

**FRAMEWORK OF REDRESSAL MECHANISMS
TO VICTIMS OF DOMESTIC VIOLENCE IN
KERALA - A CRITICAL STUDY**

**THESIS SUBMITTED TO
THE NATIONAL UNIVERSITY OF ADVANCED LEGAL
STUDIES**

**FOR THE AWARD OF DEGREE OF
DOCTOR OF PHILOSOPHY**

**BY
KAVITHA BALAKRISHNAN**

**UNDER THE SUPERVISION OF
DR. M.C.VALSON**



**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES
KALAMASSERY, KOCHI, KERALA, INDIA, PIN - 683503**

January 2020

DECLARATION

I do hereby declare that this thesis entitled “**Frame work of redressal mechanisms to victims of domestic violence in Kerala- A critical study**” for the award of the degree of Doctor of Philosophy is the record of the original research work carried out by me under the guidance and supervision of Dr. M.C.Valson, Professor, The National University of Advanced Legal Studies. I further declare that this thesis has not previously formed the basis for the award of any degree, diploma, associateship, fellowship or any other title or recognition from any University/Institution.

Kochi
January, 2020

Kavitha Balakrishnan
(Research Scholar)



CERTIFICATE

Dr.M.C.Valson,

Professor,

The National University of Advanced Legal Studies, Kochi.

This is to certify that this thesis entitled “**Frame work of redressal mechanisms to victims of domestic violence in Kerala- A critical study.**”

submitted by Kavitha Balakrishnan, for the award of the degree of Doctor of Philosophy is to the best of my knowledge, a *bona fide* record of research work carried out by her at the National University of Advanced Legal Studies under my guidance and supervision. This thesis, or any part thereof, has not been submitted elsewhere for any degree.

Kochi

January, 2020

Dr. M.C.Valson.
(Supervising Guide)



CERTIFICATE

Dr.M.C.Valson,

Professor,

The National University of Advanced Legal Studies, Kochi.

This is to certify that the major research findings of this thesis entitled **“Framework of redressal mechanisms to victims of domestic violence in Kerala- A critical study”** has been presented by **Kavitha Balakrishnan** in the pre-submission seminar held at The National University of Advanced Legal Studies, Kochi, on 9th of May, 2019.

Kochi

January, 2020

Dr. M.C.Valson

(Supervising Guide)



CERTIFICATE

Dr.M.C.Valson,

Professor,

The National University of Advanced Legal Studies, Kochi.

This is to certify that all the corrections and modifications suggested by the Research Committee in the Pre-Submission Seminar have been incorporated in the thesis entitled “**Frame work of redressal mechanisms to victims of domestic violence in Kerala- A critical study**” submitted by **Kavitha Balakrishnan** for the award of the Degree of Doctor of Philosophy.

Kochi

January, 2020

Dr. M.C.Valson

(Supervising Guide)

PREFACE

Violence against women is a universal problem, the Constitution of India has textually liberated women and ensured equality at par with men and still, the life of Indian women is lacerated, cankered and mutilated. Domestic Violence forms a separate class from any other kind of violence as, the offenders are her beloveds and taking place inside the home where she expects maximum protection. The mind set of society in looking at women merely as an object of pleasure than a peer, is the root cause for the proliferation of domestic violence.

Discourse on domestic violence has extended its tentacles to all class of families. It is one of the central issues for contemporary women's movement in India. Attempts are made by various Governments in India to reduce this menace by enacting various legislations. Judiciary has performed its role through positive judgments in favour of women. Media is doing considerably good work by educating women about their rights. Still, there is no decrease in the rate of domestic violence. In this backdrop, the present study started. Whether present law is properly implemented to curb domestic violence? Whether any additional benefit earned by the enactment of PWDV Act, 2005 to womenfolk? Whether Women's Commission and other instrumentalities are doing anything for protecting these innocent victims? This research work is an answer to those questions. Roscoe Pound has rightly told that "lawyers are social engineers." If a law is not sufficient to construct social consciousness and social reformation, it is futile. So through this study, the researcher has sought measures which will bridge the gap, construct additional pillars, augment the utility of PWDV Act, 2005. The

study is restricted to victims of the State of Kerala. Kerala being 100% literate state in India and still having a high rate of domestic violence constitute a separate class.

Now it is the turn to thank all people who have given unfettered support to me to complete this work.

I bow humbly before almighty, without whose grace, I could not have completed this work.

I have no words to express my gratitude and sincere thanks to my supervising Guide Professor (Dr) M.C. Valson, who always encouraged me and for his valuable suggestions without which this thesis could not be completed. In every stage of the work, he has paid constant attention, at the same time bestowed academic freedom to me. The support from his part was the most valuable blessing.

I thank Dr. Balakrishnan K, Associate professor and chairman of the Research Committee, for giving me valuable suggestions throughout my study and acting like a colossal of support and inspiration. Mr. D. Raveendra Kumar, who helped me a lot, by giving valuable suggestions for empirical study and data analysis, Dr. Sheeba S.Dhar, my doctoral committee member, for spending much time for me whenever I approached her for discussion, Dr. Jacob Joseph and Dr. Anil R. Nair and other faculty members and research guides for valuable support and cooperation.

It was a dream come true to work as an integral part of this prestigious institution. The professionalism of the entire staff of NUALS touched me immensely. I thank our Vice Chancellor Dr.K.C. Sunny, Registrar Mr. Mahadev and former Vice Chancellor Dr.Rose Varghese, who

supported me always. I have no words to express my gratitude to office staff and library staff of NUALS, who supported me whenever needed.

I sincerely thank Prof. K.T. Jawahar, Govt Law College Calicut, Dr. Satish Gouda, Assistant Professor, Bangalore University, who helped me in the collection of materials.

I thank the library staff of Indian Law Institute, Delhi, National Human Right Commission, Delhi, National Law School, Bangalore, Bangalore University Law Department, School of Legal Studies, CUSAT, NALSAR, Hyderabad, Govt. Law College, Calicut, Govt. Law College, Thrissur, Govt. Law College, Ernakulam, Delhi University, Jawaharlal Nehru University, New Delhi, School of Legal Studies, Kannur University, Public Library, Calicut, Central library, Kannur.

I am indebted to the staff of Kerala State Women's Commission, the office of Protection officers of Districts of Kannur, Calicut, Thrissur, Ernakulam, Kollam and Trivandrum, Sneha Theeram Charitable Trust, Kollam, Gandhi Bhavan, Pathanapuram, Anweshi Calicut, Punarjani-Calicut, Jana Neethi, Thrissur, Kairali T.V, Amritha T.V, Janam T.V, advocates, Judicial Officers whom I visited in connection with the empirical study, State Crime Records Bureau, Trivandrum, District Crime Records Bureau of Calicut, Thrissur and Kollam.

Before parting, I dedicate this work to my parents K.M. Balakrishnan and Amritha who have been a great inspiration to me. I am thankful to my husband for inspiring me to complete the work. I am extremely grateful to my children who suffered a lot due to my intermittent abstinence from motherly

duties. I express sincere thanks to all persons who have helped and supported me throughout my work.

Above all, I thank and submit the work at the lotus feet of almighty, whose benevolence was the driving force in my career.

Kavitha Balakrishnan

CONTENTS

PREFACE	vi
ABBREVIATIONS	xiv
TABLE OF CASES	xxii

CHAPTER 1

INTRODUCTION	1
1.1 Introduction	1
1.2 Research Problem	3
1.3 Objectives of the Study	3
1.4 Hypotheses.....	4
1.5 Significance of the Study.....	4
1.6 Scope of the Study.....	5
1.7 Limitation of the Study.....	6
1.8 Review of Literature	6
1.9. Methodology, Sources and Data Collection	24
1.10 Scheme of the Work.....	24
1.11 Chapterization	25
1.11.1. Introduction	25
1.11.2. Historical and Conceptual Development of Status of Women Victims	25
1.11.3 Road Map to the Protection of Women from Domestic Violence Act 2005	25
1.11.4. Judicial Response to Victims of Domestic Violence.....	26
1.11.5. Role of Instrumentalities in giving Protection of Victims of Domestic Violence	27
1.11.6 Impact of PWDV Act – Empirical Assessment	29
1.11.7 Conclusion and Suggestions	30

CHAPTER 2

HISTORICAL AND CONCEPTUAL DEVELOPMENT

OF THE STATUS OF WOMEN VICTIMS.....	31
2.1 Meaning and Concept of Victims.....	32

2.2	Historical Development of Status of Women Victims	33
2.2.1.	Status of Women in the <i>Vedic</i> Period	33
2.2.2.	Women in the Post - <i>Vedic</i> Period.....	35
2.2.3.	Status of Women in <i>Smriti</i> and <i>Epics</i>	36
2.2.4.	Women in the Buddhist Period	37
2.2.5.	Women in the Medieval Period.....	37
2.2.6.	Status of Women during the British rule	39
2.2.7.	Status of Women in Independent India.....	40
2.3	The emergence of Domestic Violence as a Mode of Victimization.....	41
2.3.1	Definition of Domestic Violence.....	44
2.3.2.	Need for differentiating Victims of Domestic Violence from other Victims.....	46
2.3.3.	Jurisprudential Analysis	48
2.3.4.	Constitutional Analysis	49
2.3.5.	Human Rights Perspective	52
2.3.6.	Steps taken by Other Countries to Combat Domestic Violence	54
2.3.6.1.	Violence in European Union	55
2.3.6.2.	Violence against Women in the United States.....	55
2.3.6.3.	United Kingdom.....	56
2.3.6.4.	Scotland	57
2.3.6.5.	Pakistan	57
2.3.6.6.	Australia	57
2.3.6.7.	Saudi Arabia	58
2.3.7.	Status of Women in Kerala	59
2.3.8.	Protection of Female Victims in International Instruments	59
2.3.8.1.	First World Conference on Women, Mexico	60
2.3.8.2.	Second World Conference on Women, Copenhagen	60
2.3.8.3.	Beijing Declaration	60
2.3.8.4.	General Assembly Resolutions on the Elimination of Domestic Violence Against Women	61

CHAPTER 3

ROAD MAP TO THE PROTECTION OF WOMEN

FROM DOMESTIC VIOLENCE ACT, 200564

- 3.1 Prologue to PWDV Act, 2005.....64
- 3.2 Analysis of the Dowry Prohibition Act, 196166
- 3.3 Specific Provisions against Domestic Violence in IPC.....69
- 3.4 Amendments in Criminal Law70
- 3.5 Section 498-A, IPC and Domestic Violence71
- 3.6 Sections 498-A, 304-B of IPC and
Section 113-B of Indian Evidence Act.....73
- 3.7 Judicial Response to S.498-A Cases74
- 3.8 Specific Legislation on Domestic Violence.....87
 - 3.8.1 Analysis of the PWDV Act, 200589
 - 3.8.2 Critical Analysis of Domestic Violence with
Respect to Provisions of the Act94
 - 3.8.3 Specific Analysis of Definition Part102
 - 3.8.4 Relief under the Act.....105
 - 3.8.5 Enforcement Mechanism under the Act108
 - 3.8.6 Role of Magistrate in Domestic Violence Cases109
- 3.9 Mechanisms Recommended in Implementing the Law110
- 3.10 Major Rights attributed to Women under the Act112

CHAPTER 4

JUDICIAL RESPONSE TO VICTIMS OF

DOMESTIC VIOLENCE115

- 4.1 Steps Taken by Judiciary for the Empowerment
of Victims of Domestic Violence.....116
- 4.2 Disputing the Constitutionality119
 - 4.2.1 Verifying the Right to Dignity121
 - 4.2.2 The Right to Shelter.....121
 - 4.2.3 Right to Matrimonial Residence and Property.....124
 - 4.2.3.1 Shared Household124
 - 4.2.3.2 Difference between Shared Household
and Matrimonial Home126
 - 4.2.3.3 Domestic Relation.....126

4.2.3.4	Perspectives on Passing Residence Order	128
4.2.3.5	Retrospective attribute of PWDV Act.....	130
4.2.3.6	Cases which are Confluence of S.498-A and Domestic Violence	131
4.2.3.7	Expanding the Scope of the Term Respondent	134
4.2.3.8	Live-in Relationship under the PWDV Act.....	137
4.2.3.9	Whether Relief sought under the PWDV Act will prevail After Getting Maintenance under Section 125 Cr.PC?	137
4.2.3.10	Period of Limitation for Filing Complaint under Section 12 and 18 of PWDV Act	138
4.3	Trend of Kerala High Court Decisions.....	144
4.4	Conclusion	156

CHAPTER 5

ROLE OF INSTRUMENTALITIES IN PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE158

5.1	Role of Women's Commission	158
5.1.1	Formation of State Commission for Women.	161
5.1.2	Women's Commission and Funding	161
5.1.3	Importance of the Commission	162
5.1.4	Constitution of State Women's Commission	163
5.1.4.1	<i>Jagratha Samithi</i>	164
5.1.4.2	Structure.....	164
5.1.4.3	Assistance to Protection Officers.....	167
5.1.5	Directives of the Commission	167
5.1.6	Effect of <i>Suo moto</i> Cognizance	169
5.1.7	Registration of Women's Organisations.....	169
5.1.8	Powers of the Commission.....	170
5.1.9	Functions of the Commission.....	171
5.1.10	Positive Action Taken by SCW.....	175
5.1.11	Shortcomings of the Commission	175
5.1.12	Closing Remarks	176
5.1.13	Some Submissions	176

5.2	Role of Non-Governmental Organizations	177
5.2.1	Role of NGO at the International Level in Protecting Women's Rights	180
5.2.2	Report of Bangladesh National Institute of Research and Training (NIPOORT).....	183
5.2.3	The Roles of Agencies and the State	183
5.2.4	Role of NGOs at National Level in Protecting Women's Rights	184
5.2.5	Comparison between NGOs in Kerala and the other States	184
5.2.6	Relation of NGOs with Judiciary and NHRC	185
5.2.7	NGOs in Kerala	186
5.2.8	Role of NGOs in Kerala in Curbing Domestic Violence...187	
5.2.8.1	<i>Anweshi</i>	187
5.2.8.2	<i>Punarjani</i>	189
5.2.8.3	<i>Jananeethi, Thrissur</i>	190
5.2.8.4	<i>Gandhibhavan, Pathanapuram</i>	191
5.2.8.5	<i>Snehatheeram Charitable Trust, Kollam</i>	
5.2.8.6	<i>Vimala Mahila Samajam</i>	193
5.2.8.7	<i>Navodaya Mahila Samajam</i>	193
5.2.8.8	<i>Neethivedi</i>	193
5.2.8.9	<i>P.Sarojini Amma Smaraka Mahila Samajam</i>	194
5.2.8.10	<i>Kerala Association for Social and Women's Welfare</i>	194
5.2.9	Role of NGOs in the Emancipation of Women.....	195
5.2.10	Suggestions to Improve the Situation	208
5.3	Role of Media in Protecting Victims of Domestic Violence ...	209
5.3.1	Social Change Movements.....	210
5.3.2	Freedom of Speech and Expression in Media	211
5.3.3	Impact of Visual Media	212
5.3.4	Role of Media in Indian Scenario	213
5.3.5	Victim's Family Approaching Media for Justice	214
5.3.6	Depiction of Women in Print Media, especially Victims of Domestic Violence.....	215
5.3.7	Depiction of Domestic Violence in Films.....	217

5.3.8	Films Having Negative Impact.....	218
5.3.9	Films and Domestic Violence	218
5.3.10	Depiction of Domestic Violence in Malayalam Novel.....	222
5.3.11	Role of Media Monitoring Cell	223
5.3.12	Impact of Film Songs on Women Empowerment	224
5.3.13	Songs, Which Give Negative Image of Women.....	224
5.3.14	Malayalam Film Songs that have a Positive Impact on Women	226
5.3.15	Role of Social Media	226
5.3.16	Positive Aspects of Social Media in Protecting Female Victims.....	228
5.3.17	Interconnection between NGOs, Women's Commission, and Media	228
5.3.18	Legal Measures to Monitor Media and Constitutional Provisions	229
5.3.19	International Arena	230
5.3.20	The Press Council Act, 1978.....	230
5.3.21	The Contempt of Courts Act, 1971	231
5.3.22	Pros and Cons of Media concerning Victims of Domestic Violence	231

CHAPTER 6

IMPACT OF PWDV ACT-EMPIRICAL ASSESSMENT236

6.1	Interview with Victims - Case Study	249
6.1.1	Victims from <i>Kollam</i> in General	249
6.1.2	Victims from <i>Thrissur</i> in General	249
6.1.3	Victims from <i>Calicut</i> in General	250
6.1.4	Case Study from <i>Thrissur</i>	251
6.1.5	Case Study from <i>Kollam</i>	259
6.1.6	Case Study of Victims from <i>Calicut</i>	267
6.2	Empirical Study from Victims of Various Districts of Kerala	279
6.2.1	Empirical Study among Victims	280
6.2.1.1	Age Group of Victims	281
6.2.1.2	Religion of the Victims	284
6.2.1.3	Victim's Education	287

6.2.1.4	Husband's Education	289
6.2.1.5	Victim's Occupation	291
6.2.1.6	Husband's Occupation	293
6.2.1.7	Years after Marriage	295
6.2.1.8	Physical Violence by Husband	297
6.2.1.9	Humiliated by Husband	299
6.2.1.10	Who Helped You When DV Happened?	300
6.2.1.11	Awareness that Child Prone to DV will become Future Perpetrators	302
6.2.1.12	Any Idea of Protection Officers?	303
6.2.1.13	Service from Protection Officers	305
6.2.1.14	Contacted Women Cell	307
6.2.1.15	Knowledge of Help from the Women's Commission	308
6.2.1.16	Knowledge about <i>Jagratha Samithi</i>	310
6.2.1.17	Help from <i>Jagratha Samithi</i>	311
6.2.1.18	Is There Dowry Torture?.....	312
6.2.1.19	Knowledge of DV Law before filing Petition?....	313
6.2.1.20	Is There Extra Marital Affair/ Alcohol Addiction?	314
6.2.1.21	Pre-Marital Counselling	316
6.2.1.22	Help from District Legal Service Authority	318
6.2.1.23	Contacted Any Women's Forum or NGO.....	319
6.2.1.24	Assistance from Women's Forum or NGO	320
6.2.1.25	Knowledge about Shelter Home	322
6.2.1.26	Counselling or Mediation	323
6.2.1.27	Whether DV Law Helps Women and Children ...	324
6.2.1.28	Redressal from DV.....	326
6.2.1.29	Your Present Status	327
6.2.1.30	Now Happy or Not?	329
6.2.1.31	Relation with Husband's Family	330
6.2.1.32	Regre filing of Petition under PWDV Act.....	332
6.2.1.33	Is There Compulsion to File Petition?.....	333
6.2.1.34	If Compulsion to File Petition, By Whom?.....	335

6.3	Empirical Study among Judicial Officers	336
6.3.1	Experience in Years	336
6.3.2	Reasons for increase in Domestic Violence.....	337
6.3.3	Speedy Redressal under PWDV Act as Compared to S. 498-A IPC	338
6.3.4	Misuse of Provisions of PWDV Act.....	339
6.3.5	Whether PWDV Act is One- sided?	339
6.3.6	Whether Girls are Adamant and Reluctant to Adjust with In-Laws and Husband	340
6.3.7	Advantages of PWDV Act over S. 498-A	340
6.3.8	PWDV Act has become a Catalyst for Disintegration of Families.....	341
6.3.9	Merits of PWDV Act	342
6.3.10	Demerits of PWDV Act	343
6.3.11	Claim more Gold from Husband at the Time of Divorce ..	343
6.3.12	Maintenance under Cr.P.C S.125 and under PWDV Act Simultaneously.....	344
6.4	Empirical Study Among Advocates	344
6.4.1	Bar Practice (Years).....	344
6.4.2	Reasons for the Increase in Domestic Violence	345
6.4.3	Do you Educate the Victims about the Provisions of PWDV Act.....	346
6.4.4	Husband's Illicit Relationships or Alcoholism	346
6.4.5	Speedy Redressal under PWDV Act Compared To IPC Section 498-A.....	346
6.4.6	Misuse of PWDV Act	347
6.4.7	Whether PWDV Act is One-Sided	347
6.4.8	Girls are Adamant and Reluctant to Adjust with in-Laws and Husband.....	348
6.4.9	Advantages of PWDV Act over S.498-A IPC	348
6.4.10	Awareness about Service Rendered by <i>Jagratha Samithi</i> ..	349
6.4.11	PWDV Act has become a Catalyst for Disintegration of Families.....	349
6.4.12	Merits of PWDV Act	350
6.4.13	Demerits of the PWDV Act	350

6.4.14	Suggestions for Improvement of Applications of PWDV Act	351
6.4.15	The Role of Protection Officers are Inconspicuous.....	352
6.4.16	Women’s Commission and NGO have Neglected. The Victims of Domestic Violence	352
6.5	Interview with Protection Officers	353

CHAPTER 7

CONCLUSION AND SUGGESTIONS	363
7.1 Drawbacks of the PWDV Act.....	365
7.1.1 Admitting only Women as Victims	365
7.1.2 Potential Misuse	365
7.1.3 Ambiguity in Definition.....	366
7.2 Chapter wise Conclusion	367
7.3 Answering Objectives	382
7.4 Answering Research Questions	386
7.5 Findings	388
7.6 Suggestions	389

BIBLIOGRAPHY	I -XXX
APPENDIX - I QUESTIONNAIRE TO VICTIMS	XXXI - XXXII
APPENDIX - II QUESTIONS TO JUDICIAL OFFICERS	xviii
APPENDIX - III QUESTIONS TO ADVOCATES	xviii
APPENDIX - IV INTERVIEW QUESTIONS TO PROTECTION OFFICERS	xviii
APPENDIX – V PIE CHART	xviii - xviii
APPENDIX – VI PUBLISHED ARTICLES (5)	xviii - xviii

ABBREVIATIONS

A.D.R	- Alternative Dispute Resolution
A.I.R	- All India Reporter
Art.	- Article
Ac.L.Rev	- Academy Law Review
ALD	- Andhra Legal Decisions
ALJ	- Allahabad Law Journal
All.MR(cri)J	- All. Maharashtra Criminal Law Journal
ALT	- Andhra Law Times
APLJ	- Andhra Pradesh Law Journal
Aust. L.J	- Australian Law Journal
Bom.	- Bombay
CEDAW	- Convention on Elimination of all forms of Discrimination Against Women
C.P.C	- Civil Procedure Code
C.U.L.R	- Cochin University Law Review
CCR	- Current Criminal Reporter
CCR (SC)	- Current Criminal Reporter (SC)
CKS	- Current Karnataka Statutes
Cr.P.C	- Criminal Procedure Code
Cri.L.J	- Criminal Law Journal
Crim.L.R	- Criminal Law Review
Crime	- Crimes
Cul. L. Rev	- Columbia Law Review
D.I.R	- Domestic Incident Report
DLT	- Delhi Law Times
DMC	- Divorce and Matrimonial Cases
DV	- Domestic Violence
Ed.	- Editor

Edn.	- Edition
Etc	- Et cetra
Fig	- Figures
Govt	- Government
H.C	- High Court
H.L.R	- Harvard Law Review
Hon'ble	- Honorable
I.B.R	- Indian Bar Review
ICO	- Indian Cases Online
I.L.R	- Indian Law Reports
I.P.C	- Indian Penal Code
Ibid	- In the same place
Id	- The same
Infra	- Below
IJETSJR	- Inter National Journal of Engineering, Technology
ILR	- Indian Law Reports
J	- Justice
J.CRIM.L & CRIMINOLOGY	- Journal of Criminal Law and Criminology
J.I.L.I	- Journal of Indian Law Institute
JCC	- Journal of Criminal Cases
JFCM	- Judicial First class Magistrate
JT	- Judgment Today
Kar.LJ	- Karnataka Law Journal
Ker.	- Kerala
KLJ	- Kerala Law Journal
KLT	- Kerala Law Times
Mad.	- Madras
MANU	- Manupatra
M.C.	- Miscellaneous Cases

Mh.LJ	-	Maharashtra Law Journal
MLJ	-	Madras Law Journal
N.C.R.B	-	National Crime Records Bureau
NCW	-	National Commission for women
NGO	-	Non Governmental Organisations
No.	-	Number
Nos	-	Numbers
O.P	-	Original Petition
O.S	-	Original Suit
P	-	Page
QBD	-	Queens Bench Division
RCR	-	Recent Criminal Report
S.C	-	Supreme Court
S.C.J	-	Supreme Court Journal
S.R.J	-	Supreme Reported Judgments
SCC	-	Supreme Court Cases
SCR	-	Supreme Court Reporter
SCW	-	State Commission for women
S.	-	Section
Supra	-	Above
v.	-	Verses
Vol.	-	Volume
W.P.	-	Writ Petition
Yale. L.J	-	Yale Law Journal
%	-	Percentage
&	-	And

TABLE OF CASES

1.	<i>A.Subhash Babu v. State of A.P</i> , (2011) 7 SCC 616.	76
2.	<i>Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan</i> . (1997) 11 SCC 123.	121
3.	<i>Ajay Kumar Madanlal Bajla v. Neha Vishal Bajla</i> , AIR 2011 Bom.79.	130
4.	<i>Ajaykumar v. Lata</i> , 2019 SCC OnLine SC 726.	134
5.	<i>Akhilesh Kumar Singh v. State of U.P</i> 2018 (2) ADJ 752.	140
6.	<i>Ambujakshi Amma v. State of Kerala</i> , 2013(2) KLT698.	150
7.	<i>Ameerul Islam v. State of Kerala</i> , Sessions case No.662/2016. 21 st March, 2017, Sessions Court, <i>Ernakulam</i> .	214
8.	<i>Anthony Jose v. State of NCT of Delhi</i> , 2018 SCC Online 1295.	142
9.	<i>Aruna Pramod Shah v. Union of India</i> , WP (Cr).425/2008, Judgment, 7 April 2008.	119
10.	<i>Ashoka Chotelal Sukla v. State of Maharastra</i> , 1987 Cr. L. J. (Guj.& Mah.) 164.	72
11.	<i>Bai Tahira v. Ali Hussain Fissali Chottia</i> 1979 AIR 362; 1979 SCR (2)316.	51
12.	<i>Bandhua Mukti Morcha v. Union of India</i> (1997) 10 SCC 549.	50
13.	<i>Batra v. Taruna Batra</i> , AIR 2007 SC 118.	125
14.	<i>Bhattacharjee v. Sarathi Chowdhury</i> , (2016) 2 SCC 705.	141
15.	<i>Bipin v. Meera</i> , KHC, 2016 (4) KLT 418 ;2016 (4)KLJ 534.	148
16.	<i>Bismi Sainudheen v. P. K Nabeesa Beevi</i> , 2013(4) KLT 377.	146

17. <i>Bobby Art International v. Ompal Singh Hoon</i> , AIR1996 SC 1846.	212
18. <i>Brij Bhushan v. State of Delhi</i> , AIR 1950 SC 129.	229
19. <i>Dennison Paulraj v. Union of India</i> , AIR 2009 (Noc) 2540 (Mad).	120
20. <i>Dhananjay Ramkrishna Gaikwad and Others v. Sunanda Dhananjay Gaikwad and Others</i> (MANU/MH/0580/2016:2016 All Mr. (Cri.) 2291)	128
21. <i>G.M. Natarajan v. State</i> , 1995Cr. L. J. 2728, (Mad).	73
22. <i>Harbans Lal Malik v. Payal Malik</i> (MANU/DE/1842/2010: 2010 (118) DRJ, 582)	127
23. <i>Hiralal v. State</i> , (Govt. Of NCT) Delhi 2003 Cri.L.J. (S.C) 3711	86
24. <i>Hema Rawal v. Prashant Sharma</i> , 2015 (2) RCR (Cri) 195 (P&H).	143
25. <i>Hima Chugh v. Pritam Ashok Sadaphule and Others</i> (MANU/DE/0838/2013: 2013 Cri.L.J., 2182).	127
26. <i>Hival P. Harsava v. Kusum Narottamdas</i> (2016) 10 SCC 165.	88
27. <i>Indian Express v. Union of India</i> , (1985) 1SCC 641.	229
28. <i>Indra Sarma v. V. K. V. Sarma</i> (2013) 15 755.	88
29. <i>Indrajit Singh Grevial v. State of Punjab</i> , (2011) 12 SCC588.	141
30. <i>J. Srinivas v. G. Dhanalakshmi</i> , 5 th April, 2013 (Aug. 8, 2019, 3.35 PM), http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/870870/1/CRLP2419-09-05-04-2013.pdf .	139

31.	<i>Jagdishraj Khatta v. State of H. P.</i> , (2019) 9 SCC 248.	133
32.	<i>Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and Another</i> MANU/SC/0861/2014: 201(2) Mh.L.J. (Cri.), 509)	128
33.	<i>K.A. Abbas v. Union of India</i> , 1971 SCR (2) 446.	212
34.	<i>K.V. Prakash Babu v. State of Karnataka</i> , 2016 SCC OnLine SC 1363.	133
35.	<i>Kohli v. Neelu Kohli</i> , AIR 2006 SC 1675.	110
36.	<i>Krishna Bhattacharjee v. Sarathi Choudhary</i> , 211 2 SCC 705.	88,141
37.	<i>Kunapareddy v. Swarnakumari</i> (2016) 11 SCC 774.	88
38.	<i>Kunjathiri v. State of Kerala</i> , 2015 (3) KLT 167; 2015 (4) KHC 183.	145
39.	<i>Kusum Lata Sharma v. State and Another</i> , 2011(4) KLT313.	136
40.	<i>Lalita Toppo v. State of Jharkhand</i> , 2018 SCC Online SC 2301.	137
41.	<i>M. Palani v. Meenakshi</i> , AIR 2008 SCC 162.	113
42.	<i>Majid Khan Patni v. Atif Iqbal Mansoori</i> , (2014)10 SCC 736.	138
43.	<i>Mandalani v. State of Bihar</i> , (1999) 5 SCC 705.	87
44.	<i>Mary Jacob v. Elizabeth Jacob</i> , 2015 (4) KLJ 326.	152
45.	<i>Mehra v. State of Kerala</i> , https://indiankanoon.org/doc/157355931 (O.P (Cri.) No. 101 of 2014).	154
46.	<i>Mukesh and Anr v. State of NCT, Delhi</i> , 2018 ICO 1068.	228
47.	<i>Nidhi Kaushik v. Union of India</i> (2013) 203 DLT 722.	88
48.	<i>Nupur Talvar v. CBI</i> , (2012)11 SCC 465.	213

49.	<i>Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana</i> , AIR 1988 SC 1642.	212
50.	<i>Olga Tellis v. Bombay Municipal Corporation</i> 1985 AIR 180; SCR Suppl. (2) 51.	51
51.	<i>Om Prakash Syngal and Others v. Shimla Garg</i> (MANU/PH/3704/2015:2016 All Mr.(Cri)	127
52.	<i>P.R. Velayudhan Nair v. Chimmikara Karthiayani</i> , 2009 (3) KHC 377.	149
53.	<i>Prabhakaran v. State of Kerala</i> , 2009 (1) KLT. 175.	94
54.	<i>Prabhu Datt v. Union of India</i> , AIR 1982 SC 6.	211
55.	<i>Prasad @ Purushothaman v. Kerala Women's commission</i> , 2017 ICO 1345.	175
56.	<i>Preethi Gupta v. State of Jharkhand</i> , (2010) 7 SCC 667.	81
57.	<i>Premchand & Anr. v. State of Haryana</i> AIR 1989 SC 937.	15
58.	<i>Punarjani Charitable Trust v. Union of India</i> , 2016 (4) KLJ 212.	207
59.	<i>R. v. Prince</i> , L R 2 C.C.R 154 (1875).	45
60.	<i>R. v. Tolson</i> , (1889) 23 QBD 164, 172 - 176.	45
61.	<i>Radha v. Deputy Tahasildar</i> , W P (C) 26559/2008) (5 th /Jan./2015), Kerala.	98
62.	<i>Rajesh Sharma v. State of Uthar Pradesh case (1)</i> 2017(3) KLJ 863	206
63.	<i>Raju Narayana Swami v. Beena</i> , 2017 ICO 130.	151
64.	<i>Rama Devi v. Kerala</i> , 2008(4) KLT 105.	103
65.	<i>Rashmi Chopra v. State of U. P.</i> , AIR 2019 SC 2297.	133

66. <i>Reema Agarwal v. Anupam</i> , (2004)3 SCC199.	76
67. <i>Rekha Balasaheb Patil v. Smt. Durgawati Shridhar Patil and Others</i> (MANU/MH/2717/2018 :2019 All Mr(Cri) 511)	127
68. <i>Reliance Petro Chemicals v. Proprietors of Indian Express</i> , 1989 AIR 190.	229
69. <i>Rema Devi v. State of Kerala</i> , 2008(4) KHC122: 2008(2) KLD 728.	145
70. <i>Romesh Thapar v. State of Madras</i> , AIR 1950 SC 124.	229
71. <i>Rupali Devi v. the State of U.P.</i> , 2019(2) KLJ 601.	132
72. <i>S.R. Batra v. Taruna Batra</i> , (2007) 3 SCC 16.	109
73. <i>Saibal Kumar Gupta v. B.K.Sen</i> , 1961 AIR 633.	229
74. <i>Saju Joseph v. M.S. Sobha Saju</i> _(O.P. No 273/2014) 2/Dec. 2015.(Kerala).	97
75. <i>Sakal Papers (P) Ltd. v. Union of India</i> AIR 1962 SC 305: (1962)3SCR 842.	212
76. <i>Sali v. Kerala Women's Commission</i> , 1997(2) KLT 499	175
77. <i>Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade</i> , (2011) 3SCC650.	134
78. <i>Santhosh Kumar Singh v. State</i> , (2010) 9 SCC 747.	213
79. <i>Santosh Kumar Yadav v. State of U.P.</i> , 2015 (S) ALJ 466.	141
80. <i>Saravana Kumar v. Thenmozhi</i> , MANU /TN/9828/2007.	130
81. <i>Saritha v. R. Ramachandran</i> , 2002 (6) ALD 319.	83
82. <i>Savitri Devi v. Ramesh Chand</i> , 2003 Cr. L. J. 2759.	83
83. <i>Shalini v. Kishor and Others</i> (MANU/SC/0688/2015).	128

84.	<i>Shambhu Prasad Singh v. Manjari</i> , 2012 SCC Online.1371.	88
85.	<i>Shanti v. State of Haryana</i> , (1991) 1 SCC 371.	74
86.	<i>Shima v. Navas & Ors.</i> 2015 ALL. MR (Cri) J.334.	155
87.	<i>Shome Nikhil Danani v. Tanya Banon Danani</i> , 2019 SCC Online Del.8016.	137
88.	<i>Shyama Devi v. State of West Bengal</i> , 1987 Cr. L. J. 1163 (Cal).	87
89.	<i>Siddhartha Vasisht @ Manu Sharma v. State (NCT of Delhi)</i> , (2010) 6 SCC 1.	213
90.	<i>Siddique P.S. v. Ministry of Women and Child Development and Others</i> , https://indiankanoon.org/doc/135470099/ .	120
91.	<i>Social Action Forum for Manav Adhikar v. Union of India</i> , AIR 2018 SC 4273	206
92.	<i>State of A.P. v. M.Madhusudan Rao</i> , (2008) 15 SCC 582.	76
93.	<i>State v. Ram Singh</i> , 212 (2014) DLT 99.	214
94.	<i>Sudhanya K.N. v. Umasankar Valsan</i> TrP (Crl) No.80/2007, DOD: October 2007, Kerala HC, https://indiankanoon.org/doc/48493552 .	96
95.	<i>Sukumar Mukharjee v. Tripathi Mukharjee</i> , AIR 1992 Pat.32	72
96.	<i>Sulochana v. Kuttapan</i> , 2007 Cr. L. J. 2057.	96
97.	<i>Susheel Kumar Sharma v. Union of India & Ors.</i> AIR 2005 SC 1928	81
98.	<i>Swapnil Thripathi v. The Supreme Court of India</i> , 2018 ICO 1721.	229
99.	<i>Thakkan Jha v. State of Bihar</i> , (2006) 1 SCC (Cri) 309.	86

100. <i>Trilochan Singh v. Manpreet Kaur</i> , https://indiankanoon.org/doc/71840775/	141
101. <i>Unni Krishnan v. State of Kerala</i> , 2017 SCC OnLine Ker. 12064.	76
102. <i>Vadala Vinay Kumar v. State of Andhra Pradesh</i> , 2006 Cr. L. J. 1710.	86
103. <i>Vaishali Abhimanya Joshi v. Nanasaheb Gopal Joshi</i> (2017) 14 SCC 774.	88
104. <i>Varinder Kaur v. Jatinder Kumar and Anr.</i> 2016 (4) RCR (Cri) 861.	124
105. <i>Varsha Kapoor v. Union of India</i> , 2015 Cr. L. J. 195.	83,88
106. <i>Vijay Verma v. State NCT and Another</i> (MANU/DE/1946/2010:2010(118) (DRJ,520)	127
107. <i>Vikram Deo Singh Tomer v. State of Bihar</i> , AIR 1988 SC1782.	205
108. <i>Vyas v. Anitha Vyas</i> AIR 1999 SC 2701.	72
109. <i>Yogesh Arantrai Bhatt v. State of Gujarat</i> , 2017 Cri.L.J.615.	141,143

CHAPTER 1

INTRODUCTION

1.1 Introduction

Atrocities against women have become quite frequent and widespread and the problems engendered by such acts have grievous ramifications. Women enjoyed a considerable amount of freedom and equality on par with their male counterparts, during the ancient period.¹ Unfortunately, now they are compelled to live an excluded, marginalized, exploited and rejected life, always bound by cruel customs and outdated rituals.

Although the Constitution of India has textually liberated women and guaranteed their dignity and individuality, granted equal status and opportunity and non-discrimination on the ground of sex, in practice many of these norms are violated. In the Statutes, justice is promised in abundance in such a way that women are equal to men, protected from sex-based rejections and can enjoy social justice in all its dimensions. Thus, the Constitution quickened by social conscience has added adequate measures for women's liberation. Despite innumerable laws, national as well as international, providing for the safety and security of women, she is yet to be recognized as a human being with dignity and modesty. Her lacerated spirit, suppressed soul, cankered cultural potential and mutilated desires, demand full self-

¹ Hetal K.Srimali, Women and Law 33(2019)

expression as a human being with equal status. The society is grappling with problems of sex determination tests, female foeticide, rape, domestic violence, illiteracy, dowry deaths, sexual harassment, flesh trade and so on. There are still manifestations of gender bias in the country. The process of socialization has taught Indian girls not to react but to bear, adjust and suffer in silence.

The cases of sexual assault, rape, and murder against women have grown in geometric proportions all over India. The recent attacks on womanhood have jolted not just the conscience of humanity but also the false sense of security among people across all classes. Domestic violence is the most reprehensible atrocity committed against a woman which not only destroys her personality, self- confidence and self- respect but also throws her into a deep emotional crisis.

Looking at women merely as an object of pleasure than a peer is the mindset of society. What the millions of women around the world need today is not sympathy but the right to live as a modest and dignified human being. Every drop of tear shed by a woman in defense of her honour is a curse on the entire humanity. The social obligation is not to cause agony to her womanhood. This temperament in society should be cultivated from the grassroots of society. The reports that come across in the media today is only

the tip of the iceberg. The ground realities are submerged, unreported and hushed up.

1.2 Research Problem

How efficient is the 'Protection of Women from Domestic Violence Act, 2005' in giving redressal to women victims in Kerala?

The object of the research is to analyze the effectiveness of the Act and measure it by the judicial response, as to whether women are getting adequate redressal or compensation. Legislators in India have been enacting laws to protect and promote the rights of women on different aspects of women's safety, dignity and well being. Despite many legislations, the ill-treatment of women still exists and continues in society. Researcher felt while conducting Legal Aid programme that, in State of Kerala, many women victims even do not know about legal recourse available and awareness about different statutes enacted for their protection are very low.

1.3 Objectives of the Study

1. To study the extent of domestic violence against women in the context of State of Kerala and suggest measures to eradicate it;
2. To analyze the condition of victims of domestic violence who have filed complaints under the Protection of Women from Domestic Violence Act, 2005;

3. To suggest measures for effective implementation of the Domestic Violence Act;
4. To study the level of awareness about the Act among the public;
5. To study whether role of Protection Officer is effective in reducing Domestic Violence; and
6. To study the role played by the Women's Commission in curbing Domestic Violence.

1.4 Hypotheses

- The redressal and relief mechanism in Kerala is not effective to solve the issues of victims under the 'Protection of Women from Domestic Violence Act, 2005'.
- There is no proper implementation of the Act to prevent violence against women.
- Women victims in Kerala are not aware of their rights and law about Domestic Violence.

1.5 Significance of the Study

There is a need to develop this work to provide authentic and responsible information to the community as a whole. The work has gone through many issues like laws and redressal mechanisms to protect women from domestic

violence, a study of Protection of Women from Domestic Violence Act, 2005 (here in after referred to as PWDV Act), implementation of the law and other issues related to the subject. The very purpose herein is to provide adequate information to the academicians, policy makers, judges, and practicing lawyers. The work may also be helpful to the Non Governmental Organisations, students, and faculties of social science, law, women studies, criminology departments, and other relevant organizations.

1.6 Scope of the Study

This work looks into victimological aspects of the victims of domestic violence and explains the need for a separate focus on domestic violence victims. It also explores the need for female victimology in the present criminal justice system, examining the consequences of victimization and various remedies available to domestic violence victims.

There is no exact method to find out whether a claim is genuine or not. Judges depend on evidence which may sometimes be fabricated. Advocates often persuade clients, who come just for a divorce, to file a petition under the PWDV Act and Section 498 -A of the Penal Code. Such practices retard the functioning of the mechanism and Women's Commission and other Non Governmental Organisations working in the field must educate the women not to misuse this protective provision considering the welfare of entire women folk in the country.

1.7 Limitation of the Study

Doing an empirical study in this area is very difficult. Many victims are reluctant to respond to the interview and questionnaires. This researcher could not contact victims from all districts of Kerala. So, the entire State of Kerala has been divided into three zones, Southern zone, Central zone, and Northern zone. Two districts from each zone were selected, the one having the highest rate of domestic violence, the other one nearest to it, and taking a convenient sample, the study was conducted.

1.8 Review of Literature

This researcher went through many books dealing with issues related to women as a part of literature review. Summary of each item referred is mentioned here. The book *Indian Women Today* addresses major problems of life of women in five 'P's, viz. patriarchy, productive resources access inadequacy, poverty, promotion advancement insufficiency, and powerlessness.² The author says that this kind of plight of women occurs through cultural evolution in the five 'P's. Poverty strikes women more than any other thing. The book analyses various social factors affecting women.

² 3, Girija Khanna, *Indian Women Today: Tradition, Modernity and Challenges*, Women Professionalism: Challenges and Prospects (1978).

In another book *Uma Shankar Jha et. al.*,³ gradual change that happened in the traditions of the Indian woman is discussed. In yet another book by Justice A.S. Anand,⁴ the need for ensuring social justice for women is discussed. Non-implementation of the laws makes them ineffective. Many women do not know that there are certain laws for their protection. The book states that women's empowerment is a myth and women's exploitation is a reality. Article 21 ensures not a mere right to life, but the right to live with dignity.

In one book⁵ how empowerment strategies of women can be effectively brought out is discussed. *Tamsin Bradley* examines⁶ the customary protection of women in Rajasthan and how it affects the life of village women. He also depicts how a village organization helps these women. He lauds the effectiveness of the organization and shows how male dominance in this society has restricted the work of the association. *Bradley* then analyses power relations existing in these village societies.

Yanik Djamba and *Sitaiva R. Kimuna*⁷ give a new perspective on gender-based peculiarities. The book deciphers socio demographic barriers of domestic violence. All these countries follow strict patriarchal patterns.

³ 1, Uma Shanker Jha et.al (ed.), Modern Women Today: Tradition, Modernity and Challenge (1996).

⁴ A.S. Anand, Justice for Women: Concerns and Expressions (2008).

⁵ Sushama Sahay, Women and Empowerment: Approaches and Strategies (1998).

⁶ Tamsin Bradley, Religion and Gender in the Developing World: Faith Based Organization and Feminism in India (2010).

⁷ Yanik Djamba & Sitaiva R Kimuna, Gender Based Violence: Perspectives from Africa, Middle East and India (2015).

There is one thesis done on domestic violence by the socio-legal method. This is a thesis done by a researcher from Mahatma Gandhi University.⁸ This is not purely legal research. This is socio-legal research. Here researcher has taken a sample from Kochi only. Researcher approaches the problem in a way different from legal research. It was a work done at the Rajagiri College of Social Science. She points out that violence in relationships will be treated as negative, and this is the reason why many instances remain unreported. She says economic instability, lack of education, unemployment, etc. have muted many women. The rationale of the study is projected as, there are no socio-legal remedies to protect female victims from domestic violence. The researcher emphasizes the psychological and sociological elements behind domestic violence. The thesis focuses on how it affects children.

The major objective of this thesis is to highlight the role played by the socio-legal system in curbing domestic violence. The method used here is the sampling method. The fourth chapter deals with results and discussion. In the last chapter, direct conclusions obtained from data analysis is given.

In another thesis by *Kritika*,⁹ reference to victims is made in general. Both male and female victims are included in this study.

⁸ Deepa Rasheed, A Study on Socio Legal Support System in Protecting Women Victims of Domestic Violence, Ph.D Thesis, Faculty Social Science, M.G. University.

⁹ Kritika, Victims and the Law: A Socio-Legal Study, Ph.D. Thesis of Faculty of Law, Maharshi Dayanand University.

First chapter deals about meaning of ‘victim’, second chapter about typology of victims, third chapter about victims of crime, fourth chapter about victims in criminal justice system, fifth chapter is about victims and human rights, sixth chapter about remedies and safeguards, seventh chapter about victims in international scenario and the last chapter is conclusion. Here various aspect of victimisation is given effectively.

Thesis submitted by researcher *Anju* deals with all kinds of crimes against women.¹⁰ The study is purely doctrinal. It is very difficult to encompass all crimes in one frame. Crimes of sexual violence, domestic violence, etc. have a different nature. Still researcher done it effectively without losing focus.

This researcher went through a Ph.D. thesis, submitted in School of Legal Studies, Cochin University of Science and Technology.¹¹ The objectives given by her is different from what is intended by this researcher. She mainly concentrated on pre-enactments. The study is made based on the doctrinal and analytical methods. The study of this researcher is differentiated because objectives of both thesis are different. Objectives of her study are:-

¹⁰ Anju, Recent Trends in Crime against Women, Ph.D. Thesis, Faculty of Law, Maharshi Dayanand University.

¹¹ S.Anuja, Right of Women against Domestic Violence- The Law and Emerging Challenges, Ph.D. Thesis, Faculty of Law, Cochin University of Science and Technology.

- “1. To highlight the historical perspective on the status of women;*
- 2. To analyze the interface between domestic violence and human right discourse;*
- 3. To make a comparative study of the strategies to contain domestic violence in western countries;*
- 4. To examine pre-enactment legal framework relating to domestic violence;*
- 5. To make a critical assessment of the Act;*
- 6. To make a critical assessment of the policy.”*

This study is completely doctrinal and analytical one. There is no empirical study. Main highlight of this thesis is comparative study made with similar legislations of UK and USA and it is done effectively.

The first chapter is the introduction and research methodology. The second chapter is a historical perspective on the concept of domestic violence-Indian and Western views. The third chapter is the nature of domestic violence-a human right discourse. The fourth chapter deals with domestic violence legislation, and it's implementation in USA and UK. Chapter five deals with legal protection against domestic violence in India-Pre 2005 scenario. The sixth chapter deals with an appraisal of the Act. Chapter Seven deals with judgments on domestic violence. Eighth chapter deals with emerging issues

in the field of domestic violence. And the ninth chapter deals with conclusion and suggestions.

According to above mentioned thesis, the following are the compelling reasons behind enactment of PWDV Act, 2005.

- “1. *No specific definition of domestic violence*
2. *Criminal law remedies do not care for shelter aspects. Civil law remedies take protracted legal proceedings.*
3. *Two remedies-either civil remedy through divorce or criminal remedy under s.498-A*
4. *No law to recognize women’s right to residence or her right to civil remedies.”*

The researcher analyses lacunae in pre 2005 legislations and justifies the need for a special legislation to deal with domestic violence.

*Indira Sharma*¹² discusses the history of violence against women in detail. Different types of violence are discussed in the article. Domestic violence is also included. The impact of domestic violence results in 40 to 70 percent of the murder of women either by their husbands or boyfriends. Violence is not always physical but psychological and verbal. In an unmarried relationship, it

¹² Sharma, Violence against Women: Where are the Solutions? Indian Journal of Psychiatry Indian J. Psychiatry. 2015, Apr-Jun 57(2): 131-139 (Aug. 1, 2019, 2.35 PM), <http://www.IndianPsychiatry.org/textasp:2015/57/2/131/158133>.

is known as dating violence, and in a married relationship, it is called domestic violence. The article also attempts a psychological analysis. A short study of violence against women at international level is explored. This is about legislation in U.S.A. However, the article does not examine the laws of domestic violence in other countries.

Another study by *Flavia Agnes*¹³ examines how laws relating to areas affecting women's lives and changing the perception towards penal enactment enhance women's movement. The article assesses enactments during 1980 -1989 for protection of women.

*Sunita D.Adhav*¹⁴ assesses the role of media. Media has a lot to do in this regard. However, sometimes, media worsen situations. The article discusses the positive role to be played by media. This idea is accommodated in the Chapter dealing with Media and NGOs. It is a critical analysis of what should be done by media for the protection of women victims. However, the study encompasses all kinds of victims.

*Hemant Kumar*¹⁵ observes that the judiciary and media are the third and fourth pillars of a democratic setup. Both are indispensable, and the judiciary should regard the freedom and right of the media to cover and disseminate

¹³ Flavia Agnes, Protecting Women Against Violence – Review of a decade of legislation 1980-89, Economic and Political Weekly, Vol. 27, Issue 17, Apr 25 1992, (Aug. 1, 2019, 2.55 PM), http://www.womenstudies.in_crime_ag_women.

¹⁴ Sunitha D. Adhav, Trial by Media: A Legal Dilemma 1(4) BLR.98-106 (2013).

¹⁵ Hemanth Kumar, Judiciary v. Media, 17(2012).

news about Court proceedings in an open justice system. The latter on its part also ought to show due diligence and extreme caution while reporting news to preserve the sanctity of the former as well as to ensure a free and fair trial.

A.K. Patnaik,¹⁶ observes that law reform for victim compensation and rehabilitation of convicts must be introduced in the law as early as possible.

*Kalicharan M.L.*¹⁷ says that Cr.P.C. does not expressly provide adequate rights to the victims at the stage of the investigation. *Malimath, JJ.*¹⁸ had recommended that in a country like India making a distinction between cognizable and non-cognizable offences in the context of the investigation is not desirable, and with a few amendments and proper implementation, the law could be made good. This literature review is relevant in the present study since at many points cases under S.498-A of IPC and domestic violence cases overlaps. Detailed exposition of S.498-A, IPC is made in the 3rd chapter.

Vasundhara examines the increase in false dowry cases. In this internet article, it is stated that no right is given to a husband and his family to file a complaint of torture, abuse, blackmailing and harassment against the wife who usually invokes Section 498-A of the IPC in the hope of pressurising

¹⁶ A.K. Patnaik, Compensation to Victims and Convicts after Imprisonment, 117 Cri.L.J. 197-208 (2011).

¹⁷ Kalicharan M.L., The Role of the Victim in the Indian Criminal Justice System, 117 Cri. L.J.285-291(2011).

¹⁸ Deepalakshmi, The Malimath committee's recommendations on reforms in the criminal justice system in 20 points, <https://www.the hindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in -20-ponts?article22457589>.

husband and in-laws.¹⁹ In most cases of settlement, the wife withdraws her complaint under Section 498-A. Thus laws are misused for extortion of husbands with the involvement of women's organizations, police and lawyers. Such instances have been increasing, and the Supreme Court had identified them as legal terrorism.²⁰

S.Santhi critically appraises the protection of women under the Domestic Violence Act, 2005, and observes that if a woman is the one to start the quarrel, the husband has no remedy under the Act.²¹ The definition clause is very extensive where the husband will be liable for omission, conduct or commission of domestic violence. Moreover, the very purpose of the Act is blurred.

*K.Vijaya Lakshmi*²² analyses the concept of domestic violence and states that the concept of cruelty as a matrimonial offence is evolved from righteous indignation. She says that mental cruelty can cause grievous hurt, and the sole object of remedy is to safeguard the injured spouse from further injury.

¹⁹ Vasundhara, Use and Misuse of Section 498-A,1 (Oct. 25, 2017, 3.38 PM), http://www.legalserviceindia.com/legal/article_652_use_and_misuse-of_Section_498a.html.

²⁰ Sushil Kumar Sharma v. Union of India, (2005)6SCC 281.

²¹ *S.Shanthi*, Domestic Violence Act- A New Dawn in Gender Justice XXXIII C. U. L. R. 197 – 217(2009).

²² *K.Vijaya Lakshmi*, Cruelty as a Matrimonial Offence: Changing Trends XXX C. U. L.R. 417 – 431(2006).

*Puja Jaiswal*²³ makes an analysis of the concept of marriage and live-in relationship. It observes the concept of marriage and live-in relationship. The author is of the view that a live-in relationship is a pure form of high-tech adultery. The Protection of Women From Domestic Violence Act, 2005 affords protection from domestic violence not only to women who are married but also to unmarried women who are in a relationship akin to marriage. The legal provision has invited much criticism.

*Debasree Lahiri*²⁴ discusses the dignity of women, rape, law, and reality in *the Suman Rani Rape Case*.²⁵ There are three accused; one was acquitted, and for others, imprisonments were reduced to five years by “peculiar facts and circumstances of the case and conduct of the victim.” Even though the judgment was delivered in 1989, the observations made by the Court are relevant even today. The judgment reflects the occasional soft attitude towards perpetrators of crimes against women.

*Anjali Kant*²⁶ proposes amendments in the Constitution and Cr.P.C. to further safeguards to women. *Luigi Lo J. and Robert C. Davis*²⁷ emphasize sexual violence perpetrated against women, men, children and the elderly, and says that young women are the most frequent victims. According to the authors, in United States sexual victimization occurred among females between age

²³ Puja Jaiswal, *Live in Relationship and Law*, Nyayadeep Vol. XIII, Issue 3 July.

²⁴ Debasree Lahiri, *Gender Justice* 337 – 360 (2006).

²⁵ *Premchand & Anr. v. State of Haryana* AIR 1989 SC 937.

²⁶ Anjali Kanth, *Women and Law* 462–467 (2003).

²⁷ J. Lurigi Lo & Robert C. Davis, *Victims of Crime*, 3 – 23(2013).

of 12 and 34, and the rate of sexual assault of girls and women was four times the rate for boys and men. They say that it strips victims of their dignity, interdependence, physical strength and has a financial impact. The book also says that the adoption of legal rights for crime-victims has been a fairly recent development in the United State's Criminal justice system. The Criminal justice system becomes more attentive to the interests of crime-victims.

*Shekhar Kumar*²⁸ discusses information regarding matrimonial crimes like dowry death, early marriage, marital rape, domestic violence, the misuse of protective laws, and the importance of counselling in curbing matrimonial offences. *Lalita Dhar Parihar*²⁹ discusses laws relating to women. The author observes "The Court has thus had to be watchful to see that emotions or sentiments are not allowed to influence their judgment, and they do not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent till proved guilty." The author has made this observation in the context of discussing checks against abuse of Section 304-B. This researcher has delved upon detailed exposition of S.304 B, IPC in the third chapter of this work. *Ramaswamy*³⁰ focuses on women's rights and laws at the national and international level. While dealing with the Indian

²⁸ Shekhar Kumar, Matrimonial Crime and Misuse of Law, 228-230, 240 – 286(2012).

²⁹ Lalita Dhar Parihar, Women and Law, From Imprisonment to Empowerment, 321(2011).

³⁰ B.Ramaswami, Women and Law, (2013).

law for the protection of women from domestic violence, the author lays down the chances of abuse of the law by women. *Rajasekharan Nair*³¹ emphasizes the concept of gender justice. The author also narrates the need for gender neutrality in offences relating to marriage. He also highlights some of the defects and lacunae in the existing laws with suggestions for amendment. *A.P. Shah's*³² book is the report of a colloquium. The book points out some defects of traditional law on domestic violence. One is that it takes several years for a case under Section 498-A of IPC to come up for trial in the Court, whereas divorce proceedings in the family Court take lesser time. For husbands to settle divorce proceedings, withdrawal of charges under Section 498-A becomes a precondition.

Eve S. Buzawa,³³ and others state that the National Family Violence Survey and more than 100 additional studies conducted in the US tended as a group to report rates of violence committed by women to be as high as men. The advocates of gender-neutral approach to violence conclude that violence perpetrated by a person should not be judged on the basis of sex. Same

³¹ G.Rajashekharan Nair, Gender Justice under Indian Criminal Justice System, 184 – 189 (2011).

³² A.P. Shah, Domestic Violence against Women and the Law, Domestic Violence and Law, The Report of Colloquium on Justice for Women Empowerment through Law, 221- 223 (2000).

³³ Eve S.Buzawa and Carl G. Buzawa, Domestic Violence – The Criminal Justice Response, 11-28 (2003).

author, in another book describes the models of judicial intervention in domestic violence cases.³⁴

*Dipa Dube*³⁵ explains the concept of marital rape, Its meaning, historical background, the legislative framework in India, and the for- and -against arguments of marital rape law, etc. *Reema Kaul*³⁶ sheds light on female criminality and explains that crime is not the exclusive domain of the male. The author specifies that husband beating is the most “underreported crime.”

*Rattan Singh and Mehak Ahuja*³⁷ have dealt with several laws to prevent offences against women. The PWDV Act, 2005, is discussed in detail. The authors, while considering the loopholes of the Act, state that many cunning and unscrupulous women misuse these laws to their advantage. This Act has now become a powerful tool in the hands of women to harass men. The Act has worsened the domestic problems leading to the breakdown of marriage as women are encouraged to approach the Court. *P.K. Das*,³⁸ emphasizes that, No doubt India has women related legislation and Constitutional provisions, particularly Sections 304- B and 498-A of IPC, and provisions of Cr.P.C and Indian Evidence Act along with Article.14, 21 & 39(a) to protect women

³⁴ Eve S. Buzawa, Responding to Domestic Violence, 309-333(2012).

³⁵ Dipa Dube, Licence to Rape, Gender Justice, N.K. Chakraborty (Ed.) 180 – 188(2006).

³⁶ Reema Kaul, Women and Crime, 21(2006).

³⁷ Rattan Singh and Mehak Ahuja, Domestic Violence in India: A milesonite in Protection of Women, Family Violence in India, Subhash Chandra Singh, (Ed.) 89 – 103(2010).

³⁸ P. K.Das, Universal Hand Book on Protection on Women from Domestic Violence Act and Rules, 4,5,6,11(2007).

from violence. The PWDV Act, 2005 intends to provide the most useful security to women community who suffer family violence.

Giriraj Shah,³⁹ observes that the way in which women criminals operate is not confined to petty crimes alone. Rarely their actions are premeditated, and in most of the cases, victims are pre-meditated, ie; the women criminals decide in advance, who is to be targeted. Most murders are the result of marital conflict. Most murders occur in a family where there is more than one woman in the same house.

*Rattan Singh and Jaseep Kaur*⁴⁰ observe that India exempts marital rape from rape law. However, it is usually considered a form of cruelty and domestic violence. It is criminalized by invoking Section 498-A of IPC and PWDV Act, 2005 though both do not contain the term 'marital rape'. The book also contains a comparative study of marital rape. *G.K. Boodeppa*,⁴¹ explains the consequences of domestic violence on women, men, older people, children, and society. It also deals with the scope of intervention of social work for domestic violence. The author states that the consequence of domestic violence over men goes unreported, as compared to women according to the statistics of Save India Family Foundation.

³⁹ Giriraj Shah, Crime against Women and Police, 576, 580, 581, 585(2000).

⁴⁰ Rattan Singh & Jasdeep Kaur, Criminalization of Marital Rape: An Analysis, Recent Issues Concerning Violence Against Women, 1 – 10(2011).

⁴¹ G.K. Boodeppa, Consequences of Domestic Violence and Intervention of Social Work 57 – 65(2011).

*Shekhar Kumar*⁴² gives information regarding matrimonial crimes like dowry death, early marriage, marital rape, domestic violence, etc. and misuse of protective laws and the importance of counselling in curbing matrimonial offences.

*Indira Jaising*⁴³ examines domestic violence and how the law deals with it.

The book also provides a definition of domestic violence. *Ram Ahuja*⁴⁴ mainly deals with wife battering and he also emphasises upon the plight of a rape victim to prove that she is a chaste woman. Book also says about recreation in sexual violence, assailant behaviorism, sex satisfaction in dominance, revenge and hostility in sadistic rape. It also deals with motives, inordinate sexual desire, hostility, intoxication and victim's provocation.

*Subhash Chandra Sing*⁴⁵ deals with physical abuse, which includes slapping, beating, arm twisting, stabbing, strangling, burning, hooking, threats with any object or weapon, and murder. This book also mentions sexual abuse and psychological abuse. The psychological abuse includes acts such as the denial of funds, denial to donate financially, denial of books, basic needs, controlling healthcare, and employment, etc. It also says that no Commission or police can watch every nook and corner of the country. No NGO or any

⁴² Shekhar Kumar, Crime Against Women, a Good Perspective, 228-230, 240 – 286 (2010).

⁴³ Indira Jaising, Law of Domestic Violence, 1(2001).

⁴⁴ Ram Ahuja, Violence Against Women (2008).

⁴⁵ Subhash Chandra Singh, Gender Violence, 18 (2011).

other agency can be present every where to protect human rights. It deals with bride burning and its reasons.

There is a newspaper article based on data given by the Government (Home Ministry).⁴⁶ Lack of legal literacy on the part of victims is projected as one reason for the increased nature of crime rate. Another reason is the use of liquor, drugs and illicit relations by perpetrators.

An article called, *Domestic violence law in India-a Shield or sword*,⁴⁷ which deals with criticism of the PWDV Act⁴⁸ states that, it is overwhelmingly gender biased in favour of women. In western countries, family violence laws are applicable to both men and women.⁴⁹

Another article mainly stresses the non-uniformity in the appointment of Protection Officers by different States.⁵⁰ The article also discusses about the impediments to the effective implementation of the law mentioned in the Supreme Court judgment,⁵¹ which had ruled that married women were not

⁴⁶ Niyamam Karsanam: Sthreekalkethiraya kutakrithyangal niyanthranatheetham, THEJUS, Oct. 13, 2013.

⁴⁷ It deals about Criticism of Domestic Violence Act. There is some criticism that Act is one sided and never address partner violence suffered by men., *Infra* N. 48.

⁴⁸ Domestic Violence Law in India-a Shield or a Sword (Sep. 10, 2014, 8.35 AM), <http://savemarriages11/10>.

⁴⁹ 498-A.org, Domestic Violence Act of India is against Men!! (Jan.22, 2015, 9AM) [http://www.498a.org/domestic Violence.htm](http://www.498a.org/domestic%20Violence.htm)

⁵⁰ One world South Asia, Study Highlights Loopholes in India's Domestic Violence Law, (Jan.14, 2018, 9.45 AM), http://southasia.oneworld.net/news/study-highlights-loopholes-in-india-domestic-violence-law#.Xb_GyNIzbiU.

⁵¹ S.R. Batra v. Taruna Batra, (2007)3SCC 169.

allowed to reside in premises owned by the mother-in-law in cases where their husband had split residence.

T.K. Rajalakshmi,⁵² says that there are ambiguities in the law to protect women against domestic violence and lack of knowledge of the Act may lead to poor relief providing. She says that there are many infrastructural lacunae and cumbersome procedures regarding serving of notice by a Protection Officer. It emphasizes there is no correlation between some cases filed and Protection Officers appointed.

In the book, *Family Violence*, *Richard O Crelles*⁵³ mentions that changes in family structure and economic climate have been in a direction that could have reduced the risk factor for wife- abuse. He further explains that being a victim of parental violence, the frequency of victimization appears to have no bearing on the beaten wife's decision whether or not to seek outside help.

*Meenakshi Poonio*⁵⁴ deals with the practice of dowry endorsed by orthodox Hinduism as a perversion of Sanskrit marriage prescriptions. Dowry is linked to caste status among higher castes, and dowry is expected from the girl's family. Among lower caste families the dowry is paid to the girl's family. As

⁵² T.K. Rajalakshmi, Gender Issues Law and Loopholes, FRONTLINE (02 Jan. 2, 2010)29.

⁵³ B. Richard, Family Violence, 107 & 114 (1987).

⁵⁴ Meenakshi Poonio, Women Human Rights in India, (2011).

a result, the prevalence of dowry increases with the process known as Sanskritization.⁵⁵

*Sudhir Rao*⁵⁶ deals with the status of women in the medieval period. The author states that a woman's position in society was so pathetic and horrible during the medieval period. *Kiran* in a study says that traditionally women had four-fold status role sequence.⁵⁷ The women, whose status is traditionally well-defined and almost fixed in the society, is now experiencing far-reaching changes.

Gaur in his study comments that the biological weakness of a woman particularly makes her an easily vulnerable victim of tyranny at the hands of men in addition to socio-economic and educational factors, The women's inferior status is established at birth itself leading to female infanticide⁵⁸.

Jaspal Singh,⁵⁹ emphasizes Directive Principles of the State Policy contained in the Constitution, which have female oriented provisions. *Susan S.M.* says domestic violence is a cultural manifestation of male power⁶⁰. It is as immutable and enduring as patriarchy, which supports and sustains it. Male

⁵⁵ It is a particular form of social change found in India. It denotes the process by which caste or tribes placed lower in the hierarchy seek upward mobility by emulating the rituals and practices of the upper or dominant castes.

⁵⁶ *Sudhir Rao*, Women Crime and Prison Life, 149 (2011).

