to women. There are some men organizations who have written to the minister for Women and Child Development, Renuka Chowdury demanding to be covered under the said Act.¹⁶ The contention of these men organizations was with the passing of this Act numbers of cases have come up before the Court for consideration, but all were not true. Wives file cases against their husbands and in-laws to harass them. The men group also contended that women should be prevented from filing multiple maintenance cases. Earlier when this Act was not enforced usually false cases were filed under Section 498A IPC and with the passing of this Act it has become easier for the women to harass her husband and in-laws as the Act makes the offence cognizable and non-bailable under Section 32. Hence, the chance of being misused still remains in the new law. It is thus suggested that there should be a provision wherein penalty should be provided for the wife if she files a false case against her husband or in-laws, provided that the burden of proof should lie on the husband and in-laws.

Another impediment to the effective implementation of this law has been the Supreme Court judgment in *S.R. Batra vs. Taruna Batra*¹⁷ wherein the Apex Court ruled that married women were not entitled to reside in the premises owned by the in-laws in cases where their husbands had separate property. The judgment of the Supreme Court poses a problem for the women

16. Vineeta Pandey, *Now, men seek cover under Domestic Violence Law*, <http://www.dnaindia.com/report.asp?newsid=1170084> [Visited on 7th April 2009].

17. AIR 2005 Del 270.

living in a situation of violence within the household she shares with their in-laws. Thus, it is opined by many public oriented person that such decision should be reviewed. It is suggested in this context it's high time that the Parliament should think about bringing necessary changes in the Prevention of Domestic Violence against Women Act, 2005 to prevent its misuse before it's too late.

The Act empowers the Magistrate to counsel the parties at any stage of the proceedings either singly or jointly which seems to be absurd as counseling should be done before the parties come to the Court for settlement of their dispute hence, it is suggested that the Act should provide provision with respect to counseling to the parties in a conflict under the Act before they come to the Court and not after they file their case. The reason for this is that the option of counseling is not readily available with the Magistrate and the Service Providers have not been notified by the Government to do this job. Hence, the Act should direct the service provider to counsel the parties before they bring their case in the court. Besides this another problem which is being an obstacle in the successful implementation of this Act is that the victims do not seek legal remedies because they are not familiar with the legal procedure and also they do not have faith in the legal system. Thus, it is suggested that the Government should encourage the girl education through their various policies as it is found that the women who are less educated faces domestic violence. Education will provide them with knowledge about the existing laws and give self-confidence. Besides this to ensure the active working of the Act the Central and the State Governments must ensure adequate funding and resources for the creation and maintenance of infrastructure envisaged under the Act. The governments in the State level and Centre should fulfill the duties placed on them under Section 11 of the Act, including periodic sensitization and awareness programmes for members of the judicial services and other stakeholders. Legal support through lawyers and other trained professionals has to

be made available to Protection Officers and other stakeholders. Legal services authorities must also engage themselves to aid and support legal literacy and programmes relating to generate awareness of the Act and its provisions. There is a need for appropriate medical facilities and shelter homes to provide temporary relief to the victims of domestic violence to which the Act of 2005 is silent. The medical facilities and shelter homes will provide the victim a safe and caring environment. Apart from this even the police officers should be sensitized about the offence of domestic violence.

Another drawback of the Act is that no relief for male-child abuse victims can be lodged under the Act as it is provided that the aggrieved person must be a female. Thus, boys are outside the scope of the Act. This needs to be corrected as it is reported in various newspapers and electronic media that even male-child are sexually abused. With the development in the society new forms of relationship is also developing in our society and India is not lacking behind. With the openness the homosexual relationship and lesbians relationship is discussed in today's society it is a fact that domestic violence also occur in such relationship wherein people of the same sex are living together. The Act of 2005 has not touched this area at all. Its reason may lie in the provision of IPC wherein under Section 377 it penalizes unnatural sexual offences i.e. sexual relationship between the same sexes. This mindset should be changed and alterations should be made in both the IPC and domestic violence in such relationship should be recognized under the Protection of Women against Domestic Violence.

As reported by the British Law Commission "*Domestic Violence is not simply a legal problem which can be eradicated by the appropriate legal remedies. It is also a social and psychological problem, which can be eliminated by fundamental changes in society and in attitudes to women and*

*children. While legal remedies are an attempt to alleviate the symptoms of domestic violence, they can do little to tackle causes.”*¹⁸

The various enactments by the Indian Government for curbing all forms of violence committed against women in the domestic domain which we have termed as “domestic violence” had good intention to achieve its goal but due to lack of its implementation in proper manner as well as its shortcomings have created the obstacle in attaining it. The originations of these crimes are the result of our mindset only; hence, in order to bring reform in the society it is essential for us to reform ourselves than only it will be possible to curb these crimes against women which will result in emancipation of women in our society.

18. Report on *Family Law & Domestic Violence and Occupation of the Family Home (1993)*, para 2.8. [Quoted in Justice A. K. Sikri, *PWDV Act, 2005: Implementation & Enforcement*, Nyaya Deep, P. 60 at 73].