⁵⁷ *Kiran*, Women in India: Role and Status of Women in India (Aug. 11, 2018, 10.40 AM), <https://www.importantindia.com/20816/women-in-india-role-and-status-of-women-in-india/>.

⁵⁸ *Gaur*, Empowerment of Women in India, 12(2002).

⁵⁹ *Jaspal Singh*, Gender Justice and Women Empowerment, 187(2013).

⁶⁰ *Susan S.M.*, Gender in the Legal Process, 181 & 227(1996).

violence against women is an expression of the will to supremacy and domination by brute force. The path genesis or morphology of domestic violence develops from common assault to grievous bodily harm and on occasions extending to murder.

1.9. Methodology, Sources and Data Collection

Research methodology used is mainly doctrinal method with limited non doctrinal study. The Study is made relying upon both primary and secondary sources. In the primary source such as the Constitution, Statutes, Rules, Regulations, Legislative Policies, Orders, Notifications, etc. have been collected and as secondary sources, Law Commission Reports, authoritative books, research articles in newspapers and reputed journals, documents and internet websites reports, etc. have been gathered and referred. Empirical studies, data from victims, advocates and Judicial officers were obtained by survey by sampling method through questionnaires. Data from Protection Officers were collected through interviews.

1.10 Scheme of the Work

The Study is titled “Framework of Redressal Mechanisms to Victims of Domestic Violence in Kerala- A Critical Study.” It comprises of seven chapters, including introduction and conclusion.

1.11 Chapterization

1.11.1. Introduction

Chapter 1 deals with the Aim, Objective, Research question, Hypotheses, Research methodology, Limitation and Review of literature of the Study.

1.11.2. Historical and Conceptual Development of Status of Women Victims

Chapter two deals with historical and conceptual development on the status of women victims. The concept of the victim is analyzed in the victimological perspective. Victim is defined in the sociological context and victimological context. Analysis in this chapter went through various eras like *Vedic*, *post-Vedic*, in *Smrithis*, in *Epics*, *Buddhist* period, the medieval period, British Age, Post Independence period, etc. After analysing many aspects, domestic violence as a mode of female victimization were analyzed. Jurisprudential, Constitutional and human rights aspect of female victims of domestic violence were analyzed.

1.11.3 Road Map to the Protection of Women from Domestic Violence Act 2005

In Chapter Three, conditions which prompted the enactment of the PWDV Act are discussed. Deficiencies of the Dowry Prohibition Act, 1961, inadequacies of S.498-A, IPC and the need for making specific laws on

domestic violence are also discussed. Also detailed analysis of the Protection of Women from Domestic Violence Act 2005 is proposed to be made.

1.11.4. Judicial Response to Victims of Domestic Violence

Chapter Four analyses the judiciary's approach to victims of domestic violence. Judiciary always shows a positive approach to women victims. Important judicial decisions of the Supreme Court of India and various High Courts are discussed. Special weightage is given to decisions of Kerala High Court as the study is about victims of Domestic violence in Kerala.

Judiciary plays a prominent and crucial role in protecting the rights of women by altering redressal against actual or threatened violation of these rights. Judiciary is the last resort of victims. Indian Judiciary establishes a procedure to protect the innocent, discover and initiate appropriate action against the guilty and afford "Due Process" to all cases of violence against women and ensures that perpetrators are held accountable and guilty.

This chapter also analyses judicial attitude towards S.498-A cases, so that a comparison can be made between cases under S.498-A and those under the PWDV Act, 2005. A study is also done by this researcher as to why the need for the PWDV Act came into being in spite of S.498-A.

Different categories of cases are given under different headings - Wife's right to matrimonial property, powers to pass residence order, cases where a woman is a respondent under the Act, cases which are confluence of Section 498-A and Domestic Violence, and cases in which PWDV Act can be applied with retrospective effect for giving more protection to women.

1.11.5. Role of Instrumentalities in giving Protection to Victims of Domestic Violence

Chapter Five entitled "Role of Instrumentalities in giving redressal to victims of domestic violence" deals with the role played by the Women's Commission, Non-governmental organizations and media in giving assistance to victims of domestic violence. As the study is conducted in Kerala, the role of the State Women's Commission is examined. In many offences, the Women's Commission is taking *suo moto* cognizance. This happens most commonly in the case of victims of sexual violence. They conduct a lot of seminars. As this researcher visited State Women's Commission office, *Trivandrum*, the researcher found that they conduct seminars usually at *Trivandrum* District. Comparing the crime rate of *Trivandrum* District in 2015 with that in 2017, there is a drastic fall in the crime rate of domestic violence. This may be due to the awareness programs of the Women's Commission. Women's Commission gives assistance to

Jagratha Samithi and shelter homes. But many victims and even many advocates are not aware of these facilities which eventually debilitate the purpose of the Act. So as a redressal agency, though they are doing many things for women victims, the efforts taken for domestic violence victims are less, and it is not focused. The second part of the chapter deals with the role played by Non Governmental Organizations in giving redressal to domestic violence victims. A lot of NGOs in Kerala like *Anweshi*, *Punarjani*, *Gandhibhavan* etc. act as shelter homes as envisaged in the Act. They also act as mediators and gives counselling. They also create employment opportunities by providing training for different kinds of jobs. They also facilitate communication to policy-making levels of Government, thus acting as a bridge between victim and policy-making bodies. Their efforts are important for the emancipation of victims of domestic violence.

The third part of the chapter focuses on the role played by media. The press is the fourth estate, they can act in a pro active manner for the protection of victims. In many sexual violence cases, it is the media that brought into lime light the gravity of the issues. Women who file divorce cases or domestic violence cases are not gauged with the traditional women's concept of *Seetha* and *Savitri*. Visual media has a direct impact on the mind of viewers. Depiction of domestic violence scenes in films and serials cast an impression

in daily life. When we analyze the trends in Malayalam films, after 2010, there is a decrease in domestic violence scenes in films as the themes have changed in tune with new generation trends. But in T.V. Serials, the depiction of domestic violence continues. Even songs of many Malayalam films portray women as inherently weak.

Social media, being of recent origin, can do a lot in victim assistance programs. Women's Commission has developed a body called Media Monitoring Cell for controlling derogatory attitude towards women victims. If stringent punishment provisions are introduced, Media Monitoring Cells could control, such situations. Both statutory and non-statutory bodies are interconnected. Women's Commission has a liaison with both media and NGOs. Women Commission can recommend NGOs as service providers for domestic violence victims. Similarly, the Women's Commission can control media through Media Monitoring Cells.

1.11.6 Impact of PWDV Act – Empirical Assessment

The purpose of Chapter Six is to give emphasis or substantiate findings of previous chapters. Here a survey among victims, advocates, and judicial officers has been conducted taking a convenient sample. Interviews with Protection Officers are also included.

1.11.7 Conclusion and Suggestions

In Chapter Seven, a summary of all chapters, findings, and suggestions for improvement, etc. are included.

In the ensuing chapter, the researcher unveils the meaning and concept of women victims, status of women victims during ancient, medieval and modern ages.

CHAPTER 2

HISTORICAL AND CONCEPTUAL DEVELOPMENT OF THE STATUS OF WOMEN VICTIMS

Everything that over emphasizes women or issues related to women is always a subject of curiosity. She is always considered as a product of gaze, never treated as a human being, but as a commodity for the pleasure and service of man; a service provider for man in different roles like a mother, wife, and sister. Some writers say that during the *Vedic* period, women were considered *Sakthi* or *Devi*.¹ Then something happened in between and resulted in the drastic change of that concept. Women are often subjected to domestic violence, sexual violence, workplace harassment and ill-treatment in all spheres. In India, crimes like dowry-related ones and matrimonial cruelty are very common.² We can see that women are considered as second-class citizenry in many places. However, in India, once women were given a prime position, and later on, their status became degraded and it is a matter to be studied in detail. In this chapter, the researcher unveils the meaning and concept of women victims, the status of women victims during ancient, medieval, and modern ages. It is often assumed that gender equality can be achieved by transcending the divides of gender, social relations, or economic

¹ Dr. Pallavi Thakur, *A journey of Hindu Women from Shakthi to Sati in Ancient India*,. 4 IJESR 6, 381, 383 (2017).

² Ankur Kumar, *Domestic Violence in India: Causes, Consequences and Remedies* (Feb. 16, 2017, 2.35 PM), <https://www.youthkiawaz.com/2010.02/>.

structures with enhanced facilities, benefits, protectionism, and institutional support.³

2.1. Meaning and Concept of Victims

The term ‘victimology’⁴ is the scientific study of crime, victims, and their relationship with offenders and society.⁵ The pristine meaning of the term victim was rooted in the idea of sacrifice.⁶ Today the concept of victim encompasses a person who experiences injury, loss, and hardship. In the 19th century, the notion of harm or loss became an integral part of the definition of a victim. In the modern criminal justice system, the word denotes a person who has experienced injury, loss, or hardship owing to the illegal action of another individual, group, or organization. It encompasses spouses, children, family, and other relations of the sufferer.⁷

The Word victim is defined in *Black Law Dictionary* as a person harmed by criminal acts.⁸ A victim is someone who has suffered as a result of someone else’s actions or beliefs, or as a result of unpleasant circumstances.⁹

³ Rainuka Dagar, Gender, Identity, and Violence - Female Deselection in India 1 (2014).

⁴ It is made up of two words, *victima* and *logos*.

⁵ All kind of sufferers are denoted by the term victim.

⁶ Jainhong Liu, Bill Heberton et. al, Hand book of Asian Criminology, 343(2013)

⁷ “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.” Article 1, U.N. General Assembly Declaration at the principles of Justice for victim and Abuse of power adopted in November 1985.

⁸ Bryan A. Garner & Henry Campbell Black, Blacks Law Dictionary, 1561 (1999).

⁹ Dictionary.com, Victim, Definitions, (Sep. 8, 2018, 12.15 PM), <https://www.dictionary.com/browse/victim?s=t>; Oxford English Mini Dictionary, 619 (7th Ed.) (2007) - If a person is harmed, injured, or killed as a result of crime associated or other event or action.

This researcher concentrates only on women victims. Because of the psychology, physical, and emotional difference from men, female victims constitute a separate class.

2.2. Historical Development of Status of Female Victims

We can correct the future only by knowing the past. We have read that women who were considered as "*Devi*" or "*Shakthi*" during the *Vedic* period were gradually ill-treated and became at par with a slave. *Manu Smriti* says, "*yathra naryasthu poojyathe ramanthe thathra devthaaha.*"¹⁰ *Rigveda* says, "no one is superior or inferior, all are brothers and all should strive collectively for common wellness."¹¹ But over the years, this situation changed. Men became the earning members and wealth accumulated in them only. When this power relation changed, the status of women at home also deteriorated. Through this Chapter, the researcher tries to find out how deterioration happened through ages.

2.2.1. Status of Women in the *Vedic* Period

The *Vedic* period may be termed as a period of feminine glory and liberalism. Women participated in all spheres of life like men. They were sent to *gurukuls* for learning *Vedas*. During the early *Vedic* age, there were two categories of female students, viz. *Brahmavedinis* and *Satya vedinis*.

¹⁰ Patrick Olivelle, *Manu's code of law*, 3 – 56 (2005).

¹¹ *Rigveda mandala - 5, Sukths 60, Mantra 5, Developing Human rights Jurisprudence, Judicial Colloquium, Vol. XV 24-26 (1988).*

Brahma vedinis were women who devoted their lives to acquiring knowledge.¹²

Scholastic women like *Gargi*, *Maitreyi*, *Ghosa*, *Apala*, and *Yami*, excelled over contemporary male scholars. They were accomplished in art, music, dance and even warfare.¹³

During the *Vedic* period, women had an exalted position, and they enjoyed a fair amount of personal freedom and equality with men. Both boys and girls had equal opportunities for education. In the *Vedic* period, the education of women was important because *Atharva Veda* reiterated that the success of a woman in her married life mainly rests on the proper training during childhood.¹⁴ Men and women together performed religious duties. She was considered more than equal in that period.¹⁵ During the *Rig Vedic* period, women participated in philosophical debates along with men.

The *Vedic* period is characterized by the absence of the *purdah* system and equal rights in selecting life partners. Polygamy was rare and was confined to the ruling class. The dowry system was present only among rich and royal families. Dowry was given not as money, but as movables, chattels. One important feature of the *Vedic* period was widow remarriage. There was no

¹² *Apala*, daughter of sage *Athri*, was a *Brahma Vedini* and contributed a few hymns in *Rig Veda*, (Aug. 12, 2016, 3.42 PM), <https://hinduism.stockexchange.com/>.

¹³ Mamata Rao, Law Relating to Women and Children 27 (2012).

¹⁴ Lakshmi Jain, Drop-out of Girl Child in Schools 10 (2008).

¹⁵ N. Jayapalan, Women And Human Rights 11 (2001).

discrimination between a boy and a girl. Girls were allowed to undergo *upanayana*. In social terms, early *Vedic* society was very egalitarian in many respects.¹⁶ In a society, where gender equality exists, there is no scope for domestic violence against women.

Vedic society viewed the offence of rape from women's perspective and regarded it as an ultimate violation of femininity. These kinds of offences were kept under a separate heading called *strisangrahanam*. *Katyayanasmrithi*, *Brihaspatismrithi*, and *Naradasmrithi* were against the victimization of women.¹⁷

2.2.2. Women in the Post -Vedic Period

A gradual decline in the position of women happened during the Post-*Vedic* period. Tenets of Manu appeared, and the role of women got restricted to four walls of the home.¹⁸ In domestic life, women were considered supreme and enjoyed family life. Women folk did spinning and weaving at home and helped their spouses in agriculture. Husbands used to consult wives on financial matters.

Eventually, the honored status enjoyed by women in family and society began to change. Aryans began to prefer a male child over females. *Upanayana* of girls was utterly abandoned. The marriageable age of girls

¹⁶ Id.

¹⁷ Dipa Dube, Rape Law in India, 24 (2013).

¹⁸ V.K. Dewan, Law Relating to Offences Against Women 32 (1996).

was lowered up to 9 or 10 years of age. Several restrictions were brought on women, and male lawgivers curtailed freedom of speech and expression of women, and society became polygamous. *Manu Smriti* curtailed the freedom of women,¹⁹ but at the same time burden of protecting them was shifted to men. Manu was totally against molestation or ill-treatment of women and gave reverence to women.²⁰

Unmarried daughters had a share in the father's property. The daughter and son had equal rights in the mother's property after her death.²¹ As a wife, the woman had no share in her husband's property. Women had equal rights in social and religious fields but had limited rights in economic affairs.

2.2.3. Status of Women in *Smriti* and *Epics*

Statements in *Smriti* are equivocal. In certain places, they speak in favour of women, and in some other places, they are anti-women.

In the epics, women were treated with respect. Most of the female characters of *Ramayana* and *Mahabharata* were well educated.²² In *Ramayana*,

¹⁹ 9.3, Manusmriti, "The father guards her at teenage, husband guards her in the youth, the son guards her in old age, the woman is not fit for independence."

²⁰ 3.56, Manusmriti, "The society that provides respect and dignity to women flourishes with nobility and prosperity. And a society that does not put women on such high pedestal has to face miseries and failures regardless of how much noble deeds they perform otherwise." 3.55, 57.58, 59, 62, 9.26, 28, 96, 4.180 etc. are also examples.

²¹ A.S. Anand, Justice for Women: Concerns and Expression 15 (2003); N. Jayapalan, Women and Human Rights 15 (2001).

²² Shwani, Status Of Women in Ancient India, (Jan 2, 2015.11 PM), <http://www.yourarticlelibrary.com/women/status-of-women-in-ancient-india/47636>.

penances done by the King without his wife (*Ardhangini*) were considered futile, and only for that, they built a golden idol of *Sita*.

2.2.4. Women in the Buddhist Period

During the Buddhist period, the position of women improved to a certain extent. They had their *Sangha* called *Bhikshuni Sangha*, which provided avenues of cultural activities and social services. They got ample opportunities in public life. But the economic status remained pathetic. They did not consider women as inferior to men, and equal treatment was provided to both sexes. In the family, the husband and wife were expected to share responsibilities. The husband has to consider the wife as a companion. The wife was given opportunities to acquaint herself with the business or industry in which the husband was engaged so that she should be in a position to manage his affairs in his absence. Buddhism did not consider the birth of a female child an ill omen and educational opportunities were equally provided.²³

2.2.5. Women in the Medieval Period

Status of women worsened during the Medieval period. With the invasion of *Alexander*, the position of women further deteriorated.²⁴ Widow marriage was banned entirely. Women were not educated and they were supposed to

²³ Bimalendu Mohanty, Budha Gave Equal Status to Women with Men (May 13, 2017 10.30 PM), <https://www.dailypioneer.com/2013/state-edition/-buddha-gave-equal-status-women-with-men.html>.

²⁴ Supra N.13 at 32.

serve their husbands, and that was their foremost duty. During this period, the *Sati* system came into society.

Muslim invasion increased the dependency of women. They introduced the *Purdah* system, and child marriage became prevalent. These are the main reasons for diminishing women's empowerment.²⁵ During the Muslim rule, a large section of Hindus accepted the practice of veiling. The challenge of Islamic occupation made the Hindu community defensive and introverted, causing a desperate return of orthodox Hindu beliefs and practices, resulting in further constraining the status of women.²⁶ Being oppressed by the feudal social order, they lost the right to education. The system of dowry became prevalent in society.²⁷

The law of the Muslim era divided offenses and punishments into four categories, viz. *Hadd*, *Quiyas*, *Diya*, and *Tazir*.²⁸ These were according to the tenets of the Prophet. Though the law did not specifically mention rape, the word *Zina* appears in the religious texts. It denotes illegal sex. Thus, Muslim law prohibits all extramarital relationships. The offence of rape ordained an

²⁵ Pralay Adar, Domestic Violence Retrospective of Mythological Concept, Domestic Violence Against Women in India 1 – 11 (2005).

²⁶ National Academy for Training and Research in Social Security, Status of women in India, National Academy for Training and Research in Social Security Reading Material (Aug. 16, 2016, 1.10 PM), <https://www.achieveriasclasses.com/images/uploads/ESO12-29-Status-of-Women-in-India.pdf>.

²⁷ Supra N.13 at 33.

²⁸ Evidence in Islamic Law: Reforming the Islamic Evidence Law Based on the Federal Rules of Evidence, (Dec. 18, 2018 6.35 PM), <https://tandfonline.com/doi/abs/10.1080/>.

equal amount of culpability on the women for the occurrence. The law treated her as an accomplice. Further, to prove the charge, four witnesses were required, and a false informer was liable to a penalty of a hundred strokes by the whip.²⁹

Polygamy became common. *Razia Sultana* was the only woman monarch to rule the throne of Delhi. *Nurjahan* and *Rani Durgawati* were also notable names of that period. The society also practiced *Devadasi* tradition, where the girl was forced to marry the teaser. The Medieval period was the darkest in the history of Indian women. Exploitation in the form of early marriage and female infanticide was practiced.³⁰

However, during the 15th century, the situation underwent some changes. With the advent of the *Bhakti* movement under the leadership of *Chaitanya*, *Guru Nanak*, *Kabir*, *Meera*, and *Tulsi Das*, women were more attracted to religious worship. But this did not bring any substantial change in the economic conditions of women.³¹

2.2.6. Status of Women during the British rule

During the British period, many reformers like *Raja Ram Roy* and *Swami Dayanand Saraswathi* with the help of the British Government, introduced

²⁹ Supra N. 13.

³⁰ Ibid

³¹ Katherine K. Young, Hinduism, Women in World Religions, Arvind Sharma (Ed.) 76-77 (1987).

measures to eradicate evils and to transform societal attitudes towards women. British Government brought about changes in the economic and social structure the society.³² *Sir John Macaulay*, Chairman of First Law Commission opined that legislations during British period is based on uniformity and certainty.³³ But whether such intentions got translated into reality remains debatable.

2.2.7. Status of Women in Independent India

The status of women has radically changed since independence. Both structural and cultural changes provided equality of opportunity to women in education, employment, and political participation. Life of a woman in India and the world over are circumscribed by what may be termed as the five 'P's, viz. patriarchy, productive resources access inadequacy, poverty, promotion advancement insufficiency, and powerlessness.³⁴ More freedom and better orientation were provided to women's organizations to pursue their interests. Several commissions were appointed by Central and State Governments to study the causes of the low status of women and to protect their rights. Various legislations were enacted to uplift the status of women including property rights.³⁵

³² Bengal Sati Regulation, 1829, Hindu Widow's Remarriage Act, 1856, Female Infanticide Prevention Act, 1870 etc. were made during British reign.

³³ M.P. Jain, *Outlines of Indian Legal History*, 467 (2001).

³⁴ Uma Shankar Jha, *Indian women Today* 3 (1996).

³⁵ B. Sivaramayya, *Property and Economic Rights of Women: Maintenance and Dower*, paper presented in 4th National Conference on Women studies, at Andhra University (4 - December 1989).

The patriarchal dominance is the main reason for female victimization at home, and for treating the wife as a property of the husband. Such inequality suffered by women through the ages has demarcated woman's places in the family as inferior.³⁶ Every film, advertisement and Television serial stereotyped women as inferior to men. Still, in families, girls are compelled to assist the mother in household chores. But boys are not allowed even to wash even their dishes. The boys, who witness such traditions, will treat women as second- class citizens.

2.3. The Emergence of Domestic Violence as a Mode of Victimization

The concept of gender justice means equality in treatment without regard to sex.³⁷ When one analyses the history of victimization, it may be seen that patriarchal culture is mainly responsible for the second-grade citizenry of women. After independence, the status of women in the country got uplifted. Various benefits such as scholarship, loan facility, hostel facility, etc. are given to women for education. By the collective efforts of these missions, a large number of girl students could go for higher studies today. There are several legislations that augmented their standard of living in India.³⁸

³⁶ Pranav Dua, Essay on Status of Women in Independent India (Sep. 14, 2018, 3.38 PM), <http://www.shareyouressays.com>.

³⁷ Rajashekar Nair, Gender Justice under Indian Criminal Justice System 15 (2011).

³⁸ Hindu Marriage Act, 1955; Hindu Succession Act, 1956; The Special Marriage Act, 1954; The Dowry Prohibition Act, 1961; Suppression of Immoral Traffic of Women and Girls Act, 1956; The Medical Termination of Pregnancy Act, 1971; The Family Court Act, 1984; The Indecent Representation of Women (Prohibition) Act, 1986; 73rd, 74th Constitutional Amendment Acts.

The liberal ideas and feminist movements have not changed the social or legal status of women. The traditional concept of marriage has changed from sacrament to contract. As the sanctity of marriage is gone, a rift began to appear in family bonds, marital relations and ultimately has led to domestic violence. Domestic violence due to the erosion of social and moral values has increased during the last few decades.³⁹

The term domestic violence most commonly refers to familial violence. Family violence may arise owing to many factors. They have mental as well as physical attributes. The trauma imprinted in the mind of the woman is psychologically most important. In Indian culture, usually, women stay in the family of husband and will have to adjust a lot in the new family. It may have entirely different culture. After marriage, she becomes alien to her own family, and some in-laws restrict her visiting her own family. Formerly family violence was considered to be a private matter. The Governmental agencies often show reluctance in intruding on it.⁴⁰ Domestic violence due to an erosion of social values has increased during the last decades.⁴¹ One researcher, *Gurpreet Panes*, has a different opinion that domestic violence is not only limited to ladies. In U. S. A. the law is termed family violence law, instead of domestic violence law and there husband or wife may be booked

³⁹ Sheeba S. Dhar, Protection of Women from Domestic Violence Act, 2005 - An Appraisal, 32 Ac. L. R.165 (2008).

⁴⁰ Anil Bhumali, Gender Violence and Social Exclusion 82 (2011).

⁴¹ Supra N. 13 at 70.

for violence.⁴² Indian law considers only women as the aggrieved person. Law against domestic violence was introduced to strengthen the position of women in society.

In India, the concept of domestic violence is multifaceted like violence between spouses, violence with other co-habitants, etc. In primitive societies also, there was evidence of domestic violence.⁴³ In the Medieval period, Mughal emperors showed disrespect towards close relations. *Aurangzeb* imprisoned his father and murdered his brothers; similar was the case of *Shahjahan*⁴⁴.

The term 'domestic' was derived from the Latin word *domicilium*, which means within the territory of home. It crosses all race, class, and culture,⁴⁵ and such brutality is generally committed in the family unit.⁴⁶ Where the relationships are deeper and bonded with love, it is very complex. Usually, there may not be any eyewitness, and it is tough to prove.

According to *Black's Law Dictionary*, domestic violence means cruelty between members of the family circle, especially spouses.⁴⁷ It is least

⁴² Gurpreet Panna, Domestic Violence Against Men - A Neglected Social Aspect, Family Violence in India, 8 (2012).

⁴³ Ratna Bharama Gowder, Protection of Women against Domestic Violence, XXX C. U. L. R. 452 (2008).

⁴⁴ Naushad Parveen, Domestic Violence 21(2009).

⁴⁵ Marcel Danesi, Language, Society, and New Media: Sociolinguistics Today 41 (2016).

⁴⁶ Nita Nawal & R.S. Sharma, Domestic Violence Against Women - Legislation, Justice and Aspects 5 (2013).

⁴⁷ Supra N. 13 at 5.

reported owing to a feeling of guilt and shame, fear of other related traumas, and consequent loss of economic support . In rural areas, still girls are getting married at an age below twenty. So many drop out of studies and become dependent on the husband for livelihood.

2.3.1 Definition of Domestic Violence

There is no universally accepted definition for the term ‘domestic violence’ and its definition changes from country to country, region to region,⁴⁸ whereas the nature and extent of its prevalence are more or less similar globally.⁴⁹ The term domestic violence, spousal abuse, and intimate partner violence, domestic abuse, battering, family violence may be broadly defined as a pattern of abusive behaviors by one partner against another in an intimate relationship such as marriage, dating, family, or cohabitation.⁵⁰ Domestic violence means any act, omission or conduct which is of such a nature as harm or injury, has the potential to hurt or harm the health, safety or well-being of the person aggrieved or any child in the domestic relationship.⁵¹ The victims of domestic violence are at higher risk of repeated violence.⁵²

⁴⁸ Ravneet Kaur & Suneela Garg, Addressing Domestic Violence Against Women: An Unfinished Agenda (Sept.12,2018,10.23A.M), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784629/>.

⁴⁹ Duaripandi Macoothu, Domestic Violence: An Assessment Global Scenario 16 (2010).

⁵⁰ Pankaj Chhikara, Jitender Jakhar, et.al, Domestic Violence: The Dark Truth of Our Society, (Sep. 12, 2018, 10.23 AM) <http://medind.nic.in/jal/t13/i1/jalt13i1p71.pdf>.

⁵¹ Revathi, Law Related to Domestic Violence 20-21 (2009).

⁵² Lynette Feder, Community Supervision of Domestic Violence Offenders, Where We are and Where We Need to Go 247 (2010).

Violence in the family manifests itself as physical mistreatment, often repetitive, which is interrelated to the exercise of mental torture, neglect of basic needs, and where there is a dependency, the connection may result in grave injury to the victim. Parliamentary Select Committee on Violence in Marriage⁵³ observed that it would be “wasting its time if it hoped to solve the difficulties of battered wives”.⁵⁴

After the Medieval period, the condition of women attained a new phase. The society considers women as inferior. The practice of *Sati* was a wily practice to eliminate a widow from inheriting the family property of her deceased husband. The weakened position of women persuaded framers of the Constitution to include Article 15(3).⁵⁵ The protective or positive discrimination has been borrowed from Common Law. One can see the difference in the standpoint taken by Common Law Judges in *R. v. Prince*⁵⁶ and *R. v. Tolson*.⁵⁷ Both stands on the same footing. Due to societal consideration of the judges, or soft corner towards a female perpetrator, decision was made favouring *Mrs. Tolson*. The attitude had crept into the Indian legal system; which has prompted the framers to adopt protective discrimination. But the western world shows a different attitude towards

⁵³ Report from the Select Committee on Violence in Marriage, Together with the Proceedings of the Committee, Session 1974-75, Volume 2.

⁵⁴ Margaret Borkowski & Mervyn Murch Val Walker, Marital Violence – The Community Response 1 (1983).

⁵⁵ Article 15(3) – “Nothing in this article shall prevent the state from making any special provision for women and children.”

⁵⁶ L R 2 C.C.R 154 (1875).

⁵⁷ (1889) 23 QBD 164, 172 - 176.

domestic violence law. U.S. Family Violence Law treats both men and women at par and violence from the point of men and women have reached similar status.

Linda Chamberlain defines domestic violence as “a pattern of assaultive and coercive behavior, including inflicted physical injury, psychological abuse, sexual assault, progressive social isolation, stalking, deprivation, intimidation, and threats”.⁵⁸

Assault of woman or woman battering as it is now commonly called, both within marriage and outside has much in common with rape. Both rape and battering have similar consequences. An author Lee Ross says that, Violence, including intimate partner violence (IPV), is a major cause of death, disability, and hospitalization, faced by women of United States, and as such it has been targeted for action in the Nation’s Public Health Plan (US Department of Health and Human Service (2000)).⁵⁹

2.3.2. Need for Differentiating Victims of Domestic Violence from other Victims

In domestic violence, the victims constitute a separate class, unlike in other victimizations, i.e., because victimization happens from intimate relations.

The place where a woman has to get maximum protection becomes the place

⁵⁸ Duraipandi Maruthu, Domestic Violence: An Assessment of Global Scenario 3 (2016); also see Linda Chamberlain, Your words make difference: Broader implications for screening 2 (2000).

⁵⁹ Lee E. Ross, The War Against Domestic Violence 1(2010).

which destroys all her freedom and right to self- determination. Husband and in-laws become perpetrators. The offence has sociological and psychological magnitudes.⁶⁰ The theories of domestic violence have developed since 1970s. Other perspectives on violence emphasize the personal characteristics of the offender and the victim. One of the important unresolved issues relating to women victims of domestic violence is the cost- related separation between victimization and survival.⁶¹

'Violence' and 'domesticity' are essential elements of domestic violence. Domesticity refers to the quality or state of being domestic or possessing a domestic character. The central fulcrum of domestic violence falls on the location of violence and the relationship of parties, which differentiate domestic violence from other kinds of violence against women.⁶²

The main characteristic of domestic violence is that it happens at home, and other generic offences usually happen in public places. Here perpetrators are members of her own family from whom she expects maximum care and protection. In this way, victims of domestic violence constitute a separate class.

As already stated, the offence happens between intimate partners or from in-laws. There exists a familial relationship between the parties created by the

⁶⁰ Joel Garner & Jeffrey Fagan, Victims of Domestic Violence 61(1997).

⁶¹ Liz Kelley & Jill Radford, Sexual Violence Against Women and Girls- An Approach to an International Overview 61(2015).

⁶² Sandy Cook & Judith Besant, Women's Encounters with Violence 9 (2014).

nuptial bond. Usually, in generic offences, there may not be any familial connections. But in domestic violence, there must be a relationship that is characterized by intimacy, familiarity, or shared household. In contrast to other offences, in some cases of domestic violence, the mother-in-law also may be a perpetrator, who is also a woman.

2.3.3. Jurisprudential Analysis

For dealing with the jurisprudential angle, one has to analyze the word 'victim,' which was done already at the beginning of the Chapter. Why this researcher selected women victims that too specifically victims of domestic violence is because, this crime happens at home, where women expect safety and security.

In the modern world, monogamy is practiced, and almost all civilized societies abandoned the practice of polygamy. This has created lineage starting from the patrilineal side and not from the matrilineal side. The division of labour also started. The husband became the earning member of the family, and the wife began to depend on him. When the wife had to depend on her husband for everything, her status in the family started deteriorating. In order to keep a balance, some wealth were given to her from her family at the time of marriage.⁶³ Thus dowry system started. Unsatisfied dowry demand leads to domestic violence.⁶⁴

⁶³ [The Dowry system in India: Is the Trend Changing ?](https://pilitzercenter.org/projects/dowrysystem-india-trend-changing) (Dec 12, 2018, 12.10 AM) pilitzercenter.org/projects/dowrysystem-india-trend-changing.

⁶⁴ Anjali Dave and Gopika Solanki, [Special cell for Women and children: A Research Study on Domestic Violence](#). 27 (2000).

2.3.4. Constitutional Analysis

The Constitution and the different legislations passed by the Union and State legislatures give special protection to women⁶⁵ being aware of their weaker position.

Articles 14,⁶⁶ 15(1),⁶⁷ 15(3),⁶⁸ 16(1),⁶⁹ 39(a),⁷⁰ 39(d),⁷¹ 42,⁷² Article 46⁷³ Article 47,⁷⁴ Article 51(A)(e),⁷⁵ Article 243 D (3)⁷⁶ and Article 243 D (4))⁷⁷ of the Constitution are of specific importance in this regard.

⁶⁵ Article 15(3) reads thus: “Nothing in this Article shall prevent the State from making any special provision for women and children.”

⁶⁶ It assures equality before law and equal protection of laws within the territory of India and the provision reads as, “State shall not deny to any person right to equality before the law or the equal protection of laws within the territory of India.”

⁶⁷ “The State shall not discriminate any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.”

⁶⁸ “The State to make any special provisions for women and children.”

⁶⁹ “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”

⁷⁰ “The State shall, in particular, direct its policy towards securing for men and women equally the right to an adequate means of livelihood.”

⁷¹ “The State shall, in particular, direct its policy towards securing... that there is equal pay for equal work for both men and women.”

⁷² “The State shall make provision for securing just and humane conditions of work and for maternity relief.”

⁷³ “The State shall promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from injustice and all forms of exploitation.”

⁷⁴ “The State to raise the level of nutrition and the standard of living of its people.”

⁷⁵ “Every citizen has a duty to promote harmony and the spirit of universal brotherhood amongst all the people of India and to necessary to renounce practices derogatory to the dignity of women.”

⁷⁶ Not less than one- third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct elections in every Panchayat to be reserved for Women and such seats to be allotted by rotation to different constituencies in a Panchayat.

⁷⁷ Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

Article 14 ensures non-discrimination, by a broad mandate of equality before the law and equal protection of the laws for every person. Next by the re-affirmation and particular reference to sex, non-discrimination under Article 15(1) makes assurance doubly sure, the egalitarian principle is repeated with specific reference to women, vis-a-vis access to public facilities and utilities and other places maintained by State funds, wholly or in part, or dedicated for the use of the general public. Article 15(2). Article 15(3) gives the promise of individual attention to remove fetters and promote better opportunities to women. It is emphasized that every woman is equal in law against every man, and will receive equal protection and opportunity at the hands of the State. Again, the power to make special provisions, in favour of women and children is granted to the State for the upliftment of women.

Article 21 has a humane connotation as has been expounded so by the Supreme Court in *Bandhua Mukti Morcha v. Union of India*⁷⁸. The Court ruled thus:

“Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses(e) and (f) of Article 19 and Article 41 and 42 and at the least, therefore, it must include protection of the health and power of workers, men and

⁷⁸ (1997) 10 SCC 549.

women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in situations of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.”

This judgment is path breaking since it emphasises the concept of human dignity which encompasses all spheres of life.

In *Olga Tellis v. Bombay Municipal Corporation*,⁷⁹ the Court observed that:

“The right to live and the right to work were integrated and interdependent and, therefore, if a person was deprived of his job as a result of his eviction from a slum or a pavement, his very right to life was put in jeopardy. Since women suffer more, Article 21 must rescue and confer shelter even when husbands abandon them.”

In *Bai Tahira v. Ali Hussain Fissali Chottia*,⁸⁰ the Court liberally construed the provisions. It held that:

“welfare laws must be so read as to effectively deliver systems of the statutory objects sought to be served by the legislature, and when the beneficiaries were the weaker sections, like

⁷⁹ 1985 AIR 180; SCR Suppl. (2) 51.

⁸⁰ 1979 AIR 362; 1979 SCR (2) 316.

destitute women, the spirit of Article 15(3) of the Constitution must light the meaning of the section. The Constitution's pervasive omnipresence broods over the meaning and transforms the values of every measure. As has been made clear, the meaning of a statutory provision should be derived from values in a given society and its legal system.”

The State has enacted various legislative measures intended to ensure equal rights to counter social discrimination and various forms of violence and atrocities and to provide support services, especially to working women, although women may be victims of any of the crimes such as ‘murder,’ ‘robbery,’ ‘cheating’⁸¹ etc.

2.3.5. Human Rights Perspective

Cruelty against women is an obstacle to the achievement of the objectives of equality. It violates a woman’s right to enjoy human rights and fundamental freedoms.⁸²

Domestic violence is a problem that needs international attention to be severely dealt with.⁸³ UNICEF states that domestic violence is perpetrated

⁸¹ Dr. P.J. Sudhakar, Protection of Human Rights of women, 1 (May 11, 2018 2.30 PM) <https://pibgov.in/newsite/mbErl.aspx?relide116782>.

⁸² Suman Rai, Law Relating to Protection of Women from Domestic Violence 1190 (2013).

⁸³ Manoj Kumar Sinha, International Criminal Law, and Human Rights 358 (2010).

mainly by an intimate partner.⁸⁴ It may take different forms in different cultures, but the survivors of domestic violence have always been placed at the rear end.

Domestic violence mostly occurs within the home, and policing and punishing it poses a challenge to the sanctity of the familial relationship. It is violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood, or law.⁸⁵ How can the State take an active role in an offence which takes place within the four walls of a house, *Radhika Coomaraswamy*, former Special Reporter of the UN on Violence against Women has opined that “State inaction in preventing violence within the domestic sphere is a concern.”⁸⁶

Under International Human Rights Law, States have to protect victims of the cruelty of whichever nature. The Convention on the Removal of all forms of Discrimination against Women, 1979⁸⁷ makes it mandatory to treat a woman at par with man. State parties have to establish a mechanism which will impart legal protection to victims of domestic violence. Convention also makes it obligatory to treat women at par with men.⁸⁸

⁸⁴ UNICEF, Domestic Violence against Women and Girls, Innocent Digest No.6, DVV (June 2000) (Sep. 12, 2018, 5.20 PM), <https://www.unicef-irc.org/publications/pdf/digest6e.pdf>.

⁸⁵ Indira Jaising, Reconsidered; Dangerous Bill, (Mar. 2, 2017, 2.45 PM), <http://www.indiatogether.org/women/violence/domvobill.htm/>.

⁸⁶ SAHRDC, Human Rights and Humanization Law 86, (2008).

⁸⁷ Convention on the Elimination of All Forms of Discrimination against Women (Sep. 19, 2018, 2.40 PM), <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.

⁸⁸ Article 2(c), CEDAW.

Indian Penal Code offers some assistance to battered wives, and at the demand of a women's movement, was amended in 1983 to include section 498-A.⁸⁹ But this law was not sufficient to ensure shelter aspect of woman. Thus a law which is of civil nature was needed to answer this. Wide discussion among academicians and legislators were made about this. The Protection of Women from Domestic Violence Bill, 2005 received Presidential assent in September 2005 and came into operation in October 2006.

Protection extends only to a woman who is or has been in a 'domestic correlation' with the respondent.⁹⁰ India is a signatory to CEDAW and has incorporated provisions into its municipal law to protect victims of domestic violence.⁹¹

2.3.6. Steps taken by Other Countries to Combat Domestic Violence

After the Beijing Declaration,⁹² a greater momentum has happened. All governmental agencies tried to promote research, data collection, and statistics relating to different forms of violence against women, and to encourage research into their causes, nature, seriousness, and consequences.

⁸⁹ Section 498-A of IPC reads thus: "Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to a fine."

⁹⁰ Section 2(A), The Protection of Women from Domestic Violence Act, 2005.

⁹¹ Janusz Symonides & Vladimir Volodin, Human Rights of Women – A Collection of International and Regional Normative Instruments 29 – 37 (1999).

⁹² The Vienna Accord 1994, Beijing Declaration and Platform for Action (1995).

2.3.6.1. Violence in European Union

Gender-based violence happens everywhere, regardless of the social behaviour or social pattern of the country. It affects women's access to justice, financial existence and means to employment. European Union (EU here in after) protects women from gender based violences. There is a special Directive for supporting victims and providing access to justice.⁹³ It conducts awareness programmes and funds campaigns. At international level, EU has signed Istanbul Convention.⁹⁴

2.3.6.2. Violence against Women in the United States

In 1994, U.S. Congress passed the Violence Against Women Act (VAWA).⁹⁵ In 1996, certain amendments were made to the Act. After this, it became a federal crime. The Crime Control Act is intended to offer protection to women from domestic violence.⁹⁶ Under VAWA the full amount of losses, inclusive of the amount spent on medical, psychological and physiotherapy, transportation, temporary housing, compensation for loss of income, attorney fees, etc. can be recovered. The vast majority of studies done to determine

⁹³ Ending gender-based Violence, (May 24, 2016, 8.45 PM), https://ec.europa.eu/info/policies/justice_and_fundamental_rights/gender_equality/gender_based_violence/ending_gender_based_violence_cn.

⁹⁴ Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011.

⁹⁵ Legal momentum.org, History of the Violence Against Women Act, History of VAWA, (Sep. 26, 2018, 11.35 AM), <https://www.legalmomentum.org/history-vawa>.

⁹⁶ As per this, the fine amount and a protection order is given to the victim as redressal.

the rate of domestic violence among native Americans indicate a higher prevalence than among other races/ethnicities.⁹⁷

2.3.6.3. United Kingdom

In the U.K., 45% of women experience some form of domestic violence.⁹⁸

On an average, two women in England and Wales are killed by a violent partner or ex-partner every year per week. This constitutes nearly 40% of all female homicide victims.⁹⁹ Seventy percent of the incidence of domestic violence culminates in physical violence and injury.¹⁰⁰ Around 85% of forced- marriage victims are women.¹⁰¹ Violence, including intimate partner violence (IPV), is a leading cause of death, disability, and hospitalization in the United Kingdom, and as such, it has been targeted for action in the 'Nations Public Health Plan (KUS Department of Health and Human Services, 2000).¹⁰² To curb this, the UK government has enacted Domestic Violence, Crime, and Victims Act, 2004. Its primary concern is criminal justice, legal protection, and assistance to victims.¹⁰³

⁹⁷ Julie C. Abril, Domestic Violence among Native Americans 26(2009).

⁹⁸ Walby & S. C. Allen, Domestic Violence, Sexual Assault and Stalking: Findings from British Crime Survey, (2004).

⁹⁹ Id.

¹⁰⁰ Dodd T Et. al, Crime in England and Wales 21 (2004).

¹⁰¹ Home Office, Foreign and Commonwealth Office, Forced Marriage: A wrong, not a Right, 21 (2005).

¹⁰² Joanne Klevens, An Overview of Intimate Partner Violence among Latinos, The War Against Domestic Violence 235 (Lee E. Ross ed.) (2010).

¹⁰³ UNODC, Topic Three: The Right of Victims to an Adequate Response to their Needs, (May 16, 2017, 2.20 PM), <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-11/key-issues/3--the-right-of-victims-to-an-adequate-response-to-their-needs.html>.

2.3.6.4. Scotland

Domestic violence instances are recorded every ten minutes in Scotland,¹⁰⁴ and it increases every year.¹⁰⁵ At least one in five women in Scotland experience domestic violence in their lifetime.¹⁰⁶ So the Scottish parliament passed the Domestic Abuse Act in February 2018. This legislation covers not only physical abuse but also psychological torturing, emotional abuses, coercive, and controlling attitude.¹⁰⁷

2.3.6.5. Pakistan

In some tribal areas, women are gang-raped as punishment for men's crimes. Waves of religious extremism have caused a specific pattern of violent cases of abuse at home. In Pakistan, Domestic violence (prevention and protection) Act 2012 was enacted for protecting women against domestic violence.¹⁰⁸

2.3.6.6. Australia

Australian Federal and State Governments now locate domestic violence within a broader public policy approach to violence against women and name it along with sexual assault and sexual harassment. As a form of gender-

¹⁰⁴ Reporter, the Press and Journal, An Insight into Domestic Violence in Scotland, (Sep. 17, 2018, 2.15 PM), <https://www.pressandjournal.co.uk/fp/news/1458237/an-insight-into-domestic-violence-in-scotland/>.

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Hossain N. & Khan S., Domestic Abuse and the Duties of Physicians: a Case Report, Indian J. Med. Ethics, 2015 Oct-Dec; 12(4):248-50, (May 18, 2019, 11.30 AM), <https://www.ncbi.nlm.nih.gov/pubmed/26592790>.

based violence, in Australia ‘wife-beating’ had been a key concern of late 19th century feminist campaigners, but by the 1960s that phenomenon had once again become a problem that had no specific name and no position on public feminist or state agenda.¹⁰⁹ Feminist analysts insist that one has to go ‘beyond the rhetoric of naming domestic violence as ‘gendered violence’ and examine ‘discourses through which policies are operationalized.’ Domestic violence was first defined in the Family Law Act, 1975. Domestic and family violence protection Act came into being in 2012.¹¹⁰

2.3.6.7. Saudi Arabia

Saudi Arabia is the country that adopted domestic violence rules recently. The culture of Saudi Arabia and other Middle East countries is different from western countries. They follow Shariat law under which the groom has to give to the bride’s father, Mahar. High-income category man may marry up to four times. Saudi Arabia passed a legal ban on domestic violence. *King Khalid Foundation* drafted a new document against domestic violence. In 2013, the cabinet made the offence punishable.¹¹¹

¹⁰⁹ Adrian Howe, Sex Violence and Crime - Foucault and the ‘Man’ Question 180 – 185 (2008).

¹¹⁰ Queensland Government, Department of Child safety, Youth and Women, Sexual Violence Prevention, Violence Prevention (May 18, 2019, 11.50 AM), <https://www.csyw.qld.gov.au/violence-prevention>.

¹¹¹ Tom Throneburg Butler, The Times: Are They a-Changing? Saudi Law Finally Addresses Domestic Violence with Its Regulation on Protection from Abuse, (Mar. 12, 2019, 8.30 AM), <https://ilr.law.uiowa.edu/print/volume-100-issue-3/the-times-are-they-a-changin-saudi-law-finally-addresses-domestic-violence-with-its-regulation-on-protection-from-abuse/>.

2.3.7. Status of Women in Kerala

Kerala, known as God's own country, is famous for its alluring beauty. The rate of literacy is higher in Kerala compared to other States. Kerala became the first State to attain 100% literacy through a programme called *Athulyam* in 2016.¹¹² A literacy rate, which is above 90%, is considered 100% literacy. Women of Kerala are far ahead in achievements and literacy rates compared to women of other States of India.¹¹³ Presently, 91.98% of Keralite women are literate, which is far higher than the national average. The national-level literacy rate of women in India is only 53.07%.¹¹⁴ Still, there are unequal power relations among males and females of Kerala. So, educationally women of Kerala form a separate class. That is the reason for the selection of women victims of domestic violence of Kerala for research.

2.3.8. Protection of Female Victims in International Instruments

In line with provisions of the Universal Declaration of Human Rights and International Covenant for Civil and Political Rights, signatory nations made changes in their municipal law to include female-friendly provisions.

¹¹² The New Indian Express, Kerala became First State to Achieve 100% Primary Education, (Sep. 18, 2018, 7.35 AM), http://www.newIndian_express.com/states/keralaathulyamfes.

¹¹³ Literacy Rate of India, 2011 (Sep. 19, 2018, 8.35 AM), <http://Indiafacts.in/india-census-2011/literacy-rate-india-2011>.

¹¹⁴ Literacy and level of Education (Oct. 2 2018,1.30PM), http://www.censusindia.gov.in/census_And_literacy_and_level_of_education.

2.3.8.1. First World Conference on Women, Mexico¹¹⁵

UN organized four world conferences on women. The first one took place in Mexico City in 1975. The Conference defined the world plan of action for implementation of the objective of International Women's Year.

2.3.8.2. Second World Conference on Women, Copenhagen

This World Conference took place between 14th and 30th July 1980 in Copenhagen. The initiative was sprouted at the 1975 inaugural conference of women. The most significant outcome of the Conference was the official signing of CEDAW. The Conference focused on the issues of domestic affairs of women.

2.3.8.3. Beijing Declaration¹¹⁶

Articles 12¹¹⁷, 13¹¹⁸, and 14¹¹⁹ of the Beijing Declaration 1995 provide for equality of women and make provisions for women's empowerment. Article

¹¹⁵ United Nations Population Fund, Women and Girls with Disabilities: Needs of survivors of gender-based violence and services offered to them - occupied Palestinian territory (Sep. 26, 2018, 3.35 PM), <https://reliefweb.int/report/occupied-palestinian-territory/women-and-girls-disabilities-needs-survivors-gender-based>.

¹¹⁶ 27 September 2015: Committing to action for gender equality and women's empowerment (Sep. 27, 2018, 2.45 PM), Beijing20.unwomen.org

¹¹⁷ Art.12: "Empowerment and advancement of women including the right to freedom of thought, conscience, religion and belief, thus contributing to the moral, ethical, spiritual and intellectual needs of women and men, individually or in community with others and there by guaranteeing them the possibility of realising their full potential in society and shaping their lives in accordance with their own aspirations."

¹¹⁸ Art 13: "Women empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision making process and access to power, are fundamental for the achievement of equality, development and peace."

¹¹⁹ Art.14: "women's rights are human rights."

9 ensured full implementation of human right of women and girl child, equal right, participation in all spheres, providing gender equality, ensure equal access to economic resources. All 361 Articles in the declaration are milestone to women empowerment.

2.3.8.4. General Assembly Resolutions on the Elimination of Domestic Violence Against Women¹²⁰

A more significant change happened in the approach of the United Nations after 2000. The UN has adopted numerous resolutions and requested the preparation of reports. Domestic violence is included as a significant area of study. In 2004, the UN resolution on violence against women and wife-beating, has been addressed in Human Rights Council and General Assembly. In 2004, the UN General Assembly specifically addressed domestic violence in resolution 58/147.¹²¹ This was for the elimination of domestic violence against women.¹²²

Apart from these, there are a lot of Conventions and Declarations for the upliftment of the status of women.¹²³ The equality of rights of women is a

¹²⁰ Declaration on the Elimination of Violence Against Women, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993).

¹²¹ (Sept.27, 2018. 12.30 PM) <https://daccess-ods.un.org/TMP/9549601.07803345.html>; UN Resolutions on Violence Against Women, (Sep. 27, 2018, 1.15 PM), www.stopvaw.org/un-resolutions-on-violence-against-women.

¹²² In this Resolution, General Assembly recognized that domestic violence was a human right issue with immediate and long term implications, and strongly condemned all forms of domestic violence.

¹²³ World Conference on Human Rights, Vienna; World Conference on Women, Nairobi; CEDAW1979; 85 UN Resolution; 90UN Resolution; 92CEDAW Committee general recommendation No.19; 93 World Conference on Human right, Vienna,93 Declaration on the Elimination of Violence against Women; 2000 CEDAW Optional Protocol.

fundamental principle of the United Nations. Article 1 proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encourage respect for human rights and fundamental freedom for all without distinction. The status of human rights, including the goal of equality between women and men, is thereby elevated. Thus a matter of ethics becomes a contractual obligation of all governments and the UN.

The Universal Declaration of Human Rights proclaims the entitlement of everyone to equality before the law and the enjoyment of human rights and fundamental freedom without distinction of any kind and proceeds to include sex among the grounds of such impermissible distinction. The International Treaty on Economic, Social, and Cultural Rights and the International Treaty on Civil and Political Rights, both of 1966, which translate the principle of the Declaration into legally binding form, clearly states that the rights set forth are applicable to all persons without distinction of any kind, and again, put forth sex as such a ground of impermissible distinction. Also, each covenant specifically binds acceding or ratifying State to ensure that women and men have an equal right to enjoy all the rights they establish.

The study of steps taken in other countries and measures implemented in International instruments is essential in the present study, though it is concentrated on victims of Kerala State. Awareness about International developments in the area will enlighten all stakeholders in achieving goals of

rectification by assimilating novel ideas from other legal systems. The back drops which prompted need for a specific law on domestic violence is discussed in next chapter.

CHAPTER 3

ROAD MAP TO THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

3.1 Prologue to PWDV Act, 2005

Women in the country face a grave form of violence at home rather than outside. The four walls of her home have become a great threat to the safety of woman, but to culprits, it is the safest place to commit violence.¹ It is inflicted not by strangers but by her close family members from whom she naturally expects love, affection, care, warmth and protection.² The contemporary legal system has a deficiency in dealing with domestic violence which happens in the private domain of women. Interference into “domestic privacy” is traditionally seen as a greater evil than actual violence inflicted upon a wife.

Domestic violence is an everyday reality in society. It occurs among all social classes, ethnic groups, cultures, and religions. Most people don't realise how common it is, because very often victims of abuse keep quiet.³ That is the reason for creation of protective provisions in the Constitution as well as Section 498-A of IPC so as to assist these women. The legislatures have passed various laws favouring women.

¹ N.K. Acharya, Commentary on the Protection of Women from Domestic Violence Act 8 (2005).

² Id. At 47.

³ Id. At 1.

The marriage is the state of being united to a person of the opposite sex as husband or wife in a consensual and contractual relationship recognised by law. Domestic violence is the usual method by which one partner gains power and control by instilling dread and forcing subservience. Early marriages will aggravate this as they lack the power to respond.⁴ Violence is not only physical abuse, but includes emotional, economic, verbal, and sexual. Women occupy a unique position in the society owing to the importance of procreation of human race, but patriarchal society has made the position of women in the society inconspicuous in all spheres of life making her suffer discrimination. She suffers violence at all stages of life. The girl child is an unwelcome guest in a family. Despite a plethora of legislations, the status of women remains the same. The home has to become a safe place for women, but it has become the safest place for men to commit violence against women. The victim is not able to raise her voice to protest against violence. Even now, the exact data of wife battering is not known, as many cases are not reported. Even if the victim approaches police for protection, the attitude of law enforcement machinery is lethargic.

Prosecution must prove the charge beyond reasonable doubt. However, the lackadaisical attitude of the prosecution and insensitiveness of the judiciary are responsible for the increased rate of acquittal in domestic violence cases⁵.

⁴ Laxmidhar Chauhan, Women and the Law 16 (2007).

⁵ R. Revathi, Law Relating to Domestic Violence 4 (2004).

Even before the arrival of the PWDV Act 2005, there were protective provisions in our legal system for preventing cruelty against women. There is S. 498- A of Indian Penal code for preventing cruelty against wife. There is the Dowry Prohibition Act for preventing Dowry harassment. However, in these cases, women have two options- either proceed with criminal action against the husband under Section 498-AIPC or resort to civil proceeding by filing divorce cases. However, these laws never addressed shelter aspects of married women. In this backdrop, new legislation became inevitable for giving speedier justice through a single-window system. Here the woman is protected from physical, sexual, verbal, emotional, and economic abuses.

3.2 Analysis of the Dowry Prohibition Act, 1961

The Dowry Prohibition Act, 1961 marks the first attempt by the Government of India to declare dowry a social evil and to control its practice. Changes were made in the definition of 'dowry'.⁶ In defining dowry, the phrase "in consideration of marriage" was replaced by "in connection with marriage" widening the definition, but does not adequately cover all situations. It may be challenging to prove that dowry demand made a couple of years after marriage was in connection with marriage. The distinction between dowry

⁶ Section 2, The Dowry Prohibition Act, 1961 defines thus: "Dowry means any property or valuable security given or agreed to be given either directly or indirectly a) by one party to a marriage to other party to the marriage' or b) by the parent of either party to marriage or by any other person to either party to the marriage of two other person , in connection with marriage and does not include dower or Mahar".

and voluntary gifts remain vague. The relation between domestic violence and dowry is manifest in many cases because unsatisfied dowry demand culminates in domestic violence. Dowry is an ancient practice in the society and it includes property or valuable security given by one party to another as consideration for marriage. Giving and taking of dowry is prohibited under a specific law ie; the Dowry Prohibition Act, 1961 and subsequently Sections 304B and 498-A of the Penal Code were inserted to supplement, strengthen and add gravity by penalising dowry death and acts of cruelty to extract more dowry. In almost all cases of dowry, such consideration has been given by the family members of the bride. It is given as a gift between the bride's family and the bridegroom's family - the formation of a relationship accompanied by gifts which persist long after the marriage rites. Dowry demands are made both before and at the time of marriage, but in most of the cases they are also made after the marriage. In other words, Dowry demands are made at the time of marriage as well as post marriage.⁷ Even after 20 years of married life, certain ladies are suffering from dowry harassment.

The Dowry Prohibition (Amendment) Act, 1984 prescribes a minimum punishment of two years imprisonment and fine to anyone demanding dowry. Under the Act, a person who gives or takes, or helps in the giving or taking of dowry is liable to be sentenced to jail for five years and fined Rs.15, 000/- or the amount of the value of dowry, whichever is higher. The Act prohibits

⁷ Dr. Monica Chawla, Women and Protective Laws 313 (2013).

giving or agreeing to give, directly or indirectly, any property or valuable security, in connection with a marriage. The Act prohibits the giving of or agreeing to give any amount either in cash or kind, jewellery, articles, properties, etc. in respect of marriage. Even the making of a demand for dowry is also prohibited, and it is punishable with imprisonment of five years and a fine of Rs.10,000/-. The Act, though very stringent in appearance, was not that successful. The Penal Code also contains provisions intended to prevent dowry-related offences. Section 304 B, IPC⁸ deals with dowry death. It does not deal with cruelty as such. Matrimonial cruelty and dowry-related harassment are inexplicably intertwined offences, and both these may trigger domestic violence. Hence the study of the Dowry Prohibition Act will not be complete without reference to Section 498-A, IPC.⁹ Section 498-A was introduced in 1983 and addressed the cases of cruelty and harassment of women at home by the husband or by the members of his family. The Section empowers woman to fight domestic violence. The main features of the Section are that it gives women quick relief as well as some bargaining

⁸ Section 304B provides that “where any burns or bodily injury cause the death of a woman, 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. Sub clause (2) of the Section provides that 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.”

⁹ S. 498-A, provides that “Whoever, being the husband or the relative of the husband of a woman, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine.”

power as the accused is arrested. Since its incorporation, the provision has become quite controversial with different points of view being put forward by the police, lawyers, and women's groups. Owing to certain deficiencies in the legal system and weak enforcement by the state machinery, the offenders often go scot-free. The unfettered discretion of the judge in passing sentence has led to a disparity in the sentencing process. Gender injustice by the formal legal system has eroded the credibility of the Judiciary also. In the process, the victims seeking justice often switch over to natural justice delivery system. .

3.3 Specific Provisions against Domestic Violence in IPC

Before 1983, the law lacked efficacy to bring the violence committed within the family, within the natal or spousal home for a public trial. The leading cause for this situation was the belief that domestic violence was a private affair, which was not open to public scrutiny and State action.¹⁰

The husband could be convicted under the general provisions of the Penal Code, mainly under Section 323. However, the offence under the Section was a non-cognizable offence, and the offender could not be arrested without a warrant. Thus, the victim was not able to secure immediate relief. The situation was technically remedied in 1984 by introducing Section 498-A in the Penal Code making domestic violence against women, a non-bailable and

¹⁰ Manish Mishra, Law on Violence against Women 8-10 (2014).

cognizable offence. The Section can be invoked by women now against the husband and his relatives effectively.

The problem of domestic violence has deep roots in the dowry system.¹¹ Dowry became a means of exploitation when social taboos developed against a girl remaining unmarried. Young married women have been subjected to physical and mental torture to extract dowry from their parents.¹² The Dowry Prohibition Act, 1961 was passed to curb the menace of dowry. It is a secular legislation applicable to all communities. As the definition of dowry in the Act was too narrow, it was amended by the amendment Act of 1984. Nothing could be dowry, which was not demanded at the time of marriage and post-marriage demands for dowry were not covered by definition. Therefore the definition was amended by the Amendment Act, 1984, which replaced the word as ‘consideration for marriage’ in Section 2 of the Act by inserting words ‘in connection to the marriage.’¹³

3.4 Amendments in Criminal Law

The prevailing circumstances pressed the Government in 1983 to insert Section 498-A in the Penal Code along with necessary amendments in the

¹¹ Sharma Et.al., Dowry-A deep rooted Cause of Violence Against Women in India, 161 (4th June, 2017,7.30 AM) <https://heionlone.org>

¹² Flavia Agnes, A comprehensive Guide to Women’s Legal Rights, 30 (June 4, 2017, 8 PM) <https://iitk.ac.in>data>majlis-Legal-rights-of-women>.

¹³ S.P. Sate, Empowerment of Women: Legal Strategies, *Sociology of Law* 272 (2005).

Evidence Act, and Cr. P.C.¹⁴ The object of introducing Chapter XXA in the Penal Code was to prevent the torture of woman by husband or relative of the husband.¹⁵

Section 174 of Cr. P. C. deals with the duty of the police, to investigate the case of suicide and other unnatural, suspicious deaths.¹⁶

The amendment of 1983 has put restrictions on the power to take cognisance of an offence under Section 498-A of IPC.¹⁷ Moreover, a new Section was inserted in the first schedule of Cr. P.C.¹⁸ Thus, the offence mentioned in Section 498-A IPC became cognizable and non-bailable. It is triable by the magistrate of the first class.

3.5 Section 498-A, IPC and Domestic Violence

Chapter XX-A of the Penal Code refers to “Cruelty by husband or relatives of the husband.” Under the Section, where the husband of a woman or his relatives subject such woman to cruelty, they shall be punished with imprisonment for a term which may extend to three years and also be liable

¹⁴ Criminal Law (Second Amendment) Act, 2 (1983).

¹⁵ B.S. Joshi v. State of Haryana, (2003) 4 SCC 675.

¹⁶ S. 174 of Cr.P.C says “Magistrate must do upon intimidation by the police officer of the cases of un natural death. The police officer is bound to give intimidation to the nearest magistrate who is empowered to hold inquest, when he received an information regarding the un natural death of person.

¹⁷ Section 198, Cr. P.C. reads “prosecution for offence against marriage, no court shall take cognisance of an offence punishable under chapter XX of the Indian Penal code (45 of 1860) except upon a complaint made by some person aggrieved by the offence”.

¹⁸ Ibid. “Here, person aggrieved includes victim, her father, mother, brother, father’s or mother’s brother or sister or with leave of the Court, by any other person related to her by blood, marriage or adoption”

to fine. It is a protective umbrella to wife from in-laws.¹⁹ The essential ingredients of Section 498-A are,

- a) A woman must be married.
- b) She must be subject to cruelty or aggravation.
- c) Such brutality or harassment must have been shown either by the husband of the woman or by the relative of her husband.

The law deals with the following kinds of cruelty:-

1. Any conduct that is likely to drive the victim to suicide.
2. Any conduct that is likely to cause grave injury to, body or health of the woman.
3. Harassment which persuade the lady or family members in such a coercive state to take the option of Suicide.²⁰

However, the word 'cruelty' is not properly defined in the Code.²¹ In *Vyas v. Anitha Vyas*,²² the Supreme Court clarified that the essence of the offence under Section 498-A, IPC was cruelty. Harassment is a series of acts, and not singular or an isolated act, which constitute cruelty.²³ It is a continuing offence in which the woman, subjected to cruelty, has a new starting point of limitation.

¹⁹ B. Ramaswamy, *Women and Law* 194 (2013).

²⁰ Vijay Malik, *Criminal Manual* 122 (1995).

²¹ *Sukumar Mukharjee v. Tripti Mukharjee*, AIR 1992 Pat.32

²² AIR 1999 SC 2701.

²³ *Ashoka Chotelal Sukla v. State of Maharashtra*, 1987 Cr. L. J. (Guj. & Mah.) 164.

Section 498-A tries to maintain that every married woman needs to be given due respect and treated with care. It reinforces the fact that a woman is not a toy to be played with, to be thrown away at one's whim and fancy or treated as inferior to any other person. The Section urges husbands to treat the wives well and not misbehave or demand cash or property unjustly. Section 498-A tries to prevent harassment of women and re-assert a woman's right to live a peaceful and happy life. The Section was introduced, keeping in mind the protection of married women from unscrupulous husbands. However, the misuse of 498-A by unscrupulous women is growing day-by-day. In this context, the PWDV Act became the need of the hour.

3.6 Sections 498-A and 304-B of IPC and Section 113-B of Indian Evidence Act

Section 304B, IPC and Section 113-B of Indian Evidence Act were inserted by the Dowry Prohibition (Amendment) Act, 1986.²⁴ Section 304B deals with 'dowry death' due to cruelty or nuisance by her husband or any relative other than husband for or in connection with any demand of dowry.²⁵ These two Sections intend to reduce dowry death. Cruelty is a common ingredient to both Sections. The explanation to Section 498-A defines 'cruelty', while Section 304B contains no such explanation. But having regard to the common background to these offences, the meaning of "cruelty and

²⁴ G.M. Natarajan v. State, 1995Cr. L. J. 2728 (Mad).

²⁵ Gazala Parveen, Dowry Deaths In India : A Legal Study,(Aug. 16, 2019, 10.30AM) <https://blog.ipleaders.in/dowry-deaths-india-legal-study/>.

harassment” has to be taken to be the same as is in the explanation to Section 498-A, under which cruelty, by itself, amounts to an offence and is punishable.²⁶

However, Sections 304-B and 498-A are not mutually exclusive. They are two distinct offences. Under Section 304-B, “dowry death” is punishable, and it should occur within seven years of the marriage. No such period is mentioned in Section 498-A.²⁷

Section 113-B of the Evidence Act deals with the presumption as to dowry death. It is a rebuttable presumption. Section 304-B IPC and Section 113-B of Indian Evidence Act have to be read together. The former is the substantive offence and the latter is the rule of evidence. The expression “shall presume” used in Section 113-B imposes a mandatory obligation on the Court.

3.7 Judicial Response to S.498-A Cases

Marriage is said to be the voluntary union²⁸ for life of one man²⁹ and one woman to the exclusion of all others.³⁰ It is a social institution where the

²⁶ Shanti v. State of Haryana, (1991) 1 SCC 371.

²⁷ Id.

²⁸ Mohamed Umar, Bride Burning in India: A Socio-Legal Study 1 (1998).

²⁹ S.K. Panchauri, Women and Human Rights 229 (1999).

³⁰ Hanis Ezzatul Farahah Binti Abdul Hamid, Living Together is the Opposite of Living Apart: Why is this Concept so Important in Family Law? (May 18, 2019, 11.50 AM), https://www.academia.edu/34128466/LIVING_TOGETHER_IS_THE_OPPOSITE_OF_LIVING_APART_WHY_IS_THIS_CONCEPT_SO_IMPORTANT_IN_FAMILY_LAW_PREPARED_BY_HANIS_EZZATUL_FARAHAH_BINTI_ABDUL_HAMID_P87861?auto=download.

husband has the responsibility³¹ to take care of and maintain his spouse. He cannot neglect his duties. But on this great institution, a stigma called 'dowry' still exists³². Women are ill-treated, harassed, killed, divorced for the simple reason that they did not bring sufficient dowry. Insertion of S.498-A was with the object of curbing this menace.³³

Three essentials are necessary to attract this Section.³⁴ The Supreme Court in *Suvetha v. State by Insp. of Police*³⁵ held that Clause (a) dealt with aggravated forms of cruelty causing grave injury. Firstly, willful conduct of such a grave nature as was likely to drive the woman to commit suicide fell within the ambit of clause (a). The second limb of clause (a) laid down that willfull conduct causing grave injury or danger to life, limb or health (whether mental or physical) of the woman was to be regarded as 'cruelty.' Dowry related harassment fell within clause (b) of the Explanation.

³¹ Gunjan Jain, Significance of Marriage as a Social Institution in Indian English Writing, 3 (Sep. 30, 2019, 12.30PM), http://www.researchgate.net/publication/323525314_significance_of_marriage_as_social_institution_in_indian_english_writings.

³² S.C. Bhatia, Social Audit of Dowry Legislation 57 (1998).

³³ S.498-A "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. 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 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."

³⁴ Section 498-A, Indian Penal Code has following ingredients.

- a) The woman must be married;
- b) She must be subjected to cruelty or harassment, and
- c) Such cruelty or harassment must have been shown either by the husband of the woman or by the relative of her husband.

³⁵ AIR 2009 SC (suppl.) 145.

When the FIR, coupled with the statement of the woman victim discloses cruelty of grave nature falling within clause (a), the police officer has to act swiftly and promptly especially if there is evidence of physical violence. In the first instance, proper medical aid and the assistance of counsellors shall be provided to the aggrieved woman, and the process of investigation should start without any loss of time. A punishment extending to three years and fine has been prescribed.³⁶ The expression 'cruelty' has been defined in wide terms to include inflicting physical³⁷ or mental harm or harm to the health of the woman and indulging in acts of harassment to coerce her or her relations to meet any unlawful demand for any property or valuable security. Harassment for dowry falls within the sweep of the latter limb of the Section. Creating a situation driving the woman to commit suicide is also one of the ingredients of 'cruelty.' In some cases, role of husband may be passive. Some grey areas in the Section was clarified by S.C. through various judgments.³⁸ The offence under Section 498-A is cognizable, non-compoundable, and non-bailable. In *Ramesh Balaji Godard v. State of Gujrat*.³⁹ the Supreme Court held that to prove cruelty was caused under Explanation a) of Section 498-A,

³⁶ Rani Jethmalani, *Kali's Yug: Empowerment, Law and Dowry Deaths* 83 (1995).

³⁷ Dr.Ramesh, *Cruelty as compoundable Offence: a Critique*,2006 Cri.L.J 205; *The Indian Express* (Sep. 23, 2017) at 1.

³⁸ *Reema Agarwal v. Anupam*, (2004)3 SCC199 (here who comes under the term husband was examined. Court observed that a person who is in marital relationship the lady is her husband); *A.Subhash Babu v. State of A.P.*, (2011) 7 SCC 616; *Unni Krishnan v. State of Kerala* 2017 SCC OnLine Ker 12064 (Lady in a live in relationship cannot invoke this Section.) *State of A.P. v. M. Madhusudan Rao* (2008) 15 SCC 582.(It was held that harassment simpliciter is not cruelty)

³⁹ 2003 Cr. L.J. 2445.

it was not important to show or put forth that the woman was beaten up. Abusing her verbally, denying her conjugal rights or even not speaking to her in a good manner would fall within the ambit of mental cruelty. The Court held thus:

“Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb, or health, whether mental or physical of the woman is required to be established to bring home the application of Section 498-A IPC.”

In *Inder Raj Malik v. Mrs Sumita Malik*,⁴⁰ it was argued that the Section was ultra vires Articles 14 and 20 (2) of the Constitution. As these provisions are already existing in the Dowry Prohibition Act, it will create double jeopardy. But Delhi High Court took a contrary view. Section 498-A was distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry was punishable, and the presence of any element of cruelty was not necessary, but Section 498-A dealt with an exasperated form of the offence. Hence a person can be prosecuted in respect of both the offences punishable under both provisions. The Section gave wide freedom to the Courts in the matter of interpretation of the words seen in the

⁴⁰ 1986 Cr. L.J. 1510.

laws and also in awarding punishment.⁴¹ The provision was held to be not ultra vires, and it did not confer arbitrary powers on Courts.

In the leading case, *Wazir Chand v. The State of Haryana*⁴² involving the death by burning of a newly married woman named *Veena*, the circumstances did not establish either murder or an abetted suicide, and thus in-laws escaped the jaws of Sections 300 and 306, but they were caught in the web of the Section for prevention of harassment for dowry. It was held that not to speak of the things they were persistently demanding from the girl's relatives, the fact that her father took a large number of dowry articles, back after her death from the matrimonial abode showed that there was pressure exerted by in-laws⁴³ and continued to be exerted till death for more money and articles.

In the last twenty years of Criminal law reform, a common argument made against laws relating to violence against women was that women misused these laws. The police, civil society, politicians, and even judges of the High Courts and Supreme Court expressed their apprehensions about the misuse of law vehemently.⁴⁴ The claim of misuse is made particularly against Section 498-A, IPC and against the offence of dowry death in Section 304B. There is a general complaint that Section 498-A is grossly misused, and uses that as justification to suggest an amendment to the provision. However, no data is

⁴¹ B.K. Nagla, *Women Crime and Law* 95 (1980).

⁴² AIR 1989 SC 378.

⁴³ Ameer Yajnik, *Domestic Violence- Protection of Human Rights*, Guj. L. Herald J. 1, 2 (1999).

⁴⁴ *Id.* At 62.

furnished to indicate how frequently and widely the Section is being misused. It is important, therefore, that such arguments are responded to, to put forth a clearer picture of the present factual status of the effect of several criminal laws enacted to protect women.⁴⁵

Domestic violence and abuse by spouse and family members are complex behaviours, and the social organisation of courts, the police, and legal cultures systematically tend to devalue domestic violence cases. Section 498-A was introduced in the IPC in 1983 and the reforms of the past thirty five years have not been adequately evaluated at all by the Government concerning their deterrence goals, despite the institutionalisation by law and policy to criminalise domestic violence. A program of research and development is urgently required to advance the current state of knowledge on the effects of legal sanctions on domestic violence. The narrow or perhaps almost negligible study done by law enforcement agencies about the deterrent effects of legal sanctions for domestic violence stands in high contrast with the extensive efforts of activists, the victim, advocates and criminal justice practitioners in mobilising law and shaping policy to stop domestic violence. It is important to do these studies to correct the general misconception that women are misusing the law by filing false complaints against their husbands and in-laws to harass them and get them convicted⁴⁶. The perspective of the State and its agencies need to change from that of protecting the husband and

⁴⁵ Shalini Nair, S.498A Battered, 5, The Indian Express, June 26, 2018.

⁴⁶ R. Jaganmohan Rao, Dowry System in India - A Socio - Legal Approach to the Problem, 15 (4) J. I. L. I. 617, 619 (1973).

in-laws against potential misuse of the laws of domestic violence to that of implementing their real purpose. It is pertinent to recognise that such violence is a human right violation and protect women who dare to file complaints against their abusers.⁴⁷

S.498-A, IPC is in contrast to Article 14⁴⁸ for assuring equality, and Article 21⁴⁹ for assuring that a person could not be deprived of life and liberty except according to the procedure established by the law. Apart from Fundamental rights, S.498-A, IPC contradict with the Directive principles, the provisions relating to the health of women and children. Article 39(f) directs the State to ensure that children⁵⁰ are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment. Article 42⁵¹ directs the State to make provisions for just and humane conditions of work and maternity benefits. Article 45 stipulates that the State shall provide early childhood care and education for all children until the age of six. Article 47 lays down the raising of the level of nutrition and standard of living of people, and improvement of public health as a primary duty of the State.

⁴⁷ Santosh Nandal, Violence against Women: Violation of Human Rights, Cr. L. J.(1), 82 (2004).

⁴⁸ Article 14, 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.”

⁴⁹ Article 21, Protection of life and personal liberty: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

⁵⁰ Article 39(f): “That children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

⁵¹ Article 42, Constitution of India.

S.498-A, IPC tries to maintain that every married woman needs to be given due respect and treated with care. It reinforces the fact that a woman is not a toy to be played with, to be thrown away at one's whims and fancies and treated as inferior to any other. It asks the husband to treat wife favourably, and not misbehave or make unjust demand, which goes to show that he treats women as a commodity for sale. Section 498-A envisages prevention and punishment of such evils and asserts a woman's right to live with dignity.

The Section was enacted to protect women from dowry harassment and domestic violence. However, more recently, its so-called misuse has been observed by Supreme Court. The Supreme Court in *Sushil Kumar Sharma v. Union of India*,⁵² condemned the misuse of the Section as 'Legal Terrorism.' Cruelty, being a ground for divorce under Section 13 (1) (a) of the Hindu Marriage Act, 1955, some wives use the provision to threaten husbands. In *Preeti Gupta v. the State of Jharkhand*,⁵³ the Supreme Court observed that:

“Serious relook of the entire provision is warranted. It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over-implication is also reflected in a very large number of cases”

⁵² *Susheel Kumar Sharma v. Union of India & Ors.* AIR 2005 SC 1928.

⁵³ *Preethi Gupta v. State of Jharkhand* (2010) 7 SCC 667.

According to the Court, even an innocent person accused under Section 498-A does not get the chance of getting quick justice owing to the offence being non-bailable and cognizable. The Court observed thus:

*“We well know that ‘justice delayed is justice denied,’ hence came the 243rd report of Law commission on Section 498-A of IPC laying down various changes which ought to be made to remove the flaws of this Section and its misuse.⁵⁴ A strict law in this regard needs to be passed by the parliament to punish those who act mala fide and tries to misguide the system of law. Law Commission in its 243rd report opined that the Section along with its allied Cr.P. C. provisions shouldn't act as an instrument of oppression and counter-harassment”.*⁵⁵

It is true that modernisation, facilities for education, financial security, and consequent independence have made 498-A a powerful weapon in the hands of women. Many helpless husbands and in-laws have suffered from such conduct. Most cases where Section 498-A is invoked turn out to be blackmail attempts by the wife. In some cases, complaints under S. 498-A are followed by attempts of extortion to settle the case out of the Court. In this back drop, it is the need of the hour to give protection to women through a law which is

⁵⁴ Chopra Nirman, Section 498-A, Indian Penal Code and it's Repercussions on the Society, Cr. L. J. 190, 197(2004).

⁵⁵ Ibid

of civil nature so that possible element of malicious prosecution will not deter the victims from taking recourse to legal remedies..

A violation of the Section and its aspirations are for getting an easy divorce or hurting the family.⁵⁶ In *Savitri Devi v. Ramesh Chand*,⁵⁷ the Court held that there was a misuse of the provision to such an extent that it was hitting at the foundation of marriage itself and proved to be not so good for the health of society at large. The Court believed that authorities and lawmakers had to review the situation and legal provisions to prevent such things taking place. In *Saritha v. R. Ramachandran*,⁵⁸ the Court did notice the trend and asked the Law Commission and Parliament to make the offence non-cognizable and bailable.

In *Varsha Kapoor v. Union of India*,⁵⁹ Court felt that it is very dangerous to invoke Section 498-A IPC in all cases. Till then, there was no law to give protection and shelter to woman. There is no point in retaliating respondents. Primacy should be given to shelter aspect. It can be made available only through a law which is of civil nature. The PWDV Act is of civil nature. In order to provide civil remedies of protection, the PWDV Act was enacted.

The Court held:

⁵⁶ D.N. Datta, A Historical, Social and Philosophical Inquiry in Hindu Rite of Widow Burning 32 (1988).

⁵⁷ 2003 Cr. L. J. 2759.

⁵⁸ 2002 (6) ALD 319.

⁵⁹ (170) 2010 DLT 166.

“.... married women are given rights to agitate their grievances against wide spectrum of respondents under proviso to Section 2 (q) of PWDV Act, with attempt to put an end to domestic violence and at the same time saving matrimonial home, which was not possible under the remedies provided in Criminal law and there was no such provision under existing family laws. When this was the lacuna in law sought to be plugged by passing PWDV Act and the purpose was to remove such mischief, leaving relatives of a husband or a male partner out of purview of ‘respondent’ would negate the purpose for which it was passed.”

The law must condemn wrong doings and protect the victim. Many women’s right groups are against the idea of making the offence non-cognizable and bailable thinking that it may give the accused a chance to escape conviction. But the issue is whether that would give a fair chance to the man and the woman, and help meet the ends of justice. Justice must protect the weaker side and ensure that the wronged one is given a fair chance before the Court. When the wife invokes Section 498-A, IPC against the husband, injustice can happen only when the man is innocent.⁶⁰ It will be difficult for the lawmakers to make the Section bias-free so that the guilty are punished and the person wronged is given justice.

⁶⁰ Rinki Bhattacharya, Behind Closed Door Domestic Violence 24 (2004).

The position of women remains pathetic except in the case of a few who are well educated and affluent. They still need the help of law because of lack of awareness of their rights and the courage to seek the protection of law through the police and the Court. The educated woman of today must agree with the mantra of equality and demand the same, but the trend is slowly getting reversed. They are taking undue advantage of the fact that they are referred to as the 'weaker sex,' and based on rights ensured to them are violating the rights of others.⁶¹ It may be a fact that there have been instances years back where, without any investigation, the police have arrested elderly parents, unmarried sisters, pregnant sisters-in-law, and even three-year-old children. In these cases, suspected husband's family has to go through a lot of mental torture and harassment by the legal system. A normal case goes on for years. Some accused parents, sisters, and even husbands have committed suicide after release from jail. Because of these drawbacks of Section 498-A IPC, the enactment of the Protection of women against PWDV Act became essential.⁶²

Sections 498-A, 304B of IPC, and Section 113 of Indian Evidence Act are interlinked provisions. Hence such a connection has to be examined in some detail.⁶³

⁶¹ Devendra Kiran, Status and Position of Women in India56 (1985).

⁶² Vasundhara, Use And Misuse of Section 498-A (Dec. 2, 2018, 9.42 PM), <http://www.legalserviceindia.com/legal/article-652-use-and-misuse-of-Section-498a.html>.

⁶³ Dr. V. Krishnamachari, Law of Evidence 517 (2012).

Cruelty or harassment need not be physical. Even mental torture may be a case of cruelty or harassment within the meaning of Section 498-A. The term wilful conduct refers to the *mensrea* part.

To attract the provisions of Section 498-A, the prosecution must establish that beating and harassment were to force the wife to commit suicide or fulfil the illegal demand of in-laws.⁶⁴ Cruelty under the Section is to be determined or inferred by considering the conduct of the man, weighing the gravity or seriousness. The consequences of cruelty, which are likely to drive women to commit suicide or cause grave injury or danger to life, limb, or health, whether mental or physical, require to be established.⁶⁵ Petty quarrels were ousted from the purview of this Section.⁶⁶

Supreme Court emphasises that Section 113A of Indian Evidence Act is to be brought only in the absence of proof as to the occurrence having taken place during seven years of marriage. Legislative intent is evident from Sections 304-B and 498-A of IPC as well as Section 113A of Indian Evidence Act. Such intent is to curb dowry death and this has to be kept in mind while deciding cases like *Hiralal v. State*.⁶⁷ The expression 'soon before' is very relevant where Sections 113B and 304B are pressed into service.⁶⁸ Pestering

⁶⁴ Shailendar Malik, Indian Penal Code 726 (2011).

⁶⁵ Susil Kumar v. Union of India, (2005) 6 SCC 281.

⁶⁶ Vadala Vinay Kumar v. State of Andhra Pradesh, 2006 Cr. L. J. 1710.

⁶⁷ Hiralal v. State (Govt. Of NCT) Delhi 2003 Cri.L.J. (S.C) 3711

⁶⁸ Thakkan Jha v. State of Bihar, (2006) 1 SCC (Cri) 309.

for dowry and illtreatment for that purpose is an essential ingredient of dowry death.⁶⁹

The term cruelty in Section 113A shall have the same meaning as in Section 498-A, IPC⁷⁰. By the introduction of the Section burden of proof is shifted to the accused to disprove the allegations.⁷¹

In *Shyama Devi v. State of West Bengal*,⁷² it was held that if it were not established that the deceased had been subjected to cruelty, Section 113 A would not be applicable. This is the background which necessitated a complete act exclusively for dealing with domestic violence cases.

3.8 Specific Legislation on Domestic Violence

Though several legislations exist like the Hindu Widow Remarriage Act, 1836, the Child Marriage Prohibition Act, 1975, Dowry Prohibition Act, 1961, the Medical Termination of Pregnancy Act, 1971, The Pre natal Diagnostic Technique (Regulation and Prevention) of Misuse Act, 1994, etc., which are specific legislations to prevent specific crimes, until 2005 there was no specific law to curb domestic violence. In 2005, Protection of Women from Domestic Violence Act was enacted by the Parliament and it became operative from 26th October, 2006.

⁶⁹ *Mandalani v. State of Bihar*, (1999) 5 SCC 705.

⁷⁰ Section 498-A, IPC:- Husband or relative of husband of a woman subjecting her to cruelty.

⁷¹ Lalitha Dhar Parihar, *Women and Law, Impoverishment to Empowerment - A Critique* 316 (2011).

⁷² 1987 Cr. L. J. 1163 (Cal).

3.8.1 Analysis of the PWDV Act, 2005

PWDV Act targets all kinds of abusive behaviour by the husband or his family. It need not be physical abuse; it could be verbal, emotional, sexual, or economic violence. Definition of domestic violence is given in Section 3 of the Act.⁷³ Legislative intent of the Act is discussed in a plethora of judgments.⁷⁴ It reveals intention of making it an effective tool in recoiling the violence at home by giving catena of remedies. The Act gives aggrieved person, remedies like protection order, custody order, residence order and compensation order.

Apex Court has opined that the PWDV Act is a social welfare legislation. In *Shambhu Prasad Singh v. Manjari*,⁷⁵ the Court held that PWDV Act is a social welfare legislation and its intention is not to punish respondents, but to give protection to victims. The Court made the following observations:

“The basic objective in enacting the Act is to secure various rights to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship. Women exposed to such domestic violence is given the right to approach for any relief stated in Section 12 and other reliefs such as divorce and maintenance as in Section 26”.

⁷³ Nidhi Kaushik v. Union of India, 2014 SCC Online. 3257.

⁷⁴ Varsha Kapoor v. Union of India, 2015 Cr. L. J. 195; Krishna Bhattacharjee v. Sarathi Choudhary, 211 2 SCC 705; Indra Sarma v. V. K. V. Sarma (2013) 15 755; Vaishali Abhimanyu Joshi v. Nanasaheb Joshi (2017) 14 SCC 774; Hival P. Harsava v. Kusum Narottamdas (2016) 10 SCC 165; Kunapareddy v. Swarnakumari (2016) 11 SCC 774;.

⁷⁵ 2012 SCC Online.1371.

Section 10⁷⁶ explains who are service providers and what can the service provider do. There are organisations which help women in trouble by providing legal, medical, or financial assistance, and such organisations are required to register themselves under the Act and are called ‘service providers.’

A notice of the date of hearing decided under Section 12 shall be given by the Magistrate to the Protection Officer, who shall serve to the respondent and on any other person, within a maximum period of 60 days or such further reasonable time as may be allowed by Magistrate from date of its receipt. The Magistrate⁷⁷ may at any stage of the proceedings under the Act, exercise the power to direct the respondent or the aggrieved person, either singly or jointly to undergo counselling with any member of a service provider, whose qualification and experience may be as prescribed. Normally Court proceeding is open for anyone to attend in domestic violence case. Parties can ask the Magistrate not to allow the general public into the Courtroom when their case is being heard.⁷⁸ The Magistrate may pass an order on this, if parties wish so.

⁷⁶ S.10, Service Providers: Subject to such rule as may be made in this behalf, any voluntary organisation registered under the Societies Registration Act can become a service provider. They have the power to

- a) record domestic incident report in the prescribed form;
- b) get the aggrieved person medically examined;
- c) ensure that aggrieved person is provided with shelter in a shelter home.

⁷⁷ Section 13A: Notice of the date of hearing fixed under S. 12 shall be given by the magistrate.

⁷⁸ Ibid.

Every victim in a ‘domestic relationship’ has the right to continue to live in her shared home. An offender cannot throw the victim out of their shared home.

Section 18⁷⁹ of the Act deals with protection orders. The magistrate may, after giving the aggrieved person and the respondent, an opportunity of being heard, 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 committing any other act as specified in the protection order.

Under Section 21 of the Act,⁸⁰ the magistrate may pass a temporary custody order at any stage of the case. She may grant custody of the children to the

⁷⁹ Section 18 deals with protection orders and reads thus: “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, including personal oral or written or electronic or telephonic contact, 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 dependents or other relatives or any person who give the aggrieved person assistance from the domestic violence, g) committing any other act as specified in the protection order.”

⁸⁰ Section 21 reads thus: “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 interest of the child or children, the magistrate shall refuse to allow such visit”.

victim or any person filing the case for her. She may allow the offender to visit the children. She may refuse such visits if it is shown that they may hurt the children.

Section 22 of the Act deals with compensation orders. Apart from other reliefs which may be granted under the 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 injuries as well as mental torture and emotional distress by the acts of domestic violence committed by the respondent. Section 23⁸¹ deals with the power to grant interim and ex parte orders. The Magistrate has to give free copies of any order she passes to the parties to the case, local police and the local service provider who registered the victim's complaint. The protection order is valid until the victim feels comfortable without it. The Magistrate may also change the conditions of the order or revoke it if there is a need to do so, based on an application from either the victim or the offender. If the victim has filed cases against the offender in other courts, she can ask those courts to provide reliefs

⁸¹ Section 23 of the PWDV Act gives the power to grant interim and ex parte orders. The Section reads thus:

“(1) In any proceedings 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, 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 S. 18, S. 19, S. 20, S. 21 or as the case may be Section 22 against the respondent.”

under the PWDV Act. If she obtains any favourable order from another Court, she has to inform the Magistrate.

The Court of Judicial Magistrate of the First Class or the Metropolitan Magistrate as the case may be, within the local limits of which,

1. The person aggrieved, permanently or temporarily resides or carries on business or is employed or
2. The respondent resides or carries on business or is employed or
3. The cause of action arises,

shall be competent to grant a protection order and other orders under this Act and to try offences under this Act.

Section 28 mandates that⁸² Court proceedings have to follow a particular procedure. Section 28 of the Act, explains the procedure to be followed in in domestic violence cases.

There shall be an appeal to the Court of Sessions within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent as the case may, whichever is later. If the victim or the offender is not happy with the order, they may file an appeal against the order within thirty days.

⁸² Section 28 of the Domestic Violence Act provides thus: “(1) Save as otherwise provided in this Act, all proceedings under Sections 12,18,19,20,21,22 and 23 and offences under sec 31 shall be governed by the provision of the Code of Criminal Procedure, 1973 (2 of 1974), (2) Nothing in Sub -sec (1) shall prevent the court from laying down its own procedure for disposal of an application under sec 12 or under sub-sec (2) of sec 23.”

The law treats⁸³ certain people as ‘public servants’ and imposes additional duties and privileges on such people. Protection Officers and service providers are public servants. Section 31 of the Act assures penalty for breach of protection order by the respondent. Section 32 of the Act directs that upon sustainable proof or the sole evidence of the aggrieved person, the Court may conclude that an offence under sub Section (1) of Section 31 has been perpetrated by the accused. Power to reprimand officers if they fail in their duty is ensured by Sections 33 and 34. The provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.⁸⁴

The Central Government has power to issue notification⁸⁵ and make rules for facilitating the provisions of the Act. Particularly, and without prejudice to the generality of the preceding power, such rules may authenticate⁸⁶

⁸³ Section 30: “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 there under shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

⁸⁴ Section 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.”

⁸⁵ Section 34:-“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.”

⁸⁶ Section 35, Protection of action taken in good faith: “No suit, prosecution or other legal proceedings 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 there under.”

for⁸⁷ certain specified matters also. Any modification in the rules can be made, if necessary. But that modification shall not be prejudicial to the validity of anything previously done under that rule.

3.8.2 Critical Analysis of Domestic Violence with Respect to Provisions of the Act

Domestic violence is any kind of abusive behaviour by a husband or male partner or relatives.⁸⁸ The violence may involve physical abuses, sexual assault, and threats. In some cases, there may not be physical abuse. But victims are tarnished and humiliated, cankering her spirit. In this backdrop, a question arises here, how far the PWDV Act provides redressal and protection to the victims.

Domestic violence refers to violent behaviour against women, especially in matrimonial homes. Therefore, domestic violence is recognised as a significant barrier to the empowerment of women, with consequences for loss of health, mental peace and retarding growth in all spheres. By expanding the definition of domestic violence and incorporating provisions for substantial changes in safeguarding women's rights, the Act attempted to strike a balance between reconciliation and a deterrent pre-arrest policy. However, the Sixth Monitoring and Evaluation Report, 2013 brought out by the

⁸⁷ Section 36, Act not in derogation of any other law: "The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force."

⁸⁸ Prabhakaran v. State of Kerala, 2009(1) KLT 175.

Lawyers Collective Women's Rights Initiative highlights the spheres of the PWDV Act, 2005. The Act was necessary to give assurance to women, especially in rural areas of the country, where the constitutional mandate of equality fails so that they have to struggle a lot for getting parity with men.

As far as justice is concerned, women are less aware of the provisions of the Act. The Act is mainly to protect the women from the offenders and to reduce domestic atrocities against womenfolk. As per the Act, the victim can directly approach the Protection Officer for justice. But it is found that very few victims approached the Protection Officer directly. Most of the time, victims approached the police, and then they inform the Protection Officers about the case. Protection Officers have to take charge of more than one district in some cases. This will also retard the efficiency of the system.

Researcher felt that following rectification is needed. The Government should appoint a separate Protection Officer for domestic violence cases in each district. The Protection Officer will focus on the responsibility allotted to him. Women are soft targets for domestic violence. Majority of lawyers who deal with domestic violence are males. Some Protection Officers believe that physical assault on women is quite common and mental harassment is the issue of concern. Separate Protection Officer should be recruited by the Government to reduce domestic violence in each district. Separate and simple legal procedure should be made for the victims of domestic violence, and proper protection should be provided to them, by the authority. Justice should

be made available in the stipulated period of sixty days. Proper implementation⁸⁹ of the Act and quick decision making should be done while solving a case.

For long womenfolk suffered a lot from men, the capitulation ranged from physical, mental and psychological torture. Women have been treated as child bearing and rearing machines, and a servant who need not be paid. Domestic violence is one of the gravest and the most diabolic human rights violation for too long, and women succumbed to it considering it as their fate.⁹⁰ Women are vulnerable, scared of being ostracized by her relatives because domestic violence remains a taboo or for other reasons best known to them, but not anymore. Women must gear up and take control because now the PWDV Act is a reality.

The Act moves in geometric progression to women's empowerment as it recognises women in a live-in relationship, It also extends protection to others in the household, including sister and mother.⁹¹ Thus, the Act's helping hand extend to consanguinity, marriage, adoption, joint family and relationship similar to marriage.

Deprivation of economic or financial resource to which the aggrieved women or child is entitled under law or custom or withholding of such resources now

⁸⁹ Sulochana v. Kuttapan, 2007 Cr. L.J. 2057.

⁹⁰ Domestic Violence Act,2005- A Bane or Boon (Jan. 30, 2018, 3.35 PM), https://www.legalserviceindia.com/articles/domestic_violence.htm.

⁹¹ Sudhanya K.N. v. Umasankar Valsan TrP(CrI) No.80/2007, DOD: October 2007, Kerala HC, (Feb. 15, 2016, 11 p.m) <https://indiankanoon.org/doc/48493552>.

falls under the category of economic abuse. The provision comes into play in marital disputes, where the husbands tend to deprive the wife of necessary money as a weapon. The law also sees a husband who sells the wife's jewellery or assets as being guilty of economic abuse.

The State Government will appoint Protection Officers to help the affected women. The Protection Officers are likely to be appointed in every district across the country, helping the victims file cases before the Magistrate. Accordingly, women will be given complete protection. Her tormentor would be ordered not to attempt to communicate with her, including at her workplace. The Court can pass 'protection orders' so that, the charged person will not cause violence to the women's relatives.⁹² Apart from this, the women can rightfully continue to live under the same roof with the man, while fighting him in the Court. According to the Act, women will have the right to a 'secure housing' in the matrimonial or shared household. The Protection Officers will assist the Court in making a domestic incident report, or an application for a protection order on behalf of the aggrieved women, and child.⁹³ Protection Officers will ensure that aggrieved people are provided legal aid, medical services, safe shelter and other required assistance. Protection Officer will ensure that necessary information on

⁹² Saju Joseph v. M.S. Sobha Saju (O.P. No 273/2014), (Oct. 13, 2016, 3.30 PM) <https://indiankanoon.org/doc/28332139>.

⁹³ Praveena Y. Bagde, Protection of Women from Domestic Violence Act, 2005: A Critical Appraisal, Cr.L.J. (1) 193 at 195 (2011).

service providers is given to the aggrieved women⁹⁴ and that orders for monetary relief are complied with.

It is pertinent to note that the law says explicitly that any domestic violence is, in fact, a human right violation. Further, the law details the different forms of violence faced by women and ensures that such matters are not left solely to the interpretational discretion of the judges, and thereby the investigating machinery can ensure that the complaints are genuine, not fake.

Therefore, every case listed under the Act, cannot easily torment the aggrieved husbands. Act is not essentially anti-men as is claimed by some people. Sometimes, the Act might have been misused (which is common to all Acts) to blackmail men. There would be many cases where complaints are legitimate,⁹⁵ requiring the benevolent touch of justice. So far as the complaint of misuse of a provision of law is concerned, it is possible to raise such complaint against every Section of the Penal Code and other Statutes.

The PWDV Act is not appropriately implemented, and there is a direct need to raise its awareness among people, especially in rural India. Even though the Act came into force early, it is not working correctly in society. Hence authorities concerned must strive for the better implementation of the Act.

Usually Magistrates frame charge on three issues together. They are PWDV Act, S.498-A, IPC and Dowry prohibition Act, if the facts

⁹⁴ Radha v. Deputy Tahasildar, W.P. (C) 26559/2008 (Jan. 30, 2015, 4 PM).
<https://indiankanoon.org/doc/3472060>.

⁹⁵ Ibid.

disclose⁹⁶ such offences. They shall be cognizable and non-bailable. Upon the sole testimony of the aggrieved person, the Court may conclude that such offences have been committed.⁹⁷

The Protection of Women from Domestic Violence Act had thus brought forth a Civil law guaranteeing compensation and civil relief. However, a Report on the Statistics of National Crime Records Bureau points out a decrease in the cases filed under Protection of women from Domestic Violence Act within the country, from 2012 to 2014. In 2012 the number of cases was 16,351, in 2013 it was 4204 and in 2014, only 531 cases.⁹⁸

Whether or not the women have any right, title, or beneficial interest, her right to reside in the shared household is recognized, and the respondent can not evict her.⁹⁹

⁹⁶ Section 31 reads thus:

"1) A breach of protection order , or an interim protection order by the respondent 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.

2) The offence under sub Section (1) shall as far as practicable be tried by the magistrate who had passed the orders the breach of which has been alleged to have been caused by the accused.

3) While framing charges under sub Section (1) the magistrate may also frame charges under Section 498-A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961(28 of 1961) as the case may be, if the facts disclose the commission of an offence under those provisions."

⁹⁷ Section 32, providing for cognizance and proof, reads thus:

"(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."

⁹⁸ Indyayil Garhika Peedhana Kesukal Kurayunnu, Mathrubhumi, Mar. 16, 2015 At 6.

⁹⁹ Section 17, dealing with right to reside in a shared household, reads thus:

"(1) Notwithstanding anything contained in any other law for the time being in force , every women in a domestic relationship shall have the right to reside in the shared household , whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

A woman is entitled to protection order directing respondent not to disturb her peaceful life.¹⁰⁰ A residence order is awarded in cases of dispossession or restoration in case the woman has already been thrown out.¹⁰¹ Monetary relief enabling the aggrieved woman to meet the expenditure is also provided for.¹⁰² It includes maintenance, compensation¹⁰³ for injury, mental torture, and emotional distress. The Act also provides for an order enabling the

¹⁰⁰ Section 18, dealing with protection orders, reads thus: “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 , including personal oral or written or electronic or telephonic contact,
- 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 dependents, other relatives or any person who give the aggrieved person assistance from the domestic violence,
- g) Committing any other act as specified in the protection orders.”

¹⁰¹ Section 19 provides thus: “While disposing of an application under sub-Section (1) of Section 12, the magistrate may on being satisfied the domestic violence has taken place pass a residence order.”

¹⁰² Section 20, dealing with monetary reliefs, provides thus: “(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 (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.”

¹⁰³ Section 22, dealing with compensation orders, reads thus: “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”.

aggrieved party to have temporary custody of children and to guard her against any form of harassment over the issue of custody of children.¹⁰⁴

In *Batra v. Taruna Batra*,¹⁰⁵ the Supreme Court observed that the Act contained certain ambiguities. The Court discussed the scope of Sections 2, 12, 17, and 19 of the Act. It criticised the legislation for clumsy drafting of Section 2(s) as it did not give a clear meaning to the shared household. The Court clarified that “the wife is entitled to claim a right to reside 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.” On receiving a complaint, Magistrate shall inform the person about her right to make an application for availing service of Protection Officers and about her right to file a complaint under Section 498-A, IPC.¹⁰⁶

¹⁰⁴ Section 21 reads thus: “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.

¹⁰⁵ AIR 2007 SC 118.

¹⁰⁶ Section 5 providing for duties of police officer service providers and Magistrate, reads thus: “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 service of service providers, C) of the availability of Protection Officer, d) of her right to free legal service under the Legal Service Authority Act, 1987(39 of 1987), e) of her right to file a complaint under Section 498-A 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.”

3.8.3 Specific Analysis of Definition Part

For the first time, the term ‘domestic violence’ got a legal definition in the PWDV Act, 2005. Domestic violence¹⁰⁷ is an act, omission or commission or physical conduct of the respondent. The Act provides civil remedies and criminal sanctions, which are in addition to remedies under other laws. It is like the emergency and is intended to give immediate remedies to relief from violence.¹⁰⁸

No change has been made in the existing Criminal law of Section 498- A, IPC. As a result, women may opt for Criminal law or Civil law, or both. The vision embedded in the PWDV Act is that the ‘home’ is a shared space even if there is no shared ownership, and hence imagines the ‘domestic’ differently.¹⁰⁹ By making this enactment, the fact of living together in a shared household became important and not its legalities. It also protects the child, including adopted, step, or foster child.¹¹⁰

Under the Act, the respondent is an adult male who is or has been in a domestic relationship with the aggrieved person and against whom the

¹⁰⁷ Section 3 defines of domestic violence thus: “For the purpose of this Act any act, omission or commission or physical or conduct of the respondent shall constitute domestic violence.”

¹⁰⁸ Supra N.97.

¹⁰⁹ Indira Jai Sing, Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence, Women & Law, Critical Feminist Perspective (Kalpana Kannabiran Ed.) 2(2014).

¹¹⁰ Section 2(b) says that “child” means any person below the age of eighteen years and includes any adopted, step or foster child.

aggrieved person has sought any relief under the Act. But his mother, sister and other relatives do not go scot-free as the case can also be filed against relatives of the husband or male partner.¹¹¹

The Kerala High Court has clarified that the term 'respondent' included even a female relative of the husband, taking a close reading of provisions to both Sections 19(1) and 2(q).¹¹² If the term meant only adult relative, and a female could never be the respondent to an application to a Magistrate under Section 12, then provisions stipulating that disposing of an application by passing residence order if the respondent was a woman she should not be directed to remove herself from shared household would become meaningless.¹¹³ The enactment has given wide connotation to women who is sharing a roof with a man.¹¹⁴ The applicant can be only a woman. The Act is female-friendly legislation. The Act has given a wide definition of the concept of domestic violence.¹¹⁵

As far as India is concerned, for a quite long period, there has been a consensus that a new law dealing with the issue of domestic violence was

¹¹¹ Section 2(q) says that respondent means "any adult male 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 this Act: provided that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against the relative of the husband or the male partner."

¹¹² Bismi Sainudheen v. P.K Nabeesa Beevi, 2013(4) KLT 377.

¹¹³ Rama Devi v. Kerala, 2008(4) KLT 105.

¹¹⁴ Section 2(a) reads thus: "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".

¹¹⁵ Sheeba S.Dhar, Protection of Woman from Domestic Violence Act, 2005: An Appraisal, 32 Acad. L. Rev. 162, 171 (2008).

needed, as the existing framework was found to be inadequate. It was argued that rather than having the provisions spread over a spate of legislation; it would be preferable to have single legislation dealing with prohibitory or injunctive orders, to grant maintenance and compensation. In other words, the need for an overarching Civil law on domestic violence was felt.¹¹⁶

India is a signatory to the United Nations, Conventions on Elimination of All Forms of Discrimination Against Women (CEDAW) 1989. So Government of India decided to make a law for preventing domestic violence. Vienna Accord 1994 and the Beijing Women's Conference, 1995 has accepted women's right as a form of human right.¹¹⁷ So Government of India decided to enact a new law in line with that for preventing atrocities against women in their matrimonial home.

The major objective of the Act is to provide more effective protection to women's rights. It embraces issues regarding violation of women's rights conferred under Articles 14, 15 and 21 of the Constitution. It is a gender-specific obligation on the Courts to presume that the accused has caused the dowry death.¹¹⁸

¹¹⁶ Rajasekharan Nair, Gender Justice under Indian Criminal Justice System 48 (2011).

¹¹⁷ Santhana Muthu D. & Arunachalam P., Domestic Violence Women in India, Family Violence in India 107 (2010).

¹¹⁸ Kamlesh Singh and Ors. v. State of U.P., (Feb. 5, 2017, 11.30 P.M)
<http://indiankanoon.org/doc/123123670/>

3.8.4 Relief under the Act

The Act provides that either an aggrieved person or a Protection Officer or any person on behalf of the aggrieved person may present an application to the Magistrate seeking a protection order, order for monetary relief, a custody order, and domestic incident report received from the Protection Officer or the service provider. The date of the hearing should be made within three days from the receipt of the application and it should be disposed within sixty days from the date of the first hearing.¹¹⁹ This mechanism is for ensuring speedy remedy.

The Magistrate may pass interim and *ex-parte* order as he deems fit and proper,¹²⁰ may direct the respondent or the aggrieved person, either singly or jointly, to provide counselling with any member of a service provider.¹²¹ A

¹¹⁹ Section 12 reads thus: "(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, b) The relief sought for under sub Section (1) may include a relief for issuance of an order for payment of compensation for damage without prejudice to the right of such person to institute a suit for compensation or damage for the injuries caused by the acts of domestic violence committed by the respondent".

¹²⁰ Section 23 dealing with power to grant interim and *ex parte* orders, provides thus: "(1) In any proceedings before him under this Act, the Magistrate may pass such interim orders 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, as the case may be, Section 22 against the respondent."

¹²¹ Section 14 reads thus: "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 counseling with any member of a service provider who possesses such qualifications and experience in counseling 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."

Magistrate may secure the help of welfare expert for assisting him in discharging his functions.¹²²

Service providers are any registered voluntary associations aimed at protecting the rights and interest of women by any lawful means including legal aid, medical, financial or other assistance, who shall register itself with the State Government as the service provider under the Act. They have the powers to record the domestic violence incident if the aggrieved person so desires and forward a copy to the Magistrate and the Protection Officer gets her medically examined and ensures that she is provided shelter in a shelter home, if so required.¹²³

The Act provides for shelter home which will greatly benefit a woman who faces a serious situation of domestic violence and is forced to leave the matrimonial home to stay alive, who in the immediate sense needs a safe

¹²² Section 15 reads thus: "In any proceeding under this Act , The magistrate may secure the service of such person , preferably a women, 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 function."

¹²³ Section10 reads thus: "(1) subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, (2) a service provider registered under sub-Section (a) record the domestic incident report in the prescribed form if the aggrieved person so desire and forward a copy thereof to the magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place, (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place, (c) Ensure that the aggrieved person is provided shelter in a shelter home , if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place, (3) No suit, prosecution or other legal proceedings shall lie against any service provider who is, or who is deemed to be, acting or purporting to act under this Act."

place to stay, from where she may freely access the kind of social support she wants.¹²⁴ The Act contains a provision for providing shelter home and medical facility to the aggrieved person. This should be extended at the request of an aggrieved person or Protection Officer or a service provider.¹²⁵ Any person who feels she is a victim of domestic violence has the right to approach Protection Officer.¹²⁶

The Protection Officers are to be appointed in each district by notification in the official gazette, and as far as possible, they should possess necessary qualification and experience.¹²⁷ They are required to do all duties entrusted to them under the Act and shall be under the control and supervision of the Magistrate.¹²⁸ He shall be deemed to be a public servant within the meaning

¹²⁴ *Supra* N. 105

¹²⁵ Section 6 reads thus: "If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home."

¹²⁶ Section 4 reads thus: "(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)."

¹²⁷ Section 8 reads thus: "(1) The state government shall by notification appoint such manner Protection Officer in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act, (2) The Protection Officer shall as far as possible be women and shall possess such qualification and experience as may be prescribed, (3) The term and conditions of service of the Protection Officer and the other officer subordinate to him shall be such as may be prescribed."

¹²⁸ Section 6 reads thus: "It shall be the duty of 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.

of Section 21 of the IPC.¹²⁹ The expanded definition includes physical, sexual, verbal, emotional, and economic abuse. The definition includes all types of violence against women by intimates. It also includes an established understanding of ‘cruelty’ in matrimonial law and covers offences under IPC and Dowry Prohibition Act, 1961.¹³⁰ To determine whether any act, omission or conduct of the respondent constitutes “domestic violence” under Section 3 of the Act, the overall facts and circumstances of the case shall be taken into consideration.¹³¹ The Act has delinked domestic violence from mere dowry-related offences.

3.8.5 Enforcement Mechanism under the Act

The Act stipulates the appointment of functionaries such as ‘Protection Officers’ and ‘service providers’ to assist complainant woman. The Act does not mention the qualification to become Protection Officers. But in Protection of Women from Domestic Violence Rules, 2006 it is given.¹³² The Act does not mention the list of service providers. So service providers are selected from the approved list maintained by the Women’s Commission.

¹²⁹ Section 21 of IPC says that person falling under any of the descriptions in the Section is public servants whether appointed by the government or not.

¹³⁰ Supra N.57.

¹³¹ Ibid.

¹³² S.3(1) “The Protection Officers appointed by the State Government may be of the Government or members of the Non Governmental Organisations: Provided that preference shall be given to women.

(2) Every person appointed as Protection Officer under the Act shall have atleast 3 years’ experience in Social sector.

(3) The tenure of Protection Officer shall be a minimum period of 3 years.

(4) The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her under the Act and these Rules.”

3.8.6 Role of Magistrate in Domestic Violence Cases

The Magistrate's role becomes very vital for reaping the full benefits of Act. The Magistrate should be pro-active and inform the applicant of her legal options, including securing maintenance, custody, and divorce. All efforts should be made to deal with an application for protection orders promptly. Each case of physical abuse, sexual abuse, verbal and emotional abuse must be treated seriously, fairly, expeditiously and with sensitivity.

Further, Section 9(2) of the Act vests control and supervision with the concerned Magistrate to oversee various duties which are performed by the Protection Officer. The service providers will, among other things, ensure that the aggrieved person is provided accommodation in a shelter home if she so requires. A service provider is protected for all actions done in good faith in the exercise of the powers under the Act, towards all preventions and commissions of domestic violence. They are, thus protected by law and cannot be liable for the proper exercise of the functions.

The new law thus recognises the role of voluntary organisations in addressing the issue of domestic violence. NGOs working for women's rights can now register as service providers under the Act.

In *S.R. Batra v. Smt. Taruna Batra*¹³³ the Supreme Court observed that the definition of 'shared household' in the Act was not very happily worded and

¹³³ AIR 2007 SC 1118.

appeared to be the result of clumsy drafting. But the Supreme Court gave it an interpretation which was sensible and which did not lead to chaos in the society. In the above appeal, the High Court verdict was reversed, and the order of senior civil judge dismissing the injunction application of *Taruna Batra* was upheld.

In *Naveen Kohli v. Neelu Kohli*,¹³⁴ the Supreme Court observed that the expression brutality was used about human conduct or human behaviour. If a husband violates any of the rights of the aggrieved woman, it will be deemed a punishable offence under Section 498-A, and a charge can be framed by the Magistrate, in addition to the charges under the Act. Thus, an accused person will be liable to have charges framed under both the old law and the new one. Further, the offence is cognizable and non-bailable. Punishment for the violation of the rights enumerated above could extend to one year imprisonment and or a maximum fine of Rs.20,000/-.

3.9 Mechanisms Recommended in Implementing the Law

Section 8 provides for the setting up and functions of Protection Officers.¹³⁵

These officers are to be selected by State Governments and will be under the jurisdiction and control of the Court and will also be responsible to the Court for monitoring the case of domestic violence.

¹³⁴ AIR 2006 SC 1675.

¹³⁵ Supra N.126

The Protection Officer will assist the Court in making a domestic incident report (DIR), or an application for a protection order on behalf of the aggrieved woman and child. Protection officer will ensure that victims are provided with legal aid, medical services, safe shelter, and other required assistance. The Protection Officer will ensure that necessary information on service providers is given to the aggrieved woman and that orders for monetary relief are complied with. Importantly, the Protection Officer may be penalised for failing/refusing to discharge any duty, with the prior sanction of the State Government.

The law provides what an abused woman requires. If she has to be provided with alternative accommodation, the accommodation and her maintenance have to be paid for by the husband or partner. The law, significantly, recognises the need of the abused woman for emergency relief, which will have to be provided by the husband. A woman cannot be stopped from making a complaint alleging domestic violence. She has the right to the services and assistance of the Protection Officer and service providers, arranged under the law. Victims of domestic violence, will have the right to get the services of the police, shelter home, and medical establishment.

Even a single act of commission or omission may constitute domestic violence. In other words; women need not suffer a prolonged period of abuse before taking recourse to the law. Further, the law delineates the different

forms of violence faced by women and ensures that such interpretations are not left solely to the discretion of the judges.

If a wife avails help from legal system for protecting her from domestic violence, husband has no right to challenge it or deny her access in the house. Thus, if a husband is accused of violence, viz. physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, he still has to provide all facilities enjoyed by the wife prior to accessing recourse. In short, a husband cannot take away her jewellery or money or throw her out of the house while they are having a dispute.¹³⁶

3.10 Major Rights attributed to Women under the Act

The law affirms and recognises a woman's right to reside in the shared household with her husband or a partner when a dispute is pending. Thus, the law protects her when a man attempts to throw her out of the house even when she is not married to him. According to the Act,¹³⁷ any relationship between two persons who live or have at any point lived together in the shared household, is considered a 'domestic relationship.'

The domestic relationship also covers sisters, widows, mothers, daughters, women in a relationship of cohabitation, single women, etc. Any widow or unmarried sister or daughter who is harassed within the home also comes

¹³⁶ Sections 18 & 19, The Protection of Women from Domestic Violence Act, 2005.

¹³⁷ Section 3(g) of the Act says that domestic violence for the purpose of this Act is 'any act omission or commission or conduct of the respondent'.

under the new law. The law also protects women in fraudulent or bigamous marriage or marriages deemed invalid in law.

In *M. Palani v. Meenakshi*,¹³⁸ the High Court emphasised that parties had shared a household, temporarily lived together, and had consensual sex. In this context, the domestic relationship may be inferred between the two. It was held that the woman could claim maintenance by making an application under the Act. Both the parties submitted affidavits declaring that there was consensual sex between them. During protracted court proceedings, the victims continued to stay under the same roof with the abuser resulting in a precarious situation even though any relationship outside the marriage was not recognised. The existing societal norms often ensure that the majority of women prefer to suffer in silence. It is essential to address such anomalies which militate against taking recourse to the protection of the Act.¹³⁹

Women and children are the primary beneficiaries of this Act. The PWDV Act will help any woman who is or has been in a domestic relationship with the “respondent” in the case.¹⁴⁰ It empowers women to file a case against a person with whom she is having a ‘domestic relationship’ in a ‘shared household’ and who has subjected her to ‘domestic violence’.

¹³⁸ AIR 2008 SCC 162.

¹³⁹ Dr. Madhuri Irene and Apoorva Gupta, *Women from sentiment to sensation – A critic on application of Domestic Violence Act*, Women, Law and Society, Vijendar Kumar (Ed.) 140 (2019).

¹⁴⁰ Section 2(a), The Protection of Women from Domestic Violence Act, 2005.

The Act also covers children, and they too can file a case against a parent or parents who are tormenting or torturing them, physically, mentally or economically. Any person can file a complaint on behalf of a child.

The Act says that any adult member who has been in a domestic relationship with the aggrieved person is the 'respondent'. The respondent can also be a relative of the husband or male partner. Thus, a father-in-law, mother-in-law and other relatives can be proceeded against.

This law recognises live-in- relationships. Thus, if a woman is living with a man who abuses her, she can take recourse to the provisions of this law even though there is no lawful wedlock.

On analysing various provisions of the Act, this researcher felt that the Act is clumsily drafted. The draft bill submitted by Women lawyers collective was instrumental in providing the skeleton of the Act. Though the intention of the legislation is good, there is vagueness in many provisions. Intention of legislation can be carried out through effective redressal mechanism. Redressal agencies under the Act are Judiciary, Women's Commission and Service providers (NGO). In the following chapter, role played by Judiciary is discussed.

CHAPTER 4

JUDICIAL RESPONSE TO VICTIMS OF DOMESTIC VIOLENCE

The importance of law to determine the quality of justice and facilitate justice delivery through the judicial system cannot be embellished. They are like a double-edged sword. To ensure impartial justice and to see that the rights of all women and children are respected equally, it becomes necessary to ensure that the laws are impartial, free of gender-based discrimination. They need to be relevant and tuned into the current context. Justice is subverted if archaic, patriarchal or discriminatory laws are adhered to.¹ The current scenario calls for a gender perspective in laws, and a clear articulation of the ethics involved in handling victims of gender-based violence. If the constitutional goal of justice has to be achieved, a gendered vision is vital, particularly within the criminal justice system and law enforcement agencies.²

There is a need for a broader understanding and knowledge of both National and International Instruments that promote women's rights while dealing with the cases of violence against women. It is the duty of the State through executive, legislature and the judiciary, to take steps to prevent violence against women as it constitutes a violation of women's human

¹ Savitri Goonesekhere, Violence Law and Women's Right in South Asia 8 (2004).

² Vikash Gandhi H, Judicial Approach in Criminal Justice System: An Experience of India 1(2010).

rights.³ Judiciary can play a prominent and crucial role in protecting the rights of women by offering redressal against actual or threatened violation of their rights. Judiciary is the last resort of the helpless victims.⁴

Law is a historically contingent feature of society and whose emergence is by the rise of a systematic form of social control administered by the institution.⁵ The abrupt social changes compels the legislature to amend the existing laws of the country. This chapter discusses the role of the judiciary in addressing the redressal to victims of domestic violence and to assess the judicial process in preventing domestic violence. Legislatures, Judges and Research Workers have made a valuable contribution to the cause of the depression and distress in married women.⁶ Judicial decisions have a tremendous impact on the formulation and implementation of national policies.

4.1 Steps Taken by Judiciary for the Empowerment of Victims of Domestic Violence

Judiciary, in its role, has significant responsibility in ensuring gender justice in criminal law administration.⁷ The traditional status of a man, i.e, the husband, under the divine laws, was that of a provider and protector of the

³ Id.

⁴ Dr. Surendra Mohan, Crime against Women and Child 162 (2020) (Released in Oct.2019)

⁵ H. L. A. Hart, The Concept of Law 167 (1972).

⁶ R. Revathi, Law Relating to Domestic Violence 17(2004).

⁷ G. Rajasekharan Nair, Gender Justice under Indian Criminal Justice System 259 (2011).

wife, family and its members. Now the situation has changed and owing to industrialization and globalization, women have entered the traditional man's sphere by going out, seeking employment. This goes to show women's adaptability to assume both official and domestic responsibilities. Judiciary can play a crucial role in arresting domestic violence. The failure of the criminal justice system to protect women from domestic violence resulted in the enactment of the Protection of Women from Domestic Violence Act, 2005 to prevent violence arising out of a domestic relationship in a shared household.⁸ Therefore, one weighty task of the judiciary is to apply the law and to make the discovery of law. The second task is the filling of gaps, which is found in every positive law.

High Court, at State level and the Supreme Court as the final appellate court, decide the appeal in such cases.⁹ They also enjoy original jurisdiction to issue writs. Most cases of rape, murder of women, together with dowry deaths, ultimately reach the Supreme Court.¹⁰ There are catena of decisions from superior courts that reveal the creative role of the judiciary in securing women's rights.¹¹ Although the Constitution and several enactments are in existence for the protection of women's rights, the credit for highlighting and

⁸ Id.

⁹ Ebbe Obi N. I. & Dalip Das K., Criminal Abuse of Women and Children 230 (2009).

¹⁰ Preethi Mishra, Domestic Violence against Women: Legal Control and Judicial Response 356 (2007).

¹¹ Goel Arun Kaur, Manvinder et al., Violence against Women: Issues and Perspectives 205 (2006).

enforcing justice goes to the Supreme Court and various High Courts.¹² Further, the legal interpretation and judgments by the Supreme Court and High Courts are legal precedent until overruled by a competent court or replaced by legislation.¹³

Laws that reflect the reality of domestic violence inside or outside the home if fully implemented, will afford justice to women who have suffered violence and even protect them against further maltreatment.¹⁴ The judiciary, predominantly the Supreme Court, has played a creative role in providing justice to victims of violence through far-reaching and innovative judgments, upholding the basic principle of equality of sexes, and tried to maintain the dignity and honour of women.¹⁵ The PWDV Act has made substantial improvements to the existing law of cruelty against women and connected all kinds of dowry demands to domestic violence.¹⁶ However, the development of the PWDV Act through the judicial process appears to be marred by confusion and inconsistency.¹⁷ The situation has led to a floodgate of

¹² P. M. Sen & Sankar Nair, Trafficking in Women and Children in India 224 (2005).

¹³ Bharama Gouder & Ratna R., Violence Against Women and Justice in Changing World: An Analysis Indian Socio-Legal Journal 34, 51(2007).

¹⁴ Avantika Sarkar, Judicial Response to Protection of Women from Domestic Violence Act: A Critical Analysis of Calcutta High Court Cases (Sep. 25, 2018, 12.15 PM), https://www.academia.edu/13029217/Judicial_Response_to_Protection_of_Women_from_Domestic_Violence_Act_2005_A_Study_of_Select_Calcutta_High_Court_Cases.

¹⁵ Id.

¹⁶ Improving Judicial Response to Domestic Violence- Human Rights Library (Sep.27, 2018, 4.30 PM), <http://hrlibrary.umn.edu/svaw/domestic/training/materials/Judicialresponse>. PDF

¹⁷ Supra N. 12.

litigation raising issues of women's rights within the confines of the domestic domain.¹⁸

4.2 Disputing the Constitutionality

The nature of proceeding under the PWDV Act was enacted to provide a remedy in civil law for the protection of women from domestic violence.¹⁹

The Constitution, the fundamental law of the land, is a comprehensive document containing the principles of justice, equality, and fraternity. These principles constitute the warp and woof of the Constitution. The Constitution allows the dignity of individuals irrespective of sex, religion, race, caste, and place of birth. In *Aruna Pramod Shah v. Union of India*²⁰ it was argued that the Act provided protection only to women and not to men²¹ and was ultra vires to Article 14 of the Constitution. The Court dismissed the contention on the ground that, there existed a difference between discrimination and reasonable classification.²² The Delhi High Court heard the petitioner's view that the purpose and elements of formulating a law as an exceptional

¹⁸ Sesha Kethineni, Violence Against Women in India: Legislative and Policy Reforms (Feb. 23, 2017, 3.20 PM), <https://www.georgetownjournalofinternationalaffairs.org/online-edition/violence-against-women-in-india-legislative-and-policy-reforms>.

¹⁹ Nidhi Kaushik v. Union of India (2013) 203 DLT 722.

²⁰ Aruna Pramod Shah v. Union of India, W.P. Cr.428/2008, Judgment, 7 April 2008.

²¹ The petition challenged the constitutional validity of the Act on two grounds: First, that gender specific nature of the Act by excluding men violated Article 14 of the Constitution. Secondly, that the definition of 'domestic relationship' in section 2(f) of the Act led to the derogation of rights of the legally wedded wife. [*V. Sen, and P.Bhasin, JJ.*]

²² The Court rejected the second contention by holding that there was no reason why equal treatment should not be accorded to wife as well as a woman who had been living with a man as his wife.

measure, which did not permit the husband to file a complaint under the PWDV Act, were violative of Articles 14 and 21 of the Constitution and also affected the life and freedom of the husband and his relatives.²³ Court dismissed the plea and directed petitioner to pay Rs.3000 to legal aid for women, children, S.C, S.T. and poor.

The High Court of Madras also rejected a similar argument and upheld the validity of the Act in *Dennison Paulraj v. Union of India*.²⁴ Court observed that Article 15(3) of the Constitution is gender-specific to achieve equality of status for women. Here the petitioner had filed the writ petition for declaring Sections 10, 12, 19 and 23 of the PWDV Act, 2005 as unconstitutional. In this case, the petitioner challenges the constitutional validity of the Act on the basis that it was a discriminatory piece of legislation, as only wife can file petition under the Act. Court held that, giving preferential treatment to wife and considering them as special category will not constitute discrimination and will not violate any constitutional provisions. On similar grounds, Kerala High Court also dismissed a similar plea challenging the constitutionality of Section 19(1)(b) of the PWDV Act in *Siddique P.S. v. Ministry Of Women And Child Development and Ors.*²⁵

²³ Under Article 14 the law may be declared valid if it satisfied the following conditions:
(a) The classification must be based on some intelligible differentia; and
(b) There must be a rational nexus between the differentia and the object sought to be achieved by the law.

²⁴ AIR 2009 (Noc) 2540 (Mad). [Venkitaraman, J]

²⁵ *Siddique P.S. v. Ministry of Women and Child Development and Others* (Apr. 30, 2018, 3.35 PM) <https://indiankanoon.org/doc/135470099/>.

4.2.1 Verifying the Right to Dignity

The right to life includes the right to live with dignity is a well -settled principle. A plethora of decisions is there in favour of the proposition. The right to dignity also includes right against all kinds of humiliations.²⁶ It was found mention in the definitions of sexual abuse and emotional abuse, respectively. The Court also included emotional abuse in the web of domestic violence.

4.2.2 The Right to Shelter

Under Section 17, of the PWDV Act, the party's right to continue the stay in the shared household is protected in consonance with rights guaranteed under Articles 14 and 15 of the Indian constitution. One of the main causes of retardation of the progress of women is domestic violence and the Act seeks to protect them from domestic violence.²⁷ The PWDV Act made classification between women and men, protecting only women from domestic violence.²⁸

²⁶ Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan (Apr. 30, 2018, 3.30 PM), <https://www.uniassignment.com/essay-samples/law/dual-system-family-court-and-cri>.

²⁷ Pragnesh Parmar, Dowry Death and Law - Indian Scenario (Apr. 30, 2018, 3.35 PM), <https://iaimjournal.com/wp-content/uploads/2014/10/6-dowry-death-and-law-indian-scenario.pdf>.

²⁸ Id.

4.2.3 Right to Matrimonial Residence and Property

The provision for the right to residence has been hailed as one of the most distinctive and essential provisions of the Act. It enables a victim of domestic violence to take recourse to independent relief for protective injunction against violence, dispossession from the matrimonial home and alternate residence.

In a unique case, *B.P. Achala Anand v. Appi Reddy*,²⁹ where *Achala* was married to *H.S. Anand*, he left their rented house leaving behind wife and children and shifted to a nearby lodge. Subsequently their marriage was dissolved. Present dispute was between wife, who is a tenant in the same property which was taken on lease by husband and the landlord. Supreme Court Chief Justice *R.C. Lahoti* observed that:

“A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if because of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. The right to residence is a part of the wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a will to defeat such a right.”

²⁹ (2005) 3 SCC 313. [*Lahoti, CJI., B.P., Mathur and P.K. Balasubramanian, JJ.*]

The Hindu Adoption and Maintenance Act, 1956 in its Section 18 statutorily recognized right to maintenance of a Hindu wife and for the purpose of maintenance wife includes divorced wife. Moreover, Section 3 (b) of the Act says about maintenance and it includes the right to residence among other things. Act has included there in provision for residence among other things.³⁰ For maintenance, the term 'wife' includes a divorced wife. A Hindu wife is entitled to be maintained by her husband, and she is entitled to remain under his roof and protection.³¹

In *S.R. Batra v. Taruna Batra*³² the facts show that the respondent had married and started living with her husband at the house owned by her mother-in-law. The appellant filed a divorce petition later on, and as a counter measure, the respondent lodged FIR under Section 498-A along with other provisions of the Indian Penal Code. The daughter-in-law sought an order to allow her to re-enter her matrimonial home. A temporary injunction was granted in favour of the wife by the trial court. On appeal, the injunction was vacated. The wife moved the High Court, which gave an order in her favour to continue residence. On appeal the Supreme Court held that house owned by mother-in-law does not come within the definition of shared household under Section 2 (s) of the Act. Also held that the wife is having the right to reside in a shared house and it means house owned by husband,

³⁰ Mulla, *Principles of Hindu Law*, 555 (1996).

³¹ Judgment - Divorce - Right of Residence (Apr. 30, 2018, 4.10 PM), <https://www.shoneekapoor.com/b-p-achala-anand-vs-s-appi-reddy-anr/>.

³² (2007)3 SCC 169.

taken on rent by husband and joint family property in which husband is a member.³³ In another case, the Supreme Court observed that self-acquired property belonging to the mother-in-law or father-in-law cannot be considered as the shared household and daughter-in-law does not have the right to live in such household.³⁴

In *Anukriti Dubey v. Partha Kansabanik and Anr*,³⁵ a couple was living in a leased house. Spouse went out after the expiry of the rent agreement. Court held that the house will not be treated as shared household. Wife was not having any right superior to that of her husband to live in the rented house after the expiry of rent agreement and landowner was eligible to oust her. Further Court held that:

“Domestic relations would not exist between people who are not related by consanguinity, marriage or through a relationship in nature of marriage, adoption or are not family members living together as a joint family.”

4.2.3.1 Shared Household

In *Roma Rajesh Tiwari v. Rajesh Dinanath Tiwari*,³⁶ the Court discussed the question “Whether the respondent has a legal or equitable interest in a shared

³³ Dr. Nandita Kaushik, Judicial Decisions on The Protection of Women from Domestic Violence (Jul. 4, 2019, 2.40 PM), <http://www.cja.gov.in/E%20Books/JUDICIAL%20PERSPECTIVE%20ON%20PROTECTION%20OF%20WOMEN%20FROM%20DOMESTIC%20VIOLENCE%2003.07.2019.pdf>

³⁴ *Varinder Kaur v. Jatinder Kumar and Anr*. 2016 (4) RCR (Cri) 861.

³⁵ 2016 (3) RCR (Cri) 284 (DEL). (*Asuthosh Kumar*, J.)

³⁶ MANU/MH/12466/2017. [*Dr. Shalini Phansalkar Joshy*. J.]

household?” Here respondent was tortured in the matrimonial home and she has to live in a joint family, where all members tortured her even during pregnancy. She went to her parental home for delivery as per custom and after delivery, when she returned with her daughter, she was thrown out of matrimonial home and found asylum in parental home in 2013. In the instant case, Hon’ble High Court has shown disagreement with *S.R. Batra v. Taruna Batra*³⁷ and held that this woman cannot be evicted. Court held that:

“...In this case, admittedly till the dispute started between the parties, both of them were residing in same flat and have lived together in the said flat as a ‘couple’ as husband and wife in a domestic relationship, it becomes her ‘shared household’ as stated in the definition of Section 2(s) of the PWDV Act “

In *Ajaykumar Jain v. Baljit Kaur Jain*,³⁸ the wife demanded a shared household and was ordered in her favour. Later on, it was revealed that the property was involved in another dispute. So the court ordered alternate accommodation to her. A similar view was taken in the case of *Shachi Mahajan v. Santosh Mahajan*.³⁹ Here husband or mother in law does not have a valid share in the disputed property. So the Court ordered for alternate accommodation to wife.

³⁷ 2007 (3) SCC 169. [S.B. Sinha, Markandey Katju, JJ.]

³⁸ MANU/DE/0777/2099. [Sanjay Kishan Kaul, Sunder Shan Kumar Misra, JJ.]

³⁹ MANU/DE/0046/2019. [Sanjeev Sachdev., JJ.]

4.2.3.2 Difference between Shared Household and Matrimonial Home

In *Shumita Didi Sandhu v. Sanjay Singhby Sandhu*⁴⁰ court made a differentiation between the term ‘shared household’ and ‘matrimonial home’. Nowhere in the Act, is the word matrimonial home used. The meaning of a shared household is ‘dwelling place’. Cases like *Neetu Mittal v. Kanta Mittal*,⁴¹ *Rekha Bala Sahib Patil v. Durgawati*,⁴² *A.R. Hashir v Sharma*,⁴³ *Vijay Vasant Sawant v. Shubhang Shivling Parab*⁴⁴ and *Lakesh Kiran Kumar Shah v. Sharadha Lokesh Shah*,⁴⁵ demand for shared household by wife was disregarded considering the fact that husband has no interest in that property.

In *Neelam Manmohan v. Manmohan Attavar Din*,⁴⁶ the Court held that if the wife failed to prove a shared household, the question of paying monetary relief also does not arise. This ratio was similar to that of *Velu Swamy v. Patchiammal*.⁴⁷

4.2.3.3 Domestic Relation

In *D. Velusamy v. D. Patchaiammal*,⁴⁸ the Supreme Court of India defined the meaning of the term ‘relationship in the nature of marriage’ which is not

⁴⁰ MANU /DB/4077/2012. (*Badar Durrezz Ahmed, Veena Birbal, JJ.*)

⁴¹ (2008) DLT 691.

⁴² MANU/JK/0075/2019.

⁴³ 2015 (3) RCR (Cri) 683 (Kerala).

⁴⁴ 2014 (1) Crimes 436 (Bom.).

⁴⁵ 2013(1) Crimes 208 (Bom.).

⁴⁶ MANU/KA/2967/2018. [*Soma sekhar, J.*]

⁴⁷ *Infra* N.48.

⁴⁸ (2010) 10 SCC 469.; [*Markandey Katju, T.S. Thakar, JJ.*]

expressly defined in the PWDV Act. Moreover, a lot of cases are coming before the court on the issue of ‘relationship in the nature of marriage’. Therefore the Supreme Court decided to interpret the above concept. The Division Bench said that “not all live-in relationships will be treated as ‘relationship in the nature of marriage’ and it is akin to common law marriage, which must fulfill some of the requirements like ‘the couple must hold themselves out to society as being akin to spouses they must attain legal age to marry; they must be otherwise qualified to enter into a legal marriage; including being unmarried; It must be proved that they are co habiting at their own interest and enjoying shared house hold as defined in Section 2(s) of the Act.” Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’. In certain judgments, remedy was not provided as petitioners failed to prove the domestic relationships.⁴⁹ In certain

⁴⁹ Delhi High Court in the case of Vijay Verma v. State NCT and Another (MANUDE/1946/2010:2010(118)(DRJ,520), Rekha Balasaheb Patil v. Smt. Durgawati Shridhar Patil and Others (MANU/MH/2717/2018 :2019 All Mr(Cri) 511) Punjab and Haryana High Court in the case of Om Prakash Syngal and Others v. Shimla Garg (MANU/PH/3704/2015:2016 All Mr.(Cri) Journal 414) and submitted that the parties are not residing together. Therefore, there is no domestic violence. It was held by Punjab and Haryana High Court that, “*once a family member leaves shared household and establishes his/her own household, domestic relationship comes to an end*”. Hima Chugh v. Pritam Ashok Sadaphule and Others (MANU/DE/0838/2013: 2013 Cri.L.J.,2182). It is observed that the petitioner returned to India temporarily. A protection order can be obtained only against her husband who is in domestic relationship with the aggrieved person and not against in laws. Harbans Lal Malik v. Payal Malik (MANU/DE/1842/2010 : 2010 (118) DRJ, 582), it is observed that “*aggrieved persons and domestic relationship mean there can be no domestic relationship of the wife of son with the parents when the parents are not living along with the son and there can be no domestic relationship of a wife with the parents of her husband when son along with the wife is living abroad, maintaining a family there and children are born abroad*”.

other cases, the judiciary has shown a proactive role to determine the nature of the relationship between man and woman.⁵⁰

4.2.3.4 Perspectives on Passing Residence Order

A Magistrate has the power to pass a residence order and may restrain the respondent from dispossessing or disturbing her possession from the shared household. To protect the wife, the respondent may be directed to move out of the shared household even if she has no legal or equitable interest.⁵¹ To protect the aggrieved, the respondent may be restrained from entering into any portion of the shared household, restrained from renouncing his rights in the shared household or to secure the same level of alternate accommodation for the aggrieved or to pay the rent for the same. However, any female member cannot be directed to be removed from the shared household. The

⁵⁰ Shalini v. Kishor and Others (MANU/SC/0688/2015: 2015 (6) SCALE, 219), it is held that, “past relation is a domestic relationship.”

Dhananjay Ramkrishna Gaikwad and Others v. Sunanda Dhananjay Gaikwad and Others (MANU/MH/0580/2016:2016 All Mr. (Cri.) 2291), it is held that, “Aggrieved Person”, as laid down in Section 2(a) clearly provided that any women, who is or has been in domestic relationship with the respondent. The definition of ‘Domestic relationship’ also means relationship between two person, who live or have, at any point of time, lived together in shared household.” In the present case, the applicant lived in a shared household along with respondents. Therefore, she is aggrieved person”

Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and Another (reported in MANU/SC/0861/2014: 201(2) Mh.L.J. (Cri.), 509), the Hon’ble Apex Court has held that, “domestic violence apart from “Physical abuses” and “sexual abuses”, “Verbal and emotional abuses” and “economic abuse” also constitute “domestic violence”.

⁵¹ Summary for the 2nd Judicial Officers Workshop District Court, Osmanabad Aug.26,2016,
[http://mja.gov.in/Site/Upload/GR/Title%20NO.158\(As%20Per%20Workshop%20List%20title%20no158%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.158(As%20Per%20Workshop%20List%20title%20no158%20pdf).pdf).

magistrate may require the respondent to execute a bond or may impose additional conditions to prevent domestic violence.

However, the 'shared household' must be distinguished from 'matrimonial home'. In the PWDV Act, the term 'shared household' as defined in Section 2(s) thus:

“The shared household means where the aggrieved person 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 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 equality 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.”

The term 'matrimonial home' is neither defined nor used in any provision in the Act.

In *Ajay Kumar Madanlal Bajla v. Neha Vishal Bajla*⁵², the Bombay High Court held that the husband had paid the EMI of loan taken for the purchase of the flat. Hence it showed that the husband had interest and ownership in the flat. The wife was held to be entitled to protect her possession.

From the analysis of these cases on shared household and right to dwelling, no foundational philosophy is emerging as to the exact position of the right to the residence. The question of matrimonial property rights of women is yet to be interpreted well. Women are leaving for their parental home from the spouse's residence after legal separation, almost with empty hands.

4.2.3.5 Retrospective attribute of PWDV Act

In *Saravana Kumar v. Thenmozhi*⁵³ the High Court of Madras was confronted with the question of maintainability of petition because the acts alleged in the petition took place before the Act came into operation. In this case, petitioner alleged continuous dowry-related atrocities and the consequent throwing out of the shared household with her child in March 2006. The Act became operative only in October 2006.

The court held that though the alleged atrocities took place before the Act came into force, since the wife and child continued to remain dispossessed

⁵² AIR 2011 Bom.79. [*Roshan Dalvi, J.*]

⁵³ MANU /TN/9828/2007. [*Ram J.*]

from the shared household, the act of domestic and economic abuse was continuing and should attract liability under the Act.

4.2.3.6 Cases which are Confluence of S.498-A and Domestic Violence

As in many cases, petitioners will avail both civil and criminal redressal mechanisms; it is tough to differentiate some cases whether they come under domestic violence alone or whether they come under S.498-A alone. There are certain common features in both cases. Here this researcher would like to cite the trend of the judiciary in such cases. In *Varsha Kapoor v. Union of India*⁵⁴ court felt that it is very dangerous to invoke Section 498-A IPC in all cases. Till then, there was no law to give protection and shelter to a woman. There is no point in retaliating respondents, as safety and protection of womenfolk is of cardinal importance. PWDV Act is of civil nature. In order to provide civil remedies of protection, the PWDV Act was enacted. Court held:

“... married women are given rights to agitate their grievances against wide spectrum of respondents under proviso to Section 2 (q) of PWDV Act, with attempt to put an end to domestic violence and at the same time saving matrimonial home, which was not possible under the remedies provided in criminal law and there was no such provision

⁵⁴ (170) 2010 DLT 166. [A.K. Sikri, Ajit Barhoke JJ.]

under existing family laws. When this was the lacuna in law sought to be plugged by passing the PWDV Act and the purpose was to remove such mischief, leaving family relatives of a husband or a male partner out of purview of 'respondent' would negate the purpose for which it was passed."

In *Rupali Devi v. the State of U.P.*,⁵⁵ the court held that a woman could file a complaint even from a place where she finds shelter after being driven from matrimonial home. The bench observed that:

"The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise her even after she leaves matrimonial home....Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place." Thus it was held that depending upon the factual situation, the Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would have the jurisdiction to entertain the offences including physical and mental cruelty.

⁵⁵ 2019 (2) KLJ 601. [*Ranjan Gogoi, Nageswara Rao, Sanjay Kishan Kaul, JJ.*]

In *Rashmi Chopra v. State of U.P.*,⁵⁶ the Supreme Court held that the complaint need not be filed by the woman subjected to cruelty herself. The Court held that:

“Section 498-A of the IPC does not contemplate that the complaint about an offence under Section 498-A should be filed only by a woman who is subjected to cruelty by husband or his relative. There is nothing in Section 498-A, which may indicate that when a woman is subjected to cruelty, a complaint has to be filed necessarily by the woman so subjected.”

In *K.V. Prakash Babu v. State of Karnataka*,⁵⁷ the Court held that extramarital relationship by husband is not cruelty to attract Section 498-A/306 IPC.

“Extramarital affairs might be illegal or immoral acts. But other ingredients are to be brought home so that it would constitute a criminal offence.”

In *Jagdish Raj Khatta v. State of H.P.*,⁵⁸ the Supreme Court held that past incidents which happened much before suicide of a lady cannot be treated as a persuasive factor for her death.

⁵⁶ AIR 2019 SC 2297. [*Ashok Bhushan and K. M. Joseph*, JJ.]

⁵⁷ 2016 SCC OnLine SC 1363. [*Dipak Misra*, J.]

⁵⁸ (2019) 9 SCC 248. [*S.A. Nazeer, N. Ramana*, JJ.]

“All those cases of alleged incidents of cruelty took place much before the commission of suicide .So they cannot be treated as immediate cause or provocation.”

In *Ajaykumar v. Lata A/s. Sharuthi*,⁵⁹ the Court held that brother in law of a widow could be ordered to pay maintenance to her under the PWDV Act. Here lady and her deceased husband were residing in the ancient joint family property. Husband and brother in law jointly carried out business. After her husband's death, she was evicted from the house along with her children. Court held that:

“Averments in the complaint prima facie indicate that the case of the complainant is that the house where she and her spouse resided belongs to joint family property. Section 2(q) indicates that expression ‘respondent’ means any adult male member of the husband’s family, who is or has been in a domestic relationship with the aggrieved party.”

4.2.3.7 Expanding the Scope of the Term ‘Respondent’

In *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*⁶⁰ in the year 2005, *Sandhya Manoj Wankhade* married *Manoj Bhimrao Wankhade* and lived with his mother and sister. About a year later, she began experiencing

⁵⁹ 2019 SCC OnLine SC 726. [D.Y. Chandrachud and Hemant Gupta, JJ.]

⁶⁰ (2011) 3SCC 650. [Altamas Kabir, Cyriac Joseph, JJ.]

abuses from the three of them, for which she lodged a complaint under PWDV Act against three of them. The central question of law mooted in this case is whether a female can be respondent under the PWDV Act. The Court held that:

“It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.”

The language of the law was unclear. Therefore High Court ruled in favour of the husband’s female relatives, thus blocking them from certain charges

outlined in the PWDV Act. The issue went to the Supreme Court, which ruled in *Sandhya Manoj Wankhade*'s favour saying that it is, in fact, permissible to hold female relatives as respondents under the Act.

In *Kusum Lata Sharma v. State and Another*,⁶¹ the Supreme Court of India considered the issue of whether respondents under 2(q) of the PWDV Act include females. The Court held that:

"A mother who is being maltreated and harassed by her son would be an "aggrieved person". If the said harassment is caused through the female relative of the son i.e. his wife, the said female relative will fall within the ambit of the respondent. This phenomenon of the daughters-in-law harassing their mothers-in-law especially those who are dependent is not uncommon in the Indian society."

Court also stated that "the Statement of Objects and Reasons cannot be stated to have excluded a female relative of the male partner or a respondent and thus, a mother-in-law being an "aggrieved person" can file a complaint against the daughter-in-law as a respondent."

⁶¹ 2011(4) KLT 313. [*Mukta Gupta, J.*]

4.2.3.8 Live-in Relationship under the PWDV Act

In *Lalita Toppo v. State of Jharkhand*⁶², Division Bench referred a matter to three-judge Bench to consider the scope of Section 125 of the Cr.P.C vis-à-vis live-in relationship. Section 125 will provide maintenance only to the legally wedded wife. Referring to Section 3 of the PWDV Act, the Bench observed that the petitioner in this case, would have an effective remedy to seek maintenance under the PWDV Act.

4.2.3.9 Whether Relief sought under the PWDV Act will prevail after Getting Maintenance under Section 125 Cr.PC?

Supreme Court in a recent judgment pronounced that there is no bar for a woman to file a petition for getting monetary relief under the PWDV Act⁶³.

Division Bench dismissed special leave petition and held:

“We are of the view that the High Court of Delhi was justified in coming to the conclusion that mere passing of an order under S.125 of Cr.P.C, 1973 did not preclude the respondent from seeking appropriate reliefs under the Protection of Women from Domestic Violence Act 2005.Hence, we decline to entertain the special leave petition under Article 136 of the constitution”.

⁶² 2018 SCC Online SC 2301.

⁶³ Shome Nikhil Danani v. Tanya Banon Danani 2019 SCC Online Del.8016. [D.Y. Chandrachud, Indira Banerji. JJ.]

Court took a view that the scope of both provisions operate in two different realms, they are independent provisions. This judgment shows societal consideration towards women victims, because maintenance amount under S.125 Cr.P.C may be meagre. In this backdrop, the court took an action that will leverage the social necessities of women hood in India. Cumulative operation of both provisions will help to realise a decent amount.

While delivering this Judgment, the court relied on the decision in *Abdul Majid Khan Patni v. Atif Iqbal Mansoori*,⁶⁴ Supreme Court suggested that monetary relief given under Section 20 is different from maintenance. It also observed.

“...on the question some monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person as a result of domestic violence, which is not dependent on whether the aggrieved person, on the date of filing of the application under Section 21 is in a domestic violence relationship with the respondent.”

4.2.3.10 Period of Limitation for Filing Complaint under Section 12 and 18 of PWDV Act

Whether a period of limitation can be fixed in cases relating to domestic violence is a question which made turbulence in legal circles. Because of the

⁶⁴ (2014) 10 SCC 736. [*Sudhansu Jyothi Mukhopadhyaya and S.A. Bobde, JJ.*]

peculiarity of the offence, it may not be divulged at the moment of occurrence. Some ladies will not file a complaint in a spur of the moment. They will wait in the feeling that sometimes in the future, these problems will settle.

Vienna Accord of 1994, as well as Beijing Declaration (1995), has taken domestic violence as an issue of human rights violations. So putting a rider of limitation will be injustice in some cases.

There is an array of cases decided by various High courts and Supreme Court of India. In *J. Srinivas v. G. Dhanalakshmi*,⁶⁵ Honourable High Court of Karnataka made an observation that as the maximum punishment for violation of an order under Section 12 read with 18 of PWDV Act is one year, so complaints should be filed within a period of one year. Here marriage of petitioner was solemnized on 31-05-2004 as per Hindu customary rites. She lived in matrimonial home up to November 2004. Though pregnant, she suffered a lot of torture there. They compelled her for abortion and made to eat meat knowing that she is vegetarian. At last, she has to take asylum in the parental home. But she filed a case under the PWDV Act only in 2009. Karnataka High Court quashed the petition stating that there was a delay in filing the petition. Court held:

⁶⁵ *J. Srinivas v. G. Dhanalakshmi* (Aug. 8, 2019, 3.35 PM), <http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/870870/1/CRLP2419-09-05-04-2013.pdf>. [Sudhansu Jyothi Mukhopadhyaya and S.A. Bobde JJ.]

“Though the allegations are spread over a period of time, it does appear that the complaint was not filed within period of one year in terms of Section 468 Cr.P.C and since in that case the complaint was registered in the year 2009 and the offence alleged to have been committed in the year 2004, it was held that the complaint was hopelessly barred by time.”

The researcher felt that, in 2004 there was no PWDV Act; it came in 2005 and people began to use it predominantly after 2006. 4 year’s delay can’t be condoned, but fixing one year as a limitation period is an injustice.

High Courts of other States also took a similar view that the provision of Section 468 Cr.P.C comes into operation when order passed under Sections 12 and 18 of the Act is violated. In *Akhilesh Kumar Singh v. State of U.P.*,⁶⁶ Allahabad High Court on 20 December 2017 decided that the limitation period is applicable in PWDV Act cases. This criminal revision petition was brought before Allahabad High Court. Persistent demands for luxury home, equipment like Wagon R Car, 20 lakh home theatre, etc. even after marriage resulted in a strained relationship of spouses. She was constantly harassed by in-laws.

In 2010, when she along with her father came to husband’s house they were assaulted using a knife. Infuriated by this Act, they lodged F.I.R. While

⁶⁶ 2018 (2) ADJ 752. [*Ravindra Nath Kakkar, J.*]

rejecting applicability of Section 12 of the Act, Court projected 3 grounds.

The Court pointed out:

- “1. *She had left her matrimonial home in 2008.*
2. *She is getting interim maintenance under Section 24 of the Hindu Marriage Act, 1955.*
3. *Complaint is barred by limitation under S.468 of Cr.P.C.”*

After hearing both parties, the court held that there is no point in interfering with the orders of the lower court.

In *Santosh Kumar Yadav v. State of U.P.*,⁶⁷ and in *Yogesh Anantrai Bhatt v. State of Gujarat*⁶⁸ also Court took a similar stand. Apart from the decision of various High Courts, there are Supreme Court rulings that affirm the limitation period. In *Indrajit Singh Grevial v. State of Punjab*⁶⁹ and *Krishna Bhattacharjee v. Sarathi Chowdhury*⁷⁰ also approved the necessity of limitation period in domestic violence cases. But in *Trilochan Singh v. Manpreet Kaur*⁷¹, was inclined to disagree. Purpose of present petition was to challenge the order dated 21-07-2012 passed by the court of Additional Sessions Judge, Court No:11 District Pratap Garh in Criminal Appeal No.72 of 2011 and order dated 18-08-2011. The petition was filed by a daughter

⁶⁷ 2015 (S) ALJ 466.

⁶⁸ 2016 SCC Online Guj. 2398.

⁶⁹ (2011) 12 SCC588.

⁷⁰ (2016) 2 SCC 705.

⁷¹ *Trilochan Singh v. Manpreet Kaur* (Dec. 12, 2017, 5.10 PM), <https://indiankanoon.org/doc/71840775/>. [Dinesh Kumar Singh, J.]

against her father. After her M.A, parents wanted to marry her off. But she was not willing. She wanted to do some private jobs. After a few years, she changed her mind. She left her home to stay with elder sister in 2005. She filed a petition under S.12 and 18 of the PWDV Act against father in 2010, suggesting domestic violence alleging that her father is abstaining from parental duty.

Court held that the father ought to protect his daughter and give monthly maintenance, fixed deposit of 4 lakhs and one-bedroom accommodation at house. But the pertinent question is whether delay in filing a petition is to be condoned. It is an established principle that the limitation period is applicable in such cases.

In *Anthony Jose v. State of NCT of Delhi*,⁷² the question which arose before the court was to decide whether plea of a wife to get maintenance after 3 years is admissible? Here petitioner/husband challenged FIR under Section 498-A, Section 12 of PWDV Act 2005 and Section 406 and Section 34 of Indian Penal Code 1860. The main contention of the husband was, “it was beyond the limitation period as more than 3 years have elapsed from their separation.” Court held:

*“Non providing of maintenance is a continuous cause of action
and even if for 3 years the respondent did not claim the*

⁷² 2018 SCC Online 1295. [*Mukta Gupta, J.*]

maintenance for herself, same would not debar her from seeking maintenance under Section 12 of PWDV Act”.

In *Yogesh Arantrai Bhatt v. State of Gujarat*,⁷³ it was clearly mentioned that period of limitation will be in tune with quantum of punishment. Complaint was filed by a lady under Section 12 of PWDV Act. Court issued notice to respondents. Ultimately, plea was rejected by the Court observing that:

“To be more precise, on perusal of the provision of Section 468 it becomes clear that the period of limitation is referred with the period of punishment ie, limitation would be 6 months if the offence is punishable with fine only; one year for the offence punishable with imprisonment for a term not exceeding one year and three years for offence punishable with imprisonment for one year and not exceeding three years”.

In *Hema Rawal v. Prashant Sharma*,⁷⁴ husband obtained an ex-parte decree of divorce. Later on wife challenged it. Court observed that when wife challenges ex-parte decree of divorce obtained by husband, it means that divorce has not become final. Until and unless the decree of divorce becomes final, the wife falls under the scope of ‘aggrieved person’ as the matrimonial relationship is alive and sustaining. Such a wife is entitled to relief under

⁷³ 2017 Cri.L.J. 615. [S.G. Shah, J.]

⁷⁴ 2015 (2) RCR (CrI) 195 (P&H). [Bedi, J.]

PWDV Act, 2005. On the issue of limitation, the Court took a contrary view and held:

“The orders passed on a complaint under Section 12 of the Act are of the civil nature. The Act has been enacted to provide a remedy in civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in society. There is no limitation period for filing a complaint under Section 12 of the Act”.

Though the Court observed that the limitation period would not be applicable, it was hesitant to pronounce a judgment as there are Supreme Court judgments taking contrary decisions. So it was returned on 2-08-2019 with a recommendation to place before a larger bench.

This researcher felt that keeping a *Damocles’* sword above the husband’s family will curtail their peace of mind. As *Roscoe Pound* suggested, there should be a balancing of competing interests.⁷⁵

4.3 Trend of Kerala High Court Decisions

High Courts usually follow precedents made by the Supreme Court. However, in certain instances, High Courts are progressive enough to

⁷⁵ Edgar Bodenheimer, *Jurisprudence-The philosophy and Method of Law*, 119 (2004)

distinguish those precedents and resort to a different conclusion. Similarly, not all cases of domestic violence will ever reach up to the Supreme Court to make it a precedent for the lower judiciary. The aforementioned reasons warrant separate discussion of decisions of Kerala High Court in this regard. It will be interesting to study the approach of the High Court of Kerala towards the implementation of the PWDV Act.

In *Rema Devi v. State of Kerala*,⁷⁶ the facts were that the marriage took place on 1.9.2007 and the wife lived in the matrimonial home only for nine days. There was harassment by her husband and relatives from the very day she entered the matrimonial home. Further, the husband was impotent, and the marriage was not consummated. The husband appropriated most of her ornaments. Here judge critically examined concept of 'shared household' and 'respondent'. The wife received adequate compensation. But the demand in the revision petition to include female members as respondents were rejected.

In *Kunjathiri v. The State of Kerala*,⁷⁷ a married woman sought protection order under Section 12 of the Act against her mother-in-law and sister-in-law. It was alleged that they had subjected her to domestic violence at the matrimonial home. The husband of the married woman was in a Gulf country, and she had no grievance against the husband. The trial court

⁷⁶ 2008 (4) KHC 122; 2008 (2) KLD 728. [Ramkumar, J.]

⁷⁷ 2015 (3) KLT 167; 2015 (4) KHC 183.

granted the protection order under the Act, which was confirmed in the appeal preferred at the instance of the mother-in-law. This was challenged in this revision by the mother-in-law. One of the grounds of challenge explicitly raised in the revision petition was that without the husband of the married woman in the party array, an application under the Act was not maintainable, and no relief could be granted. Decision of *Bismi Sainudheen's*⁷⁸ case was quoted here. In *Bismi Sainudheen v. P. K Nabeesa Beevi*,⁷⁹ the petitioner was a senior citizen and a widow, ousted by her son and daughter-in-law from the house which belonged to her husband. The case involved the crucial question of whether the wife or daughter-in-law could be a respondent under Section 2(q) of the PWDV Act. After referring to the relevant provisions involved in the matter, the judge doubted the ratio laid down in it and expressed the view that the proviso to Section 2 (a) could only mean that when the husband, to whom only the wife was related by marriage, was a respondent, his relatives, male or female also may be made respondents in the case. Hence, the single judge thought it fit to refer the matter to the Division Bench for consideration. The question that was formulated for consideration was, “whether a petition filed by a wife against her husband’s relatives without impleading him as a respondent is maintainable”.

⁷⁸ *Infra. N.79*

⁷⁹ 2013 (4) KLT 377.

It meant whether the presence of the husband in the party array was necessary for maintainability of petition? The concept of the formal party was not unknown to criminal jurisprudence. The issue revolved on the question of whether the statute visualizes a situation of abuse of wife by in-laws of the husband, without the husband committing any act of domestic violence. It could not be said that the Parliament was unaware of the social reality wherein thousands of husbands move to distant places in search of a job, leaving behind the wife at the matrimonial home along with his close relatives.

The Court held that one possible indication is available in Section 3 of the Act which declares that any omission, commission or conduct of the respondent shall comprise domestic violence provided, it had the result enumerated under (a) to (d) of Section 3. It meant that omission by the husband would also fall within the definition of domestic violence. Thus the passive conduct of the husband or even inaction on the part of the husband, exposing the wife to be harassed or abused by the in-laws, would be sufficient to attract the Section and will fall within the definition of domestic violence. Such an interpretation would make the presence of the husband as a respondent in the case essential.

The Court was not prepared to that extent and observed thus:

“...it is clear that inclusion of a relative of the husband is perfectly maintainable without the husband being in the party array and without any relief being sought against him if it falls within the proviso of Section 2(q)”.

The Objects and Reasons accompanying the Act declare that domestic violence is a human rights issue and a serious deterrent to development. Parliament was of the view that the phenomenon of domestic violence was widely prevalent, but had remained largely invisible in the public domain. PWDV Act provided that an aggrieved wife or female living in a relationship in the nature of marriage can file complaint.⁸⁰

In *Bipin v. Meera*,⁸¹ the facts disclose that the marriage took place in 2011, and a child was born to them. The matrimonial relationship got strained after that, and the spouses moved the Family Court with a joint petition for divorce invoking Section 13B of the Hindu Marriage Act. The Family Court granted the divorce in May 2015. After that in August 2015, the wife and the child moved the Magistrate Court against him seeking reliefs under Sections 18 and 20 of the PWDV Act. The main prayers of the aggrieved persons were return of 75 sovereigns of gold ornaments, protection order against domestic violence, an order restraining him from operating the bank locker in

⁸⁰ *Supra. N.77*, (Oct. 12, 2018, 9.30 AM), <http://www.insaafindia.in/>.

⁸¹ KHC 367; 2016 (2) KLD 853; 2016 (4)KLT 418, 2016 (4) KLJ 534.

which the gold ornaments were kept; and for return of the passport, retained by him.⁸²

The application was to quash the proceedings. Three specific grounds were urged. First, divorce on mutual consent was on a specific agreement that the wife would not claim the money, ornaments or maintenance against the husband in the future. Secondly, that the reliefs sought could be granted only to a woman who was or had a subsisting matrimonial relationship, and not to a divorced wife. Thirdly, a relief like a protection order cannot be granted to a divorced wife and child born in such a relationship. The Court dismissed the petition. It was held that the scope of Section 18 was wide enough to take in any violence take place in the working place of the aggrieved person indicating that domestic violence could spread outside the four walls of the matrimonial home. The court held that an act of violence that satisfied Section 3 of the Act and had a rational nexus to the past matrimonial relationship should conceptually fall within the provisions of the PWDV Act.

In *P.R. Velayudhan Nair v. Chimmikara Karthiayani*,⁸³ the petitioner was the son and respondent his mother. A mother filed a petition under Section 12 for an order prohibiting commission of domestic violence under Section 18 (a), an order for the conveyance of the property to her under Section 19(2) and mandatory relief under Section 20 of the Act. The Judicial First Class

⁸² *Id.* [Sunil Thomas, J.]

⁸³ 2009 (3) KHC 377.

Magistrate who passed an order, found that the petitioner committed domestic violence and granted reliefs prayed for. On appeal, the order was modified. The petitioner did not comply with the order. The matter assumed criminal nature under Section 31 and came before the High Court by way of a writ petition.

The court observed that the order passed under Sections 19 and 20 could not be a protection order as defined under Section 2(o) of the PWDV Act. By definition given to the protection order in Section 2(o), its scope was limited to such orders, which were made in terms of Section 18 of the Act. It was held that unless the order allegedly violated by the petitioner was passed in terms of Section 18, the Magistrate could not take cognizance under Section 31 of the Act. The petition was allowed.

In *Ambujakshi Amma v. State of Kerala*,⁸⁴ the facts were that three daughters born in the wedlock were married and residing in their matrimonial home. The petitioner, the mother, was undergoing treatment for cancer for the last two years. The 2nd respondent, the husband, was a drunkard and used to manhandle and abuse the petitioner frequently. He had attempted to sell the residential property, and the petitioner had objected it. The respondent was not taking care of the petitioner, and she was struggling to meet the expenses for her treatment. A petition was filed under Section 12 of the PWDV Act

⁸⁴ 2013 (2) KLT 698. [*Harilal, J.*]

seeking protection against the respondent and an order restraining alienation of the shared household and also for maintenance. The Magistrate allowed the petition directing the respondent not to cause physical hurt to the petitioner and dispossess her and restrained the respondent from alienating the residential property having an extent of 42 cents belonging to him. The Court found that out of 42 cents of property, 20 cents of the property was lying separately and the household where the wife lived was situated in it. The court confined the injunction order to that property.

In *Raju Narayana Swamy v. Beena*,⁸⁵ the wife of the petitioner applied for a residence order and monetary relief under Section 12 of the PWDV Act in the family court. She prayed for directions against the petitioner, for monthly maintenance at the rate of Rs.20,000/-; to secure alternative accommodation or to pay monthly rent; and (iii) to direct payment of compensation of Rs.50 lakhs. The Family Court directed the petitioner to pay a sum of Rs.15,000/- as maintenance to the respondent and a sum of Rs.10,000/- as rent for availing appropriate accommodation. The petitioner approached the High Court. The primary issue raised by the petitioner was, whether the Family Court has jurisdiction to take cognizance of an independent and original proceeding under Section 12 of the PWDV Act, 2005 and grant any of the reliefs under Section 12 to 18 of the Act. Court held that:

⁸⁵ 2017 ICO 130. [*Alexander Thomas, J.*]

“However, an application under Section 12 seeking various reliefs under Sections 18 to 22 cannot be filed as an original or independent application before the Family Court as the Act expressly stipulates that a proceeding under Section 12 of the PWDV Act has to be filed before the Magistrate competent to entertain the application. The family court will have jurisdiction under the PWDV Act to grant relief to the victim of domestic violence only if there is an existing legal proceeding and the application under Section 26 of the Act seeking relief under Sections 18 to 22 is filed in that proceeding.”

Therefore, the court decided that Family Court had no jurisdiction to entertain an independent application claiming reliefs under the PWDV Act

In *Mary Jacob v. Elizabeth Jacob*,⁸⁶ the facts were as follows:

The marriage between the first respondent and the 3rd respondent was solemnized on 8.07.1990, and the 2nd respondent was born in their wedlock on 26.6.1991. The mother of the revision petitioner/ the mother-in-law of the first respondent died on 24.1.2008 and in fact, her husband viz, the father of the revision petitioner and the third respondent predeceased her. The revision petitioner and the third respondent were having another sibling, and she pre-

⁸⁶ 2015 (4) KLJ 326. [C.T. Ravikumar, J.]

deceased the parents. After the death of the parents, the revision petitioner and the third respondent inherited the disputed house claimed to be the shared household, in the Cantonment situated in the state of Karnataka. The first respondent was taken to that house after the marriage on 8.7.1990, and she claimed to have resided there from 1991 to 1994 and after that, during 1997-1998. After the death of the in-laws, the first respondent filed M.C.No.38 of 2009 before the court of Judicial First Class Magistrate-1, *Ernakulam* under Section 12 of the PWDV Act.

It was filed seeking following reliefs:

- a) Pass an order prohibiting the respondents from alienating, encumbering, charging or creating any interest over the shared household – 158, Old No.71/1 Nandi Durg Road, Bangalore-46.
- b) Direct respondents to pay a sum of Rs.10,00,000/- as compensation.
- c) Direct the first respondent to pay the maintenance at the rate of Rs. 10,000/- per month.
- d) Pass an order directing respondents to arrange to enable the petitioners to reside peacefully in the shared household.

The Court observed that:

“It would thus reveal that the right to reside in a shared household cannot be said to be an indefeasible right. In this context, it is also to be noted that under any circumstances if

it is made impossible for the aggrieved person to enjoy the accommodation in the shared household ,sufficient safeguard has been made in the D.V Act itself to protect the right guaranteed under Section 17(1).Section 19(1)(f) is permissible only on satisfaction that domestic violence had taken place. In this case, even according to the first respondent, she left her matrimonial home as early as in the year 1998 and filed the petition under Section 12 of the D.V Act only in the year 2009. In this case, the revision petitioner is the sister of the third respondent and she, along with the third respondent, inherited the properties of their parents on their death.”

In *Mehra v. State of Kerala*,⁸⁷ the facts show that the petitioner and second respondent belonged to the Muslim community. Their marriage was solemnized on 28.05.2002, and a male child was born to them. After the delivery of the child, the relationship became strained, and she was subjected to cruelty and was thrown out of the shared household. She had spent nearly 5,00,000/- for her child’s medical treatment, and it was continuing. She was not getting any support from her husband in that regard. She filed petition against 2nd respondent, his brother, mother and brother’s wife, claiming

⁸⁷ *Mehra v. State of Kerala* (Jun 14, 2019, 4.20 PM),
<https://indiankanoon.org/doc/157355931> (O.P (Cri.) No. 101 of 2014).
[K.Ramakrishnan, J.]

various reliefs under the Act under Section 12 of the Protection of Women from Domestic Violence Act, 2005. Petition was filed under Art. 226 of the constitution for giving direction to lower court to dispose of the case pending before it. The High Court ordered to Magistrate Court, North *Parur* to dispose of the case pending before it (CrIM.P.1483/2010) within five months.

*Shima v. Navas & Ors.*⁸⁸ is a classical judgment pronounced by *Kemal Pasha, J.*, regarding shared household, and he took a different view. There is clear variation from the settled principle in *Batra v. Batra*. Being a High Court judgment, this should align with Supreme Court judgment. However, *Kemal Pasha, J.* has found a way out to help women victims. Here a lady was thrown out of her in law's house. Her husband remained a mute spectator, enjoying the sufferings of his wife. In-laws raised the contention that the husband has no share in the house. *Justice Kemal Pasha* beautifully twisted the situation to deviate from *Tharuna Batra* and held that:

“The marriage of the girl was an arranged marriage, and she was brought not to the street after marriage, whereas she was brought to the house in question. Party respondents have no case that her husband has another house of his own wherein they were living together. Had she been made aware before

⁸⁸ 2015 (1) KLJ 749.

the marriage that she would not be permitted to reside in that house and she would not be permitted to treat that house as a shared household, she would not have agreed for such a marriage. In such a case, no sensible parents of a girl will give their daughter in marriage to such a person. Therefore, having accepted the girl as their daughter-in-law and permitted to be taken to that house for her stay there, they cannot be permitted to show the doors to her, on a mere claim that the house belongs to the mother-in-law.”

4.4 Conclusion

The Act recognizes the right of women to be free from all forms of violence by giving a comprehensive definition of ‘domestic violence’, which includes physical, sexual, verbal, emotional, and economic abuse. Section 3 of the Act defines ‘domestic violence’ as “any act, omission or commission that harms or injures or can harm or injure women or child”.

The Judiciary’s response in cases of economic exploitation, alienation of assets, and restricting access to facilities has been favourable to some extent. The withdrawal of financial resources is the usual form of violence against women. However, there have been a few noteworthy attempts to provide real redress in instances of economic violence. In most of the cases, the courts award only meagre amount as maintenance. In women’s matrimonial

property rights, the PWDV Act does little more by providing statutory acknowledgment of economic violence as a form of domestic violence. Higher judiciary has limitations in providing redressal to victims of domestic violence as few cases reach up to higher judiciary. In next chapter other redressal agencies like Women's Commission, NGOs (Service providers under the Act) and media (which connects all redressal agencies) are discussed.

CHAPTER 5

ROLE OF INSTRUMENTALITIES IN PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE

This chapter discusses the role played by Women's Commission (WC hereinafter), non-governmental organizations (NGOs hereinafter) and media in the domain of protection of victims of domestic violence. WC is a statutory body. NGOs and media constitute non-governmental instrumentalities. The PWDV Act does not explicitly mention their roles. However, the Act specifically mentions the role to be played by service providers. These service providers are NGOs listed by WC. WC has the power to take *suo moto* cognizance of a case. WC gets knowledge about human rights violation against women from media reports. So these three organs are interconnected and hence the relevance of this topic for study.

5.1 Role of Women's Commission

Victims of domestic violence form a separate group, as many of the cases remain within four walls of the home. Unlike other forms of violence against women, it is difficult to trace the victims. Victims are identified only when the matter is brought before the court. Like any other kind of violence, it is also a violation of the Fundamental Right of personal liberty. The major role of WC is to bring down the inequality or bridge the gap between rights enjoyed by men and women. A majority of women are unaware of the WC. Women's Commission should adopt a pro-active role in adopting measures to

prevent cruelty against women. There are various ways by which they can spread awareness among women. Such creation of awareness may act as a deterrent and thereby can help to reduce the number of cases of offences against women. They should disseminate knowledge even among victims of lower strata about their existence, using technology. Dowry related offences sometimes reach the limelight more frequently. In India, domestic violence and dowry-related offences are inexplicably intertwined. These social evils are precipitation of social mindset.¹ The majority of women are still afraid to come out in the open to solve such issues and problems.

Different types of campaigns and advertisements are needed to enlighten women so that many avenues are made available to raise their grievances. Many women are afraid to approach the police and court. An inordinate delay occurs in court procedure and this discourages women from approaching legal authorities. As a result, they approach court only in unavoidable circumstances.

The National Commission for Women was constituted in January 1992, under the National Commission for Women Act, 1990 (NCW Act hereinafter) to re-examine the constitutional and legal safeguards available for women, to form legislative measures affecting women, to advise the government on all policy matters and facilitate redressal of grievances.²

¹ Dr.Arun M. Bachhav, Criminal Psychology, 31 (2012).

² Important Constitutional and Legal Provisions for Women in India (Jun.25,2016,10.35 AM), http://mospi.nic.in/sites/default/files/reports_and_publication/cso_social_stactices_division/Constitutional&Legal_Rights.pdf.

As the problem of violence against women is of varied nature, the NCW Act has adopted multifaceted ways to tackle them. The Commission regularly holds many legal awareness programmes among women to reinforce them with moral courage, enlighten them and give awareness about their legal rights. It extends a helping hand to women by assisting them at the pre-litigation stage. *Parivarik Mahila Adalat* is organized in different parts of the country to review the existing provisions of the Constitution and other laws affecting women, and to recommend amendments. It organizes promotional activities to mobilize women, propagate information about their status, and recommend a paradigm shift in the empowerment of women. The Commission constituted complaints and counselling cell to process the complaints received, verbal, written or *suo moto* under the NCW Act.³

National Commission for Women (NCW hereinafter) handles the problems by ensuring that investigation by the police is expedited and monitored. Family disputes are settled or compromised through counselling.⁴

³ Section 10(f), The National Commission for Women Act, 1990 provides for looking into complaints and take *suo moto* notice of matters relating to –

- i) deprivation of women's right.
- ii) non-execution of the laws enacted to protect women and also to achieve the objective of equality and development.
- iii) non-implementation of the policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring the welfare and provides relief to women and take up the issues arising out of such matters with appropriate authorities.

⁴ Supra N. 2.

5.1.1 Formation of State Commission for Women

The Government of Kerala drafted the Kerala Women's Commission Bill. The draft Bill was framed under the guidance of Smt. *K. R. Gowri Amma* the then minister for social welfare, with assistance from Justice *V.R. Krishna Iyer* and Justice *Subramanian Potti*, It also accommodated suggestions by various women's organizations.⁵

Functions of both National Women's Commission and Kerala State Women's Commission (SCW) are more or less similar. The complaints received by the Commission are analyzed and if necessary, corrective measures are suggested. PWDV Act is a Central legislation. However, this researcher has selected the role played by the State Women's Commission (SCW hereinafter) for study, because this research is about victims of Kerala.

5.1.2 Women's Commission and Funding

The Commission spends money on conducting seminars, conferences, and workshops, and sponsors events by providing financial assistance to research organizations and NGOs.⁶ The SCW holds public hearing in issues affecting large Sections of women such as crime against women. As a measure to

⁵ keralawomenscommission.gov.in (Sept. 30, 2018, 4.12 PM) (official website of Women's Commission of Kerala State)

⁶ National Commission, Seminars, Workshops and Conferences (Jun. 30, 2019, 3.35 PM), <http://www.ncw.nic.in/ncw-cells/ppmrc-cell/seminars-workshops-and-conferences/>

arouse public awareness and break bureaucratic apathy, a public hearing with vigilant activists is also made.

The NCW undertakes visits to evaluate the progress of the development of women in various States. The Commission interacts with NGOs and the State Commission to ensure gender equality and the empowerment of women. It also interacts with media, social activists and academicians while taking action.

Article 51A (e) of the Constitution of India casts a duty on every citizen to renounce practices derogatory to the dignity of women.⁷ NCW is discharging its responsibilities in compliance with this Constitutional mandate.

5.1.3 Importance of the Commission

Women as a class neither belong to any minority group nor are regarded as a backward class. India is traditionally a patriarchal society and women have always suffered social handicaps and disabilities. Therefore, it is necessary that the Commissions should take ameliorative steps. This researcher's task is to find out how far the Commissions have succeeded in bringing justice to victims of domestic violence. When the media reports atrocities against women, Commission *suo moto* takes cognizance. In that way, this researcher

⁷ The Constitution (Forty-second) Amendment Act, 1976 introduced the concept of fundamental duties of citizens. For this, Part-IVA consisting of Art. 51A has been added to the Constitution. Art. 51A(e) thus reads as "To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to women".

felt that the role of the Commission, NGOs, and media is interlinked. Commission gathers information about human right violations through media reports, so that they can take *suo moto* cognizance. Mainly *suo moto* cognizance is taken in the case of victims of sexual violence. In the case of domestic violence victims, the offences happen in the dark corridors of the houses and seldom come to limelight. Therefore, reporting of atrocities of domestic violence by media becomes news, and as a result, the role of the Commission becomes minimalistic.

5.1.4 Constitution of State Women's Commission

The SCW consists of one chairperson and not more than four members. Though the Bill was sent to the President of India in 1990, it came into being only on September 15, 1995. (took long 5 years to become an Act) The first Chairperson was *Smt. Sugatha Kumari*. The Chairperson and members must be women. One member should be from Scheduled Caste. The Commission must give a report to the Government.⁸

⁸ Duties of commission The commission shall, for the purpose of any enquiry under this Act, have the same power as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely,

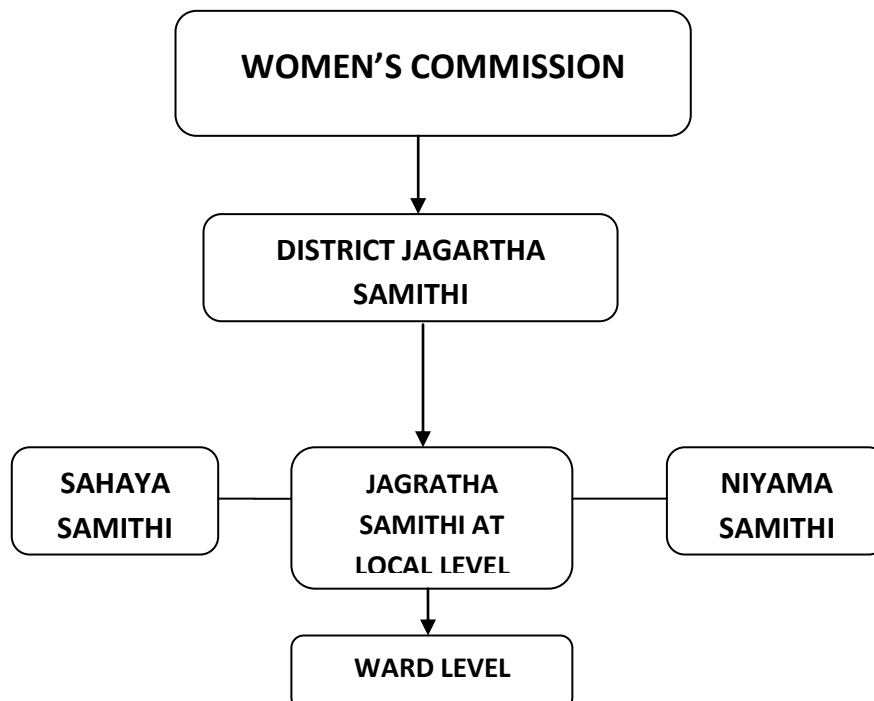
- a) summoning and enforcing the attendance of any witness and examine him.
- b) requiring the discovering and production of any document.
- c) receiving evidence on affidavits.
- d) requisitioning any public records or copy thereof from any public office.
- e) issuing commissions for the examination of the witnesses.

5.1.4.1 *Jagratha Samithi*

SCW may not be able to look into all domestic violence problems within the State. Therefore, it created *Jagratha Samithis*. Its ramifications extend up to the ward level. This structure is for effective implementation and the functions of *Jagratha Samithis* are manifold.

There are *Jagratha Samithis* at Panchayat, Municipality, Corporation and District levels.⁹ The main objectives are to receive complaints involving women and give relief, to give legal aid, advise, propagation, etc. The members of *Jagratha Samithi* have legal powers.

5.1.4.2 Structure



⁹ Jagratha Samithi-Margarekha (sa. v m.s) No.31/07.

From among the members, there is no fixed tenure for chairperson. Convenor police officers, *Kudumbasree* CDS chairperson (CDS means Community development Society, which is the apex body of *Kudumbasree*) and doctors should remain in the office till the end of the term or till they get transferred.¹⁰ In the case of women Panchayat member, women advocate, a socially committed woman member, a social worker, and a person selected from ward *Jagratha Samithi* convenors,¹¹ the tenure is for three years susceptible to get a further extension. Specific duties are allotted to the chairperson,¹² convenor,¹³ members,¹⁴ police officers,¹⁵ advocates,¹⁶ CDS chairperson,¹⁷ doctors,¹⁸ Protection Officers,¹⁹ etc.

As per the 2007 guidelines,²⁰ *Jagratha Samithi* is functioning in all districts. This researcher conducted an interview with project coordinator of *Jagratha Samithi* at SCW. At ward level, Panchayath level, Municipality, and Corporation level, it is functioning. In every district, in some Panchayaths, *Jagratha Samithi* is functioning well, at the same time, some are lethargic. Domestic violence complaints that cannot be settled at ward and panchayath

¹⁰ Id. At 6.

¹¹ Id. At 7.

¹² Id. At 11,1.8.1.

¹³ Id. At 11,1.8.2.

¹⁴ Id. At 11,1.8.3.

¹⁵ Id. At 11,1.8.4.

¹⁶ Id. At 1.8.6.

¹⁷ Id. At 13, 1.8.7.

¹⁸ Id. At 1.8.9.

¹⁹ Id. At 15, 1.8.15.

²⁰ <http://panchayatguide.in/files/2017/03/24.html>.

level are referred to *Jagratha Samithi* at district level. *Jagratha Samithi* started functioning in 2007, and act in tantum with designated officers of PWDV Act, ie, Protection Officers. All human rights violations against women especially domestic violence incidents are subject of *Jagratha Samithi*. This will act as an extension of the Women's Commission in each district. Duty of *Jagratha Samithi* is to lessen the workload of the Women's Commission. After 2010, offences of the nature of domestic violence are referred to Protection Officers.

There are some shortcomings in the functioning of *Jagratha Samithi* as per the words of the Project Officer. As both petitioners and respondents in domestic violence cases reside in the same ward, both of them are familiar to ward members. So there are chances of bias. Political influences also may hamper with fairness in decision making. If the functioning of *Jagratha Samithi* is not powerful, the system will be an utter failure.

For making *Jagratha Samithis* more powerful, Panchayath Raj Act²¹ should be amended to include *Jagratha Samithi* within its ambit. There is a move to place this amendment before Cabinet to increase the number of meetings of

²¹ The Kerala Panchayat Raj Act 1994. Amendment of SS. 6, 13, 35(1), 163(1) and 254 is proposed to include *Jagratha Samithi* under various standing committees under the Act. Major Amendments proposed are: (i) Adding (a) S.164, (ii) Adding (a) S.254 (2) etc. If these Amendments are made, number of meetings of *Jagratha Samithi* per year will be increased and it will be treated as equivalent to standing committee under the Kerala Panchayat Raj Act 1994.

Jagratha Samithi, to club it with the Panchayath Raj Act and to make it more effective.

5.1.4.3 Assistance to Protection Officers

Protection Officers are appointed to help the victims of domestic violence. *Jagratha Samithi* should help Protection Officer in handling the cases. All assistance must be provided to the Protection Officer to remove obstacles, occupational hazards, etc. *Jagratha Samithi* will give publicity to the role of Protection Officer in the society.²² If any case of domestic violence comes to *Jagratha Samithi* through Protection Officers, assistance will be provided after discussion in meetings. Protection Officer will give assistance in conducting awareness classes on domestic violence to public, initiated by *Jagratha Samithi*. Complaints to *Jagratha Samithi* can be submitted through several means; by sending directly to members, by post, and by depositing in the complaint box.²³

5.1.5 Directives of the Commission

The Commission's directives may be divided under four heads,

- a) Safeguarding the rights granted by the Constitution and laws,
- b) Studying problems faced by women in the present context and make recommendations to eradicate them,

²² Supra N 9 .at 15,1.8.7 (1) to (7).

²³ Supra N.9 at 19.

- c) Evaluating the status of women from time to time, and
- d) Funding and fighting cases related to women's rights violations.

The Commission, according to 2007 guidelines, has the responsibility of evaluating the status of women of India under the Union Government and State Governments. It has to inspect and evaluate the condition of detention homes and other such facilities in which women may be detained and deal with appropriate authorities in order to improve the conditions of such places²⁴. The evaluations are to be submitted to the Government through periodic reports and recommendations.

In fighting cases related to women's rights violations, certain clauses in the mandate also empower the Commission to take up cases relating to discrimination against women's rights violations, and fund cases that involve the interest of a large number of women. This Act empowers the Commission to take *suo moto* notice of matters relating to non-implementation of laws enacted to protect women's right deprivation and noncompliance of policies and guidelines for mitigating the hardships of women. Even though there exist a lot of such protective legal provisions, the Commission has to go a long way in effectively utilising provisions for the welfare of women. Utilisation of the funds by the Commission has to be further streamlined in order to ensure that the target groups receives cent percent benefits. Follow

²⁴ Supra N. 7

up action to assess the social impact of their seminars and other awareness programs should be made mandatory. In many of the seminars, the target group is well-educated, higher-class women. Such women are already aware of their rights. The Commission should take pro active steps to educate the perpetrator group, i.e. men. Many men, even though highly educated, are not aware of the penal provisions of the PWDV Act. When this researcher contacted some people working in high academic positions, they were ignorant of the redressal mechanism under the Act. So, the Commission must propagate the importance of these provisions.

5.1.6 Effect of *Suo moto* Cognizance

These provisions give greater power to the Commission. It is competent to take *suo moto* cognizance of cases relating to non-implementation of laws enacted to protect women and non-compliance of policies and guidelines for mitigating the hardships of women.²⁵

5.1.7 Registration of Women's Organisations

Any women's organization governed by written rules, regulations or bye-laws and working for the upliftment, development, welfare and promotion of the interests of women or with the help of any other organization having all or any of the above activities as one of its objectives, may apply to the

²⁵ Supra N. 6.

Director for registration of such organization with the Commission. This shows the close connection between NGOs and the Commission.²⁶ They are inexplicably intertwined. The researcher approached some of the women's organizations to understand the registration process and they have stressed the need for further simplification of the process.

5.1.8 Powers of the Commission²⁷

The Commission shall, for any inquiry under the Act, have vested with the powers of a civil court.²⁸

²⁶ Section 14 of the State Commission for Women Act, 1990 deals with registration of women's organizations. Registration of women's organisation (1) Any women's organisation governed by written rules, regulations or bye-laws and working for the uplift, development, welfare or promotion of the interests of women or women's wing of any other organisation having all or any of the above activities as one of its objectives may apply to the Director for registration of such organisation with the Commission, in such form and in such manner as may be prescribed. (2) The Director shall verify the applications in such manner as may be prescribed and recommend to the Commission, the organisations qualified for registration and reject the other applications. (3) The commission may consider the recommendation and direct that the name and particulars of the organisations qualified to be registered be entered in the Register maintained for the purpose in the manner prescribed and shall issue a certificate of registration in the prescribed form.

²⁷ Section 15 of the State Commission for Women Act, 1990 reads thus: "The commission shall, for the purpose of any enquiry under this Act, have the same power as are vested in a Civil Court while trying a suit under the code of civil procedure, 1908 (Central Act 5 of 1908) in respect of the following matters namely, a) Summoning and enforcing the attendance of any witness and examine him. B) Requiring the discovery and production of any document. c) Receiving evidence on affidavits. d) Requisitioning any public records or copy thereof from any public office. e) Issuing commissions for the examination of the witnesses."

²⁸ Section 16 of the SCW Act, 1990 dealing with functions of Commission reads thus: "a) Inquire into any unfair practice, take a decision and thereon and to recommend to government the action to be taken into that matter. b) Cause in investigation to be made by the Director on issues of importance concerning woman and issue concerning unfair practice and to report them on to the government on the corrective measures to be taken. c) Submit to the annual government report..."

5.1.9 Functions of the Commission

The Commission performs many judicial functions. The manner of conducting investigations and inquiries about unfair practises leaves much to be desired. Whenever the Commission interferes in sensational or controversial issues, opposition parties raise allegations about political bias, leading to suspicion in the minds of the public about credibility of the Commission. This situation could be overcome if the qualifications, selection criteria and selection procedure of the Commission members is totally fool proof without leaving any room for allegations about political intervention in appointments. The Commission is a statutory body and is working to fulfil the Constitutional mandate.²⁹

The following are the cardinal functions:

a) To investigate:

The Commission shall look into matters relating to women which require further enquiry and investigation. Based on that result if any right is violated which is guaranteed to women by the Constitution, Commission shall intervene.

29. Article 15(3) of the Constitution says that “Nothing in this Article shall prevent the State from making any special provision for women and children.”

b) To present reports to State Government:

The Commission shall present reports to the Government, upon the working of safeguards provided for women under the existing law, annually and at such other time, the Commission deems fit.

c) Recommendation for effective implementation:

In such reports, the Commission should make recommendations for the effective implementation of those safeguards for improving the conditions of women.

d) Review of existing provisions:

The Commission shall suggest amendments to existing legislative provisions, to fill lacuna, inadequacies or shortcomings.

e) Providing shelter:

The Commission runs short stay homes for ladies, who are suffering from cruelty and harassment. For getting protection under the PWDV Act, the victim should meet the Protection Officer. The officer will prepare a domestic incident report (D.I.R. hereinafter) and file it at Judicial First-class Magistrate court. Free legal aid is made available to victims with the help of Kerala State Legal Services Authority (KELSA hereinafter).³⁰

³⁰ (July, 03, 2016, 11.40 PM) <http://kelsa.nic.in/>

f) Take up violation of Constitutional rights

The Commission should take up the cases of violation of the provision of the Constitution and other laws relating to women and address it to appropriate authorities.

g) Look into complaints and take *suo moto* notice:

The Commission should look into complaints and take *suo moto* notice of matters relating to (i) deprivation of women's rights (ii) non-implementation of laws enacted to provide protection to women, and also to achieve the objective of equality and development, and (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.³¹

h) Call for special studies or investigation:

The Commission should conduct special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women, and identify the constraints to recommend strategies for their removal.

³¹ National Commission for Women, Mandate (Jun. 30, 2019, 04.20 PM), <http://ncw.nic.in/commission/about-us/mandate>.

i) Promote educational research relating to women

The Commission should undertake promotional and educational research to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancements, such as lack of access to housing and essential services, inadequate support services and technologies .³² Research relating to derogatory practices, occupational health hazards, and measures for increasing their productivity also come within its purview. They will also advise in planning process.

Other Functions

1. Evaluate the progress of women-related programs.
2. Inspect jails, observation homes, women's institutions, etc.
3. Maintenance of fund: for maintaining litigation involving a large body of women.
4. Make a periodic report to the Government.

The following are the Legal functions of the Commission.

- a) Suggesting legal amendments
- b) Making proposals of new laws and Bills
- c) Seek intervention of Court in appropriate cases.
- d) Ancillary powers

³² Unacademy.com, Constitutional and Non-constitutional Bodies in India (Jun. 30, 2019, 04.50 PM)
<https://unacademy.com/lesson/constitutional-and-non-constitutional-bodies-in-india>.

5.1.10 Positive Action Taken by SCW

Some actions are taken by SCW for the benefit of women. Several studies on topics such as social mobilization, maintenance of divorced women, women's access to health and education in slums and on similar topics. Many commissions of inquiry have also been established by the Commission to look into matters such as law and legislation, political empowerment, social security, etc. However, the role played by the Commission in the cases of victims of domestic violence remains suspicious.

5.1.11 Shortcomings of the Commission

The Commission has no real legislative powers. It has powers only to recommend amendments and submit reports which are not binding on the State or Union Governments. Commission has neither power to ensure attendance of respondents, nor punish them for their failure to attend; when they are called for.³³ The Commission does not have the power to select its members. The Commission is dependent on grants from the government for functioning and this could compromise the independence of the Commission.

³³ In Sali v. Kerala Women's Commission, 1997(2) KLT 499, it was stated that there cannot be any prosecution under Section 17 and 18 ,for failure of appearance of the person against whom complaint is filed before the Commission in pursuance of summons issued to him to answer such allegations. Same view was taken in Prasad @Purushothaman v. Kerala Women's commission. 2017 ICO 1345

5.1.12 Closing Remarks

Women's Commission has a cardinal role to be played in society. Only educated and employed women are aware of the Fundamental Rights. However, a large Section of women, who are illiterate and semi-literate, still think that they are inferior to men. Role of the Commission at this juncture is to promote women's empowerment, but this has become a paper tiger, which can only bark and not bite, as it is toothless. It is an organization to protect the rights of women, and at a time when the activities of self-appointed moral police are increasing, the Commission should give enlightenment to perpetrators also about women's rights. Because in many cases, lack of awareness lead to commission of offences.

5.1.13 Some Submissions

There are many positive and negative aspects. Some of them are:

1. Chairperson of the Commission may be given the power of a Minister.
This will give more status to the Commission to propose legislation and amendments.
2. The Commission must be granted the power to select its members. If needed, an impartial body should be constituted to propose such names.
3. The Commission must be allocated enough funds.

Moreover, it is not only the duty of the State but also the duty of citizens as a whole to oversee whether misconducts are taking place. There should be more public awareness programmes so that women may feel confident that they are under the protection of the Commission.

5.2 Role of Non-Governmental Organizations

NGOs play a significant role in protecting human rights.³⁴ They are a necessary corollary in a democratic polity. They play a cardinal role in many fields like childcare, curbing child labour, care of destitute women, and providing counselling in domestic disputes.³⁵ During the 1970s, social activists were urged to ‘think globally and act locally’. Over the past ten to fifteen years an energetic NGO community has blossomed in the South with a profound impact on development practice and thinking. Alternative NGO sponsored conferences took place alongside all the global UN Conferences of the 1990s.³⁶

An NGO is the term commonly used for an organization that is neither a part of government, nor a business entity working for profit. Usually, financial

³⁴ Aditya Keshari Mishra, NGOs and Literacy Campaign: A Vision through Reflect: A Case Study in Yakshi, Hyderabad 39 – 40 (2004).

³⁵ Ahammad Shamshad, NGOs and Development of Rural Entrepreneurship, 27 (2005).

³⁶ Role of NGOs in Education Development, 15 Literacy Watch Bulletin 3 (2000) (Sept.25, 2018, 02.00 PM), http://www.accu.or.jp/litdbase/literacy/nrc_nfe/eng_bul/BUL15.pdf

assistance to such organizations is given by the government and other institutions.³⁷

Each NGO is created with a specific purpose. A few may be for a charitable purpose, few for protecting women from various kinds of human rights violations. They are always for the protection of downtrodden. They play a cardinal role in distributing the funds received by them through fruitful means to the beneficiaries in the form of services. In every nook and corner of the world, there are NGOs, striving to bring justice to women. Through campaigns, they force governments to make various national and international declarations and conventions.³⁸ The study reports submitted by these philanthropic groups are of high academic value. They work every hour to document the injustice heaped upon women, children, etc. The term non-governmental or more accurately non-profit is usually used to cover the range of organizations that go to make up the civil society.³⁹ Such organizational work is not for profit.

NGOs mainly employ the following strategies:

³⁷ Surya Moorthy R & Gangride. K. D, 200 NGOs in India: A Cross Sectional Study 19 (2001).

³⁸ Prasanna R, 1996, Great NGO Fraud: Most of the Funds They Get Never Reach the Poor, 14 The Week 32.

³⁹ Ms.Kiran & Ms Renu Kumari, Human Rights - Needs, Provisions and Realisations, 5, (I), 29, 35 Bhartiya International Journal of Education & Research (December 2015).

1. The social welfare role:

This is done by taking up various kinds of projects, relief, and charity based activities. In the case of NGOs working for women, relief is given by assisting victims in realising rights.

2. The mediatory role:

In this role, NGOs can be seen as participating or taking up external programme and projects.⁴⁰

3. The consultative role:

They support documentation, dissemination of information, and expertise. Local experts/professional/resource persons play primary or secondary roles.⁴¹ Their expertise in women related issues is a boon for victims of domestic violence.

4. Development and operation of infrastructure:

Community-based organizations or cooperatives can acquire, sub-divide and develop the land, construct houses, provide infrastructure, operate and maintain infrastructure such as wells, public toilets, and solid waste collection, etc.⁴²

⁴⁰ (Sept.29, 2018, 03.10 PM), <https://maitri.org/maitre> is a non-profit organization based in Sanfrancisco, California that helps South Asian Women facing domestic violence, emotional abuse or family conflict.

⁴¹ Id.

⁴² Robin Lal, The Dynamics of NGOs1 – 2 (2004).

5. Supporting innovation, demonstration and pilot project:

NGOs have the advantage to select particular places for innovative projects and specify in advance the length of time in which they will be completing them.⁴³

6. Facilitating communication:

The significance of the role of NGOs is that they can communicate with the policymaking government officers, and give information about the lives, capabilities, attitudes and cultural characteristics of people at the local level.⁴⁴

They can act as a bridge between Government and society.⁴⁵ NGOs can thus influence Government in filling the gap, if any, in PWDV Act.

5.2.1 Role of NGO at the International Level in Protecting Women's Rights

At the international level, the status of women's rights is watched by many NGOs. Amnesty International is one such organization. The organization is dedicated to preventing violations of human rights.⁴⁶ Some of them are:

⁴³ Ranganathan R, Role of NGO in Rural Reconstruction, 28 (2001).

⁴⁴ Petras J, NGOs: In the Service of Imperialism, 29 J. Contemp. Asia 429, 430(1999).

⁴⁵ Riley, Stakeholders in Rural Development-Critical Collaboration in State NGO Partnerships 15 (2002).

⁴⁶ Moore & S. Steward, Corporate Governance for NGOs?8 Dev. Prac. 339 (1998).

1. WAVE

Women Against Violence in Europe (*WAVE*) is working in European Union. It was founded in 1994. It represents more than 4000 Women's organisations across the world. It has a network of women's NGOs combating violence against women and children. Funding comes from International and national public authorities and private donations. Main strategy of this NGO is to make a network of women's NGOs, strengthening human rights of women and children, information exchange and feminist analysis.⁴⁷

2. EWL

European Women's Lobby was established in 1990. Its mission is fostering coordination of women's NGOs at European Union level. It has wide network among women's NGOs of European Union. 80% of funding comes from European Union and 20% comes from membership fee and other resources. Main projects are related to Women's empowerment and gender equality.⁴⁸

3. Legal Resources Centre

The Legal Resource Centre (LRC) is a human rights organization based in South Africa with an office in Johannesburg. It was started in 1979 by a

⁴⁷ Sabine Lang, *NGOs, Civil Society and Public Sphere* 171 (2013).

⁴⁸ *Ibid*

group of prominent South African lawyers. It provide legal assistance to victims of both gender.⁴⁹

4. *Khanya college*

It is an independent non-governmental organisation based in Johannesburg; South Africa established in 1986 intending to assist victims of class struggle. It provide assistance to victims of both gender. Their main activity is providing education to these victims.⁵⁰

5. *Amnesty International*

It is an international NGO started in 1961, it thrives hard against human rights violations.⁵¹ It is based at United Kingdom. Its subsidiaries are working at USA, Australia, France, Portugal and New Zealand.

6. *WECF*

Women in Europe for our Common Future (WECF) was established in 1992. It stimulates cooperation between women in NGOs in health issues and gender sensitisation. Funding is from Foundations, private donors and public/institutional sponsors. Main projects are in the area of gender sensitisation and gender impact assessment.⁵²

⁴⁹ (July 4, 2018, 11 PM), <http://resources.Irc.org.za/>

⁵⁰ (July 4, 2018, 11.40 PM), <http://khanyacollege.org.za/>

⁵¹ Supra. N 45.

⁵² Supra.N.46 at p.173

These NGOs at international level are working to uplift status of women victims.⁵³ Their professionalism can be adopted by NGOs of Kerala.

5.2.2 Report of Bangladesh National Institute of Research and Training (NIPORT)

According to the report of NIPORT, 53% women between the ages of 15-49 have confirmed experiencing physical or sexual violence by their husbands. Women Heads of States have governed Bangladesh since 1992, but the condition of women is very pathetic. Men's right to use violence against wives is a culturally accepted belief in Bangladesh like that in many other developing countries.⁵⁴ This shows that plight of women in all developing countries are same.

5.2.3 The Roles of Agencies and the State

There are several problems, which women who are single parents face. Victims of domestic violence have to remain as single parent in many cases. Such women usually have to be aloof dislocated from their community, placed somewhere where they know no one. The State plays active role for protecting women and children. Its agencies have the responsibility to

⁵³ Sen S., Some Aspects of State NGO Relations in India in the Post-Independence Era, 30 Dev. & Changes 348 (1999).

⁵⁴ Zakia Afrin, Domestic Violence and Need for an International Legal Response 363 (2010).

recognize harm, provide care and protection, and to control the lives of women and children.⁵⁵

5.2.4 Role of NGOs at National Level in Protecting Women's Rights

In India, many NGOs working fields to protect women's rights. Organizations like *Saheli* and *Chetna* are actively involved in the protection of women's rights. They provide free legal aid to women to fight for their rights.⁵⁶ They disseminate humanism, culture, creativity, and knowledge.⁵⁷ They strive to defend life, dignity, liberty and other Fundamental Rights of victims using law and legal system.⁵⁸ They adopt a right-based, victim-centered approach for total healing through legal, social, psychological and emotional reparation.⁵⁹

5.2.5 Comparison between NGOs in Kerala and the other States

NGOs play very significant roles in diverse areas of India. However, in North Eastern States like Mizoram, Orissa, and Tripura, the working pattern of these NGOs is not productive.⁶⁰ Many NGOs work with different objectives and issues such as health, education, child development, women's

⁵⁵ Jalna Hammer, Violence and Gender Relations- Theories and Interventions, Women and Violence: Commonalities and Diversities, Current Issues and Debates, (Barbara Fawcett ed) 16-17(1996)

⁵⁶ Gokhale S. D. & N. K. Sohoni, International Voluntary Organization in Social Welfare, 2 Encyclopaedia of Social Work In India (1987).

⁵⁷ S. P. Singh, Planning and Management for Rural Development 19 – 120 (2003).

⁵⁸ Chandra, Suresh, Limitations of Voluntarism 12 (1985).

⁵⁹ Avina & Jeffrey, The Evolutionary Life Cycles of Non-governmental Development Organizations 13 Pub. Admin. & Dev. 459 (1993).

⁶⁰ Kulkarni Mangesh, Action Groups and The State 43 – 44 (1996).

empowerment, unemployment, human trafficking, poverty, mental disability, harassment and violence against women. They try to eliminate these problems. Many NGOs work with altruistic motives and attitudes. Many persons work voluntarily for NGOs and associate with them. Major issues faced by the organizations are lack of funding. In States like Madhya Pradesh, Delhi, West Bengal, Kerala, Uttar Pradesh, and Tamil Nadu many active NGOs still exist. To overcome the limitations in other States many NGOs are working there for the development of under privileged and deprived sections. Peculiarity of Kerala is its improved literacy rate and health conditions.⁶¹ Self help group called *Kudumbasree* is working actively.⁶² So it is comparatively easier for NGOs of Kerala to disseminate knowledge about redressal mechanisms of domestic violence.

5.2.6 Relation of NGOs with Judiciary and NHRC

NGOs cannot attain their goals unless they get support from the judiciary. They help the victim of human rights violation by providing them with assistance and advice. The NGOs have filed cases, writ petitions and public interest litigation on behalf of victims and public at large to protect human rights. The NGOs have fought against the system of bonded labour, protection of women's rights, etc. The judiciary has awarded appropriate compensation to the victims on petitions filed by NGOs. The NHRC

⁶¹ Krishnan T.N., Access to health care and burden of treatment in India-An inter State mechanism, 208-230 (1999)

⁶² Kannan K.P., Poverty alleviations as advancing Human Capabilities (1999)

encourages NGOs to work in the area of human rights.⁶³ The NGOs also take up cases of violation of human rights to NHRC and State Human Rights Commissions.⁶⁴

5.2.7 NGOs in Kerala

In Kerala, NGOs are part of social development and welfare of the State. NGOs generally have been actively working for genuine social development and charitable issues organized by the Government and welfare groups.⁶⁵ NGOs in Kerala are always ready to come forward to work for the uplift and betterment of children and women, and development, education, social awareness, and other objectives.⁶⁶

NGOs are functioning for child education, child welfare, women's development, women's empowerment, nursing homes, and homes for physically and mentally challenged people. They are also organizing a means of livelihood for women victims.⁶⁷ They are also conducting legal aid camps, free legal advice, legal awareness, etc. among victims.⁶⁸

⁶³ Id.

⁶⁴ Vishaka v. the State of Rajasthan, AIR 1997 SC 301; People's Union of Democratic Rights v. Union of India, 1982 SC 1473; Bandhua Mukthimorcha v. Union of India, 1997, 10 SCC 549; Saheli v Commissioner of Police, AIR 1989 SCR 488.

⁶⁵ Francis. C, 1993, Rural Development, People's Participation and the Role of NGOs 12 Rural Dev. 208(1993).

⁶⁶ Supra N. 18.

⁶⁷ ngosindia.com, Kerala (Sep., 2, 2018, 01.10 PM), <https://ngosindia.com/kerala>.

⁶⁸ Alli Band & Terry, Catalysts of Development: Voluntary Agencies in India 72 (1983).

5.2.8 Role of NGOs in Kerala in Curbing Domestic Violence

This researcher approached some NGOs in Kerala who work for the victims of domestic violence.

5.2.8.1 *Anweshi*

Anweshi is a women's organization committed to the cause of women's rights, which started in 1993. The organization renders a wide variety of services to affected women. On an average, it deals with 350 cases of violence against women every year. They have also conducted studies on the plight of victims of domestic violence. They have conducted 75 seminars and 26 workshops for giving awareness among public from the year 2000, which aim at reducing violence against women including domestic violence.⁶⁹ They show commitment to delivering a wide variety of relief services to women, which has given them a good understanding of many participating and underlying factors of domestic violence.⁷⁰ *Anweshi*, like other NGOs for emancipation of women, considers gender violence a social evil that is to be taken out from its grassroots in order to have a gender-just and violence-free society.⁷¹ They are a recognised service provider, as listed by State Women's Commission for protection of victims of domestic violence.

⁶⁹ Anweshi Women's Counselling centre/Ngos in Kerala. (Aug. 12, 2016, 2.14 AM) <https://www.indianngos.org>.

⁷⁰ Chaturvedi H R, Role of Voluntary Organizations in Rural Development, 33 Indian J. Pub. Admin.548 (1987).

⁷¹ Damodar Saur et.al, Non-governmental Organizations in Rural Development, Globalising Rural Development: Competing Paradigms and Emerging Realities 61 (Behera M. C. Ed. 2006).

The organization's constitution directs that women shall have equal rights and privileges, and directs that the State shall make provisions, both general and special, for the welfare of women. They believe that their efforts are essential for the emancipation, integration, participation, and development of women and their rights. They run a shelter home, which is a relief for victims of domestic violence. In 2007, they became service provider under PWDV Act and got A grade status from W.C.

The long-term objective of the project is women-empowerment and all-round development, i.e. individually, socially, politically and economically. The aim is to enable women to develop courage and confidence to tackle everyday violence in their lives. President of *Anveshi*, Ms. *K.Ajitha* has participated in the 'NGO Conference' organised by UN Conference of Women, held at China, in 1995. She was also a member of Asian Women's Human Rights council.

Anveshi functions in rural and urban areas of Northern Kerala through a network of community workers, who maintain constant contact with local areas and intervene in gender issues. *Anveshi* provides an active forum for collective intervention in women's issues through the counselling centres, which detangle cases of domestic violence, conducts legal aid and literacy workshops in remote areas, and campaigns to generate awareness and sensitization on gender-related issues. Because of sustained work, cases that

sometimes fail at the police stations and courts are now being referred to *Anveshi*.⁷² Interview with *K.Ajitha* revealed the commitment shown by this NGO in assisting victims of domestic violence.

5.2.8.2 *Punarjani*

This is an NGO working at Calicut. This was set up by five lady advocates of Calicut District Court. Despite the growth of the intellectual discipline, levels of victimization have increased worldwide⁷³ even though there exist constitutional safeguards to protect the rights of women. According to the founders of *Punarjani*, the victims of domestic violence never feel that they are victimized. They say that the punishment given to culprits is not enough to curb the problem.

The objectives of *Punarjani* are:

1. Rehabilitation of women and child victims of all kinds of violence including physical, mental, emotional, sexual, monetary, cybercrime, etc.
2. Setting up shelter homes for working women.
3. Rendering legal aid to the needy.
4. Imparting counselling for the victims.
5. Setting up women resource centers.
6. Provide healthcare and medical service to the needy.

⁷² (Sept. 15, 2017, 10.30 P.M) <http://www.anveshi.org>.

⁷³ Sujatha Suresh K S & George, The Role of Voluntary Organizations in Development: A Case Study of Voluntary Development Agencies in Kerala 7 (1996).

Researcher interviewed Adv. *Sujaya Sudhakaran*, one founder member of this service provider. She says, majority of victims coming to *Punarjani* are victims of domestic violence.

5.2.8.3 *Jananeethi, Thrissur*⁷⁴

It is a secular collective of human rights defenders, retired judges, lawyers, academics, writers, thinkers, social workers and artists representing humanism, culture, creativity, and knowledge.

They provide,

1. Helpline for victims of violence, abuses and prejudices enabling poor to access justice.
2. Building social capital for promoting peace.
3. Promoting justice education and therapeutic jurisprudence.
4. Combating torture, corruption, and activities affecting human dignity.
5. Advocating sustainable development and safe environment.

They conduct seminars, file cases, and take projects. They conducted an investigative research study report in 2003 on the prevalence of dowry system in Kerala and its impact on different societies. Researcher met Fr. *George Pulikthiyil*, who is steering *Jananeethi*. He says they are providing awareness program on PWDV Act to *Anganwadi* workers, members of

⁷⁴ (Sept. 14, 2017, 11 P.M) www.jananeethi.org.

Kudumbasree, women from BPL category, adolescent girls, women representatives in local body, student community, University lecturers and Parent Teacher Associations .From 1994 onwards, *Jananeethi* is trying to empower women against domestic violence. They have submitted it's views and comments on PWDV Act to Parliament during making of the Act. They have conducted training programs on provisions of the Act to Police officers, Service providers, welfare officers, family counsellors and clinical psychologists. They are approved Service provider under the Act in *Thrissur* district. They conduct awareness programs along with W.C.⁷⁵ and Lok Adalats.⁷⁶ They are accredited NGO in *Thrissur* district to help DLSA.to settle issues of domestic violence. They help in amicable settlement of pending issues of Family Court. They are also collaborating with *Jagratha Samithi* in preventing domestic violence.

5.2.8.4 Gandhibhavan, Pathanapuram

Researcher conducted an interview with Mr.*Amal*, trustee of *Gandhibhavan*. It was started in 2002 by Mr. *Punalur Soma Rajan*.⁷⁷ Here, victims of all kinds of offences are accommodated. Legal aid is provided to victims with the help of KELSA. It is included in the list of recognized service providers of Women's Commission. The Social Welfare Board recognizes it as a

⁷⁵ 3 one day Seminars for Women jointly with Women's Commission.

⁷⁶ 2 adalats in pending cases of family court, jointly with Women's Commission.

⁷⁷ (April 10, 2016, 4 PM), <https://www.gandhibhavan.org>.

shelter home. More than a thousand victims are there. Domestic violence victims are also there at present. The girl child is allowed to stay with her mother. However, boys after five years are kept at children's homes within the same compound. During day time, the mother and boy child can stay together.

They will provide counselling sessions to both husband and wife. They also conduct Adalats to settle cases. Even High Court judges come for Adalats. Victims of domestic violence are provided with skill training like tailoring, jewellery making, *Saree* painting ,embroidery work, etc. Bank accounts are provided to all victims. Remuneration for work done in *Gandhibhavan* will be credited to their accounts. If the victim is illiterate, work in kitchen, nursing old inmates, etc. will be entrusted to them. Educated people will be given office work. Every evening, there will be cultural programmes to entertain inmates. A Panchayath committee elected from inmates will look into the affairs of the office, agriculture, cleanliness, etc. For this, the entire building is divided into nine wards.

Founder *Punalur Somarajan* and his family also reside with the inmates. Now it has branches at *Kasaragod* and *Alapuzha*. The institution is situated in 2.5 acres of land.

5.2.8.5 Snehatheeram Charitable Trust, Kollam

This is an NGO working in Kollam District.⁷⁸ The main objective of the institution is the protection of mentally disabled children, and it gives asylum to victims of domestic violence under police orders. They also conduct Adalat and counselling to victims of Domestic violence.⁷⁹

5.2.8.6 Vimala Mahila Samajam

This is situated at *Muvatupuzha*. It is headed by Sr. *Rincy*. This NGO assists victims of domestic violence by conducting training programs for employment purposes, social awareness program, and educational programs, etc.⁸⁰

5.2.8.7 Navodaya Mahila Samajam

The NGO conducts various training programs intending to eradicate domestic violence.⁸¹

5.2.8.8 Neethivedi

This is a human right organization that supports the empowerment process and the right conscientization of marginalized groups. It provides free legal aid to victims of domestic violence.⁸²

⁷⁸ (Aug. 8, 2016, 8.52 AM) <http://snehatheeram.org/>

⁷⁹ Ibid.

⁸⁰ (Aug. 8, 2016, 9.54 AM) <http://www.indaingolist.com>.

⁸¹ (Aug. 8, 2016, 10.02 AM) <http://searchdonations.com>.

⁸² Social Justice, Kerala.sjd.kerala.gov.in, (Aug.30, 2017 10.30 AM) <http://sjd.kerala.gov.in/spc.php> 27

5.2.8.9 P.Sarojini Amma Smaraka Mahila Samajam

This NGO was started in 1958 in *Manjeri*. The aim of the association is the upliftment of women and nurtures the needs of children through educational and vocational training and to promote art and culture and give assistance to victims of domestic violence. They also conduct legal literacy classes and awareness programs. It is a service provider under PWDV Act.⁸³

5.2.8.10 Kerala Association for Social and Women's Welfare

The organization is involved in various activities related to the development of women, children, and disabled people. It undertakes educational and training programmes for target groups on relevant issues and aims to develop a scientific outlook among people.⁸⁴

There are 57 more NGOs working for the victims of domestic violence in Kerala, apart from the those discussed above. Government of Kerala has notified 67 NGOs as service providers under PWDV Act during 2007 to 2008.⁸⁵ Steps must be taken by the Government to increase its number periodically.

⁸³ (8th Aug., 2016, 9.36 AM) <https://www.sathire.com>

⁸⁴ (8th Aug., 2016, 2.30 PM) <https://www.indianngos.org>.

⁸⁵ George Johnson & Dominic Johnson, Protection of women from Domestic violence Act and Rules, 163-167(2017).Number of Service providers are increased through following G.O.s. they are G.O.(P) No.45/2007/SWD, dated 21st August, 2007; G.O(P) No.04/2007/SWD dated 23rd January, 2007.

5.2.9 Role of NGOs in the Emancipation of Women

On September 4, 2015, a news item came as a boon to victims of domestic violence, that the *Bombay High Court* set aside a part of a State Government circular prohibiting counselling and mediation in domestic violence cases without court orders.⁸⁶ It meant that domestic violence cases could be resolved out of court, with the help of NGOs, counsellors, and police, who will be allowed to counsel a woman about the course of action, which she should take including joint counselling or mediation.⁸⁷

NGOs generally possess a wide range of structures from informal, unstructured associations and groups to highly structured associations and formalized collectives. 'Non-governmental' implies that the organizations are not managed or directed by officers of the State, and at the same time not accountable to or receive finances, such as staff salaries from a government department.⁸⁸ This does not mean that it cannot collaborate with the government to plan and implement programmes. In India, however, the term NGO is often used interchangeably with voluntary organizations.

NGOs have recently gained considerable attention as vehicles of social change. Their aim is to consciously bring about attitudinal change of society,

⁸⁶ Pandey & Shashi Ranjan, Community Action for Social Justice: Grassroots Organizations in India 102(1991).

⁸⁷ Korten & David C, Getting to the 21st Century: Voluntary Action and the Global Agenda (1992).

⁸⁸ Supra N. 38.

organization and mobilization for social, political, and economic participation, structural change and institutional and legal change.

The Indian NGO sector is vibrant, diverse and growing. Not all NGOs target women especially, and only very few target women exclusively. Women's NGOs have a role in changing women's perceptions about their position and status.⁸⁹ Some of them focus on the particular needs of women. For example, struggle oriented ones fight for women's right and service-oriented ones provide training in skills and financial assistance or assistance to establish self-employment by small-scale units.⁹⁰

Some NGOs are playing a great role in the emancipation of women in India. Emancipation of women means giving or obtaining all or some of the rights, opportunities, etc. that men have. An emancipated woman means one who has freed herself from the conventional restrictions of the community to which she belongs. These NGOs help women in need of protection and assistance. An NGO would deal with a woman seeking assistance based on its organizations, policy, expertise, resources, infrastructure and the background of the women and the stage of violence against her.⁹¹ Several

⁸⁹ Dr. Bipasha Baruah & Dr. Kato Grantham, Women's NGO are Changing the World and not Getting the Credit for it (Dec. 20, 2017 7.30 AM), <http://www.theconversion.com/women-ngos-arechanging-the-world-and-not-gettingcredit-for-it-88360>.

⁹⁰ Avina J, The Evolutionary Life Cycles of Non-Governmental Development Organizations, 13 Pub. Admin. Dev. 466 (1993).

⁹¹ Radhakrishna, Voluntary Agencies in a Critical Decade, 15 Gandhi Marg 294 (1993).

NGOs assist in generating options and help to have an idea of the kind of assistance a woman desire.

The leading NGOs, which fight for the emancipation of women in India, are:

1. *All India Democratic Women's Association (AIDWA)*
2. *Indian Social Action Forum*
3. *The Forum for Fact-finding Documentation and Advocacy (FFDA)*
4. *The Feminist Association for Social Action (FASA)*
5. *Guild of Service*
6. *Jagriti Mahilasamiti*
7. *Shaktisalin*
8. *Delhi Mahila Kalyan Samithi*
9. *The National Federation of Indian Women*
10. *Jagori*
11. *SAMA*
12. *CEHAT*
13. *Legal Aid Centre for Women*

The organizers and office-bearers of NGOs should listen patiently by allowing women to off-load their pent-up emotions. They should reassure the suffering women by creating the “it is okay” atmosphere among them.⁹² They

⁹² Roy & Bunker, *Spirit of Volunteerism: The New Parasites*, INDIAN EXPRESS (New Delhi edition), October 7, 1994 at 8.

should provide assistance in areas where they possess the skill and for which they have organized. They should advise on the pros and cons of various options, and allow the suffering women to make their own decisions, and then give their helping hand.⁹³

The NGOs help women to emancipate from the conventional constraints by advising and helping them to make an application seeking the assistance of the NCW or SCW.⁹⁴

The NGOs can help the victims to register the first information report (FIR) at the police station that has jurisdiction.

The NGOs involved in giving assistance to domestic violence victims provide the following services also.

1. Shelter
2. Medical assistance
3. Conciliation
4. Counselling
5. Removal of property from spouse's house
6. Financial or entrepreneurial assistance
7. Skill training

⁹³ Bhatt & Anil, Voluntary Action in India: Roles Trends, 30 *Economic & Political Weekly* 872 (1995).

⁹⁴ Fowler A, Striking A Balance: A Guide to Enhancing the Effectiveness of Non-governmental Organizations 11 (1997).

8. Legal aid and legal literacy
9. Public interest lawyering
10. Leading agitations and demonstration

Shelter

A woman facing violence requires shelter to survive. Any NGO intended to emancipate women should apply for a license and get one. In Kerala, a shelter home called '*Sakhi*' functions under Social Justice department. This is crisis intervention centre and shelter homes for victims of domestic violence.⁹⁵ Short-stay homes are run by licensed NGOs as well as the State. In *Sakhi*, vocational training and counselling is given to victims. These homes provide shelter and food free of cost for a short period, up to six months to a woman and her minor children. Similar to this, shelter homes for victims of domestic violence also functions. NGOs who are recognised service providers under PWDV Act are providing shelter to victims of domestic violence.⁹⁶ This service is available in other shelter homes also ,if an NGO who is a registered service provider request them to do so.⁹⁷

⁹⁵ (Dec. 1, 2018, 8.32 AM), <http://www.wheels4women.org/sakhi.html>.

⁹⁶ Overview of Protection of Women from Domestic Violence Act,2005, (Sept.12, 2018, 9.10 PM), <https://www.icrw.org/files/image/reducing-HIV-stigma-and-gender-based-violence-toolkit- PDF>.

⁹⁷ S.6 states "If an aggrieved person or on her behalf a Protection Officer or service provider requests the person in charge of a shelter home to provide shelter to her ,such person in charge of the shelter home shall provide shelter to the aggrieved person in shelter home.

Medical Assistance

Medical aid is required to the woman in cases of severe injuries due to domestic violence; NGOs assist the victims to get medical aid by the doctors. Doctors, both government and private, have to provide first aid to patients without insisting on the completion of legal formalities such as registration of crime. All domestic violence cases are medico-legal cases. A police officer posted at the government hospital should register the complaints. NGOs which are registered service providers under PWDV Act, can ensure medical facility to victims of domestic violence.⁹⁸

Conciliation as Pre-litigation Option

Some State Governments set up crime against women (CAW) cells. This system functions exceedingly well in Delhi.⁹⁹ Women police officials operate these cells and professional counsellors are available here. These cells deal with all types of cases related to crime against women. These cells help to bring about conciliation or settlement at the local level. If they fail in the settlement, they proceed to register a criminal case in the police station having the appropriate jurisdiction. In Delhi, it is functioning very well.

⁹⁸ S.7 states “If an aggrieved person or on her behalf a Protection Officer or service provider requests the person in charge of a medical facility to provide medical aid to her, such person in charge of a medical facility shall provide medical facility to the aggrieved person.”

⁹⁹ G. P. Joshi, N. P. Gupta & T. Chakraborty, Functioning of CAW Cells in the Police Force in States/Union Territories (Oct. 1, 2018, 08.30 AM), <http://www.hellocounsel.com/>

Counselling

Whenever a woman is deprived of conjugal rights by divorce or has faced domestic violence, she feels that there is no other way than to die and often goes into depression. Many vulnerable women may attempt to commit suicide. She requires, under such conditions, proper counselling. The organizers of NGOs should meet them, promise her help, and make her feel that she is not alone. They should hear her problems and give her advice. They should assure her that they would fight her cause and provide all assistance. They should educate her by explaining all the legal provisions and prompt her to fight. They should suggest the name of advocates who support the feminist movement for consultation.

Retrieving Property from Spouse's House

Women's property generally is in the matrimonial home, managed or looked after by her husband or in-laws. When a woman is separated from her husband or becomes a widow, the relatives or husband may try to deprive her of the property. If she has no support, she loses the property. At this stage, the NGOs can come to the rescue of such a destitute woman to recover her property from her husband or relatives. The NGOs may do this by negotiation, or complaining to the State authorities or filing a petition in a court if negotiation fails.

Help to get financial assistance

The NGOs help destitute or deprived women stand on their legs by organizing a small-scale business unit, or to earn by using technical knowledge, facilitating to get the bank loans or margin money from the welfare departments. The authorities and members of NGOs generally know facilities available to women to run the small-scale units of their own.

Providing Skill Training

The NGOs provide vocational training if the women require and request for it. Some NGOs run vocational school for women and these women get vocational training in such schools free of cost as those institutes get aid from the Government.

Providing Legal Aid and conducting Legal Literacy Camps

The Constitution of India provides free legal aid system for promoting justice, based on equal opportunity, and shall; in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that access to justice is not denied to any civilian because of economic or other disabilities.¹⁰⁰ Under Section 12 of the Legal Services Authorities Act, 2007, a woman shall be entitled to legal service if she does not have earning

¹⁰⁰ Art.39 A, Constitution of India directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen.

capacity.¹⁰¹ As a supplementary measure, State Bar Councils may constitute one or more funds in the prescribed manner to give legal aid to women victims, including victims of domestic violence.

The NGOs can help women to get legal services for,

- a) Payment of court fee, process fee and all other charges payable or incurred in connection with any legal proceedings.
- b) Charges for drafting, preparing and filing of any legal proceedings and representation by a legal practitioner in legal proceedings.
- c) Cost of obtaining and supply of certified copies of judgment, order and other documents in legal proceedings.

The NGOs help the women to know about the facilities of legal aid available for them to fight legally whenever they are deprived of their rights. They conduct legal literacy camps independently or with the collaboration of the legal services authorities or with the law colleges. Many of the women, due to ignorance of the facilities available to them, simply bear domestic

¹⁰¹ Section 12, the Legal Services Authorities Act, 2007. 12. Criteria for giving legal services.—Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is—

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) a women or a child; 1[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]
- (d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]"

violence. If the woman is aware of the availability of legal services, they can resist the atrocities and fight legally if the need arises.

Leading Agitation and Demonstrations

Public opinion is a powerful tool in any democratic society. The government considers public opinion in framing policies. The women NGOs start agitations to bring changes whenever the existing law is not women-friendly. The administration generally neglects the voice of women and then the NGOs bring pressure on the Government by organizing demonstrations through mass rallies.

Whenever the administrative authorities act indifferently in the case of dowry death and domestic violence, the NGOs conduct rallies and exhibit the might of the women force¹⁰². NGOs working in the field of women are thus doing commendable job by being the voice of silent women.

Public Interest Lawyering

Previously, the right to move the superior courts for extra ordinary remedies was available only to aggrieved persons. The concept of *locus standi* applied to writ petitions. An association or a public-spirited individual is allowed to approach the court when the aggrieved parties are illiterate, financially weak, or are unable to approach courts for similar reasons in the case of public interest litigation. The court permits public interest litigation or social interest

¹⁰² The Pioneer, Feb. 26, 2019, (Nov. 10, 2019, 10.12 PM),[http://www.dailypioneer.com/2019.;10 women led protests that shook the world in 2018 \(19th Nov, 2019,10.41 PM\), https://www.oxfordindia.org-protest-violence-gender-equality](http://www.dailypioneer.com/2019.;10_women_led_protests_that_shook_the_world_in_2018_(19th_Nov,_2019,10.41_PM),_https://www.oxfordindia.org-protest-violence-gender-equality).

litigation at the instance of public-spirited citizens for the enforcement of Constitutional and legal rights. Under these circumstances, many NGOs started to emancipate women through public interest lawyering.

1) In *Vikram Deo Singh Tomer v. State of Bihar*¹⁰³, the plight of the female inmates of the shelter home in Patna was brought to the notice of the Court through public interest litigation, as the inmates were illiterate. The majority of these women sought shelter, because of the violent behaviour of their husbands. They were compelled to live in sub-human conditions. They were provided insufficient and inadequate quality of food. They were not provided with any medical attention. In this case, the Supreme Court held that the right to live with human dignity was a Fundamental Right of every citizen and the State was under a duty to provide minimum amenities to ensure human dignity.

2) An NGO named *Delhi Domestic Working Women's Forum* filed a public interest Writ Petition regarding the sexual assault on four domestic servants by seven army men travelling by the *Muri Express* from Ranchi to Delhi, under Article 32 of the Constitution.¹⁰⁴ The Court held that the rape victims should be awarded compensation by taking into account the pain, suffering, and shock as well as loss of earnings

¹⁰³ AIR 1988 SC1782. [Sabharwal, K.G.Balakrishnan, S.H. Kapadia, C.K. Thakker, P.K.Balasubramanian, JJ.]

¹⁰⁴ Delhi Domestic Working Women's Forum v. Union of India, 1995 (1)SCC14

due to pregnancy and the expenses of child-birth if that was the result of the rape. It was also directed that legal assistance should be provided at the police station, since the victims of sexual assault might very well be in distressed state upon arrival. Though this case is not directly related to assistance given to domestic violence victims, it has some impact as, when this matter is reported in the media, victims of all kind of violence will approach these NGOs.

- 3) Verdict in *Rajesh Sharma case (2)*,¹⁰⁵ which protects the interest of victims of matrimonial cruelty and domestic violence was also the result of the intervention of NGOs. An NGO called *Social Action Forum for Manav Adhikar* was instrumental in this case. They filed this case for getting inclusion in the family welfare committee.¹⁰⁶ Three judge's bench held the view that the constitution of the family welfare committee in *Rajesh Sharma case (1)*¹⁰⁷ should be modified. An earlier decision by a two judge's bench was that complaints under S.498-A IPC cases should be scrutinized by a family welfare committee before arresting the accused. In this case, that view was recalled.

¹⁰⁵ Case filed by Social Action Forum for Manav Adhikar is known as Rajesh Sharma Case 2.

¹⁰⁶ *Social Action Forum for Manav Adhikar v. Union of India* AIR 2018 SC 4273.

¹⁰⁷ 2017(3) KLJ 863

- 4) An NGO, which strive for protection of victims of domestic violence. ie; *Punarjani charitable Trust, Calicut* has filed a PIL for protecting destitute ladies from Bangladesh.¹⁰⁸

Action Aid India is also an NGO which provides legal aid to victims of domestic violence. They are ready to take any issue which demands legal intervention.¹⁰⁹ *Sahayam* is an NGO working in Kerala. It started in 1983. They help women to secure social security, consciousness against exploitation and employment programs to women.¹¹⁰

The NGOs play an important role in voicing, assisting, standing up, and ventilating the grievances of those who are unable to speak. Every human being is entitled to certain basic human rights available to them without discrimination of any sort. The United Nations and its specialized agencies protect human rights. In India, the Judiciary and Human Rights Commissions protect human rights. Apart from these, the NGOs also have an important role in the protection of human rights. The NGOs work at the grass-root, the national and international levels for the protection of human rights.

Nowadays with the help of technology and social media, NGOs can react against any violence against women immediately. The NGOs conduct

¹⁰⁸ Punarjani Charitable Trust v. Union of India, 2016 (4) KLJ 212.

¹⁰⁹ 10 NGOs helping women to fight for their rights in India, (8th Aug, 2018, 11.42 PM) <https://blog.giveindia.org>.

¹¹⁰ R.Suryamoorthy & K.D. Gangrade, NGOs in India-A cross sectional Study, 87(2006)

different campaigns to educate women, especially in the backward class of the society to react against different types of harassment against them. NGOs play a pivotal role in minimizing the gender-based attitude of society. Peace, development and human rights are essentially inter-related, inter-dependent and indivisible.

The NGOs play an essential role by becoming the concrete expression of international, national, regional and local level voices to assist and stand up for those who cannot speak for themselves.

5.2.10 Suggestions to Improve the Situation

NGOs need to expand the programmes and perform ‘campaign skits’ at least on a monthly basis because frequent programs increase the awareness of human rights. NGOs also need to get more aid both from foreign and indigenous sources, which will be useful to carry out their cause. NGOs must have clear goals and priorities; they should define what they are trying to achieve as clearly as possible. They should think strategically and assess how short-term goals fit in with long term ones. NGOs must have a clear plan of action for both individual and collective activities. Plan reminds people of what the goals are, it helps to keep things on track and with major projects or campaigns it helps people see where they fit into the big picture.

5.3 Role of Media in Protecting Victims of Domestic Violence

The transmission of data plays a vital role in spreading information in society. Electronic data reaches every nook and corner of society within seconds. Years back, there was a period when communication was made through letters, telegrams, etc. and the only mode of entertainment was All India Radio. Until mid-seventies, all cinemas were black and white.¹¹¹ Film directors, during this period started using Cinema as a medium to revitalise Society. Only in 1985, even affluent people acquired television sets. Only later the colour television sets came.

In reducing violence against women, media has created awareness of the Fundamental Rights among women of all categories of society and educated them through various types of campaigns and programs. Since the operating area of media being vast, they could give an opening for many cases, which would not have been ventilated otherwise, and help the victims to get justice.

The role of media is to curtail the issues of violence against women, both in terms of how media cover the issue and how media may be used as a tool to help activists and government to raise awareness and implement programs on this issue.

¹¹¹ Researcher conducted an interview with Mr. Jayaraj, who is a film critic and won State Film Award for literature relating to Cinema on 2018. He revealed above statement. KUTTYEDATHY, MENON PRODUCTIONS. (1971) is an example.

In a book called *Philosophy of crime*, it is stated that potency to commit crime travel in the form of wave. Crime wave always passes through the atmosphere. When people discuss more about crime, the intensity of waves of that crime will be more in the atmosphere. Persons whose brain is tuned to that offence will react as per the waves, and his antenna will receive these signals that culminate into the commission of that crime.¹¹² In this manner, the media can affect the crime rate positively and negatively. If the media always report about the protection given to women victims', it will retard the commission of the crime. If number of crime is reduced, number of victims will be reduced automatically. Redressal agencies can give more attention to victims if their number is lessened. In that way, media assist redressal agencies.

5.3.1 Social Change Movements

Social change movements have successfully affected public behaviour involving important issues, and one can learn from them and apply the lessons to the issue of domestic violence. Saturating the media with messages that promote individual involvement and action, even when the messages are unpleasant and intrusive, is an effective method for changing social behaviour. Public education efforts have succeeded in producing these kinds of significant changes in behaviour and attitudes about the difficult subject that has several common threads. Media has the capacity to build, powerful

¹¹² Pradeep Kumar, *Philosophy of Crime* 30 (2004).

messages that are action-oriented, emotional, empowering, and short.¹¹³ This kind of short messages lasts for long in the mind of viewer. In that sense, role of media in bringing social change is manifold.

5.3.2 Freedom of Speech and Expression in Media

Article 19 of the Constitution guarantees freedom of speech and expression.¹¹⁴ There are many cases dealing with freedom of speech of media. In *Prabhu Datt v. Union of India*¹¹⁵ the Supreme Court held that the right to news and information regarding the administration of the government was included in freedom of the press. The right to this is subject to reasonable restrictions under Article 19 (2).¹¹⁶ Media speak as the tongue of downtrodden. A newspaper is a powerful organ of democracy. Its role in the national and international life of a country is very crucial.¹¹⁷

In *Romesh Thapar v. State of Madras*,¹¹⁸ the apex court held that the freedom of speech and expression was paramount and nothing short of a danger to the State or an attempt to overthrow, the government would justify its

¹¹³ Ethel Klein, Jacquelyn, Campbell et al, Ending Domestic Violence- Changing Public Perceptions/Halting the Epidemic 90 – 92 (1997).

¹¹⁴ Article 19 of the Constitution deals with the citizen's six basic Fundamental Rights like freedoms. These freedoms are not absolute.

¹¹⁵ AIR 1982 SC 6.

¹¹⁶ Article 19(2) empowers the State to impose reasonable restrictions in the interests of the security of the State, friendly relations with the Foreign States, public order, decency and morality, contempt of court, defamation, incitement of offence and integrity and sovereignty of India.

¹¹⁷ Salil Shringarpure, Trial by Media: Indian Perspective, 1 BLR. 4, 147(2013)

¹¹⁸ AIR 1950 SC 124.

curtailment. Similarly, in *Sakal Papers (P) Ltd. v. Union of India*¹¹⁹ the Court held that the State could not make laws that directly affected the circulation of a newspaper as it curtailed freedom of speech.

5.3.3 Impact of Visual Media

Information dissemination is done through print media, electronic media, and visual media. However, the impact of visual media is far-reaching compared to other modes. One has five sense organs. Through each sense organ, one perceives knowledge differently. Eyes are most prominent among five sense organs. That is why pre-censorship was imposed on films.¹²⁰ Visual media can perform it to a different level.¹²¹ It can influence audience both positively and negatively depending on the nature of the content it propagates. That means visual media can disseminate both positive and negative messages to society. In *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana*,¹²² court held that exhibition of serial, *Honi Anthoni* is not likely to endanger public morality. In this case the Court has analysed in depth the impact that media can create in society. If positively used, media can reduce domestic violence.

¹¹⁹ AIR 1962 SC 305: (1962) 3SCR 842.

¹²⁰ *K.A. Abbas v. Union of India*, 1971 SCR (2) 446.

¹²¹ *Bobby Art International v. Ompal Singh Hoon*, AIR 1996 SC 1846.

¹²² AIR 1988 SC 1642.

5.3.4 Role of Media in Indian Scenario

With the intervention of new technology in the field of communication, news reporting has jumped too far-reaching effects. In India, until the 1990s there was only one channel maintained by the Union Government, Door Darshan. However, after the liberalization policy, private channels grew and brought competition. Because of the competition, the media tried to control the mind of people. For that, they tried to appease the mind of people through channel discussions, 'Breaking News' etc. and tried to reinforce ideas into the mind of people which they never intended.

In *Siddhartha Vasisht @ Manu Sharma v. State (NCT of Delhi)*¹²³ the Court held that there was danger of serious risk of prejudice if the media exercised an unrestricted and unregulated freedom, such that it could publish photographs of suspects or accused persons before the identification parades are conducted. If media is accusing a person as guilty even before trial at Court, there is a probability of it influencing judicial decisions. The Court criticized the role of media in *Santhosh Kumar Singh v. State*¹²⁴ and *Nupur Talvar v. CBI, Delhi*.¹²⁵ The criminal justice system in India is facing new issues and challenges owing to advanced technologies.

¹²³ (2010) 6 SCC 1.

¹²⁴ (2010) 9 SCC 747.

¹²⁵ (2012)11SCC 465.

5.3.5 Victim's Family Approaching Media for Justice

Nowadays, there is a new trend of victim's families approaching media for justice. Why does it happen? Is media a redressal agency? Contemporary developments in the country have given rise to new controversies that need immediate attention. Media highlights exaggerated news, which assumes the character of trial by media.

The press or media is considered to have a significant influence on the daily life of the common man. Hence, it should show responsibility in its action. However, there are symptoms of negativity in the media. The media often highlights only negative news; and sensationalism has become the icon of media. In the *Nirbhaya Case*¹²⁶ and *Jisha murder Case*,¹²⁷ several other people were depicted as perpetrators by the media. This brings in the issue of prejudicial publicity.

The reason why victims or their families seek justice through media is only because of its acceptance among people. Though it is not a redressal agency, it can create liaison with other redressal agencies like Women's Commission and NGOs. Women's Commission can issue *suo moto* notice and NGOs in the capacity of the service provider can give protection to the victims.

¹²⁶ *State v. Ram Singh*, 212 (2014) DLT99

¹²⁷ *Ameerul Islam v. State of Kerala*, Sessions case No.662/2016., Principal Sessions court, *Ernakulam*.

Moreover, media trials unnecessarily draw the judiciary into the public scanner, often making a mockery of the justice delivery system.

In certain cases, the media conducts sting operations and private investigations to expose the scams prevalent in society.¹²⁸ They also sensationalize and create a causal connection between the way things are, and the way they are not, they feed the psychology of their readers and viewers by providing them images of celebrities cooked up in such a way that it will fit into viewer's taste.

5.3.6 Depiction of Women in Print Media, especially Victims of Domestic Violence

Mass media including electronic media and print media depict women as stereotypes. Advertisements have become more sensational and commercialized. The importance of print media can be gauged during the struggle for independence when it played a major role in initiating the fire of freedom struggle in society. Still the importance of print media is not lost. But now they are including news which will elevate reader ship. They have stereotyped women as homemakers and allot space for recipes, cookery, beauty tips, luxurious items, bridal fashion and new pattern of dresses.

¹²⁸ In Kerala, sting operation of the Mangalam Channel resulted in the resignation of minister Saseendran from the Council of Ministers.

Women appear in the news when they are raped, murdered and victimised in domestic violence. Photos of women political leaders are exceptions. Print media portray her sporadically as if there exists sexist bias. Newspapers give catchy headlines to make it more sensational. The reporters never think twice before distorting stories and throwing all blames on women. There is a notion in society that even if the husband and in-laws ill-treat a woman, she should suffer it without any complaint. Those women who suffer will be treated as chaste and those who try to retaliate or those who opt for divorce will be termed unruly and unchaste.

The images of women in the advertisements do not match actual womanhood. In advertisements, women are depicted wearing costly apparel even at home, even though they are the mother of two children, will be slim and lean, all have 5.7 to 5.9 inches height, which average women never possess. This gives some negative impression that in the case of women body is more important than the soul, which is against the ancient Indian concept.¹²⁹

The print media in the last decade has seen a wholesome growth. Instead of giving negative news about women, if media concentrates on news related to women's empowerment, it will give greater momentum to the social change.

¹²⁹ Swami Swaroopananda, Gita-English translation and commentary 288 (1909). In Bhagwat Gita, the body is called kshetra and soul is kshetrajna. It is the soul who should be given primacy and not the body.

It is only on the last but one page that news about performances by female artists, or painting exhibitions by women artists are given.

In 'Hindu' newspaper, once in a week, they portray women achievers.¹³⁰ With half the population being women, the media planners and editors allot a single page once a week to women issues.

All media while reporting violence against women, gives primacy to sexual violence. Media often neglect domestic violence.¹³¹ One exception is program called *Kathayallithu jeevitham* by Amrita TV, which try to settle issues between spouses. Here, anchor psychologically approaches issues and give good counselling; patch up issues between them in majority of cases.

5.3.7 Depiction of Domestic Violence in Films

Keralites are very much fond of films as they are short of hang out places. Many people of Kerala became advocates and IPS officers influenced by films of *Mammootty*¹³² and *Suresh Gopi*.¹³³ Among visual media, films have a great impact on viewers. There are a lot of Malayalam films that depict domestic violence and dowry harassment. If people continue to view the scenes they inculcate a feeling that domestic violence is usually happening in

¹³⁰ https://www.thehindu.com/topic/The_Hindu_Friday_Review/.

¹³¹ G.N. Ray, Women and Media in an address on Sep. 16, 2008 at Vigyan Bhavan, New Delhi.

¹³² ORU ABHIBHASHAKANTE CASE DIARY, MAC PRODUCTIONS (1995)

¹³³ COMMISSIONER, SUNITHA PRODUCTIONS, (1992).

a house and there is nothing unusual if a husband beats his wife. Some films even portray that women enjoy these slaps.¹³⁴

5.3.8 Films Having Negative Impact

Malayalam cinema was revolving around family stories till 2000. Often domestic violence scenes are depicted in such kinds of films. In Film *Valayam*, there is sad portrayal of domestic violence silently suffered by a hapless wife in the matrimonial home.¹³⁵ Film *Sthreedhanam*¹³⁶ depicts dowry harassment and domestic violence. (Two sisters become scapegoats of dowry. Elder one with children is thrown out from her matrimonial home and younger one suffers domestic violence at the hands of mother in law) *Thulabharam*¹³⁷ is another film that depicts domestic violence (Heroine had to kill her starving children and she was arrested and prosecuted before she could commit suicide). With the advent of new generation films, the storyline became different. It began to change from traditional family stories to abstract themes.¹³⁸

5.3.9 Films and Domestic Violence

Films show many domestic violence scenes. Public discussion on domestic violence has been very sporadic and what one sees on a big screen or mini

¹³⁴ MAHAYANAM, JUBILY PICTURES, (1989).

¹³⁵ VALAYAM, SHARON PICTURES, (1992).

¹³⁶ STHREEDHANAM, RISE SUN PICTURES, (1993).

¹³⁷ THULABHARAM, SUPRIYA PICTURES, (1968).

¹³⁸ VASTHUHARA, PARAGON MOVIE MAKERS (1991) and PANCHAGNI, SEVEN ARTS (1986).

screenplays a greater role in the formulation of opinion on domestic violence.

Holly Wood films also contain scenes of partner violence.

In many films, heroines silently suffer violent behaviour without resistance and still crave for the love of the husband or partner. This will give a negative impression in the mind of the audience that women are the property of men.

As visual media has a greater impact on opinion formation among the audience, the negative impact of films becomes conspicuous. Usually, in films, resistance by women to violence is less and those who suffer domestic violence are more and this projects the mute sufferer role as the accepted one.

A film that shows a wife taking recourse to legal remedies against harassers is yet to come.

In the first Malayalam movie, *Balan* depicted domestic violence suffered by a daughter-in-law from the mother-in-law.¹³⁹ Films *Kuttikupayam*,¹⁴⁰ *Midumidukki*,¹⁴¹ *Tharavatamma*,¹⁴² *Aparadhini*,¹⁴³ *Bharyamar sookshikkuka*¹⁴⁴ and *Agnipareeksha*¹⁴⁵ also portray domestic violence.

In old Malayalam films, the central axis was family stories and families were joint families. Therefore, the violence was not only from husband but also

¹³⁹ BALAN, MERILAND (1938). (Sufferings of a brother and sister).

¹⁴⁰ KUTTI KUPPAYAM, MERILAND, (1964).

¹⁴¹ MIDUMIDUKKI, DEEPTHI FILMS (1968) (Story line - Raghunathan throws his wife Sarasu out of his house because of unsatisfied dowry demand.)

¹⁴² THARAVATTAMMA, MADRAS MOVIES, (1966), (Violence suffered by a girl from step - mother.)

¹⁴³ APARADHINI, VASANTH PICTURES (1968).

¹⁴⁴ BHARYAMARSOOKSHIKKUKA, JAYAMARUTHI PRODUCTIONS (1968), (A wife Sobha, fall in love with a singer and that triggers domestic violence in their life.)

¹⁴⁵ AGNIPAREEKSHA, AZEEM COMPANY (1968), (Ramesh loves Hema. But he has to Marry another lady as per his father's wish. From this point, domestic violence started in the family.)

from the mother-in-law, sister-in-law, etc.¹⁴⁶ After 1950, the Malayalam film industry has witnessed a series of movies depicting domestic violence. After 1960 there was a hike in its number.¹⁴⁷ At the same time, most of the films had a strong storyline that gave importance to female roles.¹⁴⁸ After 1970, asserting role of mother-in-law decreased in some films. In film, *Innallengil nale*¹⁴⁹ the main theme of the film was domestic violence. Because of the domestic violence at their husband's house, the wife committed suicide by jumping into the river. The subsequent part of the film depicted court proceedings and finally, culprits were punished.

Dowry and domestic violence are two sides of the same coin. There are many films where dowry is the main theme. Some films give a positive message to fight against dowry but some assert dowry as a part of the social covenant. Women suffer because of dowry harassment, but the latter parts depict the a self-sustained energy of women to fight against evil.¹⁵⁰ How alcoholism of husband leads to domestic violence is depicted in movie, *Spirit*.¹⁵¹ This film

¹⁴⁶ Jayaraj, *Malayala Cinema Pinnitta Vazhikal*, 588 – 592 (2018).

¹⁴⁷ *Id* At 306. They are JEEVITHA NOUKA, K & K COMBINES, (1951); STHREEHRIDHAYAM, T & T PRODUCTIONS, (1960); AYISHA, UDAYA PRODUCTIONS, (1964); UMMA, UDAYA PRODUCTIONS (1960); KUPPIVALA, LOTUS PICTURES (1965); and AMMU, LOTUS PICTURES, (1965). See *Id* At 340, 367 and 369.

¹⁴⁸ CHETTATHI, CENTRAL PICTURES, (1965); PERAMAKKAL, UDAYA PRODUCTIONS, (1966); and SAHADHARMINI, THOMAS PICTURES, (1967). *Id* At 423.

¹⁴⁹ INNALLENKIL NALE, GEO MOVIES, (1982).

¹⁵⁰ THURAKKATHA VATHIL, SANJAY PRODUCTIONS (1970); NATHOON, MALITHRA PRODUCTIONS (1974); STHREE DHANAM, RISE SUN PICTURES (1993); AMMA AMMAYIAMMA, CLASSIC CINI VISION (1998); SANTHANA GOPALAM, CENTRAL PRODUCTIONS (1994); KUDUMBA PURANAM, CENTRAL PICTURES (1988); and BHAGYA DEVATHA, DAY NIGHT CREATIONS (2009).

¹⁵¹ SPIRIT, ASHIRVAD CINEMAS (2012). (Raghunathan divorces his wife Meera after domestic violence, induced by alcoholism.)

was screened in front of several politicians including Ministers such as *K.Babu, Ramesh Chennithala, N.Sakthan, P.C.Vishnu Nath* etc, on 21st June, 2012 at *Sreekumar* theatre, Trivandrum. 50 M.L.As also were there. This film was announced 'tax free' as it has good message to society. Then Minister of Social Welfare Dr. *M.K. Muneer* suggested that film gives good insight to social issues as it depicts domestic violence resulting from alcoholism.¹⁵²

These films create two kinds of feelings among the audience. A woman may consider it as age-old practice and accept it as fate. A man may develop a superego that if he does not tame his wife, she will not respect him. Children who watch such films get a feeling that it is an essential concomitant of family life.

Some Malayalam films contain dialogues derogatory to women.¹⁵³ They are mostly films by so-called superstars.¹⁵⁴

After the 1990s some films began to depict women empowerment as the main theme.¹⁵⁵ The storyline has changed to a particular pattern where domestic relations lose significance. As a result, domestic violence scenes

¹⁵² Researcher got this information from interview with Film Director *Harikumar*.

¹⁵³ COMMISSIONER, SUNITHA PRODUCTIONS (1994).

¹⁵⁴ THE KING, MAC PRODUCTIONS (1995).

¹⁵⁵ AGNISAKSHI, SRISHTYFILMS (1999); PANCHAGNI, GRIHALAKSMI PRODUCTIONS (1986); AKASHADOODH, ANUPAMA PRODUCTIONS (1993); PENPATTANA, MS (2010); 22 FEMALE KOTTAYAM, FLUX BREWERY (2012); KANNEZHUTHI POTTUMTHOTTU, ONE TWO ONE CREATIONS (1999); KALIMANNU, CHERUMUTADATHU FILMS (2013); KANMADHAM, PRANAVAM ARTS (1998); ACHUVINTE AMMA, GRIHALAKSHMI FILMS (2005); PUTHIYA MUGHAM, BETHESHA PRODUCTIONS (2009); THIRA, L. J. FILMS (2013); TRIVANDRUM LODGE, TIME ARTS ENTERTAINMENT (2012); CHARLI, FRIDAY CINEMA (2015); ARTIST, SUNITHA PRODUCTIONS (2013); and 4 PENNUNGAL, EMIL AND ERIC DIGITAL FILMS (2007).

have almost vanished from films. However, Malayalam TV serials still depict domestic violence as the main theme.

In Calicut, a film festival was conducted, where only films directed by women¹⁵⁶ were screened. Recent Malayalam films depict strong female characters, thereby influencing the society to think in that way¹⁵⁷

5.3.10 Depiction of Domestic Violence in Malayalam Novel

In many older novels, as the main thread of the story is based on family, domestic violence also became a part. Thus, violence inflicted by their husbands became the main thread¹⁵⁸. “*Ente Katha*” by *Madhavikkutty* is an epitome of women empowerment and at the same time depicts domestic violence and humiliation suffered by her during the initial years of marriage. Like films, the novel also creates empathy and sympathy in the mind of readers. Many poems and novels have sown the seeds of women empowerment. Because this can easily induce new ideas into mind of Keralites.¹⁵⁹

¹⁵⁶ Premchand, Noottandinte Mounangal 21 (2017).

¹⁵⁷ RANI PADMINI, FROUT ENTERTAINMENT (2015); HOW OLD ARE YOU, MAGIC FRAMES (2014); UDHAHARANAM SUJATHA, THE SCENE STUDIO (2017).

¹⁵⁸ See Uroob, Mindappennu, 1970; M T Vasudevan Nair, Oppol, 1981; and Vaikkam Muhammad Basheer, Pathummayude Aadu, 1959.

¹⁵⁹ Lalitambika Antharjanam, Agni Sakshi, 1976; Vayalar Rama Varma, Aysha (poem), 2002; Uroob, Ummachu 1986; Kakkanadan, Orotha (2009); Sara Joseph, Aalaahayade Penmakkal (1999); Sara Joseph, Othappu (2005); Chandu Menon, Indhulekha (1889); Kumaranasan, Chinthavishtayaya Seetha (1935); K. Surendran, Maranam, Durbalam (1989); K. Surendran, Devi Sakthi (2015); and K.R. Meera, Arachar (2012).

5.3.11 Role of Media Monitoring Cell

Women's Commission has developed a body called Media Monitoring Cell. It monitors the activities of media and controls derogatory attitudes towards women. The Commission has prepared a draft Regulation for media and submitted it to the Government. As per a survey conducted by the Commission,¹⁶⁰ 53.5 percent of women watch TV for news and other programmes, 8.9 percent like reality shows, 7.87 percent watch film-based programmes.¹⁶¹ This shows that the majority of women do not watch T.V serials as they do not agree with their wishes. All major channels show serials from 6 to 10 PM.

In the media world of Kerala, there exists gender insensitive empowerment. In TV serials, cinema, magazines, etc. women are depicted as problem makers and conspirators. In many serials, daughter-in-law and mother-in-law are depicted as enemies. Media Cell of the Commission has suggested certain recommendations to media in Kerala.

Glimpses of Recommendations Made to Government¹⁶² are listed below.

1. A campaign should be made to free Keralites from the fist of T.V;
2. Sensor board should be made for T.V programme;

¹⁶⁰ Survey conducted in 2009 and shown in the Hand Book of Women's Commission. 72 (2016)

¹⁶¹ Annual report of Kerala Women's Commission, 81 (2015 -16).

¹⁶² Annual Report of Kerala Women's Commission, 82 (2015 -2016)

3. In Journalism syllabus more women-related issues should be included;
and
4. Public Relations Department should make a screening committee for censoring social media.

5.3.12 Impact of Film Songs on Women Empowerment

Music has a proven quality to rejuvenate the mind. Nowadays music therapy is used to treat various diseases. It is said that the *keerthana*, “*Brihaspathe... tharapathe*” by *Muthuswami Dikshithar* had once rescued his disciple from acute stomach pain.¹⁶³ Similarly, the rendition of *keerthana*, “*Anandamrithavarshini*” in *Amrithavarshiniraga* resulted in heavy rain.¹⁶⁴ These stories show that music has immense power to influence both living creatures and the environment.

Film songs influence ordinary people. They do not have the technical knowledge to enjoy *Carnatic* or *Hindustani* music. However, they can very well enjoy ordinary film songs, which have the back up of *ragas*.

5.3.13 Songs, Which Give Negative Image of Women

Ordinary people empathize with characters in films. So, songs which give a negative image in the mind of women that they are powerless and bound to

¹⁶³ A. Ravindra Nath, *Dakshinenthyan Sangeetham* 1253 (1985).

¹⁶⁴ Suresh Narayan, *Karnataka Sangeetham* 6 (2006); also see Dhananjayan, *Swararagarnavam* (2012).

suffer everything. Each letter is a packet of energy and in that way, songs are oceans of energy. If a woman hears it continuously a feeling will be generated in her mind that it is an age-old practice, so better succumb to it than fight against it. So many Malayalam songs debilitate the status of women.¹⁶⁵ The female characters of these songs are victims of domestic violence. The songs which portray women as the one who are destined to suffer in silence create a negative impact in the mind of listeners both men and women. These songs act as a conditioning agent in creating a mindset in women that they are bound to lead a life of second grade citizens, merely to satisfy wants, wishes and desires of menfolk. On the other hand, these songs try to give authenticity to the subjugating behaviour of men, overall result of which is that women take everything in the stride and are reluctant to

¹⁶⁵ *Kannuneer thulliye sthreeyodupamicha...*, PANITHEERTHA VEEDU, Chithrakalakendram (1973), (Nov. 24, 2018, 6.00 AM), [https://www.youtube.com/watch?v=CYtpfL](https://www.youtube.com/watch?v=CYtpfL;).; *Paavangal pennungal dukhabharam chumakum devathakal...*, PAVANGAL PENNUNGAL, Excel Productions (1973), (Nov. 24, 2018, 6.20 AM) [https://www.youtube.com/watch?v=n6IoyeenTzs](https://www.youtube.com/watch?v=n6IoyeenTzs;).; *Seethayumoormilayilayum janichakaalamuthal sapikkapetavarallo Sthreekal...*, BRAHMACHARI, Sippy Films (1968), (Nov. 24, 2018, 6.25 AM), [://www.youtube.com/watch?v=pe1w8uYprQo](https://www.youtube.com/watch?v=pe1w8uYprQo); *Bhumiyil Sthreekalai janichavarellam paapamcheythavarano...*, NAKHANGAL, SUPRIYA, (1973); *Sayahnaswapnathil marathupadarnnoo kanneerkudavumayi povuka...*, ADYATHE KATHA, Chitranjali Studio (1978), (Nov. 24, 2018, 6.35 AM) <https://www.youtube.com/watch?v=5-tWjuugEI>; *Kannuneer muthinu pennennuperitu kaalamam ajnathasilpi...*, CHAYAM, Merriland (1973), (Nov. 24, 2018, 6.45 AM) <https://www.youtube.com/watch?v=QsDLSLI7JNk>; *Kannadikkullilepennayijanikkaruthe; Ningalorikkal choodiyeninjavai njan karpooranaalamayi ningalthan mumpil kathiyeerinjavai njan* (Song: kannuthurakkatha daivangale), (Nov. 24, 2018, 7.00 AM) <https://www.youtube.com/watch?v=CBUVULnxFS0>; *Kanneerilaliyatha manukonduallathu pandumenanjeduthu; Sthreeye sthreeye neeyum papiyo (ganam eekaikalil rakthamundo); Mannil pennaypiranna thetinu maputharoo.*

approach the redressal mechanism open before them even in extreme cases of domestic violence.

5.3.14 Malayalam Film Songs that have a Positive Impact on Women

There are film songs that narrate females as an epitome of sanctity.¹⁶⁶ A man who continuously hears these kinds of songs will start worshipping women. Similarly, a woman who hears this several times will develop self-confidence.

5.3.15 Role of Social Media

The younger generation spends more time on Facebook, Twitter, Instagram, and WhatsApp. The messages forwarded from somebody are forwarded without testing its veracity. Social media has become a significant perpetrator of the crime against women because of the anonymity it enjoys.¹⁶⁷

¹⁶⁶ *Ellaasthreeyilum antharleenamam; Manushyanum daivavum soundaryam nalkiya mayaroopini nee; Amme amme aviduthe munpi 1*, (Nov. 24, 2018, 7.00 AM) <https://www.youtube.com/watch?v=ULy5xNjjTJY>;
Aarude pranayini ayalum devathayalle; Ammayallathoru daivamundo, SANBHAVAMI YUGE YUGE, GANESH PICTURES (1972), (NOV 24,2018, 7: 30 AM), https://www.youtube.com/watch?v=bI80tj_38WY;
Penkalku mathruthwam mukhyamalle, SNEHATHINTE MUKHANGAL, PRIYADARSINI MOVIES (1978), (Nov. 24, 2018, 7.45 AM), <https://www.youtube.com/watch?v=1TxDAgyfyc4>;
Malayali penne nintemanassu (Nov. 25, 2018, 6.00 AM) https://www.youtube.com/watch?v=ERSTr_OBVRc, BANDHUKKAL SATHRUKKAL, AMRUTHESWARY PRODUCTIONS (1993);
Ammayenna aksharam ambalam ponnambalam, (Nov. 25, 2018, 6.00 AM), https://www.youtube.com/watch?v=O5n73o_jljc`2q;
AVAN ORU AHANKARI, CHANTHAMANI FILMS(1980).

¹⁶⁷ <http://www.violenceagainstwomeninsocialmediajusticeandthelaw>

New generation girls spend a lot of time in social media.. In society, still, there is a gap between male and female groups. It always expects that women should enjoy only limited space.¹⁶⁸ The needs of social media are very wide. So, some people of the new generation misuse it to tarnish the images of housewives.¹⁶⁹ Sometimes a serious psychological problem is suffered by many women who are doing a dual job of working women and housewives.¹⁷⁰ Social media gives some impression in the mind of the younger generation about the role to be played by ideal mothers. Many adult sons quarrel with their mothers saying that their friends have better mothers, making the domestic atmosphere callous.

In a recent incident in Kerala, in a case where five clergymen committed sexual atrocities, social media propagated a photo of a woman stating that she is the victim of that case. The photo has no connection with the victim. Many photos of *Dr.Sandhya* was circulated saying that she was the victim.¹⁷¹

Similar cases are reported from various parts of Kerala. In some cases, this will make the life of the victim miserable because of suspicion of husbands.

¹⁶⁸ Geeta Kashyap, Role of alternative media is the empowerment of women, J. Mass Comm. & Journalism (Feb. 13, 2018, 11PM), <http://omicsonline.com>

¹⁶⁹ Debarathi Halder, Creating Awareness of Online Victimization Using Social Media. A Therapeutic Jurisprudential Approach (Sept. 9, 2018, 9.30 AM), [www.http://mainstreamif.worldpress.com](http://mainstreamif.worldpress.com) .

¹⁷⁰ R. Velmurugan, Implications of Social Media Among Working Women in Coimbatore, 2 IJCISS 15(2015).

¹⁷¹ <https://www.ndtv.com/kerala-news/2-of-5-kerala-priests-accused-of-sexual-assault-see-anticipatory-bail-1877077> (NOV 25, 2018, 8:00 PM)

5.3.16 Positive Aspects of Social Media in Protecting Female Victims

As in the case of *the Nirbhaya rape case*,¹⁷² *the Asifa murder case*,¹⁷³ etc, strong protests began against women. However, victims of domestic violence are not getting direct redressal from social media. They get positive messages like details of a self-help group for women, some institutions which give vocational training to destitute ladies, widows, those who are deserted by husbands, which are forwarded in different WhatsApp groups. It will be helpful for the needy.

5.3.17 Interconnection between NGOs, Women's Commission, and Media

Though these three instrumentalities are not connected directly, there are so many ramifications. Women's Commission has extended its appendages to NGOs and media. Media Monitoring Cell, which controls media is a product of Women's Commission. NGOs are service providers under the Act. Those NGOs, which are listed by Women's Commission, will be treated as a service provider. In that way, media and NGOs can be treated as instruments that augment the working capacity of Women's Commission.

¹⁷² Mukesh and Anr v. State of NCT, Delhi, 2018 ICO 1068.

¹⁷³ The Brutal Crime that has Kashmir on Edge, (Nov. 7, 2019, 5 AM), <https://www.bbc.com/news/world-asia-india-43722714>.

5.3.18 Legal Measures to Monitor Media and Constitutional Provisions

The Supreme Court has widened the ambit of freedom of speech and expression through case laws.¹⁷⁴ The Supreme Court and High Courts have permitted media to publish its proceedings in several matters, but curtailed their freedom in the publication of any matter, which causes prejudice to a pending proceeding to keep the stream of justice clean and pure, so that parties may proceed with safety both of themselves and of their character.¹⁷⁵

Article 19(2)¹⁷⁶ permits imposition by the law of reasonable restrictions on the exercise of the freedom¹⁷⁷ of speech and expression under Art. 19(1)(a) of the Constitution of India. In a recent decision, Supreme Court has made a path breaking judgement related to media, which permitted live streaming of Court procedure. This has widened the scope of freedom of speech and expression of media.¹⁷⁸

¹⁷⁴ Romesh Thapper v. State of Madras, AIR 1950 SC124; Indian Express v. Union of India, (1985)1SCC 641; Brij Bhushan v. State of Delhi, AIR 1950 SC 129;

¹⁷⁵ Reliance Petro Chemicals v. Proprietors of Indian Express,1989 AIR 190; Saibal Kumar Gupta v. B.K.Sen, 1961 AIR 633.

¹⁷⁶ Art.19(2),Constitution of India (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

¹⁷⁷ Art. 19(1)(a),Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, “all citizens shall have the right to freedom of speech and expression”.

¹⁷⁸ Swapnil Thripathi v. The Supreme Court of India 2018 ICO 1721.

5.3.19 International Arena

The 1998 Declaration¹⁷⁹ recognizes a journalist as a human rights defender and adds a critical momentum to the protection of human rights and its defenders worldwide. The Universal Declaration of Human Rights, 1948 (UDHR) European Convention of Human Rights 1950 and international human rights agreements explicitly protect freedom of expression.¹⁸⁰

5.3.20 The Press Council Act, 1978

The Press Council of India is established, with the objectives to preserve the freedom of the press and to maintain and improve the standards of newspapers and news agencies in India.¹⁸¹ To achieve these goals, news agencies should take the utmost care in Protection of human right of victims regardless of who the perpetrator is. The Council also enjoys the power to censure newspapers when they misuse the freedom. If any individual has any grievance against the press it is better to approach the Council. The Council

¹⁷⁹ Turkish Journalist's Declaration of Rights and Responsibilities, Istanbul. This is fully about rights and duties of Journalists.

¹⁸⁰ UDHR Art. 19- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

European Convention of Human Rights 1950, Article 10 Freedom of expression 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

¹⁸¹ Media Experts Say Press Regulation Doesn't Work In India (Jun. 30, 2019, 06.30 PM), <https://theprint.in/india/governance/media-experts-say-press-regulation-doesnt-w/>

decides complaints after notice to parties. It is an effective remedy from the Press Council.

5.3.21 The Contempt of Courts Act, 1971

No civil or criminal action will lie against a newspaper faithfully publishing proceeding of a court, though the reporting has adversely affected an individual.¹⁸² Recently S.C. has widened the power of media through permitting live streaming of Court procedure.¹⁸³ In such cases, media have immunity even if the matter published is prejudicial to the interest of some people.

5.3.22 Pros and Cons of Media concerning Victims of Domestic Violence

Media sometimes make twists in the story and report it for increasing readership, viewership and rating. Even in domestic violence and divorce cases involving film stars, they will follow these people wherever they go. The print media have played a pivotal role in moulding society's attitude towards women.

¹⁸² S.4 of The Contempt of Courts Act 1971 says "Fair and accurate report of judicial proceeding not contempt subject to the provisions contained in Section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof."

¹⁸³ Swapnil Thripathi v. The Supreme Court of India 2018 ICO 1721.

The newspapers, television, and magazines take more interest in unearthing scandals to embarrass politicians or poke noses in elite people's matter than to write for women's empowerment.

The press and media have been recognized as great influencing factors. The power full press enjoys with it an obligation to act with responsibility and creativity.¹⁸⁴ However, the media always try to get negative news. For the administration of justice, the media and judiciary are inextricably interconnected.

Media are more interested in juicy stories and victims of sexual violence. They can do many things if they act positively. Media trials sometimes influence judicial decisions. It is essential to ensure that one does not overshadow the other. The Court of law must be positive in their approach while curtaining free speech and expression, while at the same time the media must recognize its duty and debt towards society in so much as fair and responsible reporting is concerned.

The media should restrain from making any decisive comment on any case before the final judgment is pronounced. Coverage is good, but it should be kept in checks. The media must follow the case to the end making the people aware of the proceedings in the case and the outcome.

¹⁸⁴ Shobha Ram Sharma, Judicial Activism of Media, IX Nyaya Deep, (Oct). 47 (2008).

Media being the most powerful institution of the society, they naturally carry more responsibility.¹⁸⁵ So media persons should make the corrective mechanism for media.¹⁸⁶ The primary duty of media is to collect and transmit correct information to citizens.¹⁸⁷ If media reports anything, which is against the rights of the accused or victim, there are appropriate remedies.¹⁸⁸

In the era of globalization, with the revolution in means of communication and information technology, the role of media has become more crucial for women's empowerment in India. Indian media must focus on women's issues in a decisive way to make their role not detrimental to women's empowerment in India. It is essential that media should devote a good percentage of their programmes to create awareness among women and the society, give information about women's rights and types of machinery to approach for their all-round development.¹⁸⁹ Thus, the distant dream of women's empowerment in India can be realized with the support of the media.

The researcher has dealt with the role of media in shaping the attitude of society towards female victims. News coverage of violence against women is

¹⁸⁵ Abhinav Shrivastava, Effect of Media in the Adjudication of Criminal Trials 113 Cr. L.J. 1289 (2005).

¹⁸⁶ P.B. Sawant, Media and the Law, Freedom of Speech or Unbridled Freedom, Vol. 3, Issue 2, Halsbury's Law 8-10 at 10 (2009).

¹⁸⁷ Peter Carey, Media Law, 114 (2010).

¹⁸⁸ Dr. Sukanta K. Nanda, Media Law, 190 (2017)

¹⁸⁹ Docshare. tips, Women Problems in The Society (Jun. 30, 2019, 06.15 PM), http://docshare.tips/women-problems-inthesociety_58b5fa28b6d87f81288b4e10.html.

always sensational, now depiction of domestic violence by media has undergone radical changes.

The media must report matters honestly. Truth means the whole truth and nothing but truth. Some media have taken a positive approach towards female victims, but some still stick on to patriarchal heredity. Media's growing role is in highlighting violence against women and to stress the need for creating awareness among the women victims about their rights so that they could protect themselves. The role of media is crucial to the victims of domestic violence because, in many newspapers, they have published instances of misuse of Section 498-A and PWDV Act. For every such legislation, there is a chance of misuse. Every Act and every legal provision has loopholes. However, a personal interview with some of the eminent media persons, Protection Officers and NGOs reveal that some women are misusing the protective provisions of the PWDV Act. However, if the media gives undue weight on that aspect, the whole Act becomes weak. Content regulation should be made mandatory for Media. When scenes involving domestic violence and cruelty to women are shown in cinema or television, a statutory warning should be made mandatory that they are punishable under the PWDV Act. Derogatory remarks about women in the advertisement should also be banned. Media should provide a platform for settlement of issues between spouses. It can sensitize public about the plight of domestic violence victims and should generate an empathy towards them.

Even though a discussion about role played by redressal agencies are discussed in this chapter, its efficacy cannot be ascertained by mere doctrinal study. So in the next chapter, an empirical study to detect level of awareness of the Act among victims and level of awareness about redressal mechanisms are included.

CHAPTER 6

IMPACT OF PWDV ACT-EMPIRICAL ASSESSMENT

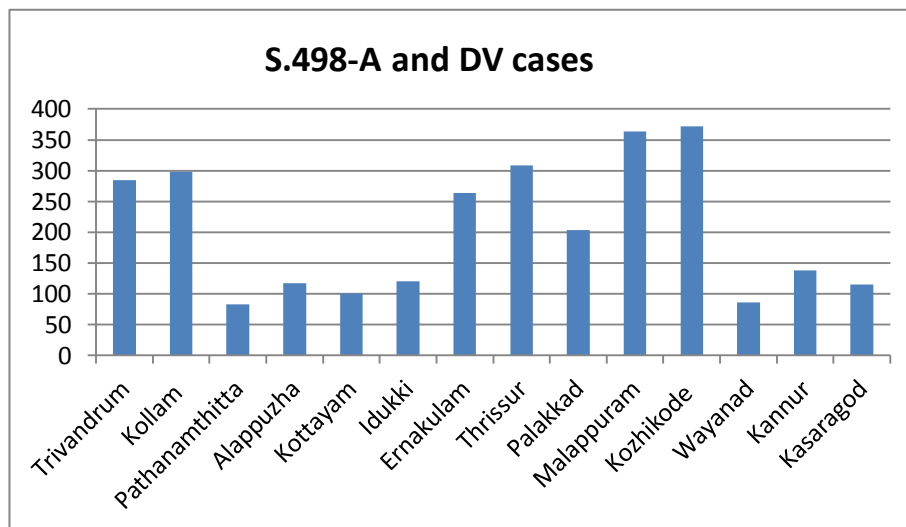
The focus of the study of this research was on the victims of domestic violence in Kerala. For that purpose, the researcher collected data from the State Crime Records Bureau (SCRB hereinafter). Based on the data collected, at the initial stage of the research in 2015, the research design was made. As per this design entire Kerala was divided into Central zone, North zone, and South zone, which when put in other terms, can be stated as erstwhile *Travancore, Kochi, and Malabar*. During that period, most cases of domestic violence were reported in *Kollam, Thrissur, and Calicut*. So these three districts were selected for the case study. As per this, 10 victims from each of these districts were selected. The researcher approached those victims and interviewed them. This is given separately as a case study in this chapter. For case study, those victims who have given case during the year 2010-2016 and who has reaped the fruits of filing case were included. SCRB has uploaded year-wise data regarding the cruelty against women in each district. It included all kinds of matrimonial cruelty. They have not uploaded domestic violence cases reported in each district separately. The researcher personally visited their office and collected it. It is given as separate tables (Table D and E)

Cruelty against Women by Husband and In-Laws – 2015 (S.498-A Cases and Domestic Violence Cases).

Table A

SL. No.	DISTRICT	No. OF CASES
1	Trivandrum	250
2	Kollam	416
3	Pathanamthitta	75
4	Alappuzha	154
5	Kottayam	135
6	Idukki	108
7	Ernakulam	268
8	Thrissur	395
9	Palakkad	363
10	Malappuram	494
11	Kozhikode	435
12	Wayanad	109
13	Kannur	235
14	Kasaragod	130
	TOTAL	3567

Source: SCRB



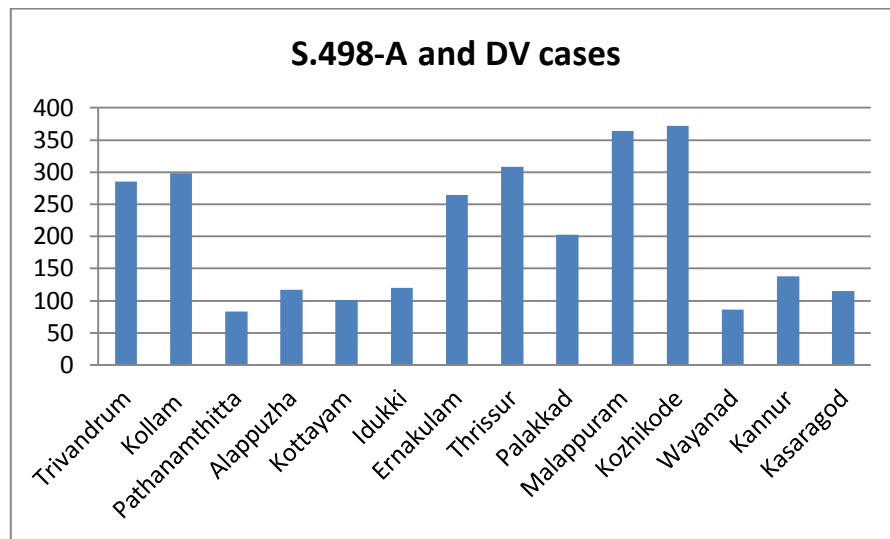
There is no material difference between the figures of 2015 and 2016 in the data obtained from SCRB. Hence the figures of 2016 are not reproduced here. Survey was based on data of 2017 from the State Crime Records Bureau. This was uploaded in their website in 2018. Survey started in 2018. So data of 2017 and 2018 are reproduced here.

Cruelty by Husband against Women - 2017 (S.498-A Cases and Domestic Violence Cases)

Table B

SL. No.	DISTRICT	No. OF CASES
1	Trivandrum	285
2	Kollam	298
3	Pathanamthitta	83
4	Alappuzha	117
5	Kottayam	101
6	Idukki	120
7	Ernakulam	264
8	Thrissur	308
9	Palakkad	203
10	Malappuram	364
11	Kozhikode	372
12	Wayanad	86
13	Kannur	138
14	Kasaragod	115
	TOTAL	2854

Source: SCRB

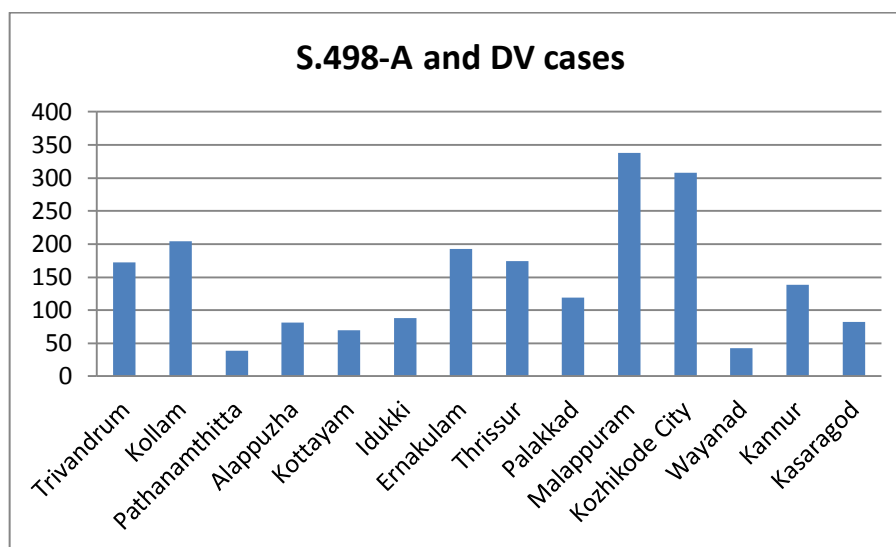


Crime against Women - 2018 (498-A Cases and Domestic Violence Cases)

Table C

SL. No.	DISTRICT	No. OF CASES
1	Trivandrum	172
2	Kollam	204
3	Pathanamthitta	39
4	Alappuzha	81
5	Kottayam	70
6	Idukki	88
7	Ernakulam	193
8	Thrissur	174
9	Palakkad	119
10	Malappuram	338
11	Kozhikode City	308
12	Wayanad	42
13	Kannur	138
14	Kasaragod	82
	TOTAL	2048

Source: SCRB



Domestic Violence Exclusive – 2015

Table D

SL. No.	DISTRICT	DOMESTIC VIOLENCE
1	Trivandrum	37
2	Kollam	28
3	Pathanamthitta	1
4	Alappuzha	10
5	Kottayam	6
6	Idukki	6
7	Ernakulam	16
8	Thrissur	10
9	Palakkad	2
10	Malappuram	8
11	Kozhikode	4
12	Wayanad	0
13	Kannur	1
14	Kasaragod	3
	TOTAL	132

Source: SCRB

Domestic Violence Exclusive – 2017

Table E

SL. No.	DISTRICT	DOMESTIC VIOLENCE
1	Trivandrum	30
2	Kollam	11
3	Pathanamthitta	13
4	Alappuzha	16
5	Kottayam	12
6	Idukki	10
7	Ernakulam	28
8	Thrissur	3
9	Palakkad	1
10	Malappuram	5
11	Kozhikode	2
12	Wayanad	3
13	Kannur	0
14	Kasaragod	3
	TOTAL	137

Source: SCRB

The second phase of the study was done selecting two districts from each zone of the state, ie. Southern zone, Central zone, and Northern zone. 159 victims were selected from South Kerala (*Kollam and Trivandrum*), 102 victims were selected from Central Kerala (*Thrissur and Ernakulam*), 162 victims from North Kerala (*Kannur and Calicut*). The questionnaire was supplied to each victim and data collection was done accordingly.

The third phase of the study consists of survey among 30 judicial officers across the state and collecting data by providing questionnaires.

The fourth phase of the study is survey done by selecting 105 advocates from different parts of the state and collecting data from them by supplying the questionnaires.

The fifth phase of the study is by collecting information from Protection Officers.

While we are considering crimes against women in Kerala, domestic violence still retains a predominant position. Travelling across the State and meeting various people in connection with this research, what the researcher felt is given in following pages. (pp.242-248)

Twentieth-century witnessed a rapid and visible change in each and every aspect of life. The causes of this transformation are manifold. Apart from education which is having a vital role, there were several other factors like the emergence of socio-religious reforms initiated by different organizations, economic changes, gulf boom and globalization, which brought these changes. The changes are visible in all walks of life like overall outlook, dress habits, active participation in public life, day to day politics, etc. Life of women also has undergone radical changes.

Entering into wedlock and starting family life brings in new responsibilities, challenges, and sacrifices. Either one among the couple, refuses to accept that and wants to lead the carefree and fun-loving life enjoyed during

singlehood. If both individuals carry the same thoughts, it is not problematic.

But if both of them are of different tastes, problems in marriage will develop.

Awareness among both victims and perpetrators are low. Awareness of the perpetrator is of paramount importance than awareness of victims. If parents are unaware of these social obligations, their children, who are the future generation will also lack awareness and this vicious cycle will continue. Hence, if the women have enough willpower to raise their voice against domestic violence, they should avail full support from governmental and non-governmental organizations.

As per data of SCRB, the percentage of domestic violence is higher in *Calicut, Kollam, and Thrissur*. People of *Thrissur* give importance to education, have a lot of prestigious educational institutions and it is our cultural capital. Obviously, most of the people are literate. They have high thinking capacity. They can think diplomatically. This researcher felt that mothers-in-law of *Thrissur* behave lovingly towards daughters-in-law. New generation girls are educated and employed. They will not allow their husband or partner to rule over them. They don't like to be subdued. These characteristics of women will likely create jealousy and ill-feeling among in-laws and it will likely lead to domestic violence.

Like *Thrissur*, in *Kollam* also the women are empowered. It is part of erstwhile *Travancore*, where women were powerful. An empowered woman

invests insight and experiences that expands her mind and bring self-knowledge. The older generations in their matrimonial home will not be able to adjust with these characteristics and it will likely lead to domestic violence.

The women in *Calicut* are more subdued and less empowered. On analyzing and examining the process of modernization and social inclusion of Muslim women in *Malabar*, the present study establishes the fact that the socio-economic and educational status of Muslim women during the last decades has undergone a drastic change. The quality and quantity of the changes are unexpected compared to the earlier period. New avenues have been opened up to enter into social, economic and political aspects of their lives. The study assumes to be relevant, while most of the Indian states are lagging behind in providing female education, the experience of women in Kerala in general and the Muslim women, in particular, is markedly different. The attitude of the community has undergone radical changes in the last few decades. As the British Government introduced modern education in the region, *Mappilas* were reluctant to join the schools, even though the British government introduced some sort of incentives to attract the *Mappilas* into schools. The last decades have been witnessing the growing desire of *Mappila* women to embrace higher and professional education.

While interviewing victims for empirical study, researcher met several ladies of Muslim community. As per their opinion, women were the most marginalized group within the community. Twentieth-century witnessed a rapid and visible change in each and every aspect of their life. The causes of this transformation are to be explored. Apart from education which is having a vital role, there were several other factors like the emergence of socio-religious reforms initiated by different organizations, economic changes, gulf boom and globalization which brought these changes. The changes are visible in all walks of life, and because of this in-laws at their matrimonial home who will not be able to adjust to these changes create problems in the family.

Domestic violence is a stigma to human society and affront on civilization. In any case, domestic violence in this silent and invisible form is taking place behind closed doors, thus perpetuating gender injustice. The indoor violence against women does not see the daylight. Even today domestic violence is viewed as a private affair and not as a social problem. Hence, domestic violence denies women, enjoyment of their rights and retards her development. Violence on women has been prevalent in India for many centuries. It is not an easy task to tackle it or eliminate it with immediate effect. Mere enactments to protect women from domestic violence can't stop women from becoming victims of violence; there should be an awareness and change in the social attitude of people. Law can function as a protective

measure, but the change in the attitude of all relations will no doubt bring down the frequency of violence on women and this is necessary to make the law a success. Otherwise, after the enactment of the law also the judiciary will be helpless in protecting women belonging to different sections of the society from being victimized.

Dual roles will be more difficult when our work and our family occupy completely separate geographic spheres. The situation is such that after marriage, one needs to get permission from one's husband or mother-in-law to meet one's own family or to stay at their place. Before marriage, girls enjoy complete freedom of their parental home. The researcher, while doing an interview with advocates and judicial officers came to know that today's couple lack adjustment capacity. The rights guaranteed under this Act are very precious and each woman should use the law sparingly and in essential situations. Otherwise, the law will become weak. This will result in judgments like *Sushilkumar Sharma v. Union of India*,¹ *Preethi Gupta v. State of Jharkhand*,² *Savithri Devi v. Ramesh Chand and others*³ and *Saritha v. R. Ramachandran*.⁴

The researcher, while interviewing victims, felt that nowadays girls are giving much more importance to their career. Sometimes it is difficult for

¹ 2005(6) SCC 281

² 2010(7) SCC 667.

³ 2003 Cri.L.J 2579.

⁴ 2002(6) ALD 319.

them to follow the aforesaid traditional norms and regulations of marriage and family life. So once they start violating this traditional set up, it is likely to create problems in their marital life. The women from *Calicut, Thrissur, and Kollam* will come under this category. The Percentage of domestic violence is higher in these districts. Once they experienced violence, they will file a complaint at the earliest against the abusers, because they give much more importance to their own career and personality. These women have a great amount of self-respect, and they can take their own personal decisions by upholding their views.

Marriage is the voluntary union for life of one man and one woman to the exclusion of all others. As per the PWDV Act, the daughter-in-law has no right over self-acquired property of in-laws, against the latter's consent. It is not that fair. Once a lady gets into the matrimonial house through marriage, the very next moment itself, it is her house. She has certain rights and responsibilities over that house. This researcher felt that the daughter-in-law can claim the right to residence in her matrimonial house, even though it is the self-acquired property of in-laws. But according to the PWDV Act, it is impossible.

The property rights of daughter-in-law is partly protected through the PWDV Act. The aforesaid rights are not fully protected by the various Sections of the PWDV Act. Hence amendments in the PWDV Act are necessary. Thus,

the provisions of the PWDV Act are not fully sufficient to protect the property rights of daughter-in-law. If the judiciary puts forward favourable interpretations to the PWDV Act, it will easily result in the reduction of violence.

Inheritance of females is improved because of the intervention of the judiciary. The inheritance legislation has direct implications over women's welfare and well-being. Hence, improved legislation, which enhances the inheritance rights as well as property rights of daughters-in-law, which will likely reduce the violence committed against her, is essential. At least the amendments in the PWDV Act, with respect to these aspects are the need of the hour.

The judicial officers opined that women in the country are facing a more grave form of violence at home rather than outside the home. The four walls of her home have become a great threat to the safety of women; but to culprits, it is the safest place to commit violence. It is inflicted not by strangers, but by her close family members from whom she naturally expects love, affection, care, warmth, and protection. A significant lacuna has existed in the capacity of Indian legal system to accommodate cases of everyday domestic violence. Interference into "domestic privacy" has traditionally been seen as a greater evil than actual violence inflicted upon a wife. The PWDV Act was enacted with the intention to curb domestic violence.

6.1 Interview with Victims - Case Study

6.1.1 Victims from *Kollam* in General

In *Kollam*, the victims selected for study filed the case of domestic violence during 2010-2016. While the researcher interviewed 10 victims from *Kollam*, it was found that 70% of the victims filed the petition for domestic violence during the pendency of divorce proceedings. They filed the case as per the advise of their friends, family members and relatives. At the time of filing this case, they were not aware of the PWDV Act. According to this survey, women under age group 20-40 are more susceptible to violence. As their relationship with their matrimonial home is irretrievably broken, at present they are living with their parents. On the contrary, in some situations, they thought that it is futile to file petition under the PWDV Act. They opined that girls should marry only after getting a job.

6.1.2 Victims from *Thrissur* in General

In *Thrissur*, like *Kollam*, most of the victims filed the case of domestic violence during 2010-2016. As per the advice of their friends, family members and relatives, 60% of the victims filed the petition for domestic violence during the pendency of divorce proceedings. At that time, they were not aware of the PWDV Act. By filing this case, they got an opportunity for mediation. The age group under which women are susceptible to violence is the same as in *Kollam*. Now they are residing singly or else with parents,

owing to the fact that their relationship with their matrimonial home is irretrievably broken. The victims regretfully said that in some moments they lost faith in the PWDV Act. As per their opinion, if the women are financially and emotionally strong and independent, no one can beat them. Before concluding their conversation, they sadly told this researcher that, they had to face a lot of torture from their former husbands.

6.1.3 Victims from *Calicut* in General

In *Calicut*, most of the victims selected for study filed the case of domestic violence during 2010-2016. The majority of the victims filed the petition for domestic violence, during the pendency of divorce proceedings. Most of the victims hardly had any awareness about the PWDV Act and they do not have any hope that their problems will be solved by the PWDV Act, and they filed this case, as per the opinion of their friends, family members, and relatives. As a remedial measure, now they are waiting for protection order. According to this survey, women under the age group 20-40 are more susceptible to violence. 40 percent of them thought that it is waste to file petition under the PWDV Act. As far as their opinion is concerned, before getting married, women should be educated and financially independent. Financial independence will build strong-hearted personalities. In the concluding part of their interview, they shared that, they had to face a lot of humiliation from their former husbands. Moreover, their present life is absolutely pathetic, with no earning at all.

After interviewing the victims from *Calicut, Thrissur* and *Kollam*, this researcher has reached upon the conclusion that, the relationship of 70 percent of victim women with matrimonial home is irretrievably broken. Moreover, at present, they are either living singly or living with parents. Fortunately, the remaining 30 percent are staying in the matrimonial homes with in-laws with a good level of synchronization. The majority of the interviewed women are less educated and unemployed. Hence they do have financial problems. But still, 20 percent of women who are coming from financially sound families are secure. To make them financially stable, newer provisions should be incorporated in the PWDV Act without conflicting with provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

6.1.4 Case Study from *Thrissur*

This researcher interviewed 10 victims from *Thrissur*. *Anitha Kumari*, aged 48 years was married to *Anilkumar*, aged 49 years on 8/01/95. (MC 54/2016, JFCM, *Chalaky*) 2 children were born in the wedlock. 12 sovereigns of gold ornaments and Rs.50,000 were given at the time of marriage. Husband spend all these for consuming alcohol and failed to look after family. Victim is residing in quarters allotted for employees of Govt. press, *Koratty*. On 24/5/16, the Respondent came to her office and abused her in filthy language. He continued his ill treatment; hence the petition. Following reliefs were

awarded: 1) Respondent is restrained from committing verbal and physical violence 2) He was prevented from entering the workplace and residence of victim. She is happy with the relief obtained.

Next victim is *Susmita Verma*. (MC.144/2016, JFCM, *Chalaky*) She was married to *Sreekumar* on 18/04/2007. They resided together at *Koratty*. 15 sovereigns of gold and 2 lakhs rupees were given at the time of marriage. He misappropriated it for his own use and ill treated her demanding more money. Respondent was working in a private TV channel and he developed intimacy with another artist of the channel and started residing with that lady at *Aluva*. Respondent was getting more than Rs.50,000 per month from employment. Victim requested for following reliefs. 1) Protection order 2) Maintenance 3) Return of gold ornaments 4) Compensation. Following reliefs were granted to her: 1) Protection order 2) To return gold ornaments or equivalent value of Rs. 3 lakhs and cash of Rs.2 lakhs as compensation 3) maintenance amount of Rs.15000 for wife and children. 4) He was restrained from entering her house and contacting her in any manner. Though she demanded 10 lakh as compensation, it was not allowed. Victim is not much satisfied with the order.

Next was *Sulekha*, 44 years. (MC 140/2016, JFCM, *Chalaky*) She was married to *Shahul hameed*, on 10/11/1998. First Respondent was her elder son *Nahas* aged 27. Her son was causing more problem to her than husband.

So he was made first Respondent. They are residing in husband's property. Husband is a drunkard and neglected her, and her son is involved in many criminal cases. Son and husband create problems after consuming alcohol. They used to assault her. She is a cancer patient. Following reliefs were granted: 1) Both husband and son are not allowed to enter shared household 2) She cannot be evicted from house. 3) Monthly maintenance of Rs.10000.

Next victim was *Nancy James*. (MC 134/2014, JFCM, *Chalakudy*) She was married to *James P.Chakko*. They got married on 18/01/93 and the victim says their marital relations were not cordial. Her husband was working in Indian Navy. He purchased a landed property in the name of *James* and *Nancy*. He tortured children for not getting expected marks, daughter was forced to walk 14 kilometres at a stretch for not getting sufficient marks, daughter *Sweetie* was compelled to join B.Tech against her wishes. Her performance in examination was poor and *James* prevented her from coming home during vacations. It caused mental agony to her, and she was wrecked thoroughly. Following reliefs were requested: 1) To direct *James* to remove himself from shared house 2) Protection order against domestic violence 3) Order restraining him from alienating petition scheduled property 4) maintenance 5) Restraining him from operating SB account with HDFC bank and other FD's. Following reliefs were granted: 1) He was prevented from committing any act of physical violence. 2) Victim and children can reside in

petition scheduled property 3) Husband to remove himself from shared household.

Ajitha, aged 35 was married to *Sudheesh*, aged 37 on 14/04/2013. He ill treated and attacked her and children. Hence, the petition. (MC 61/2016 JFCM *Chalaky*). Respondent was directed to pay Rs.4000 towards monthly maintenance. He is prevented from contacting children. She requested compensation of Rs. 5 lakh, but it was not awarded. She was not happy with the orders.

Shemitha, aged 32 years, (MC 58/2016, JFCM, *Chalaky*) was married to *Abdul Shukkur* on 19/08/2000. Two children were born in the wedlock. 70 sovereigns of gold and 10 lakh rupees were given at the time of marriage. They resided at *Vellanchira*. They had also resided abroad for 7 years. He ill treated her and forcefully produced her before a psychiatrist. His acts were unbearable to her. Following reliefs were requested: 1) Protection order 2) return of gold ornaments. Following reliefs were granted: 1) He was prevented from committing any act of domestic violence. She was not happy with the relief obtained.

Binsy Krishna, who was a Post graduate Student in a self-financing college was married to *Hareesh*. (case obtained from *Jananeethi*, a service provider) Their marriage was in 2010. After 3 months, some issues started among them. She says he was suffering from Obsessive Compulsive Disorder. His

parents took them to a clinical psychologist. Everyday they started fighting. At last, her parents lodged a complaint at *Kodungallur* Police Station. Her parents met an advocate and he compelled them to file cases under PWDV Act and under S.498-A. They filed under above mentioned provisions against husband and all family members. As a result, ill feeling between them worsened. She got protection order when husband tried to contact her. After one year, they filed petition for divorce under S.13 B of Hindu Marriage Act. Case was settled in 2014. Now, she is staying with her parents. She feels that she invoked PWDV Act in haste. She is not happy with her present life.

Next Petitioner whom the researcher met was *Ragini*. (OP 1924 of 2012 Family Court, *Thrissur*). Respondent- husband was *Raghavan*. The parties are Hindus and marriage was solemnised on 10/09/1987. There are 2 children in the wedlock, aged 20 and 17 respectively. Respondent is a drunkard and ill treated the Petitioner under the influence of alcohol. Respondent was irresponsible, he has never taken care of the Petitioner and children. Initially they were residing at the *tharawad house* of the Respondent. Parents of Respondent have expelled them from *tharawad*. Respondent sold his autorikshaw and thereafter they resided at residence of the Petitioner. Later, by selling gold ornaments of Petitioner, her father purchased 15 cents of land as per document No.506/1989. With the help of her father, Petitioner constructed a residential building and parties resided there. Respondent quarrelled with the Petitioner everyday. Their daughter was studying for

B.Tech and son for Plus One. On 2/10/2012, Respondent under the influence of alcohol broke the front door of the house and chased Petitioner with a dagger threatening to kill her. He used to abuse her in front of others and even called her a prostitute. In this backdrop, she decided to file petition for divorce, for getting maintenance and also under PWDV Act. She wanted following reliefs under PWDV Act: 1) To restrain the Respondent from committing act of domestic violence 2) Restrain Respondent from transferring property 3) To provide maintenance to Petitioner and children at the rate of Rs.10,000 each. She got the following reliefs: 1) Order restraining Respondent from committing act of domestic violence. 2) Order preventing transfer of property. 3) to provide a maintenance of Rs.4000 each to Petitioner and 2 children. Petitioner says even after getting maintenance order, Respondent is not obeying it. But he has evicted himself from the house. She was thus saved from the cruelty of Respondent. She says that she has got some benefit from the Act, but is not fully satisfied with its working.

Shamna was married to *Abdul Salam* in 2012. (OP 509/2016, Family Court, *Thrissur*). She was tortured by in-laws and husband, She hates recollecting her past life with him. She studied up to 12th Standard. Her age was 21 years at the time of filing the case. She had 17 Sovereigns of gold at the time of marriage. Husband and in-laws misappropriated it. She was not allowed to visit her parental home, and finally she filed the case of domestic violence

during 2016, under the compulsion of her parents. At that time she strongly believed in the PWDV Act and thought that the Act will give remedy to all her problems. Initially, she filed an O.P. at Family Court, *Thrissur* and subsequently filed Petition under PWDV Act and she expected the best remedy from this Act. She filed the petition requesting for order against Respondent to abstain from the torture, to provide interim protection order and interim residence order, and to provide maintenance for Petitioner and children. She was awarded protection order only. She was not able to get back gold as she had no bill to prove purchase of gold. She is not satisfied with the result obtained from PWDV Act. Now she is residing with parents.

The Petitioner *Souda* was married to *Najeemudheen*. (OP335/2015 Family Court, *Thrissur*) Their marriage took place on 2002. She filed the case of domestic violence in 2015, after filing Petition for divorce, as per the advice of her colleagues. Here *Souda* filed the case for return cash and ornaments. But in the process, she lost faith in the PWDV Act. She is disappointed that her life was a failure. She regretfully said that her life could have been better if she showed some restraint. Respondent started searching for another alliance hurting the Petitioner and breaking her down totally. She needed a protection order against the Respondent's threats and also claimed maintenance. Following reliefs were awarded by Court: 1) Protection order

2) Maintenance order. Plea for medical expenses and Compensatory order were not entertained.

Apart from these 10 victims, following victims were also met by researcher. *Parukutty*, aged 78 (MC 92/2015, JFCM, *Chalakydy*) filed Petition against Son and daughter-in-law. An agreement was made to pay Rs.2000 per month as maintenance. Case was amicably settled between the parties.

Kunjelia aged 76 years, filed petition against *Antu*, aged 38 years, her son. (MC 73/2015, JFCM, *Chalakydy*). Here son illtreated Petitioner and tried to manhandle her. He tried to evict her forcefully. He deliberately disobeyed orders of Court. Protection order is issued by the Court and Respondent was prevented from entering her house.

Neha Sajan aged 21 years filed Petition against her husband *Kishore Kumar*. (MC 33/2015, JFCM, *Chalakydy*). Court granted her protection order, custody of child, compensation of Rs,50000 and Rs.5000 as monthly maintenance. She is satisfied with the order.

On analysing case study from *Thrissur*, researcher felt that advocates prompt victims to file petition under PWDV Act also. Eventhough victims expect speedy remedy, it takes 2-4 years for final settlement. Victims are not at all satisfied due to this delay.

6.1.5 Case Study from Kollam

Next, this researcher interviewed 10 victims from *Kollam*.

First victim was *Jessy*. (MC 155/2014, JFCM-1 *Kollam*) She was married to *Nowshad* as per Islamic rites in the year 1999. Her father had given 150 sovereigns of gold, Maruti Zen car and Rs.10 lakhs. Her husband was a lecturer at TKM Engineering College, at the time of marriage. They have 2 children. Victim says she was harassed for extracting more dowry. She was neglected by husband and he married another lady called *Latheefa* from *Malapuram*. Frustrated by this, she filed Petition seeking following reliefs: 1) To prohibit acts of domestic violence 2) To prohibit him from communicating with Victim in any form 3) To prohibit him from causing violence to parents and other relatives. But Court dismissed her Petition. She did not get any relief from the Court. She was very much depressed over the order. She says, her averments were not believed by the Court as she could not produce the requisite evidence to substantiate her contention.

Next victim was *Rekha*, aged 33 years. (MC 114/2014, JFCM-1, *Kollam*) She was married to *Baiju Lal*. They were married as per Hindu religious rites at *Anchalummoodu*. She was tortured by husband and in laws for getting more dowry. She was humiliated by husband alleging that she is not good looking. They are having one child, *Sidhi Mon*. She was evicted from matrimonial home in 2013. Her parents compelled her to file a Petition seeking following reliefs: 1) Direct him, not to commit any physical violence on her 2) Direct him to accommodate her in shared household 3) To award 5

lakhs as compensation. Respondent was not appearing before the Court. His sisters and parents also were Respondents in this case. Court awarded following relief as Ex-Parte. 1) Residence order 2) Directed him not to commit act of domestic violence 3) Awarded monetary relief of Rs.1.5 lakhs. Victim says that, though she was permitted entry at husband's house, her relation with in-laws became more strained. Some advocates persuaded her to file the petition and now she is not at all happy with her life.

Next victim from *Kollam* is *Meena*. She was married to *Titus*. This case was originally filed as Divorce Petition in Family Court, *Kollam*. Subsequently Petition under S.498-A, and Petition under PWDV Act, was also filed. In JFCM, *Kollam*. (OP 116/2016, Family Court, *Kollam*) *Meena* filed the Petition of domestic violence during 2016, based on the request of her parents. At that time she strongly believed in the PWDV Act and she expected the best remedy from this Act. She hoped for faster proceedings by filing this case. But she did not get expected result. She lost faith in the institution of marriage and feels financial security is more essential than family life. He mentally and physically tortures the Petitioner alleging adultery with her colleagues and neighbours when he is not around or away from home for his business needs. He alleges that the children are not born of their wedlock, but to some else in adultery. The Petitioner needs divorce and maintenance for herself. She filed petition for divorce in Family Court and a connected matter was filed in JFCM for protection order. She got the

following reliefs: 1) Protection order 2) Monetary relief of Rs.2 lakhs. She is very much dejected in life now. She feels that because of compulsion from others, she filed these cases and now she is lamenting over it.

Asha Murali (MC 54/2014, JFCM-1, *Kollam*) was married to *Satish Pillai*, who was an employee of Indian Air Force. They got married on 18/03/2012 at *Sana Auditorium, Moonnam Kuti*. They have a child called *Anusha*. Respondent demanded a house and more gold, before marriage itself. On becoming aware of this, she was reluctant for this marriage. As per custom of their community, husband has to buy clothing for the bride, she says. But Respondent did not purchase it, she has to wear her own clothing. Her mother-in-law forced her to do laborious work. She was not allowed to take food on time nor was she allowed to take proper rest. Even during night, mother-in-law compelled husband to watch TV with her. Mother-in-law prevented husband from taking her outside. Following reliefs were sought: 1) Restrain Respondents from committing domestic violence 2) To provide alternate accommodation to her 3) Maintenance of Rs.15,000 per month 4) Permanent custody of child 5) Monetary compensation of Rs. 5 lakhs. But Court refused to award any relief to the victim thinking the demands are hyperbolized. Victim is not satisfied with the relief. The researcher felt that as some ladies are misusing provisions of PWDV Act, Courts are very meticulous in awarding relief and sometimes genuine victims are also suffering by this.

Next victim is *Philomina* aged 53 years.(MC 42/2017, JFCM-1,*Kollam*). Respondents were her elder daughter and her husband, *Liji* and *Varghese*. Victim and her husband were residing in a house for 28 years. On assurance of looking after victim and her husband till their death, landed property and house were given in the name of daughter. Petitioner was illiterate and was doing peeling of Prawn at *Sakthikulangara*. Her husband was a fisherman. Respondents have shown cruelty towards these elderly couple. Son-in-law tried to manhandle them. Relief sought by the Petitioner was: 1) Protection order 2) Residence order. But no relief was awarded. Victim is very much sad about the order. She says, during cross examination advocate of Respondent asked several questions to her. Being illiterate, she could not answer it all properly. The researcher felt that Court might have thought that she was unworthy of credit.

Next victim was *Vidyakumari*. (MC 40/2014, JFCM-1, *Kollam*) She was aged 40 years. She got married to *Biju Achari* on 9/11/2011. After marriage she resided at the matrimonial home. She got 25 sovereigns of gold and 1 lakh rupees at the time of marriage. After 1 month, he sold a gold chain of 7 sovereigns. He used to call her bad words and mentally harass her. He even used to beat her with an iron rod, and he was alcoholic. He, along with his father and mother abused and ill treated her. Petitioner met with an accident on 30/12/2012 and was in ICU for 45 days. At that time also husband and in-laws never visited her. She requested following reliefs: 1) Protection order 2)

Residence order 3) Compensation order 4) Monthly maintenance. But the Court dismissed her case without giving any relief observing that her testimony was un reliable. She says, she was not aware of the provisions of PWDV Act before filing this petition. But some advocates persuaded her to file this petition. Now her condition is very pathetic.

Ramadevi, 29 years, and *Anil Kumar*, 36 years, were lovers and were living together from 2002 onwards. (MC 04/2013, JFCM-1, *Kollam*) She belong to *Nair* community and he was from *Ezhava* community. A girl child was born to them. They lived together in same house till 2012. Her parents gave her 25 sovereigns of gold and 1 lakh to the Respondent. Respondent was accused of an offence under S.420 IPC and was in prison. Petitioner managed all affairs of home during his absence. He used to abuse her and manhandle her without any reason. Her ornaments and cash were used by Respondent for clearing his debt. He was a money lender. Reliefs claimed were: 1) Not to disturb peaceful possession of residential property 2) Rs.15,000 per month as maintenance 3) Rs.5 lakhs as compensation. Judgment was pronounced in 2017. No reliefs were granted by the Court. Court was not satisfied with the evidence given by the victim. She is very much disappointed by the judgment. She says she wants to file an appeal.

The victim *Jena P.K.* was married to *Madhu T.M.* at *Kallambalam*. After few months of their marriage, issues started. He was a Paranoic person. He used

to nag her always. She was a feminist and she was not willing to suffer every thing in silence. She was aware of the provisions of PWDV Act even before her marriage. She has attended one awareness program in this area. She filed the case for divorce in Family Court, *Kollam* as OP 401/2016. Subsequently, Petition alleging domestic violence was filed at JFCM Court, *Kollam* in 2016.. She was a strong believer of the PWDV Act. But in the course of the proceedings, she lost faith in this Act. She shared that, marriage is not a mandatory requirement for a woman's life. If you are not able to stand or live alone, then only you can resort to the institution of marriage. Petitioner says that her husband physically tortures her and destroys household materials and throws away utensils in the kitchen. She added that he exhibits this kind of weird behaviour due to influence and intoxication from alcohol. When he keeps himself away from alcoholic drinks he seems to behave well, as per the statement of Petitioner. Following reliefs were requested by her: 1) Return of 23 sovereigns of gold to her 2) Maintenance of Rs.8000 Per month 3) Monetary relief of Rs. 5 Lakh. 4) Protection order from domestic violence. She was granted return of gold ornaments. Protection order also was awarded. She is not satisfied with the reliefs obtained.

Next victim is *Shanthamma alias Sheeba Mary*, aged 42 years. She was married to *Alexander* aged 48 years. (MC 109/2013, JFCM-1, *Kollam*) Their marriage took place in June 1990, at Holy Cross church, *Mangad*. 12 Sovereigns of gold and 5 cents of land were given to her by her parents.

Apart from this, she gave 1 sovereign gold chain and a ring of half sovereign to him at the time of marriage. A female child, *Charlette* was born to them. He used to question fidelity of wife. He never took care of wife and child. Husband fraudulently tried to manipulate property documents for him which was in her name. Following reliefs were sought: 1) Residence order 2) Compensation order 3) Protection order 4) Monthly maintenance. Following reliefs were obtained: She got Residence order, Protection order and Respondent was directed to give back the property which he tried to transfer to his own name fraudulently. She was awarded 4000 per month as maintenance to her, and Rs.3000 was awarded as monthly maintenance to daughter. He was also prevented from committing domestic violence. She says she was not able to produce bill of gold purchased at the time of marriage. So she did not get it back. To a certain extent she is satisfied with the working of the Act.

Next victim from *Kollam* was *Beena*. She was married to *Kunjalikutty*. Their marriage was in 1998. Their marriage was inter religious. During initial years of marriage, they were happy. After birth of child, problems began in the family. Her in-laws did not like her, they tried to infuse ill feeling in the mind of her husband. After that, he used to beat her and abuse her. She was beaten in front of children. Her parents told her to file divorce Petition. As per their advice, she filed a Petition in Family Court, *Kollam*. (OP 114/2015) In connection with that, Petition under PWDV Act was filed in JFCM Court,

Kollam. Following reliefs were sought by her: 1) Protection order 2) Residence Order 3) Compensation order 4) Monthly maintenance. Protection order was awarded. Later on divorce petition was allowed. She is not happy with the reliefs obtained under the Act.

Apart from these victims, researcher also met some other victims. *Nisha* aged 24 was married to *Suni*, aged 28 years. (MC64/12, CJM, Kollam) Marriage was solemnised on 3/12/2009. *Suni* was alcoholic and tortured Petitioner regularly. She was tortured even at the carrying stage. When she was admitted in hospital, he did not give hospital expenses. She was expelled from house along with child. She requested following reliefs. 1) Rs.3000 towards medicine. 2) Rs.4000 for rent 3) 25 sovereign gold or equivalent value 4) Restraining Respondent from committing further violence. Following reliefs were given. 1) Directed Husband and mother in law not to commit domestic violence on her. 2) Rs.3000 each to mother and child as monthly maintenance 3) To return 8 sovereigns of gold. Victim is not satisfied with the order.

Sushama Devi, aged 52 years was married to *Pratapa chandran Pillai*. (MC 63/12, CJM, Kollam). Marriage was solemnised during 1989. Respondent was behaving cruelly with Petitioner. He snatched her chain and caused serious injury to victim. Following orders were received. 1) Total of Rs.6000 per month to his wife and children as maintenance. 2) Respondent

was restricted from entering house and committing DV. She is happy with orders.

Jasmine, 33 years was married to *Shanavas*, aged 38. Marriage was solemnised on 27th, January, 2002. (MC43/2012, CJM Court, *Kollam*) He started cohabiting with another lady. Her gold was misappropriated by in-laws and hence the petition. Following reliefs were awarded to her by Court. 1) Petitioner was allowed a maintenance of Rs, 12000 for her and children. 2) protection order. Prayer for getting back 15 sovereigns of gold ornaments and an amount of 2.5 lakhs along with 5 lakhs compensation was not allowed. She is not happy with order.

On analysing case study of *Kollam*, researcher felt that judicial officers meticulously weigh each case and award favourable orders only in very few cases. Here more weightage is given to evidence. Many ladies are misguided by advocates to file petition under PWDV Act, under S.498-A IPC, cases for maintenance and divorce cases simultaneously. Judiciary is not taking it in good taste and that will reflect in decisions.

6.1.6 Case Study of Victims from *Calicut*

Next, this researcher interviewed 10 victims from *Calicut*.

Researcher interviewed victim named *Binshi*, aged 26 years. She was at Government Short stay home, *Vellimadukunnu, Calicut*. (MC 6/15, JFCM -1, *Calicut*) She was married to *Ramesh* aged 36 years. Petitioner got married to

Respondent on 23/12/2012 at *Aazhinjilam Siva* temple, *Ramanatukara*. At the time of marriage, she had 19 sovereigns of gold. On the date of marriage itself, it was misappropriated by Respondent and his father. Husband demanded more gold and money. His father used to come to their house after consuming liquor, and he once kicked her on her abdomen and she sustained severe injuries. *Ramesh* was a driver. She left the matrimonial home and returned to her own home. She filed Petition for getting following reliefs: 1) Protection order 2) Residence order 3) Monetary compensation. She was awarded compensation of rupees fifty thousand only against compensation of Rs. Five lakhs requested, under S.22 of the PWDV Act. Respondents were restrained from committing act of domestic violence. An interim maintenance of Rs. 3000 was awarded. Court also directed Respondents not to alienate or dispose shared household. Interim order was passed on 4th December 2015. Victim is not happy with the order received. She requested Rs.5 lakhs and got only Rs.50,000 as compensation. She filed the Petition owing to compulsion from family members. Maintenance amount is meagre, she feels.

Next victim from *Calicut* was *Preetha*, 42 years, Senior Manager, Punjab National Bank. Respondent was *K.T Sajan*, aged 44 years (MC 11/13, JFCM-3 Court, *Calicut*). Victim married Respondent on 26th September, 1998. They have 2 children. After 2 years of marriage *Sajan* demanded her gold and monthly salary. He used to assault in front of children. He was

having illicit relations with female colleagues and was receiving voluptuous messages from them. He demanded to change ownership of car, and also demanded father-in-law to transfer landed property to his name. She suffered it in silence. On 17/10/2010, she was forced to lodge a complaint at Police Station. Respondent also was manager in Bank. She got promotion and transfer to *Govindapuram*. She tried to admit children in *Bharathiya vidya Bhavan, Chevayur*. But Respondent persuaded Principal to deny admission. Her minor child *Ram Madhav* was under ENT treatment. At last she decided to file petition under PWDV Act for getting following reliefs: 1) Protection order 2) To prevent Respondent from entering house 3) Preventing him from entering her work place. 4) To restrain Respondent from taking custody of minor children. 5) Preventing Respondent from selling or pledging her gold ornaments of 25 sovereigns. 6) To restrain Respondent from alienating landed property at *Ernakulam* 7) To hand over car to Petitioner. Following reliefs were obtained: 1) Respondent was prevented from entering her house 2) He was prevented from entering her work place 3) She also got custody of children.

Next victim was *Nishi Abdul Salam*. (MC 38/13, JFCM-III, *Calicut*) She was married to *P.K.Abdul Salam*. After marriage, they were staying at *Saudi Arabia*. He met with an accident and came back to his native place. Her contention is that her in-laws tried to misappropriate their property by using power of attorney given by her husband. Husband was bed ridden and

Petitioner was not allowed to meet him. She and her daughter were forcefully evicted from their house. She filed Petition alleging economic abuse, for getting following reliefs: 1) Preventing father-in-law from committing domestic violence. 2) Preventing him and other Respondents from entering their house 3) Preventing forceful eviction 4) Preventing him from spreading false stories about character of Petitioner. 5) Prohibiting him from retaining insurance amount and retirement benefits from company at *Riyadh*. 6) Properly account for total amount thus received and show it to Court and deposit it in the name of her husband. 7) Prohibiting him from operating her husband's accounts. 8) Preventing father-in-law from using house hold utensils sent from *Riyadh* through cargo. Following reliefs were obtained: 1) She was allowed to take her husband to her home 2) Preventing dispossession of household utensils and equipments. 3) Monetary relief of Rs.2,22,445. 4) Rs 10,000 as maintenance per month, and two school going children will get 500 each per month. 5) Rupees 25 lakhs as compensation for physical and mental torture and emotional distress. Here victim was satisfied with the orders that she received.

Jayalakshmi, 48 years was married to *Sreedharan*, aged 59 years. Their marriage was on 07/08/1988. (MC 241/2014, JFCM *Vatakara*) At the time of marriage her parents gave 25 sovereigns. In 1989, he went abroad. After one year, he came back. After that he started scolding her on flimsy reasons and assaulting her suspecting her chastity. On one occasion, she had

accompanied him abroad. He sold gold ornaments of victim and her daughter for constructing house. In 2014, he returned from abroad and resided along with victim and her children. After some days, he started harassing her for bringing share from her father's property. Then her father has given 43 cents of land. He demanded another 10 cents of land. Subsequently Victim was thrown out of the house.

Because of this torture, she was constrained to approach Court. Her Petition was partially allowed. Following reliefs were granted. 1) Petition for return of gold ornaments dismissed 2) Petition for protection order is dismissed. 3) Respondent is not allowed to sell the property. 4) Petitioner was directed to find a suitable house, rent of which is less than 7000 Rs. Per month and Respondent shall pay the rent amount.

Next victim was *Haseena A.T.*, 36 years. (MC 68/14, JFCM-1, *Calicut*) She was married to *Abdul Riyaz*, aged 37 on 21/09/97. They have 3 children. 30 sovereigns of gold ornaments and Rs.1 lakh were given to her by her parents. Her husband used to kick her, demanding more gold. An additional amount of Rs.1 lakh was given by her parents. *Riyaz* married another lady called *Saifunnisa*. After second marriage, he failed to maintain the victim and her children, and hence the Petition. Following reliefs were sought by her: 1) Protection order 2) Residence order 3) Monetary relief. She got ex-parte order on 10th December 2015 with the following reliefs. 1) He was prevented

from committing any act of domestic violence. 2) Maintenance of Rs.3000 per month to her and Rs.2000 to first child and Rs.1000 each to younger children. 3) Compensation order of Rs.50000 4) He is restrained from alienating shared household. Victim has a feeling that only a portion of her requests were allowed by the Court. She is not happy with the orders.

The Petitioner *Prabhina*, 33 years, whom this researcher met at *Anweshi, Calicut*, is allegedly subjected to domestic violence by her husband *Sashi*, 44 years. The Respondent has studied up to 8th standard and her husband up to 5th Standard. Petitioner says that he physically tortures her and destroys household utensils and throws away things in the kitchen. She added that he exhibits this kind of lunatic behaviour due to influence and intoxication from alcohol. When the Respondent does not consume any alcoholic drinks, he seems to behave well. After 11 years of their marriage, she decided to seek the aid of PWDV Act. She has not heard of the Act before filing the case. On 12th August, 2016, when Respondent along with Petitioner and his sisters went to *Parassinikadavu temple*, she was humiliated by the Respondent in front of his sisters. He is having some illicit relationship with some ladies. Her 13 sovereigns of gold were snatched by Respondent. He used to make fun of the Petitioner in public. Because of these humiliations she left matrimonial home and went back to her house at *Thengila kadavu*. Her parents compelled her to file a petition under PWDV Act at Judicial first class Magistrate Court, *Calicut*. Her friends acquainted her with *Anweshi*,

Calicut. She had counselling sessions at *Anweshi*. They tried for mediation. She needed following reliefs: 1) To prevent the Respondent from committing any act of domestic violence. 2) To prevent the Respondent from entering the house in which the Petitioner is residing. 3) To stop his alcoholic behaviour. She wants a protection order. First two reliefs were awarded. If Respondent quits the habit of drinking alcohol, she is ready to go back to his house. She feels she got a remedy under PWDV Act. But her relationship with husband and in-laws remain strained.

Next case is that of Petitioner *Anitha* 35 years. She is the wife of Respondent *Ramesh babu*, 42 years, an alcoholic who is accused to have behavioural disorders, who physically and mentally tortures his wife and children (met victim at *Anweshi*). (CMP 1760, 1761/2012, MC121/2012 *Calicut*) Soon after the marriage, he started behaving like this. Later on, she came to know from his relatives that Respondent was having some mental disorder even before marriage and his parents thought that it will be alright after marriage. He used to ill treat her and children. He tried to throw their elder child into well. Their younger child was handicapped. Both children were afraid of Respondent. Frustrated by this, she took asylum in her sister's house. Then, Respondent alleged adultery with Petitioner's sister's husband. Then she again went to her matrimonial home. Her sister brought her to *Anweshi*. Petitioner wants protection order restraining Respondent from entering the

house, and residence order. As Respondent failed to appear, she got ex-parte orders. Still her life is miserable.

Next Petitioner was 21 year old *Rafeena*. (MC No.110/2016 of JFCM 1, *Calicut*). Respondents were, her husband *Thamnas*, aged 25 and his parents *Kather* and *Khadeeja*. Marriage between Petitioner and Respondent No.1 took place on 13/03/2016 as per Muslim religious rites. 15 sovereigns of gold were given to Petitioner as dowry on demand of Respondents. Petitioner's father took loan from cooperative Bank, *Palli* committee and relatives to purchase gold. After one week of marriage, there was tremendous change in the behaviour of Respondents. Respondent No.1 forcefully snatched her gold ornaments for buying a lorry in his name. When she resisted, her mobile phone was taken forcibly and broken into pieces. After 2 months of marriage, she was compelled to bring 5 sovereigns more and one lakh rupees from her house. During pregnancy also she was ill treated. Respondent was a lorry driver and a broker. He is having own income. Parents of Petitioner compelled her to file petition on 23/03/2016 requesting following reliefs: 1) To prevent the Respondent from committing any act of domestic violence. 2) To return gold ornaments or equivalent cash. Court directed him not to commit any act of domestic violence. He was directed to pay Rs. 5 lakhs as equivalent value of the gold ornaments taken away by him. Now Petitioner is staying with her parents. She has not heard of PWDV Act before filing petition. Her life is better now compared to her life with Respondent.

Jisha Sebastian aged 34 was married to *Biju*, 39 years on 11th November, 2002. She studied up to 10th standard and he, up to 5th. Researcher met her during a counselling session at *Anweshi*. They got married as per Christian laws on 11th November, 2002. Respondent demanded dowry and Petitioner has given 13.5 soveriegns of gold and Rs.30000. After 2 months of marriage, he sold all gold and spend it for drinking and for drugs. Daily expenses were met by Petitioner's family. Their elder son has deformity in eyes and because of that Respondent hated him and he was sent to orphanage. As instructed by the doctor, it was decided to perform an operation to the child and he was brought home from orphanage. That night, Respondent came after drinking and quarrelled with Petitioner and poured a bucket full of water on her face. She and the children were severely beaten and all utensils were thrown outside. She called her brother and he took them to hospital. She approached Court seeking following reliefs: (M.C.18/16, JFCM 2, *Calicut* 1) To restrain the Respondent from committing any act of domestic violence. 2) To provide the Petitioner with Rs. 5000 per month as maintenance. 3) To restrain the Respondent from entering into the house occupied by the Petitioners. 4) To order the Respondent to provide Rs. 2 lakhs as compensation for the atrocities experienced by the Petitioner. They were sent to mediation and now they are residing in same house. Petitioner says, Protection Officers and service providers helped very much for giving counselling and mediation.

The Petitioner *Sathi*, 39 years and her 3 children were beaten daily by the alcoholic husband (met this victim at *Anweshi*). Their marriage was in 2001. At the time of marriage, dowry of 20 sovereigns and 20,000 rupees were demanded by the Respondent. Father of Petitioner gave 18.5 sovereigns and 20000 rupees. In their community, within two weeks of marriage, bride and groom will pay a friendly visit at every relative's house. During these visits, her mother-in-law also accompanied them and humiliated the Petitioner in front of other relatives. Husband and mother-in-law colluded with each other and seized her gold ornaments. He is a casual labourer and takes alcohol every day. She suffered a lot of mental and physical cruelty. In 2014, she sought help of PWDV Act. (MC 139/2014, JFCM-V, *Calicut*) She wants protection order and other orders for safe stay at house. Unfortunately, she did not get any remedy. Court did not appreciate the evidence given by victim. Here, the Petitioner and her children are ill-treated and physically tortured. The Petitioner was hospitalized several times. She needs protection and wants an order to get into their house and live there peacefully. But the PWDV Act was not that powerful, she feels.

Prabhitha (researcher met this victim at *Anweshi*) got married to *Prajosh*, the Respondent with 23 sovereigns of Gold during the year 2009 and they have a daughter *Alakananda*, 3 years, in their wedlock. During these years of marriage, the Respondent misappropriated all the gold of the Petitioner for his own needs and for the construction of the Respondent's sister's house.

The sisters used to come with their husbands and children, and torture the Petitioner, physically and mentally. The sisters, their husbands, and the neighbours conspired against the Petitioner to get rid of her from the house by alleging that she had an illicit relationship with a person named *Babu*, in the absence of the Respondent. The Respondent had never taken up any responsibilities as a husband or a father. He never bore any expenses of his wife or daughter. The Respondent's mother was also cruel to the Petitioner. She is a graduate. Her cousins persuaded her to file Petition under PWDV Act. She thought all problems will be solved by the Act. But she did not get the expected remedy. She requested for protection order, monetary compensation and residence order. She got protection order only. She is not happy and said that her relation with in-laws became more strained.

The Petitioner *Mini* aged 38 and the Respondent *Raju* is married for 20 years. (met victim at *Anweshi*) Ever since the marriage, Respondent is a complete alcoholic person. The Respondent misappropriated the 15 sovereigns of gold given to the Petitioner on her marriage for his unruly life. Respondent harasses, beats and physically abuses the Petitioner, if his behaviour and drinking habits are questioned. He had never taken care of the children or the household expenses. Now the elder son *Mithun Raj*, 19 years old, had to drop his education to earn the bread of the family. Her family members compelled her to seek legal protection. She approached *Anweshi*. The Petitioner wants protection order and maintenance to her minor daughter

Neethu Raj and herself. In the first instance, she thoroughly believed in the PWDV Act. She filed Petition in Judicial First class Magistrate Court, *Calicut* under PWDV Act. She got protection order. Order is silent as to maintenance. She feels she is not benefitted by PWDV Act.

Apart from these 10 victims, researcher met following victims also. *Chankoth Sakkeena*, aged 40 years married, *Subair* aged 45 years in 1984. (MC214./2014, JFCM, *Vatakara*) He suspected chastity of Wife. He did not participate in the marriage of their daughter, manhandled Petitioner in front of children and hence the petition. She got following reliefs. 1) Rs.5000 as monthly maintenance for Petitioner and children. Prayer for other relief rejected. She was not happy with the order.

Sunitha, 35 years was married to *Sureshbabu*, 45 years during 1995 (MC131/2014, JFCM, *Vatakara*). After 3 months of marriage, Respondent started to ill treat her alleging adultery. Her gold ornaments were (35 Sovereigns) squandered by Respondent. He assaulted her in front of children. He posted slanderous and libellious matter in face book. Hence, the petition. Following reliefs were obtained. 1) prevented defamatory posts by Respondent 2) Protection order 3) 5000 Rs per month to Petitioner and Rs.3000 to child. Her request for compensation and claim for gold ornaments were rejected. She was not at all happy with the orders.

Najma, 37 years was married to *Gafoor*, aged 45 in 1994. (MC 56/2015, JFCM, *Vatakara*) She got 35 sovereigns of gold and 2 lakh rupees. He sold her ornaments and misappropriated 2 lakh rupees. He was a lazy person and will not go for any work. He harassed her physically and mentally. He was having an extra marital affair with a lady. She was evicted from his family and hence the petition. She got a protection order from Court. But her other claims like return of gold ornaments and compensation was rejected. Victim was not satisfied with the order.

On analysing case study from *Calicut*, it was felt that victims from lower strata are availing assistance of service providers like *Anweshi*. They have not heard about the Act till an issue of such colour happened in their life. Family members and friends, instead of patching up issues between husband and wife, try to escalate it. Advocates misguide the victims to file various cases in several courts on issues between parties. Lack of awareness about DV provisions are reflected in case study.

6.2 Empirical Study from Victims of Various Districts of Kerala

After conducting a pilot study through the case study method, this researcher resorted to a wider scale study. A pilot study was conducted based on the 2015 data of the State Crime Records Bureau. The present study was made by supplying questionnaires to victims. For convenience, the State of Kerala is divided into 3 zones, viz. Southern Zone, Northern Zone, and Central Zone.

Two districts from each zone are taken for study. From the Southern Zone, *Trivandrum* and *Kollam* are taken. From the Central Zone, *Thrissur* and *Ernakulam* are taken. From the Northern Zone, *Calicut* and *Kannur* are taken. These districts were selected based on the 2017 data of the State Crime Records Bureau.

Respective figures in the year of 2017 was 309, 311, 351, 364, 389 and 141 from *Trivandrum*, *Kollam*, *Ernakulam*, *Thrissur*, *Calicut*, and *Kannur* respectively. A convenient sampling method was selected.

6.2.1 Empirical Study among Victims

The statistical tool used for the study is the questionnaire method. Detailed questionnaires are prepared for the collection of data. Questions are framed in such a way that it will supplement the objective of the study. It is given as Appendix I. Sample size is 159 victims from South Kerala, 102 victims from Central Kerala, and 162 victims from North Kerala. All data are tabulated to tables as well as pie diagrams. But pie diagrams are pasted only in cases where it is difficult to understand without the help of a diagram. (total of 165 analysis for study among victims, judicial officers advocates and pasting pie diagram for each will make the work voluminous. So diagrams which are not integral and which can be assessed from the table itself is given in Appendix V).

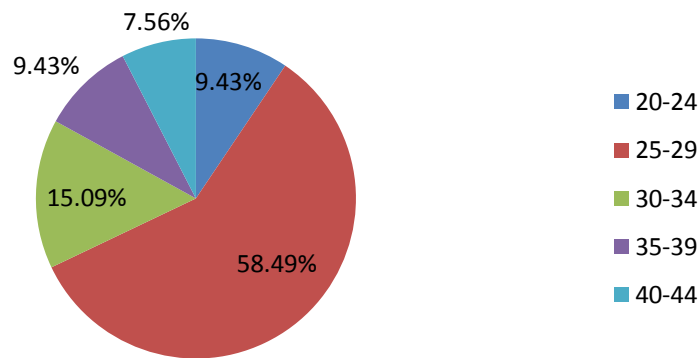
6.2.1.1 Age Group of Victims

South Kerala

Age Group	Frequency	Percent
20-24	15	9.43
25-29	93	58.49
30-34	24	15.09
35-39	15	9.43
40-44	12	7.56
Total	159	100.0

Source: Survey

Age Group

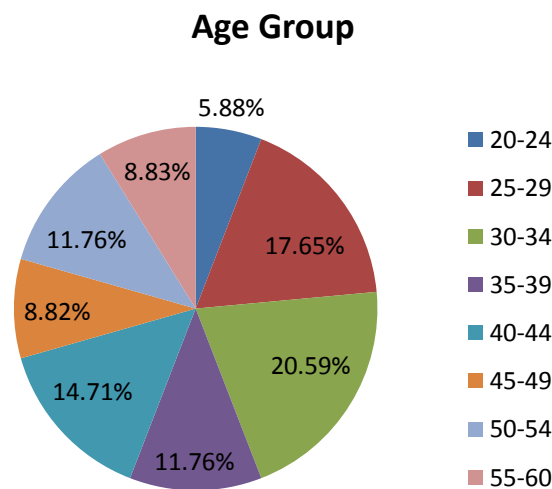


In South Kerala, maximum DV cases happened in the victim's age group of 25-29 with 58.49% and minimum in the age group of 40-44 with 7.56 %. This shows mostly it happens during the initial years of marriage. Many ladies leave the matrimonial home because of this. So more victims are featured in 25-29 age groups.

Central Kerala

Age Group	Frequency	Percent
20-24	6	5.88
25-29	18	17.65
30-34	21	20.59
35-39	12	11.76
40-44	15	14.71
45-49	9	8.82
50-54	12	11.76
55-60	9	8.83
Total	102	100.0

Source: Survey

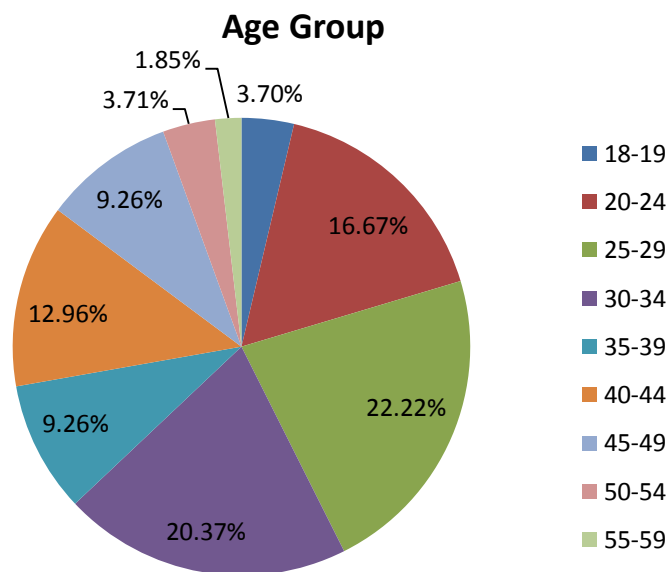


In Central Kerala, maximum DV cases happened in the victim’s age group of 30-34 with 20.59% and minimum in the age group of 20-24 with 5.88%. In Central Kerala, marriage of girls happens at later ages as they give importance to study and new generation girls marry after becoming financially stable.

North Kerala

Age Group	Frequency	Percent
18-19	6	3.70
20-24	27	16.67
25-29	36	22.22
30-34	33	20.37
35-39	15	9.26
40-44	21	12.96
45-49	15	9.26
50-54	6	3.71
55-59	3	1.85
Total	162	100.0

Source: Survey



In North Kerala, maximum DV cases happened in the victim’s age group of 25-29 with 22.22% and minimum in the age group of 55-59 with 1.85%.

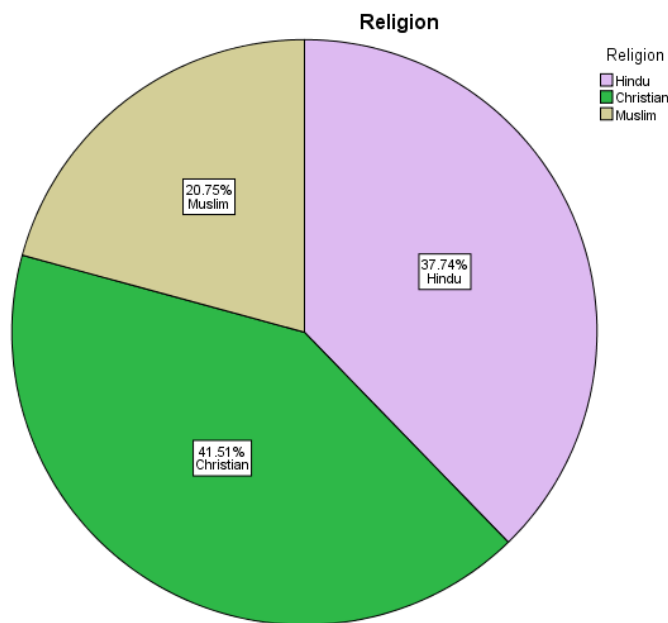
Here also occurrence is similar to that of South Kerala.

6.2.1.2 Religion of the Victims

South Kerala

Religion	Frequency	Percent
Hindu	60	37.74
Christian	66	41.51
Muslim	33	20.75
Total	159	100.0

Source: Survey

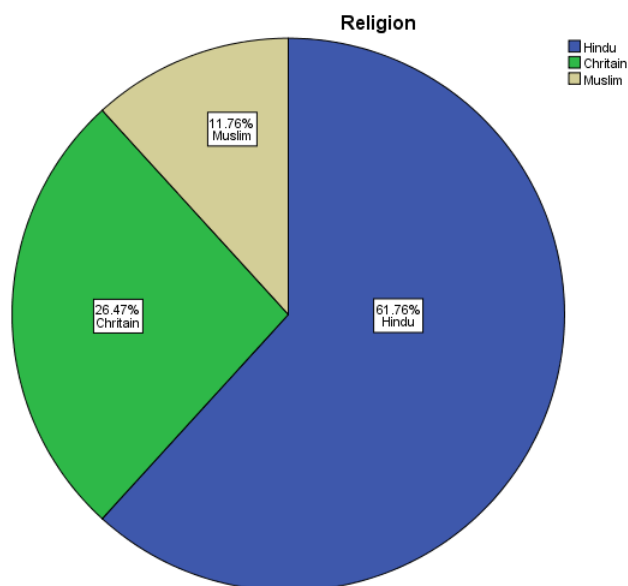


In South Kerala, DV cases are found in the Hindu religion with 37.74%, Christian religion with 41.51% and Muslim religion with 20.75%. Christian victims are more in *Kollam* District while collecting data and some parts of *Trivandrum*. The Muslim population is comparatively low. So their Percentage of domestic violence cases is also low.

Central Kerala

Religion	Frequency	Per cent
Hindu	63	61.76
Christian	27	26.47
Muslim	12	11.76
Total	102	100.0

Source: Survey

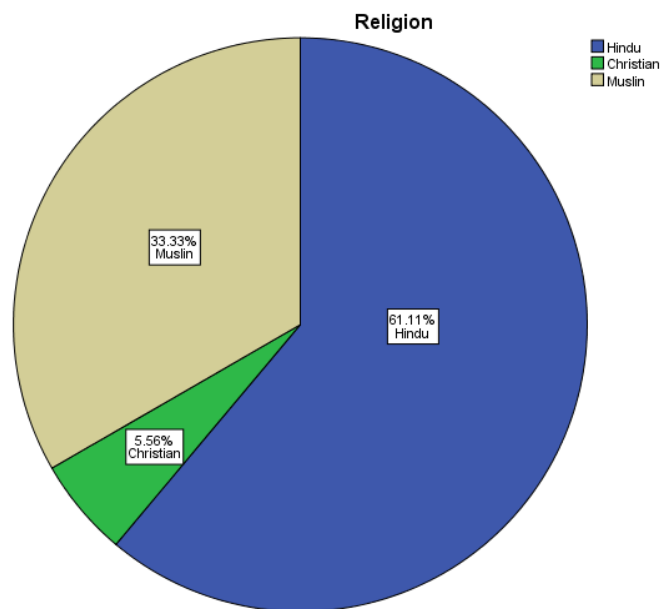


In Central Kerala, DV cases are found in the Hindu religion with 61.76%, Christian religion with 26.47% and Muslim religion with 11.76%. In Central Kerala, the majority of the population is Hindus. Christians come in second position and Muslims in third position.

North Kerala

Religion	Frequency	Percent
Hindu	99	61.1
Christian	9	5.6
Muslim	54	33.3
Total	162	100.0

Source: Survey



In North Kerala, DV cases are found in the Hindu religion with 61.11%, Christian religion with 5.6% and Muslim religion with 33.33%. In North Kerala, *Calicut and Kannur* district are selected. There Hindu population is slightly more than Muslims. Christian population is comparatively low. It is confined to hilly areas. D.V cases in Muslim community rarely reach Court. In some cases, it is settled through mediation.

6.2.1.3 Victim's Education

South Kerala

Education	Frequency	Percent
School Level	48	30.2
Higher Secondary	24	15.1
Graduation	48	30.2
Post-Graduation	27	17.0
Professional	12	7.5
Total	159	100.0

Source: Survey

In South Kerala, the victims with school level education are 30.2%, with higher secondary education are 15.1%, with graduation are 30.2%, with post-graduation are 17.0% and professional education are 7.5%. Nowadays, people with higher secondary education only are very rare. Especially ladies will not end their study with higher secondary and will complete at least graduation.

Central Kerala

Education	Frequency	Per cent
School Level	40	39.22
Higher Secondary	16	15.69
Graduation	22	21.57
Post-Graduation	9	8.82
Professional	9	8.82
Not answered	6	5.88
Total	102	100.0

Source: Survey

In Central Kerala, the victims with school level education are 39.22%, with higher secondary education are 15.69%, with graduation are 21.57%, with post-graduation are 8.82% and professional education are 8.8%. 5.88% victims did not disclose their education. Here also victims with only higher secondary education are low compared to graduates. Post graduates and professionals are represented least as there are few victims from that group who participated in the survey.

North Kerala

Education	Frequency	Percent
School	48	29.6
Higher Secondary	33	20.4
Graduation	48	29.6
Post-Graduation	12	7.4
Professional	12	7.4
Not answered	9	5.6
Total	162	100.0

Source: Survey

In North Kerala, the victims with school level education are 29.6%, with higher secondary education are 20.4%, with graduation are 29.6%, with post-graduation are 7.4% and professional education are 7.4%. 5.6% victims did not disclose their education. Here the Muslim population is high compared to the other two zones. Their age of marriage is low compared to other communities. It adversely affects their education. So many of them end their education at plus two.

6.2.1.4 Husband's Education

In our society, the husband has the role of protector. In some cases, a husband may not be committing domestic violence and it may be done by in-laws. In those cases too, the husband has a passive role as he is not resorting to prevent it.⁵Hence, education of husband is relevant in this study.

South Kerala

Education	Frequency	Percent
School Level	52	32.70
Higher Secondary	23	14.47
Graduation	28	17.61
Post-Graduation	22	13.84
Professional	13	8.18
Not answered	21	13.20
Total	159	100

Source: Survey

The survey reveals that, in South Kerala, the husbands with school level education are involved in DV cases with 32.70% of which is maximum, with graduation and post-graduation are less, and the least with professionals at 8.18%, higher secondary education with 14.47%. Persons with higher secondary education and professional education are less and so they are represented less.

⁵ Kunjathiri v. State of Kerala, 2015(4) KHC 18. Court held that “*Even though husband was not making domestic violence, passive conduct of the husband or even inaction on the part of husband ,exposing the wife to be harassed or abused by the in laws are sufficient to attract the case of domestic violence*”.

Central Kerala

Education	Frequency	Percent
School Level	33	32.4
Higher Secondary	9	8.8
Graduation	36	35.3
Professional	9	8.8
Not answered	15	14.7
Total	102	100.0

Source: Survey

The survey reveals that, in Central Kerala, the husbands with graduation are involved in DV cases with 35.3% of which is highest rate compared to others, with school level education is less, and the least with higher secondary and professional education with 8.8% .Education level of Central Kerala is more as there are lot of good educational institutions. So men may study at least up to graduation.

North Kerala

Education	Frequency	Percent
School	72	44.4
Higher Secondary	21	13.0
Graduation	36	22.2
Post-Graduation	6	3.7
Professional	9	5.6
Not answered	18	11.1
Total	162	100.0

Source: Survey

The survey reveals that, in North Kerala, the husbands with school level education are involved in DV cases with 44.4% of which is maximum, with higher secondary and graduation are less, and the least for post-graduation with 3.7% and professionals with 5.6%. Here Muslim population are high and they start small business like mobile charging shops even before reaching 12th standard with the assistance of relatives who are in Gulf Countries. So men with school level education are represented more.

6.2.1.5 Victim's Occupation

South Kerala

Victim's occupation	Frequency	Percent
Business	9	5.7
Labour	18	11.3
Office employee	24	15.1
Teacher	21	13.2
Professional	15	9.4
Housewife	54	34.0
Other	18	11.3
Total	159	100.0

Source: Survey

In South Kerala, the housewives are the most vulnerable group affected by and pursuing DV cases with 34.00%. Housewives are usually not financially independent. They cannot resist domestic violence and become the most vulnerable group.

Central Kerala

Victim's Occupation	Frequency	Percentage
Office Employee	15	14.70
Teacher	20	19.60
Professional	12	11.76
House wife	38	37.26
Others	17	16.68
Total	102	100

Source: Survey

In Central Kerala, the housewives are the most vulnerable group affected by and pursuing DV cases with 37.26%. Housewives are usually not financially independent. They cannot resist domestic violence and become the most vulnerable group.

North Kerala

Victim's Occupation	Frequency	Per cent
Office Employee	27	16.7
Teacher	6	3.7
Professional	6	3.7
House Wife	108	66.7
Others	3	1.9
Not answered	12	7.3
Total	162	100.0

Source: Survey

In North Kerala, the housewives are the most victims of DV cases with 66.7%. In North Kerala, Muslim community occupies a major portion of the population. They marry off girls at a younger age, they become college dropouts and will lose the chance of getting a job and they will have to depend on husbands for financial assistance. Professionals constitute 3.7%, Teachers constitute 3.7%, and Office employees constitute 16.7% of the victims who pursue DV cases.

6.2.1.6 Husband's Occupation

South Kerala

Occupation	Frequency	Percent
Business	33	20.8
Labour	42	26.4
Office employee	18	11.3
Teacher	6	3.8
Professional	15	9.4
Abroad	6	3.8
Other	39	24.5
Total	159	100.0

Source: Survey

In South Kerala, the husbands with job as casual labourers are involved mostly in DV cases with 26.4%, Businessmen constitute 20.8%, Office employees with 11.3%, Teachers with 3.8%, Professionals with 9.4% and others with 39% of husbands who are involved in DV cases.

Central Kerala

Occupation	Frequency	Per cent
Business	18	17.6
Labour	21	20.6
Office employee	27	26.5
Professional	9	8.8
Abroad	3	2.9
Other	18	17.6
Not answered	6	6.2
Total	102	100.0

Source: Survey

The survey reveals that in Central Kerala, the husbands with office jobs are involved in DV cases mostly with 26.5%. Nearly 6% of difference is seen between the employed category and labourers. In Central Kerala, people opt for office job even if it is at a private firm. Their education level, may not be much different from labourers.

North Kerala

Occupation	Frequency	Percent
Business	54	33.3
Labour	36	22.2
Office Employee	9	5.6
Professional	9	5.6
Abroad	24	14.8
Others	24	14.8
Not answered	6	3.7
Total	162	100.0

Source: Survey

In North Kerala, the husbands with business involved in DV cases stand at highest with 33.3%. In North Kerala, major population is occupied by Muslims. Many of them are running small businesses like mobile accessory shops or small stalls in the fish market. Still, they call them business. In line with that other communities have started to call their occupation as business. So business people appear to be more in number.

6.2.1.7 Years after Marriage

South Kerala

Years of marriage	Frequency	Percent
0<year<=5	51	32.1
5<year<=10	78	49.1
10<year<=15	12	7.5
15<year<=20	15	9.4
20<year<=25	3	1.9
Total	159	100.0

Source: Survey

The survey reveals that in South Kerala, the majority of DV cases occur within 5 to 10 years of marriage where the actual Percentage is 49.1%, 32.1% within 5 years of marriage and 7.5% within 10 to 15 years of marriage. This shows that during initial years, victims suffer thinking that it will be alright in coming days. If it continues even after 5 years they reveal it to others.

Central Kerala

Years of marriage	Frequency	Percent
0<year<=5	12	11.8
5<year<=10	27	26.5
10<year<=15	15	14.7
15<year<=20	18	17.6
20<year<=25	12	11.8
25<year<=30	15	14.7
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, the majority of DV cases occur between 5 and 10 years of marriage with 26.5%. This is also similar to South Kerala.

North Kerala

Years after Marriage	Frequency	Per cent
0 < Year <= 5	54	33.3
5 < Year <= 10	33	20.4
10 < Year <= 15	27	16.7
15 < Year <= 20	21	13.0
20 < Year <= 25	15	9.3
Not answered	12	7.4
Total	162	100.0

Source: Survey

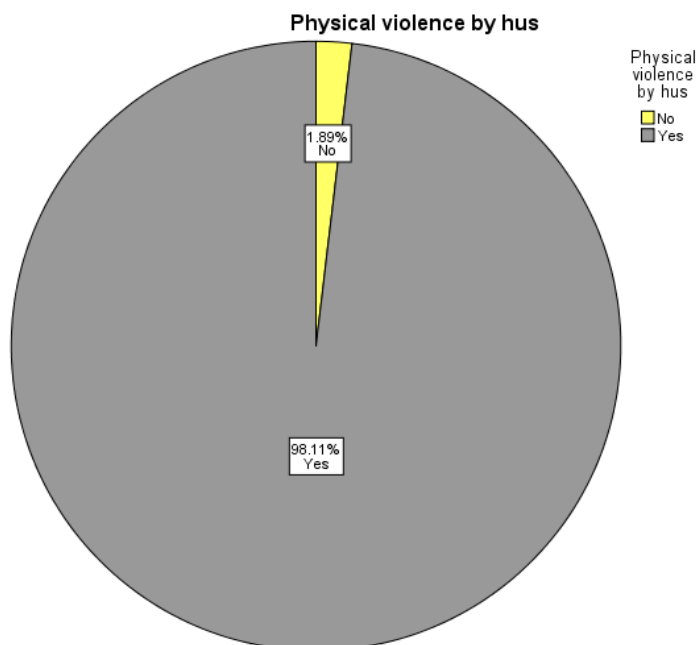
In North Kerala, the majority of DV cases occur within 5 years of marriage where the actual Percentage is 33.3%, within 5 to 10 years of marriage with 20.4%, between 10 to 15 years of marriage with 16.7%. Here also it is similar to other two zones.

6.2.1.8 Physical Violence by Husband

South Kerala

Physical Violence	Frequency	Percent
No	3	1.89
Yes	156	98.11
Total	159	100.0

Source: Survey

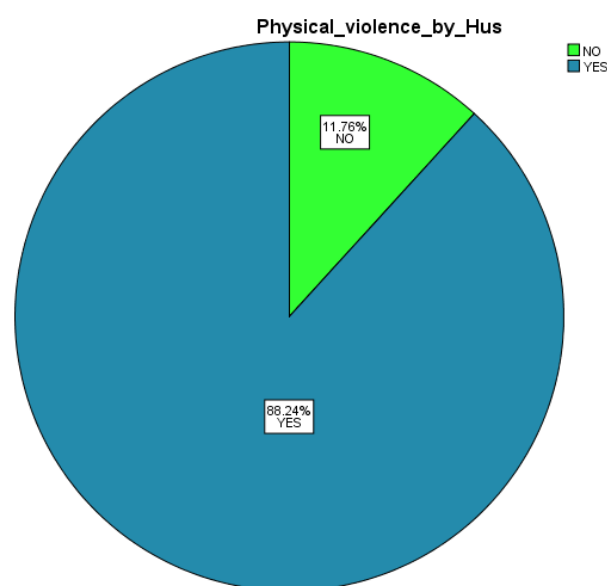


In South Kerala, 98.11% of DV victims face physical violence by husband. Only 1.89% of say they have not encountered with Physical violence from husband.

Central Kerala

Physical Violence	Frequency	Per cent
NO	12	11.76
YES	90	88.24
Total	102	100.0

Source: Survey

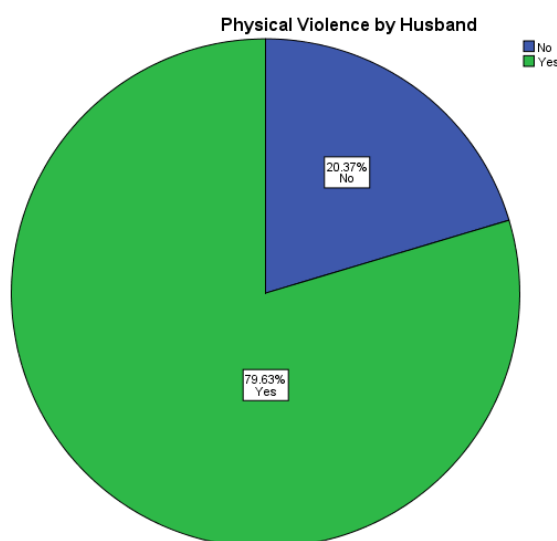


In Central Kerala, 88.24% of DV victims face physical violence by husband. 11.76% of victims say that they have not met with physical violence from the husband.

North Kerala

Physical Violence	Frequency	Percent
No	33	20.37
Yes	129	79.63
Total	162	100.0

Source: Survey



In North Kerala, 79.63% of DV victims face physical violence by husband. 20.37% of DV victims say that they have not experienced physical violence from husband.

6.2.1.9 Humiliated by Husband

South Kerala

	Frequency	Percent
Yes	159	100.0

Source: Survey

In South Kerala, 100% of DV victims are humiliated by husband.

Central Kerala

	Frequency	Percent
No	4	3.92
Yes	98	96.08
Total	102	100.0

Source: Survey

In Central Kerala, 96.08% of DV victims are humiliated by husband.

North Kerala

	Frequency	Percent
No	9	5.6
Yes	153	94.4
Total	162	100.0

Source: Survey

In North Kerala, 94.4% of DV victims are humiliated by husband. 5.6% of the victims said that they have not experienced humiliation by husband.

6.2.1.10 Who Helped You When DV Happened?

South Kerala

	Frequency	Percent
Legal	60	37.7
Family	45	28.3
Others	48	30.2
Not answered	6	3.8
Total	159	100.0

Source: Survey

In South Kerala, 37.7% of victims received help from the legal system, 28.3% from their family and 30.2% from others. Here, police, advocates and judiciary are termed under the heading legal system.

Central Kerala

	Frequency	Percent
Legal	60	58.82
Family	21	20.58
Other	6	5.88
Not answered	15	14.72
Total	102	100.0

Source: Survey

In Central Kerala, 58.82% of victims received help from the legal system, 20.58% from their family and 5.88% from others. Police, advocates, judiciary etc. will come under the term legal system.

North Kerala

	Frequency	Per cent
Legal	69	42.6
Family	57	35.2
Other	6	3.7
Not answered	30	18.5
Total	162	100.0

Source: Survey

In North Kerala, 42.6% of victims received help from legal system, 35.2% from their family and 3.7% from others. Here, Police, Advocates and Judiciary are referred to as legal system.

6.2.1.11 Awareness that Children Prone to DV will become Future Perpetrators

South Kerala

	Frequency	Per cent
No	20	12.58
Yes	134	84.28
No Idea	5	3.14
Total	159	100.0

Source: Survey

In South Kerala, 84.28% of victims are aware that the children prone to DV will be future perpetrators. 12.58% of the victims are not aware of this fact. 3.14% of the victims do not have any idea about this matter.

Central Kerala

	Frequency	Per cent
No	57	55.9
Yes	33	32.4
Unanswered	12	11.8
Total	102	100.0

Source: Survey

In Central Kerala, 32.4% of victims are aware that the children prone to DV will be future perpetrators. 55.9% of victims say they are not aware of this fact. 11.8% of the victims declined from answering this question.

North Kerala

	Frequency	Per cent
No	30	18.5
Yes	105	64.80
No Idea	18	11.10
Not answered	9	5.6
Total	162	100.0

Source: Survey

In North Kerala, 64.80% of victims are aware that the children prone to DV will be future perpetrators. 18.5% of the victims are not aware of the fact. 11.10% of the victims do not have any idea about this fact. 5.6 % of the victims did not answer that question.

6.2.1.12 Any Idea of Protection Officers?

This question was asked as it has a connection with the last objective.

South Kerala

	Frequency	Per cent
No	141	88.68
Yes	18	11.32
Total	159	100.0

Source: Survey

In South Kerala, 88.68% of victims do not have any idea of Protection Officers. 11.32% of victims are aware of the service of Protection Officers. Protection Officers are the backbone of PWDV Act. This analysis shows lack of awareness about the Act.

Central Kerala

	Frequency	Per cent
No	69	67.6
Yes	30	29.5
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 67.6% of victims do not have any idea of Protection Officers. 29.5% of victims have heard of them. 2.9 % of the victims did not answer this question. Protection Officers are the spine of the PWDV Act. So if victims are not aware of the services of protection Officers, it shows a lack of awareness on the part of victims and inadequacy of projecting the service of protection Officers.

North Kerala

	Frequency	Per cent
No	78	48.1
Yes	81	50.0
Not answered	3	1.9
Total	162	100.0

Source: Survey

In North Kerala, 48.1% of victims do not have any idea of Protection Officers. 50% of the victims do know about the service of Protection Officers. 1.9% of the victims did not answer the question. When this researcher interviewed Protection Officers of *Calicut* and *Kannur*, they explained measures taken by them for rendering classes to DV victims. The results of the study substantiate their effort.

6.2.1.13 Service from Protection Officers

This question has a connection with the fourth and fifth objectives.

South Kerala

	Frequency	Per cent
No	156	98.1
Yes	3	1.9
Total	159	100.0

Source: Survey

In South Kerala, 98.1% of victims did not get service from Protection Officers. 1.9% of victims got assistance from Protection Officers. This shows that majority of victims are going directly to advocates and file petitions. If they are availing the service of Protection Officers, they will try to patch up by counselling and financial loss suffered by multiplicity of cases can be avoided.

Central Kerala

	Frequency	Per cent
No	78	76.5
Yes	6	5.9
Not answered	18	17.6
Total	102	100.0

Source: Survey

In Central Kerala, 76.5% of victims did not get service from Protection Officers. Only 5.9% got assistance from Protection Officers. 17.6% of victims did not answer the question. That may be due to the fact that they might not have even heard of them. This shows that majority of victims are going directly to advocates and file petitions. If they are availing the service of Protection Officers, they will try to patch up by counselling and financial loss suffered by multiplicity of cases can be avoided.

North Kerala

	Frequency	Per cent
No	63	38.9
Yes	54	33.3
Not answered	45	27.8
Total	162	100.0

Source: Survey

In North Kerala, 38.9% of victims did not get service from Protection Officers. 33.3% of victims availed service of Protection Officers. Performance of Protection Officers are comparatively better here.

6.2.1.14 Contacted Women Cell

South Kerala

	Frequency	Per cent
No	132	83.0
Yes	27	17.0
Total	159	100.0

Source: Survey

In South Kerala, 83% of victims did not contact women's cell before filing a DV petition. 17% of victims contacted women cell.

Central Kerala

	Frequency	Per cent
No	45	44.1
Yes	51	50.0
Not answered	6	5.9
Total	102	100.0

Source: Survey

In Central Kerala, 44.1% of victims did not contact women's cell before filing a DV Petition. 50% contacted women cell before filing Petition.

North Kerala

	Frequency	Per cent
No	114	70.4
Yes	45	27.8
Not answered	3	1.9
Total	162	100.0

Source: Survey

In North Kerala, 70.4% of victims did not contact women cell before filing a DV Petition. 27.8 % of victims contacted women cell before filing a petition. If victims avail service of women cell. They will direct them to Protection Officers rather than advocates.

6.2.1.15 Knowledge of Help from the Women's Commission

South Kerala

	Frequency	Per cent
No	90	56.6
Yes	69	43.4
Total	159	100.0

Source: Survey

In South Kerala, 56.6% of victims are not aware of the legal assistance provided by Women's Commission. 43.4% has awareness about Women's Commission. If victims avail the service of Women's Commission, there is a law officer to assist victims, Project officer of *Jagratha Samithi* is there, so that many problems of victims will be solved there itself.

Central Kerala

	Frequency	Per cent
No	27	26.5
Yes	69	67.6
Not answered	6	5.9
Total	102	100.0

Source: Survey

In Central Kerala, 26.5% of victims are not aware of the legal assistance provided by Women's Commission. Women's Commission office is situated at *Trivandrum*. So many of victims may not be aware of it as it is situated at a distant place. It has extended its activity through *Jagratha Samithi* in every district. It reveals lack of awareness among public.

North Kerala

	Frequency	Per cent
No	84	51.9
Yes	78	48.1
Total	162	100.0

Source: Survey

In North Kerala, 51.9% of victims are not aware of the legal assistance provided by Women's Commission. Here awareness is better compared to Central zone. Women's Commission office is situated at *Trivandrum*. So many of victims may not be aware of it as it is at a distant place. It has extended its activity through *Jagratha Samithi* in every district. It reveals lack of awareness among public.

6.2.1.16 Knowledge about *Jagratha Samithi*

South Kerala

	Frequency	Per cent
No	156	98.1
Yes	3	1.9
Total	159	100.0

Source: Survey

In South Kerala, 98.1% of victims are not aware of the *Jagratha Samithi*. It reveals lack of awareness of victims.

Central Kerala

	Frequency	Per cent
NO	90	88.2
YES	9	8.8
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 88.2% of victims are not aware of the *Jagratha Samithi*

North Kerala

	Frequency	Per cent
No	105	64.8
Yes	51	31.5
Not answered	6	3.7
Total	162	100.0

Source: Survey

In North Kerala, 64.8% of victims are not aware of the *Jagratha Samithi*.

6.2.1.17 Help from *Jagratha Samithi*

South Kerala

	Frequency	Per cent
No	159	100.0

Source: Survey

In South Kerala, 100% of victims are not aware of the legal assistance from *Jagratha Samithi*. It shows lack of awareness among victims.

Central Kerala

	Frequency	Per cent
No	99	97.1
Not answered.	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 97.1% of victims are not aware of the legal assistance from *Jagratha Samithi*. It shows lack of awareness among victims.

North Kerala

	Frequency	Per cent
No	87	53.7
Yes	15	9.3
Not answered	60	37.0
Total	162	100.0

Source: Survey

In North Kerala, 53.7% of victims are not aware of the legal assistance from *Jagratha Samithi*. Comparatively better awareness is here than in other zones.

6.2.1.18 Is There Dowry Torture?

South Kerala

	Frequency	Per cent
No	21	13.2
Yes	138	86.8
Total	159	100.0

Source: Survey

In South Kerala, 86.8% of victims face dowry torture also along with domestic violence. In many cases, both offences are experienced by victims.

Central Kerala

	Frequency	Per cent
No	51	50.0
Yes	42	41.2
Not answered	9	8.8
Total	102	100.0

Source: Survey

In Central Kerala, 41.2% of victims face dowry torture also along with domestic violence. Dowry torture is less compared to Southern zone.

North Kerala

	Frequency	Per cent
No	30	18.5
Yes	129	79.6
Not answered	3	1.9
Total	162	100.0

Source: Survey

In North Kerala, 79.6% of victims face dowry torture along with domestic violence.

6.2.1.19 Knowledge of DV Law before filing Petition?

This question has a connection with the fifth objective.

South Kerala

	Frequency	Per cent
No	105	66.0
Yes	54	34.0
Total	159	100.0

Source: Survey

In South Kerala, 66% of victims did not know DV law before filing the Petition. This shows lack of awareness. This kind of people are easily susceptible to incitement for filing Petition.

Central Kerala

	Frequency	Per cent
NO	60	58.8
YES	39	38.2
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 58.8% of victims did not know DV law before filing the Petition. Here it is better Compared to South zone.

North Kerala

	Frequency	Per cent
No	72	44.4
Yes	90	55.6
Total	162	100.0

Source: Survey

In North Kerala, 44.4% of victims did not know DV law before filing the Petition. Awareness among victims of Central Kerala and North Kerala is almost similar.

6.2.1.20 Is There Extra Marital Affair/Alcohol Addiction?

South Kerala

	Frequency	Per cent
No	51	32.1
Yes	102	64.2
No Idea	6	3.8
Total	159	100.0

Source: Survey

In South Kerala, 64.2% of victims say that their spouse has bad habits like extra-marital affair or addiction to alcohol. (This question was asked to victims based on an article in *Thejus* newspaper (Oct. 3, 2013), based on data of State Crime Records Bureau. As per that lack of legal literacy, use of liquor by perpetrators, illicit relations of perpetrators are said to increase the rate of domestic violence)

Central Kerala

	Frequency	Per cent
NO	18	17.6
YES	75	73.5
Not answered	9	8.8
Total	102	100.0

Source: Survey

In Central Kerala, 73.5% of victims are worried that their spouse has bad habits like extra-marital affair or alcohol abuse.

North Kerala

	Frequency	Per cent
No	39	24.1
Yes	123	75.9
Total	162	100.0

Source: Survey

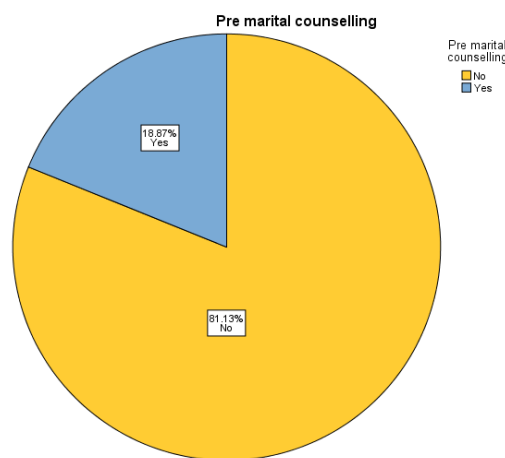
In North Kerala, 75.9% of victims are worried that their spouses have bad habits like extra-marital affair or alcohol abuse.

6.2.1.21 Pre-Marital Counselling

South Kerala

	Frequency	Per cent
No	129	81.13
Yes	30	18.87
Total	159	100.0

Source: Survey

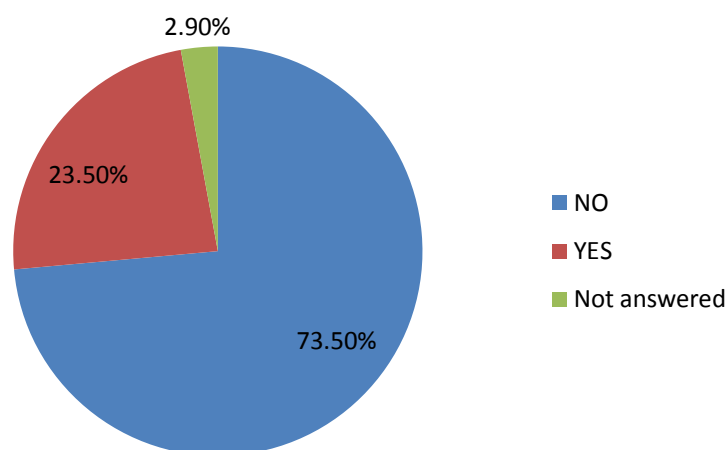


In South Kerala, 81.13% of victims did not attend pre-marital counselling. It reveals that majority of people marry without getting any knowledge about problems to be faced at married life, ways of sorting it out and sex education, which are integral part of pre marital counselling.

Central Kerala

	Frequency	Per cent
NO	75	73.5
YES	24	23.5
Not answered	3	2.9
Total	102	100.0

Source: Survey

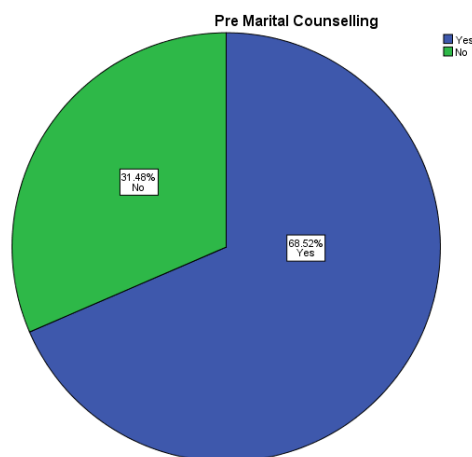


In central Kerala, 73.5% of victims did not attend pre-marital counselling. It reveals that majority of people marry without getting any knowledge about problems to be faced at married life, ways of sorting it out and sex education, which are integral part of pre marital counselling.

North Kerala

	Frequency	Per cent
Yes	111	68.52
No	51	31.48
Total	162	100.0

Source: Survey



In North Kerala, 31.48% of victims did not attend pre-marital counselling. Here, majority of people attend pre marital counselling. Percentage is better compared to victims of other two zones.

6.2.1.22 Help from District Legal Services Authority

South Kerala

	Frequency	Per cent
No	129	81.13
Yes	30	18.87
Total	159	100.0

Source: Survey

In South Kerala, 81.13% of victims did not get legal assistance from DLSA (District Legal Services Authority). This shows poor performance of free legal aid system.

Central Kerala

	Frequency	Per cent
No	78	76.5
Yes	21	20.6
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 76.5% of victims did not get legal assistance from DLSA (District Legal Services Authority). This shows poor performance of free legal aid system.

North Kerala

	Frequency	Per cent
No	93	57.4
Yes	69	42.6
Total	162	100.0

Source: Survey

In North Kerala, 57.4% of victims did not get legal assistance from DLSA (District Legal Services Authority). This shows poor performance of free legal aid system. But plight is better compared to other two zones.

6.2.1.23 Contacted Any Women's Forum or NGO?

South Kerala

	Frequency	Per cent
No	147	92.5
Yes	12	7.5
Total	159	100.0

Source: Survey

In South Kerala, 92.5% of victims did not contact any Women's forum or NGO. Service providers under the Act are NGOs which are recognised by Women's Commission. If 92.5% of victims did not contact them, that itself shows lack of awareness.

Central Kerala

	Frequency	Per cent
NO	96	94.1
YES	3	2.9
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 94.1% of victims did not contact any Women's forum or NGO. Service providers under the Act are NGOs which are recognised by Women's Commission. If 94.1% of victims did not contact them, that itself shows lack of awareness. Here situation is worse than South Zone.

North Kerala

	Frequency	Per cent
No	111	68.5
Yes	48	29.6
Not answered	3	1.9
Total	162	100.0

In North Kerala, 68.5% of victims did not contact any Women's forum or NGO. Here awareness about their service is better compared to that of other two Zones.

6.2.1.24 Assistance from Women's Forum or NGO

South Kerala

	Frequency	Per cent
No	147	92.5
Yes	12	7.5
Total	159	100.0

Source: Survey

In South Kerala, 92.5% of victims did not get assistance from Women's forum or NGO. On connecting this with previous question, researcher felt that victims did not get assistance because they did not contact NGOs or Women's forum.

Central Kerala

	Frequency	Per cent
NO	96	94.1
YES	3	2.9
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 94.1% of victims did not get assistance from Women's forum or NGOs. On connecting this with previous question, researcher felt that victims did not get assistance because they did not contact NGOs or Women's forum.

North Kerala

	Frequency	Per cent
No	60	37.0
Yes	48	29.6
Not answered	54	33.3
Total	162	100.0

Source: Survey

In North Kerala, 37% of victims did not get assistance from Women's forum or NGO. Here, plight is better compared to that of other two Zones.

6.2.1.25 Knowledge about Shelter Home

South Kerala

	Frequency	Per cent
No	81	50.9
Yes	78	49.1
Total	159	100.0

Source: Survey

In South Kerala, 50.9% of victims do not have idea about shelter homes. This shows lack of awareness about redressal agencies under the Act.

Central Kerala

	Frequency	Per cent
No	72	70.6
Yes	24	23.5
Not answered	6	5.9
Total	102	100.0

Source: Survey

In Central Kerala, 70.6% of victims do not have idea about shelter homes. This shows lack of awareness about redressal agencies under the Act, but there is better awareness compared to other Zones.

North Kerala

	Frequency	Per cent
No	105	64.8
Yes	39	24.1
Not answered	18	11.1
Total	162	100.0

Source: Survey

In North Kerala, 64.8 % of victims do not have any idea about shelter homes.

This shows lack of awareness about redressal agencies under the Act

6.2.1.26 Counselling or Mediation

South Kerala

	Frequency	Per cent
No	102	64.2
Yes	54	34.0
Case not filed	3	1.9
Total	159	100.0

Source: Survey

In South Kerala, 64.2% of victims did not undergo mediation or counselling.

Many matrimonial issues will be patched up if victims opt for mediation or counselling.

Central Kerala

	Frequency	Per cent
No	63	61.8
Yes	36	35.3
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 61.8% of victims did not undergo mediation or counselling. Here percentage of victims who has undergone mediation and counselling are slightly high compared to South Zone.

North Kerala

	Frequency	Per cent
No	39	24.1
Yes	120	74.1
Not answered	3	1.9
Total	162	100.0

Source: Survey

In North Kerala, 24.1% of victims did not undergo mediation or counselling.

Here, their percentage is low compared to other 2 Zones.

6.2.1.27 Whether DV Law Helps Women and Children

South Kerala

	Frequency	Per cent
No	75	47.2
Yes	57	35.8
No Idea	27	17.0
Total	159	100.0

Source: Survey

In South Kerala, 35.8% of victims admit that DV law helps women and children. 47.2% says DV law does not help women and children. 17% percent of the victims do not have any idea at all.

Central Kerala

	Frequency	Per cent
No	24	23.5
Yes	66	64.7
Not answered	12	11.8
Total	102	100.0

Source: Survey

In Central Kerala, 64.7% of victims admit that DV law helps women and children. 23.5% says it does not help women and children.

North Kerala

	Frequency	Per cent
No	24	14.8
Yes	126	77.8
No Idea	3	1.9
Not answered	9	5.5
Total	162	100.0

Source: Survey

In North Kerala, 77.8% of victims admit that DV law helps women and children. 14.8% says DV law does not help women and children. 5.5 percent did not answer the question.

6.2.1.28 Redressal from DV

South Kerala

	Frequency	Per cent
No	6	3.8
Yes	108	67.9
Case Continues	39	24.5
Not answered	6	3.8
Total	159	100.0

Source: Survey

In South Kerala, 67.9% of victims got redressal after filing a DV Petition. For 24.5%, case still continues. It shows that there is delay in procedure. Redressal mechanism will be effective only when there is speedy disposal of cases.

Central Kerala

	Frequency	Per cent
No	3	2.9
Yes	15	14.7
Case Continues	6	5.9
Not answered	78	76.5
Total	102	100.0

Source: Survey

In Central Kerala, 14.7% of victims got redressal after filing DV Petition. 76.5% of victims did not answer this question. This shows that redressal mechanism is not much effective.

North Kerala

	Frequency	Per cent
No	21	13.0
Yes	111	68.5
Still The DV Case Continues	24	14.8
Not answered	6	3.7
Total	162	100.0

Source: Survey

In North Kerala, 68.5% of victims got redressal after filing DV Petition.

Here, plight of victims are better compared to North Zone.

6.2.1.29 Your Present Status

South Kerala

	Frequency	Per cent
Separated	51	32.1
Staying with Husband	6	3.8
Not answered	102	64.2
Total	159	100.0

Source: Survey

In South Kerala, 32.1% of victims are separated from their husbands after filing DV cases. Only 3.8% victims are staying with husbands. 64.2% of victims showed reluctance to answer that question. That shows that they are also not in good terms with husband.

Central Kerala

	Frequency	Per cent
Separated	6	5.8
Staying with Husband	48	47.1
Unanswered	48	47.1
Total	102	100.0

Source: Survey

In Central Kerala, 5.8% of victims are separated from their husbands after filing DV cases. Only 47.1 percent are staying with husband. 47.1 percent are reluctant to disclose it. In this analysis, un answered group is of some importance. Their relation ships with husband's family might have been spoiled.

North Kerala

	Frequency	Per cent
Separated	30	18.5
Staying with Husband	6	3.7
Not answered	126	77.8
Total	162	100.0

Source: Survey

In North Kerala, 18.5% of victims are separated from husband after filing a domestic violence case. Only 3.7% of victims are staying with husband. 77.8% of victims are reluctant to answer this question.

6.2.1.30 Now Happy or Not?

South Kerala

	Frequency	Per cent
No	39	24.5
Yes	84	52.8
Not answered	36	22.6
Total	159	100.0

Source: Survey

In South Kerala, 52.78% of victims are satisfied with the present life. 24.5 of victims say that they are not happy. 22.6 percent of victims are reluctant to answer this question. This shows their relation with husband may not be good.

Central Kerala

	Frequency	Per cent
NO	27	26.5
YES	72	70.6
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 70.6% of victims are satisfied with the present life. 26.5 percent of victims are not satisfied with their present condition of life. They are not happy as they have not received effective remedy from PWDV Act.

North Kerala

	Frequency	Per cent
No	21	13.0
Yes	84	51.9
Not answered	57	35.2
Total	162	100.0

Source: Survey

In North Kerala, only 51.9% of victims are satisfied with the present life. 13% of victims are not happy now. Percentage of satisfied victims are less compared to Central Zone.

6.2.1.31 Relation with Husband's Family

South Kerala

	Frequency	Per cent
No	153	96.2
Yes	3	1.9
Not answered	3	1.9
Total	159	100.0

Source: Survey

In South Kerala, 96.2% of victims do not have any relation with the husband's family right now. After filing the case, their relationship with the husband's family members became strained.

Central Kerala

	Frequency	Per cent
NO	42	41.2
YES	57	55.9
Not answered	3	2.9
Total	102	100.0

Source: Survey

In Central Kerala, 41.2% of victims do not have any relation with the husband's family right now. 55.9% of victims still retain a relationship with the husband's family members. 2.9% did not answer the question. Compared to South Zone, more victims retain relationship with Husband's family.

North Kerala

	Frequency	Per cent
No	111	68.5
Yes	45	27.8
Not answered	6	3.7
Total	162	100.0

Source: Survey

In North Kerala, 68.5% of victims do not have any relation with the husband's family right now. 27.8% of victims still retain relationship with the husband's family.

6.2.1.32 Regret filing of Petition under PWDV Act

South Kerala

	Frequency	Per cent
No	138	86.8
Sometimes	15	9.4
No Idea	3	1.9
Not Filed	3	1.9
Total	159	100.0

Source: Survey

In South Kerala, 86.8% of victims do not have any rethinking after filing a DV Petition. 9.4 percent of victims are regretting over their act of filing DV petition. After filing such a petition, they will loose relation with husband. This must have made a change in their attitude.

Central Kerala

	Frequency	Per cent
No	48	47.1
Yes	39	38.2
Sometimes	6	5.9
Not answered	9	8.8
Total	102	100.0

Source: Survey

In Central Kerala, 47.1% of victims do not have any rethinking after filing a DV Petition. 38.2% of victims are thinking about why they have filed a DV Petition. 8.8% of the victims are confused and did not answer the question. If

victims are satisfied with the remedy obtained, there is no scope for rethinking.

North Kerala

	Frequency	Per cent
No	123	75.9
Yes	27	16.7
Sometimes	3	1.9
No Idea	3	1.9
Not answered	6	3.6
Total	162	100.0

Source: Survey

In North Kerala, 75.9% of victims do not have any rethinking after filing a DV Petition. 16.7% is rethinking why they have filed the Petition. 1.9% rethinks some times. 1.9% has no idea about this question. 3.6% declined to answer this question. Here, percentage of rethinking victims are less compared to Central Zone.

6.2.1.33 Is There Compulsion to File Petition?

South Kerala

	Frequency	Per cent
No	87	54.7
Yes	69	43.4
Not Filed	3	1.9
Total	159	100.0

Source: Survey

In South Kerala, 43.4% of victims have filed DV cases because of compulsion and not by their own will. This shows external influence which compelled them to file DV cases.

Central Kerala

	Frequency	Per cent
NO	81	79.4
YES	15	14.7
Not answered	6	5.9
Total	102	100.0

Source: Survey

In Central Kerala, 14.7% of victims have filed DV cases because of compulsion and not by their own will. 5.9% of victims did not answer this question. Compared to South Kerala, victims took own decisions here.

North Kerala

	Frequency	Per cent
No	105	64.8
Yes	54	33.3
Not answered	3	1.9
Total	162	100.0

Source: Survey

In North Kerala, 33.3% of victims have filed DV cases because of compulsion and not by their own will. Here percentage of victims compelled

by others are less compared to South Zone and more compared to Central Zone.

6.2.1.34 If Compulsion to File Petition, By Whom?

South Kerala

	Frequency	Per cent
No compulsion	87	54.7
Family	42	26.4
Others	27	17.0
Not answered	3	1.9
Total	159	100.0

Source: Survey

In South Kerala, 26.4% of victims filed DV Petition because of compulsion from family and 17% because of compulsion from others.

Central Kerala

	Frequency	Per cent
Family	15	14.7
Not answered	87	85.3
Total	102	100.0

Source: Survey

In South Kerala, 14.7 % of victims admit compulsion from family members. 85.3% even does not dare to answer the question. That implies they are also under some kind of compulsion.

North Kerala

	Frequency	Per cent
No compulsion	15	9.3
Family	33	20.4
Others	3	1.9
Not answered	111	68.5
Total	162	100.0

Source: Survey

In North Kerala, 20.4% of victims filed DV Petition because of compulsion from family and 1.9% because of compulsion from others. 68.5% does not even dare to answer the question. That means they are also under some compulsion.

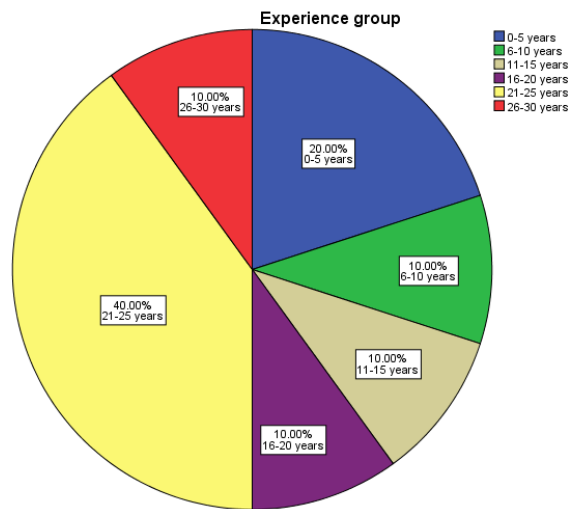
6.3 Empirical Study among Judicial Officers

30 judicial officers were selected for study. The statistical tool used was the questionnaire method. The questionnaire is given as Appendix-II.

6.3.1 Experience in Years

	Frequency	Per cent
1-5 years	6	20.0
6-10 years	3	10.0
11-15 years	3	10.0
16-20 years	3	10.0
21-25 years	12	40.0
26-30 years	3	10.0
Total	30	100.0

Source: Survey



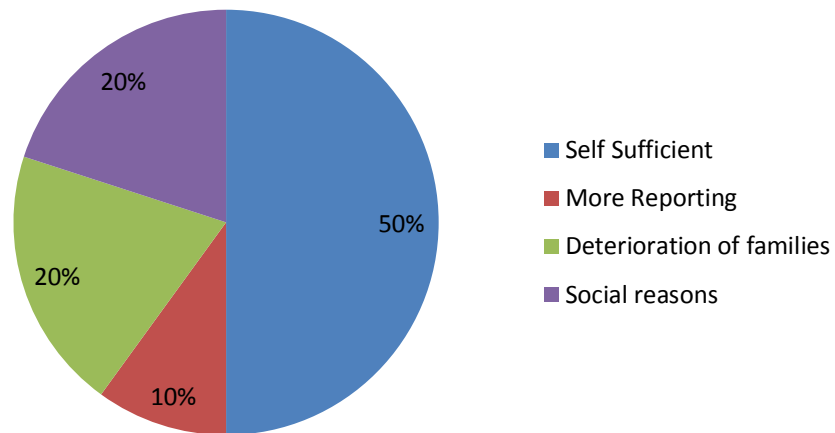
Judges with less than or equal to 5 years of experience represent 20% of the sample for this survey. Judges with 6-10 years, 11-15 years and 16-20 years are 10% of the sample each. Judges with 21-25 years of experience contain 40% of the sample and those with 26-30 years of experience contribute to 10% of the sample.

6.3.2 Reasons for Increase in Domestic Violence

	Frequency	Per cent
Self Sufficient	15	50.0
More Reporting	3	10.0
Deterioration of families	6	20.0
Social reasons	6	20.0
Total	30	100.0

Source: Survey

Reasons for increase in DV



Self-sufficiency of women contributes 50% of reasons for an increase in DV, more reporting of the DV cases contribute 10 % and deterioration of families amount to 20% . Social reasons cause a 20% increase in DV.

6.3.3 Speedy Redressal Under PWDV Act as Compared to S. 498-A IPC

	Frequency	Per cent
NO	6	20.0
YES	24	80.0
Total	30	100.0

Source: Survey

80% of the judges prefer the PWDV Act to IPC Section 498-A and the remaining 20% of judges prefer IPC Section 498-A to PWDV Act as far as speedy redressal is concerned.

6.3.4 Misuse of Provisions of PWDV Act

	Frequency	Per cent
YES	27	90.0
No	3	10.0
Total	30	100.0

Source: Survey

90% of Judges are of the opinion that DV provisions are being misused. (This question was based on a study by *John Hamel* that there is abuse of men by women. It was published in 2018 by Silvers publishing LL.C).

6.3.5 Whether PWDV Act is One-Sided?

	Frequency	Per cent
NO	15	50.0
YES	15	50.0
Total	30	100.0

Source: Survey

50% of the judges say that the PWDV Act is one-sided. 50 Percent say it is not one-sided. In PWDV Act, there is no gender neutrality as it does not address cruelty done by wife, against husband.

6.3.6 Whether Girls are Adamant and Reluctant to Adjust with In-Laws and Husband

	Frequency	Per cent
NO	6	20.0
YES	24	80.0
Total	30	100.0

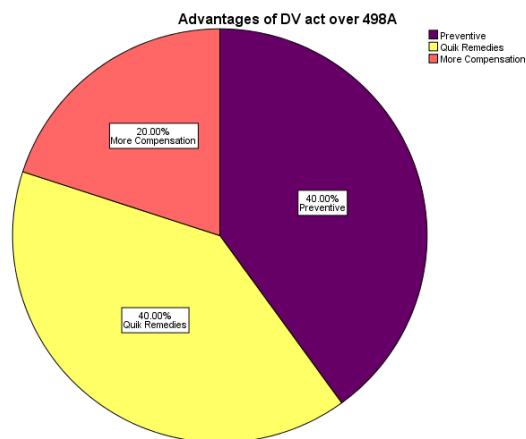
Source: Survey

80% of judges say that girls are adamant and reluctant to adjust with in-laws and husbands. The remaining 20% contradict this conclusion. If majority of judges are holding such a view, that will reflect in their decisions and ultimately affect redressal to victims.

6.3.7 Advantages Of PWDV Act Over S. 498-A

	Frequency	Per cent
Preventive	12	40.0
Quick Remedies	12	40.0
More Compensation	8	20.0
Total	30	100.0

Source: Survey

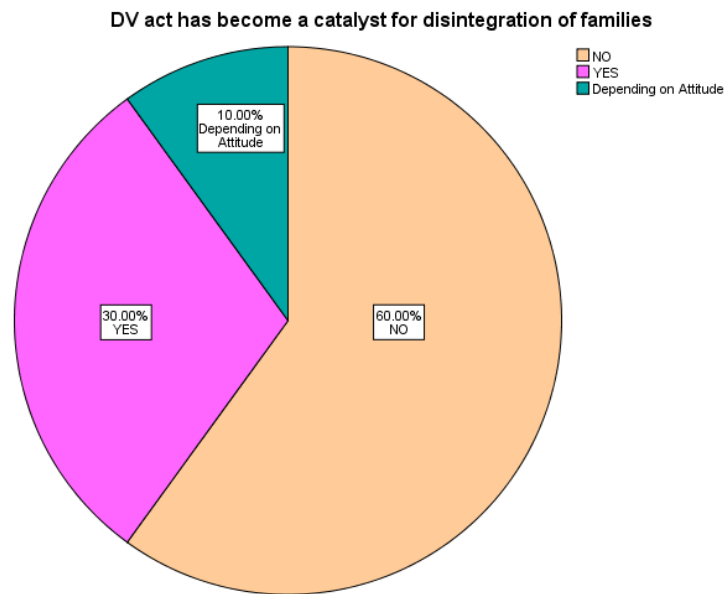


The advantages of PWDV Act over IPC Section 498-A are preventive as per the opinion of 40%, quick remedies says 40% and more compensation as per 20% of Judicial Officers who participated in the survey. They are of opinion that PWDV Act has advantage over S.498-A of IPC.

6.3.8 PWDV Act has become a Catalyst for Disintegration of Families

	Frequency	Per cent
No	18	60.0
Yes	9	30.0
Depending on Attitude	3	10.0
Total	30	100.0

Source: Survey

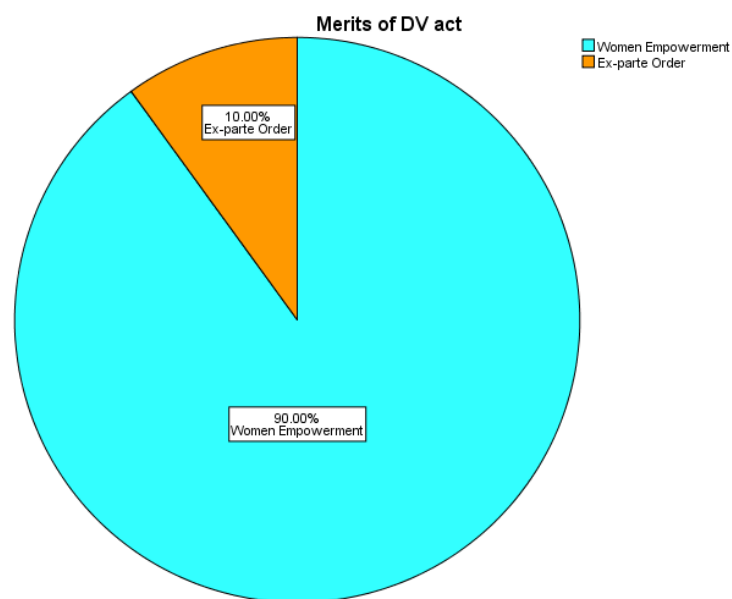


30% of the judges say that the PWDV Act has become a catalyst for the disintegration of families, while 60% contradict this. 10% of the judges say that it is depending on attitude. Attitude of judicial officers are important as it will reflect in their decisions.

6.3.9 Merits Of PWDV Act

	Frequency	Per cent
Women's Empowerment	27	90.0
Ex-parte Order	3	10.0
Total	30	100.0

Source: Survey



90% of the judges who took part in this survey say that the very important merit of the PWDV Act is women's empowerment and the remaining 10% say that it is ex-parte order. This shows that PWDV Act has empowered woman to a certain extent.

6.3.10 Demerits of PWDV Act

	Frequency	Per cent
Can be misused	15	50.0
Relief can be claimed only against Respondents	3	10.0
Most ill drafted and not implemented properly	12	40.0
Total	30	100.0

Source: Survey

50% of the judges say that the PWDV Act can be misused, 10% say that relief can be claimed only against Respondents and 40% say that the PWDV Act is most ill-drafted and not implemented properly. These 3 opinions are important as it will reflect in decision making.

6.3.11 Claim more Gold from Husband at the Time of Divorce

	Frequency	Per cent
Yes	6	20.0
Sometimes	24	80.0
Total	30	100.0

Source: Survey

20% of the Judges say that victims claim more gold from husband and the remaining 80% say that it happens sometimes only. This attitude of Judges are reflected in their decisions. (It was evident in case studies of *Kollam*)

6.3.12 Maintenance under Cr.P.C S.125 and under PWDV Act Simultaneously

	Frequency	Per cent
No	12	40.0
Yes	18	60.0
Total	30	100.0

Source: Survey

60% of the judges are of the opinion that maintenance under Cr.PC Section 125 and PWDV Act can be claimed simultaneously, while the remaining 40% say that it cannot be claimed simultaneously. Judicial officers who are magistrates dealing with DV case subscribed to the first view and others hold second view. Only first category persons are aware of this provision.

6.4 Empirical Study Among Advocates

105 advocates from various Courts across Kerala were selected for study. The statistical tool used was the questionnaire method. The questionnaire is given in Appendix - III.

6.4.1 Bar Practice (Years)

	Frequency	Per cent
0-10	45	42.9
11-20	42	40.0
21-30	6	5.7
31-40	6	5.7
41-50	3	2.9
Not answered	3	2.9
Total	105	100.0

Source: Survey

Advocates with less than or equal to 10 years of bar practice constitutes 42.9% of the sample, between 11 and 20 years of bar practice are 40%, between 21 and 30 are 5.7%, between 31 and 40 are 5.7% and more than 40 years of bar practice related to 2.9% of the sample.

6.4.2 Reasons for the Increase in Domestic Violence

	Frequency	Per cent
Alcoholism	18	17.1
Lack of awareness	36	34.3
Women empowerment	27	25.7
Extra-marital relationship	6	5.7
Physical torture from husband	15	14.3
Not answered	3	2.9
Total	105	100.0

Source: Survey

17.1% of advocates say that alcoholism is the reason for the increase in DV cases, 34.3% of advocates say that lack of awareness, 25.7% of advocates are of the opinion that women's empowerment is the reason for the increase in filing of DV cases. 5.7% of the advocates under the study suggest that extra-marital relationships and 14.3% of the advocates are of the view that physical torture from the husband is the main reason for the increase in DV cases. Majority hold the view that lack of awareness is major causative factor.

6.4.3 Do you Educate the Victims about the Provisions of the PWDV Act

	Frequency	Per cent
No	3	2.9
Yes	102	97.1
Total	105	100.0

Source: Survey

97.1% of advocates convince the victims about the provisions of the PWDV Act.

6.4.4 Husband's Illicit Relationships or Alcoholism

	Frequency	Per cent
Yes	105	100.0
No	0	0

Source: Survey

All the advocates (100%) who took part in this survey say that husband's illicit relationships or alcoholism caused DV cases.

6.4.5 Speedy Redressal Under PWDV Act Compared To IPC Section

498-A

	Frequency	Per cent
No	30	28.6
Yes	75	71.4
Total	105	100.0

Source: Survey

71.4% of the advocates observe that the PWDV Act provides speedy redressal as compared to IPC Section 498-A, while 28.6% contradict this.

6.4.6 Misuse of PWDV Act

	Frequency	Per cent
No	6	5.7
Yes	96	91.4
Not answered	3	2.9
Total	105	100.0

Source: Survey

94.1% of the advocates under the survey find misuse of PWDV Act while 5.7% of the advocates do not find any misuse of PWDV Act. It is the advocate who drafts the petition. If they say, there is misuse, they are also responsible for that.

6.4.7 Whether PWDV Act is One-Sided

	Frequency	Per cent
No	27	25.7
Yes	78	74.3
Total	105	100.0

Source: Survey

74.3% of advocates are of the opinion that the DV Act is one-sided, while 25.7% disagree with this. It is treated as one sided as there is no gender neutral provisions.

6.4.8 Girls are Adamant and Reluctant to Adjust with in-Laws and Husband

	Frequency	Per cent
No	33	31.4
Yes	69	65.7
Not answered	3	2.9
Total	105	100.0

Source: Survey

65.7% of advocates say that girls are adamant and reluctant to adjust with in-laws and husbands, while 31.4% are against this finding.

6.4.9 Advantages of PWDV Act over S.498-A IPC

	Frequency	Per cent
Speedy remedy	78	74.3
Protect the rights of the women	3	2.9
Change in society's attitude towards women	6	5.7
Nil	15	14.3
Not answered	3	2.9
Total	105	100.0

Source: Survey

74.3% of advocates find speedy remedy as an advantage, 2.9% say that PWDV Act protect the rights of women, 5.7% observe change in society's

attitude towards women and 14.3% of advocates do not find any advantage of PWDV Act as compared to IPC Section 498-A.

6.4.10 Awareness about Service Rendered by *Jagratha Samithi*

	Frequency	Per cent
No	45	42.9
Yes	60	57.1
Total	105	100.0

Source: Survey

57.1% of the advocates who took part in the survey are only aware of the services rendered by *Jagratha Samithi*. This shows gravity of lack of awareness. Even advocates are not aware of it.

6.4.11 PWDV Act has become a Catalyst for the Disintegration of Families

	Frequency	Per cent
No	63	60.0
Yes	39	37.1
Not answered	3	2.9
Total	105	100.0

Source: Survey

37.1% of the advocates think that the PWDV Act has become a catalyst for the disintegration of families and 60% of the advocates disagree with it.

6.4.12 Merits of PWDV Act

	Frequency	Per cent
Speedy disposal	57	54.3
Less expensive	6	5.7
Protect women from all types of cruelty	21	20.0
Nil	21	20.0
Total	105	100.0

Source: Survey

According to the advocates who participated in the survey, the merits of PWDV Act are suggested as speedy disposal by 54.3%, less expensive by 5.7%, protection to women from all types of cruelty by 20% and no merits are put forward by 20%.

6.4.13 Demerits of PWDV Act

	Frequency	Per cent
One-sided	57	54.3
Misuse of this Act	18	17.1
Breaking down family relationship	6	5.7
Nil	9	8.6
Not answered	15	14.3
Total	105	100.0

Source: Survey

Advocates who took part in this survey identify the demerits of PWDV Act as one-sided (54.3%), misuse of PWDV Act (17.1%) and breaking down

family relationship (5.7%). 8.6% Advocates did not identify any demerit of the PWDV Act.

6.4.14 Suggestions for Improvement of Application of PWDV Act

	Frequency	Per cent
Separate Court	36	34.3
Men oriented provisions should be added	9	8.6
Public awareness through classes	9	8.6
More caution from the part of Court while dealing with DV cases.	12	11.4
Careful approach should be taken before filing complaint	9	8.5
Not answered	30	28.6
Total	105	100.0

Source: Survey

The suggestions for the improvement of application of PWDV Act are: 34.3% suggest that separate Court is needed for DV cases, 8.6% suggest men oriented provisions should be added, 8.6% suggest public awareness through classes, 11.4% suggests, more caution from the part of Court while dealing with DV cases, 8.5% suggests that careful approach should be taken before filing complaint.

6.4.15 The Role of Protection Officers are Inconspicuous

	Frequency	Per cent
No	39	37.1
Yes	63	60.0
Not answered	3	2.9
Total	105	100.0

Source: Survey

60% of the advocates think that the role of Protection Officers are inconspicuous while 37.1% disagree with it. Advocates do not prefer clients going to Protection Officers. This attitude is reflected here.

6.4.16 Women's Commission and NGOs have neglected the Victims of Domestic Violence

	Frequency	Per cent
No	66	62.9
Yes	39	37.1
Total	105	100.0

Source: Survey

37.1% of the advocates who participated in this survey are of the opinion that Women's Commission and NGOs have neglected the victims of DV, while 62.9% disagree with it.

6.5 Interview with Protection Officers

This researcher has conducted an interview with 6 Protection Officers from *Calicut, Kannur, Ernakulum, Thrissur, Kollam, and Trivandrum*. The statistical tool used was the interview method. Seven questions were asked to them. It is given as Appendix IV.

The first question was what are the major problems in the implementation of the PWDV Act? The Protection Officer from *Calicut* says there are problems at the implementation level. In Family Court, if the husband is not willing to give maintenance, attachment is available. But in the case of domestic violence, attachment orders are not available. Distress warrants are pending in village offices. Different courts take different attitudes towards protection orders. As per the decision in *Batra v. Batra*,⁶ there is no provision to accommodate daughter-in-law in in-law's house. Kerala High Court has taken a different view that *Batra v. Batra* must not be taken in a strict sense.⁷

The office of Protection Officer does not have sufficient infrastructure. All the supporting staff of the Protection Officer's office are contract staff. In many cases, the wife continues to live in the house of the husband. In such cases, harassment continues even if they are having a protection order in hand. Police are not filing F.I.R in Domestic Violence cases. Fake reports are

⁶ 2007 (3) SCC 169.

⁷ *Shima v. Nawas*, 2015(1) KLJ 749

filed by lawyers. They add spice to the case and distort it for strengthening the case. But it will often turn negative. More legal counsellors should be appointed. The Act is clumsily drafted.

Protection Officer from *Ernakulam* reacted that there is a deficiency in infrastructure and the clerk is a contract staff. Advocates are holding views against Protection Officers. There should be amendments to the Act. Criminal cases come to the scene only when protection orders are violated. Maintenance and other orders are not effective. Law should be strengthened. If Respondents are not coming, the Protection Officer has no power to ensure their appearance. They can't be arrested to ensure appearances. D.I.R is given to Magistrate. But as per Act, only NGOs, who are registered service providers have the power to issue D.I.R. She also told that judgment of *Batra v. Batra* is attaching a rider to the rights of victims.

The Protection Officer from *Thrissur* replied that the lack of infrastructure is a major problem. In Court, D.I.R filed by Protection Officers is not effective. Its acceptability depends on hook and crook played by advocates.

The Protection Officer from *Kannur* says the case should be completed within six months. But in reality, sometimes it may reach up to seven years; there should be a separate Court for dealing with domestic violence cases. Infrastructure and staff are deficient. Genuine cases are a lot, but victims are not aware of the Act and remedies. In cinema theatre, advertisements should

be given against the PWDV Act like in the case of cigarettes. Victims don't know that the District Legal Services Authority is providing free legal aid. In Domestic Violence cases, notice should be served by Protection Officers. Usually, victims will not be financially stable, but most of the Respondents have money. Evidence is strictly looked into as in criminal cases. Many women show reluctance to pursue domestic violence cases. Distress warrants are pending in Court. Advocates will add spice to the facts and will convert them into divorce cases. The most rigorous punishment is also a nominal one. That is given under Section 18 for violating a protection order, that too is one year imprisonment and Rs.2000 as fine. Only this is the criminal offence in the Act. Pending cases should be disposed of through Adalats. Awareness programs should be conducted for men.

Protection Officer from *Kollam* responded that orders are not given judiciously. Protection orders under Section 18 are given on the basis of averments of parties. Court is not taking D.I.R in true spirit. Advocates should be completely avoided from domestic violence cases. The earlier practice of referring S.498-A cases to family welfare committee should be adopted in domestic violence cases also.

Protection Officer from *Trivandrum* replied to the first question that the inadequacy of staff and infrastructure is a major problem. Lack of awareness among common people is another problem. The contract staff of the

Protection Officer's office should be made permanent. There is no power to Protection Officer to ensure attendance of Respondent. Advocate's drafting of domestic violence petition and including fake torture stories also create problems.

The second question was who refers victims to you?

The Protection Officer from *Calicut* replied that they come directly. Victims are also directed from police station. But an advocate never promotes victims coming to Protection Officers.

Protection Officer from *Ernakulam* says victims are directed to them from women's cell, *Kudumbasree*, etc. Some victims are coming directly.

The Protection Officer from *Thrissur* says some victims are coming directly. Victims are also referred from *Kudumbasree*, *Anganwadi*, *Asha workers*, etc. Advocates prevent victims from coming to Protection Officers.

Protection officer from *Trivandrum* says some victims are coming directly or referred by Women's Commission.

The third question was do you refer victims to shelter homes?

Protection Officers from *Calicut and Ernakulam* said that they refer them to shelter homes, Protection Officer will also sent them to short-stay homes. In *Thrissur*, there is a shelter home called *Snehitha*. Protection Officer from

Kannur says they refer to shelter homes. In *Kannur*, there is 'Sakhi', one-stop center. Protection Officer from *Kollam* says, she sent victims to shelter homes rarely. She advises victims to stay at home itself because if wives are away, the illegal activities of husbands will increase. Protection Officer from *Trivandrum* says they will refer victims to shelter homes.

Fourth question was, does alcoholism and extra-marital relationships of husbands trigger wife to file domestic violence cases?

Protection officer from *Calicut* says - yes. Protection Officer from *Ernakulam* says such cases are rare. In some cases, husbands are using drugs and harass family members. In such cases, it may end up in domestic violence cases. Protection Officer from *Thrissur* says that because of that physical and mental harassment happens. The Protection Officer from *Kannur* says, apart from these two cases, men's notion that women don't deserve human rights is the concept of the majority of males of *Kannur*. Protection Officers from *Kollam* and *Trivandrum* say that these two issues will culminate in wife filing domestic violence cases.

The fifth question was what are the causes of the increase in domestic violence cases?

Protection Officer from *Calicut* says it is not increasing, but reporting has increased. The Protection Officer from *Thrissur* says it seems like,

increasing. Actually reporting is increasing. The Protection Officer from *Kollam* says both domestic violence and reporting are increasing. Protection Officer from *Trivandrum* says lack of adjustment among couples is one problem. As ladies are more educated and employed, they are intolerant to harassment.

The sixth question was whether there is any misuse?

Protection Officer from *Calicut* says 85% of the cases are genuine. Protection Officer from *Kollam* says only 5% of the ladies misuse it. Protection Officers from *Thrissur, Ernakulam, Kannur, and Trivandrum* says there is no rampant misuse. Misuse is possible even in several other Acts.

The seventh question was what is your suggestion for improvement of the system?

Protection Officer from *Calicut* says; there should be necessary amendments. There should be a Court for exclusively dealing with domestic violence cases.

Advocates should avoid adding spice to the drafting, as this will reduce the chance of reunion.

Protection Officer from *Ernakulam* responded that there should be more awareness campaigns. Gender equality should start from within the family.

In Curriculum, from the first standard itself, family awareness must be included.

Protection Officer from *Thrissur* opined that if judicial power is given to protection Officers in the matter of summoning witness, it will be good.

Protection Officer from *Kannur* says, now many of the judgments are pro-male. There should be gender sensitized judiciary. Violation of protection order should be made non-bailable offense.

Protection Officer from *Kollam* says that all domestic violence cases must reach court only through Protection Officer and they should get freedom to intrude into family affairs. ‘Retreat’⁸ in the Christian Community is somewhat effective in curbing domestic violence among Christians of coastal area. An awareness programme should be conducted in each residence association. Panchayaths should conduct compulsory classes for preventing domestic violence.

Protection officer from *Trivandrum* says an adequate amendment is needed. More awareness should be given to men.

⁸ Husband and wife together or all family members together will go to Retreat Centres for prayer ranging from 7 to 41 days. Some family counselling sessions are also there. Some people may feel relief as they are chanting God’s prayers continuously. But this will depend on the mindset of people. *Divine* retreat centre, *Chalakydy*, *Gethesmani* retreat centre, *Calicut*, *Jerusalem* retreat Centre, *Thalore* etc. are some prominent retreat centres in Kerala.

Till the date of submission of this thesis, only data up to the year 2017 were uploaded on the website of the State Crime Records Bureau. This researcher approached the Bureau directly and got provisional data for 2018. In data of 2018, there is a slight change from the data of 2017. In 2018, in the Northern zone, *Malapuram* has a hike in cruelty against women. Number is 338 and surpassed *Calicut* which is 308. Provisional data (2018) of *Trivandrum* is 172, *Kollam* 204, *Ernakulam* is 193, *Thrissur* 174, *Calicut* 308, *Malapuram* is 338. But taking only purely domestic violence cases, it was 8 in 2015 and decreased to 5 in 2017. So, cruelty includes domestic violence also. This researcher approached some family Court lawyers of *Malapuram* district. Advocate *Ali Hassan T(K 263/94)*, Advocate *K.A.Samad (K459/92)* and Advocate *Dinesh Pookkayil (K350/94)* opined that increase in a number of matrimonial cruelties against wives is not due to a sudden increase in its number. These kinds of offenses are happening mostly in coastal areas. In 2015 and 2016, advocates were filing these cases only in Family Court. Two Family Courts are there. One at *Thirur* and one at *Malapuram*. Usually, they will get a meagre amount of maintenance. They are mainly Muslim population and will have 4 or 5 children. Meagre maintenance amount is not sufficient to rear their children. So all Family Court advocates started filing it as 2 separate cases, one under S.498-A and other under PWDV Act. This trend started at the end of 2017. That is the reason for the increase in numbers. Actually, the number is less compared to *Calicut*.

Extent of domestic violence in Kerala is studied through empirical study in six districts and by case study in 3 districts, one from each zone. A study of the present condition of victims who have filed complaints under the PWDV Act was conducted. Case studies of thirty victims, 10 from each district revealed that they are not satisfied with the present redressal mechanism. The level of awareness about the Act prior to filing the case was very minimal. Awareness should be given to males also. Many men including highly educated and even professionals do not know the penal provisions in the Act. Awareness should be given to male members of society. Even advocates do not know the importance of Protection Officers in curbing the menace of domestic violence. Interview with judicial officers revealed that there are a lot of misuses and fake complaints under the Act. Some unscrupulous ladies may be misusing the Act, but if it continues, judges might view all future cases with prejudiced mind and it will ultimately weaken the law. Recent trend of Kerala High Court has been analyzed by this researcher in chapter 4. There it was revealed that in the majority of cases, victims are getting interim orders favourably. But accused are acquitted in many cases. Empirical study with judicial officers is a pointer towards that trend. Advocates must abstain from persuading the victim to file false claims. It will have a negative impact. Recently a lady called *Thushara* was starved to death by in-laws in Kerala⁹. Even neighbours and relatives were not aware of her suffering. Many victims

⁹ Kerala woman starved for 2 years over Dowry, dies weighing 20 Kg: Police (19th Nov, 2019, 3.42 PM), <https://www.ndtv.com/kerala-news/kerala-woman-starved-for-2-years-over-dowry-dies-weighing-20kg-police-2016604>.

may not complain and suffer silently. So *Jagratha Samithi* must extend its reach to residence associations and collect information. Society also must keep a vigilant eye to protect victims of domestic violence. In the ensuing chapter, summary of six chapters, research findings, conclusion and suggestions for improvement of the system are included.

CHAPTER 7

CONCLUSION AND SUGGESTIONS

In a welfare State, the State must protect its citizens from aggression. If it fails to do so at least a therapeutic approach must be taken to soothe the victims. Even from the time of the theory of social contract, this protective nature is attributed to the State and State is bound to consider the aspirations of its subjects. In a monarchical police state, the situation may be different. In a welfare state, proper balancing of rights and duties of the citizens should be maintained. In order to maintain this balance, some protective rights such as the presumption of innocence till guilt is proved, shifting the burden of proof to prosecution, protection against self-incrimination, etc. are given. These are attributes of the accusatorial system. The purpose is to keep a balance; as the whole of society points its accusing finger to a single individual, and these protective rights in favour of accused will help in striking a proper balance.¹ This has created a wrong notion in the mind of some people that the criminal justice system is meant for the protection of criminals though the purpose of criminal law is to protect society from criminals.

As rehabilitative and reformatory theories attained prominence, the criminal tendency was treated as a pathological aberration, which can be cured by proper treatment. For this, the government spent a considerable amount of

¹ Edgar Bodenheimer, Jurisprudence-The Philosophy and method of Law 119 (2004).

money for constructing huge mansions for their accommodation and conceptualizing reformatory homes, while neglecting what happens to the people on the other side of the equation- the victims. However, nowadays, that attitude has undergone a radical change.

There has been a realization that the Criminal law does not perform its role adequately if it does not pay attention to the needs of the victims. The task of Criminology and Criminal law has thus become more sophisticated, more voluminous in its content and more delicate in the approach to be adopted. From the victim's perspective, reception at the hand of the judiciary is cold. Judicial officers should take a victim-oriented approach. What the victim needs is not sympathy, but empathy. A Judicial officer who identifies himself with the victim can give proper remedy to the victim. However, disregarding the fact that they are 'ministers of justice', they act as 'merchants of justice'.

What victims need is emotional support from society, and they hardly get it. This happens especially in the case of domestic violence victims.

Even though historically and socially, the status of women in India has been one of respect and reverence, even today, they struggle for existence and identity. The Constitutional protection of equality is not enough to curb the rampant discrimination against women in India.

Women in Kerala and generally in India, whatever religion they belong to, are facing different kinds of social injustice in their day-to-day life. The status of a society is determined by the respect it attributes to women.

7.1 Drawbacks of the PWDV Act

This research work dealt with the study of redressal mechanisms for victims of domestic violence in Kerala. The Act was enacted to give protection to the victims of domestic violence. This Act has some drawbacks.

7.1.1 Admitting only Women as Victims

The PWDV Act is very different from the Family Violence Act of U.S.A. Under the Act, only women are victims, and only a woman can file a complaint against the man. A man has no right under this law. This often creates an impression in the mind of adjudicating authorities that the legislation is one sided and consequently they exercise extreme caution in granting reliefs under the Act; which often turns out to be counter productive to the victims.

7.1.2 Potential Misuse

If a woman lodges a complaint that her husband committed verbal and emotional abuse against her, her statement can be taken as valid evidence before the court of law. Under Section 18 of this Act, a magistrate can take

measures to protect the woman from domestic violence which may occur in future. Some women misuse this provision. This Act also says that any person can inform the act of domestic violence, even neighbours or relatives can file a complaint on behalf of a woman. Therefore, even if a woman does not want to file a complaint, her relative files a complaint on her behalf, then she will be in a dilemma, as she has to decide prudently whether to stand with her husband or with relatives.

7.1.3 Ambiguity in Definition

As per the definition, an insult is also considered as domestic violence. Differences may indeed arise in married life, as both partners come from different backgrounds. Some unscrupulous women taking a ride on this provision, approach Family Courts and that may end up in a divorce. Thus, even some Protection Officers and Family Court judges state that the PWDV Act has accelerated the breakdown of families.

In Kerala, a strong patriarchal notion continues to exist. There was a period in Kerala when women enjoyed autonomy on how to spend their life. The live-in relationship in the form of '*Sambandham*' existed here. However, now, all communities have shifted to the patriarchal system.

Society, Governmental organizations, media, etc. play a pivotal role in providing redressal for victims of domestic violence. Education has given the

women of Kerala, the courage to fight against injustice. However, a section of society continues to oppose women blindly, even though their causes are genuine. Effective enforcement of the protective provisions of female-friendly laws is needed to end injustice to women.

The National Commission for Women visits various States to study the status of women and also conduct an investigation in cases involving severe crime against women. However, it is not easy to identify cases of domestic violence in this way. When women suffer violence from family members, society acts as a mere spectator. A study conducted by Times of India,² reveals that even highly educated men beat wives in Kerala. Highly qualified, employed wives also suffer it. In this 21st century, women have conquered even space. However, at home, she has to do multiple roles of wife, daughter-in-law, mother, sister-in-law and more than that, of a homemaker. The sex ratio of India shows that there are miles to go before attaining equality.

7.2 Chapter wise Conclusion

Chapter 1 deals with the Aim, Objective, Research question Hypotheses, Research methodology, Limitation and Review of literature of the Study.

The objectives of the study are:

² Domestic Violence haunts literate Kerala, The Times of India, 30th Jan.2018.

1. To study the extent of domestic violence against women in the Kerala context and suggest measures to eradicate it.
2. To analyze the present condition of victims of domestic violence, who have filed complaints under the PWDV Act.
3. To suggest measures for effective implementation of the PWDV Act.
4. To study whether there is sufficient awareness about the Act among the public.
5. Whether the Protection Officer's role is useful in reducing Domestic Violence.
6. To study the role played by the women's Commission in curbing Domestic Violence.

Research Questions are:

1. Whether there is proper implementation of the Acts to Prevent Violence against Women?
2. Whether there is awareness among women victims in Kerala about their rights and laws related to Domestic Violence?
3. What are the Redressal Mechanisms established under the PWDV Act to resolve the issues of women victims?
4. What are the contributions of NGOs and other Non-governmental agencies for the protection of female victims in India?

The hypotheses of the study:

- The redressal and relief mechanism in Kerala is not sufficient to solve the issues of victims under the PWDV Act
- There is no proper implementation of the Act to prevent violence against women.
- Women victims in Kerala are not aware of their rights and laws about Domestic Violence.

Answer to objectives mentioned above and the research question is to be found out through the following chapters.

Historical and conceptual development of the status of the women victims is dealt with under chapter two. The victim is analysed from a victimological perspective. The victim can be defined in a sociological context and a victimological context. Analysis in this chapter went through various eras like *Vedic*, *post-Vedic*, women's positions in *Smrithi*, in *Epics*, *Buddhist* period, the *Medieval period*, *British Age*, *Post Independence period*, etc. After analyzing the above aspects, domestic violence as a mode of women victimization was analyzed. Jurisprudential, Constitutional and human rights aspect of women victims of domestic violence was analyzed and it was concluded that victims of domestic violence constitute a separate class.

In the third chapter, the circumstances that prompted the enactment of the PWDV Act, were discussed. Deficiencies of the Dowry Prohibition Act, inadequacies of S.498-A IPC and the need for making specific laws on

domestic violence were discussed. After that, a detailed analysis of the PWDV Act was made. After Transgender marriage got recognition in India, wives in such marriage cannot get protection under this Act. Appointing men as Protection Officers under the Act causes problems. The main attributes of this law are that it covers women in a domestic relationship i. e, sisters, widows, mothers, daughters, women in the relationship of cohabitation; single women, etc. One major defect is that the Act is ill drafted. There are provisions in the Act to levy the amount for maintenance in the case of husbands who are working in private firms. However, there is no provision for levying the amount from Government employees if they are defaulters. Usually, the person who file Petition under the PWDV Act files petition under S.498-A also. This only adds up to the workload of the court. This Act is not gender-neutral, and there are no safeguards against misuse. Compared to S.498-A, this Act has many compensation angles that ensure separation and also contain provisions of protection against economic abuse. It does not mention the method of enforcement of the orders of the court except protection orders. In the case of monetary reliefs, the Act mentions a type of garnishee order in the case of private employees. There is a lack of proper enforcement mechanisms for monetary reliefs against people in business and salaried persons, who constitute the majority of respondents. This was pointed out by a Judicial Officer when the researcher interviewed him.

Women can claim maintenance both under Cr.P.C S.125 and under the PWDV Act.

Chapter 4 analyses the Judiciary's approach to victims of domestic violence. Judiciary always shows a positive approach to women victims. Judiciary plays a prominent and crucial role in protecting the rights of women by offering redressal against actual or threatened violation of these rights. Judiciary is the last resort of victims. Indian Judiciary establishes a procedure to protect the innocent, discover and initiate appropriate action against the guilty and afford "Due Process" to all cases of violence against women and ensures that perpetrators are held accountable.

This chapter analyses Judicial attitude towards S.498-A cases which enable the researcher to make a comparative study between cases under S.498-A and those under the PWDV Act, 2005. This researcher also studied as to why the need for PWDV Act came into being, despite S. 498-A. A comparison of judicial attitude shows that more favourable orders are obtained under PWDV Act. It being of civil nature, shelter aspect of married woman are answered. It was felt from decided cases that, Judiciary takes a gender-sensitive approach.

Different categories of cases are given under different headings. Wife's right to matrimonial property, constitutionality of the Act, powers to pass residence order, and cases in which PWDV Act can be used with

retrospective effect for giving more protection to women are arranged. In the subtopic, cases that are a confluence of S.498-A IPC and PWDV Act, cases that have the nature of both are included. Many ingredients of both these offences are the same. Some women opt for either one, or some others opt for both. With the same ingredients, two different types of procedures can be invoked. While going through various cases, this researcher hesitates whether the judiciary is more inclined towards the words of women. This is sometimes showed as a negative aspect of the Act. However, on conducting an empirical study with judicial officers, it is felt that they hold a personal view that rampant misuse is taking place.

As the present study is on the victims of Kerala, a separate study is made on Kerala High Court cases. All states of India take precedents from the Supreme Court of India. However, cases like domestic violence rarely reach the Supreme Court. In this backdrop, views of the High Court also have relevance. Judiciary has taken into consideration all kinds of abuses like verbal, physical, emotional and economic, which denigrates the life of women and treated them as cruelty.

Chapter 5 entitled “Role of instrumentalities in giving protection to victims of domestic violence” dealt with the role played by the Women's Commission, Non-governmental organizations and media in assisting victims of domestic violence. As the study is conducted in Kerala, the role of State

Women's Commission is examined. Though the PWDV Act is a Central Act, instead of discussing the role of the National Commission for Women, State Women's Commission is included. The present study is about domestic violence victims of Kerala. State Women's Commission has incorporated measures to protect these victims. National Commission cannot pay attention to all cases in all states. In many offences, the Women's Commission is taking *suo moto* cognizance. This most commonly happens in the case of victims of sexual violence. They are conducting many seminars. When this researcher visited State Women's Commission Office, *Trivandrum* she came to know that they are conducting seminars usually at *Trivandrum* District. Comparing the crime rate of *Trivandrum* District in 2015 with that in 2017, we can see a drastic fall in the crime rate of domestic violence. That may be due to the awareness programme of Women's Commission. Women's Commission assists *Jagratha Samithi* and shelter homes. However, many victims and even many advocates are not aware of these facilities, which eventually debilitate the purpose of the Act. So as a redressal agency, though they are doing many things for women victims, the efforts taken for Domestic Violence victims are less, and it is not focused. The second part of the chapter dealt with the role played by Non Governmental Organizations in giving redressal to domestic violence victims. A lot of NGOs in Kerala, like *Anweshi, Punarjani, Gandhi Bhavan*, etc. act as shelter homes as envisaged in the Act. They also act as a mediator, give counselling to provide

employment opportunity and provide training in different kind of jobs. They also facilitate communication with policy-makers of Government, thus acting as a bridge between victim and policy-making bodies. Their efforts are essential for the emancipation of women. They also provide free legal aid. Because of sustained work, cases that sometimes fail at the police station and courts are handled successfully by NGOs. This researcher felt that they are mainly concentrating on rehabilitation.

The chapter, in its 3rd part, deals with the role played by media. The press being the fourth estate, they can act pro-actively for the protection of victims. In many sexual violence cases, the media brought to light the gravity of the issues.

Visual media has a direct impact on the minds of viewers. The depiction of domestic violence scenes in films and serials create an impression that it is part of daily life. When we analyze the trends in Malayalam films, after 2010, there is a decrease in domestic violence scenes in films as the themes have changed too in tune with trends of new generation. However, in T.V. Serials, the depiction of domestic violence continues. Even songs in many Malayalam films state that women are inherently weak. Social Media can do a lot in victim assistance programmes. Women's Commission has developed a body called Media Monitoring Cells for controlling derogatory attitude

towards women victims. If stringent punishment provisions are attached, the Media Monitoring Cell can control such situations.

Both statutory and non-statutory bodies are interconnected. Women's Commission has a liaison with both media and NGOs. Women's Commission can recommend NGOs as service providers for domestic violence victims. Similarly, the Women's Commission can control the media through Media Monitoring Cells.

The sixth chapter is a consolidation of various kinds of empirical studies conducted by this researcher. This research work started in 2015. The entire State of Kerala was divided into 3 zones. Southern, Central and Northern. Three districts were selected from each zone which featured the highest rate of cruelty against wives -*Kollam, Thrissur, and Calicut*. A case study of 10 victims each from those districts revealed that 60 percent of victims who decided to file a case under the PWDV Act, did it in haste and say they regret that they opted to file a case under PWDV Act. Eighteen people among 30 case studies said that their present status of life is very pathetic. At the time of filing the petition, they had many expectations. Friends or relatives who prompted the filing of the case would not be there throughout the rest of their life. There are rehabilitative programs by the Women's Commission and service providers. They also teach jewellery making, book binding, etc. But due to lack of awareness, women failed to avail it. In *Kollam* district, one

peculiarity was observed. When they suffered domestic violence, they complained about it to the priests of churches than to relatives. The reason may be that there is much Latin Christian population in *Kollam* and *Trivandrum* districts. Christian women victims are more in these districts.

The second phase was an empirical study from two districts from each zone. In the Southern Zone, *Trivandrum* and *Kollam*, in the Central Zone, *Thrissur*, and *Ernakulam*, in the Northern Zone *Calicut* and *Kannur*. Victims from each district were selected. Major findings of the empirical study of victims are as follows: highest susceptible age groups are 25-29 (58.49%) in South Kerala, 30-34 (20.59%) in Central Kerala, and 25-29 (12%) in North Kerala. In the south and North Kerala, age groups are similar. However, in Central Kerala, it shows a deviation. In Central Kerala, girls are more educated, and marriage takes place at a later age when compared to other parts of the state. In all zones, mostly domestic violence incidents happened during the first ten years of marriage. (South- 49.1%, Central -26.5%. North 20.4%). In all zones, physical violence by husband is an integral part of domestic violence (South- 98.1%, Central- 88.2%, North- 79.63 %) All victims suffered humiliation from the husband in front of others (South-100%, central-94.1%. North-94.4%). In South Kerala-37.7% of ladies sought assistance from the legal system, 28.3% from family members, in Central Kerala-58.82 %sought legal assistance, 20.58% sought assistance from family members, In North, 42.6% sought assistance from the legal system and 35.2% from family

members. The majority of victims don't have any idea about Protection Officers. (South-88.68%, Central Kerala-67.6% and North-48.01% do not know). Protection Officers are the backbone of the PWDV Act. If their assistance is properly utilized, many victims will not resort to filing cases and issues will be settled through counsellors. The majority of victims do not contact women's cell or Women's Commission for help. That is because they do not have knowledge about assistance rendered by these instrumentalities. In South Kerala-83.%, Central Kerala-44.01%, and in North Kerala-70.04% of victims did not avail services of the women's cell. In the South-56.60%, Central-26.05% and in North-51.85% did not avail service from Women's Commission. The majority of victims do not know *Jagratha Samithi*. *Jagratha Samithi* is an extension of Women's Commission to deal with domestic violence cases. However, due to ignorance, victims are not utilizing this facility. In the South-98.1%, Central Kerala-88.2% and in North-64.8% do not know about services rendered by *Jagratha Samithi*. The majority of victims did not know about the PWDV Act before filing a case under that Act. This shows a lack of awareness among victims. So proper awareness should be given to both victims and perpetrators. Perpetrators resort to the commission of violence, as they are ignorant of the penal provisions under the Act. Many men do not know that beating a wife is an offence. In South Kerala-66.0 %, Central Kerala-58. 8%, North Kerala-44. 4% of victims did not know about the PWDV Act before filing petition under this Act.

Premarital counselling will have some positive effects. Present generation youth lack support of a joint family and the majority are coming from nuclear families. Elders are neither giving advises to them, nor they are willing to listen to it. So premarital counselling should be promoted. There PWDV Act, S.498-A, dowry harassment and harmful effects of related offences should be taught to them. Then boys will abstain from doing it. Females should be given classes on how to adjust with in-laws. In South-81.13%, Central-73.5% and in North-31.48 % of victims did not undergo pre-marital counselling. Help from Legal Service Authority should be increased. In South-81.13%, Central-76.05% and in North-57.4% did not get any help from DLSA. In South, 92.05%, Central-96.09%, and in North, 94.01% of victims did not contact any women forum or NGOs. That is because they are not aware of the services rendered by these instrumentalities. In the South, 92.5%, Central 94.1%, North 68.5% of victims does not know about Shelter homes. Women's Commission lists many shelter homes, and the purpose of this is not to let single women as destitutes. However, the state has failed to give awareness about this to victims. In South-50.9 %, Central 70.6-%, and in North-64.8% of victims do not know about shelter homes. In some cases, victims do not like to file a case, however, because of the compulsion of family members, they resorted to filing a complaint. Whatever may be the motive, ultimately losers will be victims. In South-26.4%, Central-14.7%

and in North-20.4% of victims filed cases due to compulsion from family members.

The third phase was an empirical study among 30 Judicial officers. 50% of Judges say that women are self-sufficient today and reluctant to make adjustments. That is one reason for the increase in domestic violence cases. Judges feel that there is misuse of the Act by empowered women. 80% of Judges say that there is speedy redressal compared to S.498-A. 90% of Judges opined that there is a misuse of provisions of the PWDV Act. This is an alarming situation. If the judge's mind is preoccupied with such a notion, it will affect the outcome of judgments. In the Sexual Harassment of Women at work place (Prevention and Prohibition) Act, 2013, there is provision for punishing petitioner, if she is making false allegations (Section 14). This researcher feels, that would be better in the case of the PWDV Act also. 50 percent of judges say D.V is one-sided. 80% say nowadays girls are adamant and fail to adjust with in-laws. 80 percent of judicial officers say, victims claim more gold from husband's family at the time of divorce than they owe. Girls do this as per the advice of their advocates. Otherwise, they will not win the case. Advocates must guide victims in the right direction. In these situations, a judge cannot approach a case with an open mind.

The fourth phase was an empirical study among advocates. Fifty advocates were selected and questionnaires were supplied to them. Significant findings

from that study were that the majority of advocates do not know about the service of Protection Officers. They hold the view that there is a lack of awareness about the Act among victims and perpetrators. (34.03%) and that is the reason for the increase in domestic violence cases. 74.3% of advocates says there is speedy redressal under PWDV Act. That is a reason for the increase in filing cases. 91.4% of advocates admit that there is misuse of PWDV Act. 97.1% says they educate their victims. These two statements are contradictory. If they are teaching the victims about the Act in the right spirit, there will not be misuse. This researcher felt that they are educating them in a negative way. 74.3% says the Act is one-sided. This Act is in contradiction with the family violence Act of U.S. Social set up of the U.S and India is different. Our Act is gender polarised. That polarisation is justifiable to a certain extent.

However, we are galloping towards western culture. The subservient role of women will be thoroughly washed off. Then gender neutrality of the Act will be highly appreciated. 65.7% say girls are adamant nowadays and are reluctant to adjust with in-laws. 74.3 % suggest that speedy remedy may be taken as an advantage of the PWDV Act. 42.9 % of advocates do not know about the service rendered by *Jagratha Samithi*. It is very pathetic. 37.1% admits that the Act is a catalyst for the disintegration of families. They never realize that they are instrumental in making it a catalyst. From this study, it is evident that even advocates have not taken the Act in its true spirit.

The fifth phase was an interview with Protection Officers. Interview with six Protection Officers revealed the following facts. The Protection Officer from *Calicut* says there are problems at the implementation level. In Family Court, if the husband is not willing to give maintenance, attachment is available. However, in the case of Domestic Violence, attachment orders are not available. Distress warrants are pending in village offices. Different Courts follow different attitudes toward protection orders. Courts do not take D.I.R in true spirit. Previously in S. 498-A matters, cases were sent to the family welfare committee. That should be brought in domestic violence cases also. Awareness programme should be conducted in each residence association. Panchayath should conduct compulsory classes for preventing domestic violence. Protection Officer from *Trivandrum* says that adequate amendment is needed. More awareness should be given to men. Protection Officer from *Calicut* says 85% of the cases are genuine. Protection Officer from *Kollam* says only 5% of the ladies misuse it. Protection Officers from *Thrissur*, *Ernakulam*, *Kannur*, and *Trivandrum* says there is no rampant misuse. Misuse is possible even in several other Acts.

There should be necessary amendments. There should be a court exclusively dealing with domestic violence cases. Advocates should avoid adding spice to the drafting, as this will reduce the chance of a reunion. There should be more awareness campaigns. Gender equality should start with in the family.

In school curriculum, from the first standard itself, gender sensitization must be included.

Protection Officer from *Thrissur* opined that judicial power may be given to Protection Officers in the matter of summoning witnesses.

7.3 Answering Objectives

The first objective was to study the extent of domestic violence in the State of Kerala. For studying this, the researcher approached the State Crime Records Bureau, District crime records bureau of *Calicut, Kannur, Thrissur, Ernakulam, Kollam, and Trivandrum*. Data given in the website was analyzed and after that this researcher visited these offices personally. They keep records of both S.498-A and domestic violence cases. At many points, ingredients of S.498-A and domestic violence overlap. Usually the criminal case is filed under S.498-A is and subsequently, petition against domestic violence is filed. So in the Crime Records Bureau, many cases are seen under the heading Cruelty by husband or by a relative of husband. This research reveals the extent of domestic in the districts chosen for study. Based on the 2015 data, three districts were selected for a case study. Based on the 2017 data; the empirical study was conducted. These data show the extent of domestic violence happening in Kerala. An empirical study conducted among victims, advocates and judicial officers show the real scenario of Kerala regarding domestic violence. Interview with Protection Officers reveals a

cross-section of the real problems. Through the chapters mentioned above, the first objective is answered.

The second objective was to analyze the present condition of victims of domestic violence who have filed complaints under the PWDV Act. For studying this objective, a case study was conducted among ten victims from three districts from each zone. All victims have filed cases 2 to 5 years before the interview. No victims claim that they filed cases on their own and against the wish of their family members. One peculiar feature found among victims of *Kollam* is that there is a tendency to disclose issues of domestic violence to priests. This researcher analyzed the caste wise population of *Kollam*. A significant section of Latin Catholics who are fishermen by profession reside at *Kollam* and *Trivandrum*. The majority of victims filed a case in 2016. As there are only ten victims from each zone for the case study, there is no point in calculating the percentage.

Victims think that they were inspired by the Act while filing a complaint. They expected a change for the better in their life. They did not get what they expected. They have lost their place in their husband's family. They are not happy with the redressal measures they got from the PWDV Act. There is much delay in getting adequate redressal. This prompted them to think that it was a futile exercise to file a case under the PWDV Act. From their

statement, this researcher concluded that they are not happy with relief obtained from the PWDV Act, 2005.

Next objective was to suggest measures for the effective implementation of the PWDV Act. Several legislations remain futile because of ineffective implementation and enforcement. Interviews with Protection Officers reveal that many measures can be adopted for effective implementation. The drafting of the Act is clumsy. The Act says how to extract the maintenance amount from a Private employee. However, the Act is silent as to how it can be levied from a Government Employee, if he is not willing to pay. The Protection Officer and Dowry Prohibition Officer of each district should work in liaison with each other. Warrant should be issued to ensure the attendance of respondents. For misuse of the provisions of the Act, punishments should be given by amending the Act. Free legal aid should be provided more effectively. The service of Protection Officers must be utilized more effectively. Now, only violation of Section 18 (protection order) is punishable. Violation of all orders should be made punishable. Monetary relief orders for domestic violence victims and their children are mostly not obeyed. It should be made punishable, and it should be levied from the income/ assets of respondents. For residence order, women should be allowed to reside even in shared households. If the measures mentioned above are appropriately implemented, lacunae in the Act will vanish.

The next objective was to study whether there is sufficient awareness about the Act among the public. It is very clear from the empirical study among victims that they were not aware of it before filing the case. The opinion of Advocates, Protection Officers and Judges shows there is a lack of awareness. Lack of awareness of perpetrators is more dangerous than that of victims. Gender sensitization should be inculcated in children from childhood itself. It should be a part of the curriculum. Those women who misuse the PWDV Act lack the knowledge of legislative intention behind the Act. Women's Commission, media, and NGOs can contribute in this regard. Women's Commission is spending much money for conducting awareness programs. This researcher verified it from their annual budget report.

The next objective was, whether the Protection Officer's role is useful in reducing Domestic Violence? Protection Officers are the backbone of the Act. If their service is appropriately utilized, the proliferation of domestic violence cases would not have occurred. Advocates never promote clients going to Protection Officers. Awareness programs should be conducted at the grassroots level. When a prospective victim approaches a Protection Officer, they will try to patch up differences among spouses by sending them to counsellors. We have to keep in mind that many young couples lack adjustment capacity. In this backdrop, going directly to advocates will worsen the situation. Interview with Protection Officers reveals that they are well aware of the lacunae in the system and have effective solutions to revive

the system. Their service will be handy to curb the menace. For this, more awareness must be given to the public about the service of Protection Officers.

The next objective was to study the role played by Women's Commission in curbing domestic violence. Women's Commission has created *Jagratha Samithi* exclusively for dealing with domestic violence cases. Each member of the Women's Commission conducts awareness programs in their respective jurisdiction. In addition to that, the Commission conducts programs at *Trivandrum* where it is located. Service providers and shelter homes listed by Women's Commission can only assist victims. It is to protect victims from fake agencies. Interview with Women's Commission member reveals that Commission has not utilized the power of *suo moto* cognizance in the case of domestic violence victims. Women's Commission has created a Media Monitoring Cell for regulating the content of programs. Even though they are making earnest effort, it is not fruitful as victims are not aware of the services provided by Women's Commission. In that respect the role of Women's Commission is minimal.

7.4 Answering Research Questions

- Whether there is proper implementation of Act to Prevent Violence against Women?

This is already answered while dealing with objective, to suggest measures for effective implementation. This researcher was able to suggest many changes to the existing system. That shows there is a lack of implementation. This question is answered in objective dealing with practical implementation. The Act is clumsily drafted and lacks proper implementation is proved.

- Whether there is awareness among women victims in Kerala about their rights and law related to Domestic Violence?

To this question, it is evident that women victims lack awareness about this Act. Not only victims, but even perpetrators also do not know the gravity of the their wrong doings and its implications under the Act. In chapter six, this was proved.

- What are the Redressal Mechanisms established under the PWDV Act in India to resolve the issues of women victims?

Redressal agencies as per the Act are Judiciary, Women's Commission, service providers who are NGOs and which act as shelter homes. Their efficacy is critically examined in chapters 4 and 5.

- What are the contributions of NGOs and other Non-governmental agencies for the protection of women victims in Kerala?

This questions is answered in chapter 5. Role played by NGOs like *Anweshi*, *Punarjani*, *Gandhi bhavan* and similar organisations were discussed in that chapter.

The hypotheses of the study:

- The redressal and relief mechanism in Kerala is not practical to solve the issues of victims under the PWDV Act. This objective stands proved through chapters four, five and six.
- There is no proper implementation of the Act to prevent violence against women. This objective stands proved through the third and sixth chapters.
- Women victims in Kerala are not aware of their rights and law about domestic violence. This objective stands proved through chapters one, two, three and six.

7.5 Findings

- Majority of victims are unhappy and regretful.
- Level of awareness about the Act among victims and perpetrators is very low.
- The service of Protection Officers is not effectively utilized.
- Redressal mechanisms are not effective.
- There is no proper implementation of the Act
- Most of the victims have not undergone pre marital counselling and decide to file petition in haste, often motivated by others

- Many of the victims are unaware of services rendered by Women's Commission and, NGOs as service providers.

7.6 Suggestions

- The clumsiness of the Act should be removed. Complete overhauling of the Statute is required to make it a perfect one. Act says how to extract the maintenance amount if the respondent is reluctant to pay the amount (Section 20(6)). This mode can be easily employed in the case of a private employee. This method is difficult in the case of a Government Employee. The Act is silent as to how it can be levied from a Government Employee if he is not willing to pay. Procedure for extracting maintenance from Government employees should be mentioned separately in the Act.
- Protection Officers under Protection of Women from Domestic Violence Act and Dowry Prohibition Officers under Dowry Prohibition Act, 1961 working in each district are working completely independent of each other. There is no coordination between them. Many of the cases have overlapping nature of both Statutes. So the Protection Officer and Dowry Prohibition Officer of each district should work in liaison with each other. This will improve efficacy of the Act.
- Warrant should be issued to ensure the attendance of respondents. In many cases, respondents are not obeying the notice given by Protection

Officers. There will be lot of adjournments, and this will delay justice delivery. In order to prevent this, power to issue warrant to ensure attendance of respondents should be included in the Act.

- For misuse of the provisions of the Act, punishments should be given by amending the Act. There is room for misuse in every Act and these misuse will ultimately weaken the Act. Judicial officers will not be able to differentiate genuine case from fabricated one. On analysing the pattern of judgments relating to domestic violence cases, it is evident that victims are getting interim orders only and conviction rate is low. This happens because of the misuse by some unscrupulous ladies. In Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013, as per Section 14, complainant lady can be punished as per service rules, if the internal complaints committee is of the opinion that complaint is fabricated or filed with malicious intention. Such provisions may be included in the PWDV Act by amendment. Then only genuine complaints will reach court and real victims will get more weightage and it will strengthen redressal mechanism under the Act.
- Free legal aid should be provided more effectively. DLSA is providing free legal aid to victims of domestic violence, but they are not aware of these services. So more publicity should be given regarding these services.

- The service of Protection Officers must be utilized more effectively. Their office should be provided with adequate supporting staff and infrastructure facilities. Minimum qualification to be appointed as Protection Officers should be fixed as Graduation in Law with minimum of 3 years bar experience. In order to ensure transparency, selection should be done by Public Service Commission.
- Now violation of Section 18 (protection order) only is punishable. Violation of all kind of orders under the Act should be made punishable. Monetary relief orders for domestic violence victims and their children are not obeyed in most cases. It should be made punishable, and it should be levied from the income/ assets of respondents. For residence order, women should be allowed to reside even in shared households. If the measures mentioned above are correctly implemented, lacunae in the Act will vanish.
- Pre-marital counselling should be promoted at the Panchayath level. In the curriculum of counselling, the PWDV Act should be included. For men, penal provisions of the Act should be stressed, and for women, the harmful effect of misuse of PWDV Act should be taught and make them aware that misuse will weaken the law.
- From school level education itself, gender sensitization should be included in the syllabus. Gender neutral uniforms can be introduced. Moral education and Ethics classes should be made part of curriculum.

Boys should be taught the concept that they should respect women and girls should be taught that their behaviour should be dignified so as to attract respect from others. Periodic assessment should be made in these topics and that should be included in grading.

- From home itself, advice should be given to boys that girls are equal to them in all aspects; they should be treated with reverence. If girls are compelled to do household chores, boys also should be compelled for that. The joint family system should be promoted. In a nuclear family, violence between father and mother will result in psychological trauma to children. Grand parents will act as shock absorbers. Tax exemption may be provided to those living in a joint family.
- Television serials influence people a lot. Content regulation should be made for television programs. Serials, which depict stereotype women characters, should not be promoted. If scenes of domestic violence are inevitable, then a statutory warning should be given that cruelty to women is punishable under IPC and PWDV Act.
- Legal experts say that working women are less prone to domestic violence. So parents must give good education to girls. Marrying off girls before attaining adequate education should not be promoted. They should be made self-sufficient.
- Section 4 of the Maintenance and welfare of Parents and Senior Citizens Act, is in contradiction with provisions of the PWDV Act. As per Section

4, son or daughter in law, who is harassing senior citizens, can be evicted from the house. As per the Section 19(c) of the PWDV Act, in-laws, who are causing harassment, can be prevented from entering the premises of the shared household where complainant is residing. Therefore, if the mother in law harasses the daughter in law and she files a complaint first, her version will get weightage. So contradictions in both Acts should be eliminated.

- As the Supreme Court has decriminalized homosexuality, lesbian and gay marriage will get legalized. In that context, the PWDV Act fails to ensure gender sensitivity. So Act should be broadened to include such partners.
- Sending women to a husband's home after marriage is a rudiment of patriarchal culture. In ancient Kerala, in Nair families girls stay in their home after marriage. In Malabar, one sect of Muslim community (*Mappillas*) also practice that custom. If such systems are promoted, there will not be chance for ill treatment from in laws.

Recasting the PWDV Act on the suggested lines would go a long way in ensuring that Indian families would be a safe place for persons both young and old, irrespective of gender, to live in peace. Dwelling places would then reflect the meaning of the word 'Home'-an enjoyable happy place; where one can love, live, grow, socialise, get educated, respect and care each other. That would take the concept of 'dignified existence 'to

its logical conclusion; and obviate the need for perceiving ‘men’ and ‘women’ as separate classes vying to establish their supremacy over each other. True egalitarian society can thus be established; when the practice originates from dwelling places.

BIBLIOGRAPHY

BOOKS

1. 1, Uma Shanker Jha et. al (ed.), Modern Women Today: Tradition, Modernity and Challenge (1996).
2. 3, Girija Khanna, Indian Women Today: Tradition, Modernity and Challenges, Women Professionalism: Challenges and Prospects (1978).
3. A.S. Anand, Justice for Women: Concerns and Expressions (2008).
4. Aditya Keshari Mishra, NGOs and Literacy Campaign: A Vision through Reflect: A Case Study in Yakshi, Hyderabad (2004).
5. Adrian Howe, Sex Violence and Crime - Foucault and the 'Man' Question (2008).
6. Ahammad Shamshad, NGOs and Development of Rural Entrepreneurship (2005).
7. Alli Band & Terry, Catalysts of Development: Voluntary Agencies in India (1983).
8. Anil Bhumali, Gender Violence and Social Exclusion (2011).
9. Anjali Kanth, Women and Law (2003).
10. Anju, Recent Trends in Crime against Women, Ph.D. Thesis, Faculty of Law, Maharshi Dayanand University.
11. B. Ramaswamy, Women and Law (2013).

12. B. Richard, Family Violence (1987).
13. B. Sivaramayya, Property and Economic Rights of Women: Maintenance and Dower, (1989).
14. Bryan A. Garner & Henry Campbell Black, Blacks Law Dictionary (1999).
15. Chandra, Suresh, Limitations of Voluntarism (1985).
16. Chandu Menon, Indhulekha (1889)
17. Chatterjee B, Voluntary Agencies for Social Welfare (1977).
18. Damodar Saur et.al, Non-governmental Organizations in Rural Development, Globalising Rural Development: Competing Paradigms and Emerging Realities (2006).
19. David Gold burg, Gari M. Sutter, et al, Media Law and practice (2009).
20. Debasree Lahiri, Gender Justice (2006).
21. Deepa Rasheed, A Study on Socio Legal Support System in Protecting Women Victims of Domestic Violence, Ph.D Thesis, Faculty of Law, M. G. University.
22. Devendra Kiran, Status and Position of Women in India (1985).
23. Dhananjayan, Swararagarnavam (2012).
24. Dipa Dube, Licence to Rape, Gender Justice (2006).
25. Dipa Dube, Rape Law in India (2013).

26. Dodd T et.al, Crime in England and Wales (2004).
27. Dr. Arun M. Bachhav, Criminal Psychology (2012).
28. Dr. Madhuri Irene and Apoorva Guptha, Women from sentiment to sensation – A critic on application of Domestic Violence Act, Women, Law and Society, Vijendar Kumar (Ed.) 140 (2019).
29. Dr. Monica Chawla, Women and Protective Laws (2013).
30. Dr. Sukanta K. Nanda, Media Law (2017).
31. Dr. Surendra Mohan, Crime against Women and Child (2020).
32. Dr. V. Krishnamachari, Law of Evidence (2012).
33. Dr. Avtar Singh, Introduction to Jurisprudence (2016)
34. Duraipandi Maruthu, Domestic Violence: An Assessment of Global Scenario (2016).
35. Ebbe Obi N. I. & Dalip Das K., Criminal Abuse of Women and Children (2009).
36. Edgar Bodenheimer, Jurisprudence (2004)
37. Edgar Bodenheimer, Jurisprudence-The Philosophy and method of Law (2004).
38. Ethel Klein, Jacquelyn, Campbell et.al, Ending Domestic Violence- Changing Public Perceptions/Halting the Epidemic (1997).

39. Eve S. Buzava & Carl G. Buzava, Domestic Violence –Criminal Justice Response (2003)
40. Farrington J. & A. Bebbington, Reluctant Partners? Non-governmental Organizations, the state and sustainable Agricultural Development (1993).
41. Fowler A, Striking A Balance: A Guide to Enhancing the Effectiveness of Non-governmental Organizations (1997).
42. Francis. C, 1993, Rural Development, People’s Participation and the Role of NGOs (1993).
43. G. Rajashekharan Nair, Justice under Indian Criminal Justice System (2011).
44. G.K. Boodeppa, Consequences of Domestic Violence and Intervention of Social Work (2011).
45. G.N. Ray, Women and Media (2008).
46. G.W.Paton, A Textbook of Jurisprudence (2007)
47. Gaur, Empowerment of Women in India (2002).
48. Giriraj Shah, Crime against Women and Police (2000).
49. Goel Arun Kaur, Manvinder et al., Violence against Women: Issues and Perspectives (2006).
50. Goerge Johnson & Dominic Johnson, Protection on Women from Domestic Violence Act & Rules (2017).

51. Gokhale S. D. & N. K. Sohoni, International Voluntary Organization in Social Welfare, 2 Encyclopaedia of Social Work In India (1987).
52. Gurpreet Panna, Domestic Violence Against Men - A Neglected Social Aspect, Family Violence in India (2012).
53. H. L. A. Hart, The Concept of Law (1971).
54. Hetal K.Srimali, Women and Law (2019)
55. Home Office, Foreign and Commonwealth Office, Forced Marriage: A wrong, not a Right (2005).
56. Indira Jaising, Law of Domestic Violence (2001).
57. J. Lurigi Lo & Robert C. Davis, Victims of Crime (2013).
58. Jagratha Samithi-Margarekha (sa. v m.s) No.31/07.
59. Jalna Hammer, Violence and Gender Relations- Theories and Interventions, Women and Violence: Commonalities and Diversities, Current Issues and Debates (1996).
60. Janusz Symonides & Vladimir Volodin, Human Rights of Women – A Collection of International and Regional Normative Instruments (1999).
61. Jaspal Singh, Gender Justice and Women Empowerment (2013).
62. Jayaraj, Malayala Cinema Pinnitta Vazhikal (2018).
63. Joanne Klevens, An Overview of Intimate Partner Violence among Latinos, The War Against Domestic Violence (2010).

64. Joel Garner & Jeffrey Fagan, Victims of Domestic Violence (1997).
65. Julie C. Abril, Domestic Violence among Native Americans (2009).
66. K. Nagla, Women Crime and Law (1980).
67. K. Surendran, Devi Sakthi (2015).
68. K. Surendran, Maranam, Durbalam (1989).
69. K.R. Meera, Arachar (2012).
70. Kakkanadan, Orotha (2009).
71. Kannan K.P, Poverty alleviations as advancing human capabilities (1999).
72. Korten & David C, Getting to the 21st Century: Voluntary Action and the Global Agenda (1992).
73. Krishnan T.N, Access to health care and burden of treatment in India (1999).
74. Kritika, Victims and the Law: A Socio-Legal Study, Ph.D. Thesis of Faculty of Law, Maharshi Dayanand University.
75. Kulkarni Mangesh, Action Groups and The State (1996).
76. Kumaran Asan, Chinthavishtayaya Seetha (1935)
77. Lakshmi Jain, Drop-out of Girl Child in Schools (2008).

78. Lalita Dhar Parihar, Women and Law, From Imprisonment to Empowerment (2011).
79. Lalitambika Antharjanam, Agni Sakshi (1976).
80. Laxmidhar Chauhan, Women and the Law (2007).
81. Lee E. Ross, The War Against Domestic Violence (1958).
82. Liz Kelley & Jill Radford, Sexual Violence Against Women and Girls- An Approach to an International Overview (2015).
83. Lynette Feder, Community Supervision of Domestic Violence Offenders, Where We are and Where We Need to Go (2010).
84. M T Vasudevan Nair, Oppol (1981).
85. M. P. Jain, Outlines of Indian Legal History (2001).
86. Madhavi Goradia Divan, Media and the Law and The Way Forward (2009).
87. Madhavi Goradia Divan, Facets of media Laws, (2010)
88. Mamata Rao, Law Relating to Women and Children (2012).
89. Manish Mishra, Law on Violence against Women (2014).
90. Manoj Kumar Sinha, International Criminal Law, and Human Rights (2010).
91. Marcel Danesi, Language, Society, and New Media: Sociolinguistics Today (2016).

92. Margaret Borkowski & Mervyn Murch Val Walker, Marital Violence – The Community Response (1983).
93. Meenakshi Poonio, Women Human Rights in India, (2011).
94. Mohamed Umar, Bride Burning in India: A Socio-Legal Study (1998).
95. Moore & S. Steward, Corporate Governance for NGOs (1998).
96. Mulla, Principles of Hindu Law (2001).
97. N. Datta, A Historical, Social and Philosophical Inquiry in Hindu Rite of Widow Burning (1988).
98. N. Jayapalan, Women and Human Rights (2001).
99. N. K. Acharya, Commentary on the Protection of Women from Domestic Violence Act (2005).
100. Nabhi Kumar Jain, Vol. 2 Handbook for NGOs, (2009).
101. Naushad Parveen, Domestic Violence (2009).
102. Nita Nawal & R.S. Sharma, Domestic Violence Against Women - Legislation, Justice and Aspects (2013).
103. O.P. Tewari, Cruelty against Husbands by Wives and its Remedies, (2013).
104. P. M. Sen & Sankar Nair, Trafficking in Women and Children in India (2005).

105. P. Shah, Domestic Violence against Women and the Law, Domestic Violence and Law, The Report of Colloquium on Justice for Women Empowerment through Law (2000).
106. P.K. Das, Universal Hand Book on Protection on Women from Domestic Violence Act and Rules (2007).
107. P.S. Narayana, J. Law of Press in India, (2007).
108. Pandey & Shashi Ranjan, Community Action for Social justice: Grassroots Organizations in India (1991).
109. Patrick Olivelle, Manu's code of law (2005).
110. Paul M. Schwartz, Privacy and the Media, (2008).
111. Peter Caray, Media Law, (2010).
112. Pradeep Kumar, Philosophy of Crime (2004).
113. Pralay Adar, Domestic Violence Retrospective of Mythological Concept, Domestic Violence Against Women in India (2005).
114. Preethi Mishra, Domestic Violence against Women: Legal Control and Judicial Response (2007).
115. Premchand, Noottandinte Mounangal (2017).
116. R. Revathi, Law Relating to Domestic Violence (2004).
117. Radhakrishna, Voluntary Agencies in a Critical Decade, (1993).

118. Rainuka Dagar, Gender, Identity, and Violence - Female Deselection in India (2014).
119. Ram Ahuja, Violence Against Women (2008).
120. Ram Jeth Malani, D.S. Chopra, Media Law, Vol. II, (2014).
121. Ramaswami, Women and Law (2013).
122. Ranganathan R, Role of NGO in Rural Reconstruction (2001).
123. Rani Jethmalani, Kali'sYug: Empowerment, Law and Dowry Deaths (1995).
124. Rattan Singh & Jasdeep Kaur, Criminalization of Marital Rape: An Analysis, Recent Issues Concerning Violence Against Women (2011).
125. Ravindra Nath, Dakshinenthyan Sangeetham (1985).
126. Reema Kaul, Women and Crime (2006).
127. Revathi, Law Related to Domestic Violence (2009).
128. Riley, Stakeholders in Rural Development-Critical Collaboration in State NGO Partnerships (2002).
129. Rinki Bhattacharya, Behind Closed Door Domestic Violence (2004).
130. Robin Lal, The Dynamics of NGOs (2004).
131. S. Anuja, Right of Women against Domestic Violence - The Law and Emerging Challenges, Ph.D. Thesis, Faculty of Law, Cochin University of Science and Technology.

132. S. C. Bhatia, Social Audit of Dowry Legislation (1998).
133. S. K. Panchauri, Women and Human Rights (1999).
134. S. P. Singh, Planning and Management for Rural Development (2003).
135. S. P. Sate, Empowerment of Women: Legal Strategies, Sociology of Law (2005).
136. Sabine Lang, NGOs, Civil society and public sphere (2013).
137. SAHRDC, Human Rights and Humanization Law (2008).
138. Sandy Cook & Judith Besant, Women's Encounters with Violence (2014).
139. Santhana Muthu D. & Arunachalam P., Domestic Violence and Women in India, Family Violence in India (2010).
140. Sara Joseph, Aalaahayade Penmakkal (1999).
141. Sara Joseph, Othappu (2005)
142. Savitri Goonesekhere, Violence Law and Women's Right in South Asia (2004).
143. Sen S., Some Aspects of State NGO Relations in India in the Post-Independence Era, (1999).
144. Shailendar Malik, Indian Penal Code (2011).
145. Shekhar Kumar, Crime Against Women, a Good Perspective (2010).

146. Shekhur Kumar, Matrimonial Crime and Misuse of Law (2012).
147. Smith E. L. & Ferule, Profile of Intimate (2009).
148. Subhash Chandra Singh, Family Violence in India (2010).
149. Subhash Chandra Singh, Gender Violence (2011).
150. Sudarshan Goel, N.S. Dhillon, Burning issues on Family Law in India, (2014).
151. Sudhir Rao, Women Crime and Prison Life (2011).
152. Sujatha Suresh K S & George, The Role of Voluntary Organizations in Development: A Case Study of Voluntary Development Agencies in Kerala (1996).
153. Suman Rai, Law Relating to Protection of Women from Domestic Violence (2013).
154. Suresh Narayan, Karnataka Sangeetham (2008).
155. Surya Moorthy R & Gangride. K.D, 200 NGOs in India: A Cross Sectional Study (2001).
156. Susan S. M., Gender in the Legal Process (1996).
157. Sushama Sahay, Women and Empowerment: Approaches and Strategies (1998).
158. Tamsin Bradley, Religion and Gender in the Developing World: Faith Based Organization and Feminism in India (2010).

159. Uma Shankar Jha, Indian women Today (1996).
160. Uroob, Mindappennu (1970).
161. Uroob, Ummachu (1986).
162. V.K. Dewan, Cruelty and Offences against Husbands, (2010-11).
163. V.K. Dewan, Law Relating to Offences Against Women (1996).
164. Vaikkam Muhammad Basheer, Pathummayude Aadu (1959).
165. Vayalar Rama Varma, Aysha (2002).
166. Vijay Malik, Criminal Manual (1995).
167. Vikash Gandhi H, Judicial Approach in Criminal Justice System: An Experience of India (2010).
168. Vishwanath L. S., Peoples Organizations for Rural Development Mainstream (1985).
169. Walby & S. C. Allen, Domestic Violence, Sexual Assault and Stalking: Findings from British Crime Survey (2004).
170. Yanik Djamba & Sitaiva R Kimuna, Gender Based Violence: Perspectives from Africa, Middle East and India (2015).
171. Zachariah, Mathew & Sooryamoorthy R., Science in Participatory Development (1994).
172. Zakia Afrin, Domestic Violence and Need for an International Legal Response (2010).

WEBLIOGRAPHY

1. [http://www.violenceagainstwomeninsocialmediajustice and the law](http://www.violenceagainstwomeninsocialmediajusticeandthelaw)
2. National Commission for Women, Mandate ,
<http://new.nic.in/commission/about-us/mandate>.
3. 27 September 2015: Committing to action for gender equality and women's empowerment , Beijing20.unwomen.org
4. <https://hinduism.stockexchange.com/>.
5. <https://maitri.org/>
6. 498A.org, Domestic Violence Act of India is against Men!!
[http://www.498a.org/domestic Violence.htm](http://www.498a.org/domestic%20Violence.htm)
7. Ankur Kumar, Domestic Violence in India: Causes, Consequences and Remedies [https://www.youthkiawaz.com/ 2010.02/](https://www.youthkiawaz.com/2010.02/).
8. AvantikaSarkar, Judicial Response to Protection of Women from Domestic Violence Act: A Critical Analysis of Calcutta High Court Cases,[https://www.academia.edu/13029217/](https://www.academia.edu/13029217/Judicial_Response_to_Protection_of_Women_from_Domestic_Violence_Act_2005_A_Study_of_Select_Calcutta_High_Court_Cases)
Judicial_Response_to_Protection_of_Women_from_Domestic_Violence_Act_2005_A_Study_of_Select_Calcutta_High_Court_Cases.
9. Debarathi Halder, Creating Awareness of Online Victimization Using Social Media. A Therapeutic Jurisprudential Approach,
[www.http://mainstreamif.wordpress.com](http://mainstreamif.wordpress.com) .

10. Deepalakshmi, The Malimath committee's recommendations on reforms in the criminal justice system in 20 points, ([https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in -20-ponts?article22457589](https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-20-ponts?article22457589)).
11. Dictionary.com, [https://www.dictionary.com/browse/victim?s=t.](https://www.dictionary.com/browse/victim?s=t;); Oxford English Mini Dictionary, 619 (7th Ed.) (2007).
12. Docshare.tips, Women Problems in The Society), http://docshare.tips/women-problems-in-thesociety_58b5fa28b6d87f81288b4e10.html.
13. Domestic Violence Act,2005- A Bane or Boon,
https://www.legalserviceindia.com/articles/domestic_violence.htm.
14. Domestic Violence Law in India - a Shield or a Sword<http://savemarriages11/10>.
15. Dr. Bipasha Baruah & Dr. Kato Grantham, Women's NGO are Changing the World and not Getting the Credit for it , <http://www.theconversion.com/women-ngos-arechanging-the-world-and-not-gettingcredit-for-it-88360>.
16. Dr. Nandita Kaushik, Judicial Decisions on The Protection of Women from Domestic Violence (<http://www.cja.gov.in/E%20Books/JUDICIAL%20PERSPECTIVE%20ON%20PROTECTION%20OF%20WOMEN%20FROM%20DOMESTIC%20VIOLENCE%2003.07.2019.pdf>)

17. Kiran, Women in India; Role and Status of Women in India ,
<https://www.importantindia.com/20816/women-in-india-role-and-status-of-women-in-india/>.
18. Evidence in Islamic Law: Reforming the Islamic Evidence Law Based on the Federal Rules of Evidence,
<https://tandfonline.com/doi/abs/10.1080/>.
19. Flavia Agnes, Violence against Women: Review of Recent Enactment,
http://www.womenstudies.in_crime_ag_women.
20. G.P. Joshi, N. P. Gupta & T. Chakraborty, Functioning of CAW Cells in the Police Force in States/Union Territories
<http://www.hellocounsel.com/>
21. Geeta Kashyap, Role of alternative media is the empowerment of women, J. Mass Comm. & Journalism <http://omicsonline.com>
22. Gunjan Jain, Significance of Marriage as a Social Institution in Indian English Writing, 3), http://www.researchgate.net/publication/323525314_significance_of_marriage_as_social_institution_in_indian_english_writings.
23. Hanis Ezzatul Farahah Binti Abdul Hamid, Living Together is the Opposite of Living Apart: Why is this Concept so Important in Family Law?https://www.academia.edu/34128466/LIVING_TOGETHER_IS_THE_IMPORTANT_IN_FAMILY_LAW_PREPARED_BY_HANIS_EZZAT_UL_FARAHAH_BINTI_ABDUL_HAMID_P87861?auto=download.

24. Hossain N. & Khan S., Domestic Abuse and the Duties of Physicians: a Case Report, Indian J. Med. Ethics, 2015 Oct-Dec; 12(4):248-50, (May 18, 2019, 11.30 AM), <https://www.ncbi.nlm.nih.gov/pubmed/26592790>
25. <http://kelsa.nic.in/>
26. <http://panchayatguide.in/files/2017/03/24.html>.
27. <http://snehatheeram.org/>
28. <http://www.anveshi.org>.
29. <https://www.ndtv.com/kerala-news/2-of-5-kerala-priests-accused-of-sexual-assault-seek-anticipatory-bail-1877077> (NOV 25, 2018, 8:00 PM)
30. Important Constitutional and Legal Provisions for Women in India (Jun. 25, 2016, 10.35 AM), http://mospi.nic.in/sites/default/files/reports_and_publication/cso_social_statices_division/Constitutional&Legal_Rights.pdf.
31. Improving Judicial Response to Domestic Violence- Human Rights Library, [http://hrlibrary.umn.edu/svaw/ domestic/training/materials/Judicialresponse.PDF](http://hrlibrary.umn.edu/svaw/domestic/training/materials/Judicialresponse.PDF)
32. Indira Jaising, Reconsidered; Dangerous Bill, <http://www.indiatogether.org/women/violence/domvobill.htm/>.
33. Judgment - Divorce - Right of Residence, <https://www.shoneekapoor.com/b-p-achala-anand-vs-s-appi-reddy-anr/>.

34. Legal momentum.org, History of the Violence Against Women Act, History of VAWA: (<https://www.legal momentum.org/history-vawa>).
35. Literacy and level of Education,
http://www.censusindia.gov.in/census_And_literacy_and_level_of_education.
36. Literacy Rate of India, 2011 (<http://Indiafacts.in/india-census-2011/literacy-rate-india-2011>).
37. Media Experts Say Press Regulation Doesn't Work In India (<https://theprint.in/india/governance/media-experts-say-press-regulation-doesnt-w/>).
38. National Academy for Training and Research in Social Security, Status of women in India, National Academy for Training and Research in Social Security Reading Material
<https://www.achieveriasclasses.com/images/uploads/ESO12-29-Status-of-Women-in-India.pdf>.
39. National Commission, Seminars, Workshops and Conferences
<http://www.ncw.nic.in/ncw-cells/ppmrc-cell/seminars-workshops-and-conferences/>
40. ngosindia.com, Kerala <https://ngosindia.com/kerala>.
41. One world South Asia, Study Highlights Loopholes in India's Domestic Violence Law, http://southasia.oneworld.net/news/study-highlights-loopholes-in-india-domestic-violence-law#.Xb_GyNIzbIU.

42. Pankaj Chhikara, Jitender Jakhar, et.al, Domestic Violence: The Dark Truth of Our Society,) <http://medind.nic.in/jal/t13/i1/jalt13i1p71.pdf>.
43. Pragnesh Parmar, Dowry Death and Law - Indian Scenario (<https://iaimjournal.com/wp-content/uploads/2014/10/6-dowry-death-and-law-indian-scenario.pdf>).
44. Pranav Dua, Essay on Status of Women in Independent India<http://www.shareyouressays.com>.
45. Queensland Government, Department of Child safety, Youth and Women, Sexual Violence Prevention, Violence Prevention AM), <https://www.csyw.qld.gov.au/violence-prevention>.
46. Ravneet Kaur & Suneela Garg, Addressing Domestic Violence Against Women: An Unfinished Agenda <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784629/>.
47. Reporter, the Press and Journal, An Insight into Domestic Violence in Scotland, <https://www.pressandjournal.co.uk/fp/news/1458237/an-insight-into-domestic-violence-in-scotland/>.
48. Role of NGOs in Education Development, 15 Literacy Watch Bulletin (2000), http://www.accu.or.jp/litdbase/literacy/nrc_nfe/eng_bul/BUL15.pdf.
49. Sessa Kethineni, Violence Against Women in India: Legislative and Policy Reforms, <https://www.georgetownjournalofinternationalaffairs.org/online-edition/violence-against-women-in-india-legislative-and-policy-reforms>.

50. Sharma, Violence against Women: Where are the Solutions? Indian Journal of Psychiatry [http://www.Indian Psychiatry.org/textasp:2015/57/2/131/158133](http://www.IndianPsychiatry.org/textasp:2015/57/2/131/158133).
51. Summary for the 2nd Judicial Officers Workshop District Court, Osmanabad Aug.26,2016, [http://mja.gov.in/Site/Upload/GR/Title%20NO.158\(As%20Per%20Workshop%20List%20title%20no158%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.158(As%20Per%20Workshop%20List%20title%20no158%20pdf).pdf).
52. The New Indian Express, Kerala became First State to Achieve 100% Primary Education, [http://www.new Indian express.com/states/keralaathulyamfes](http://www.newindianexpress.com/states/keralaathulyamfes).
53. Tom Throneburg Butler, The Times: Are They a-Changing? Saudi Law Finally Addresses Domestic Violence with Its Regulation on Protection from Abuse, <https://ilr.law.uiowa.edu/print/volume-100-issue-3/the-times-are-they-a-changin-saudi-law-finally-addresses-domestic-violence-with-its-regulation-on-protection-from-abuse/>.
54. Unacademy.com, Constitutional and Non-constitutional Bodies in India <https://unacademy.com/lesson/constitutional-and-non-constitutional-bodies-in-india>.
55. UNICEF, Domestic Violence against Women and Girls, Innocent Digest No.6, DVV (June 2000) <https://www.unicef-irc.org/publications/pdf/digest6e.pdf>.
56. United Nations Population Fund, Women and Girls with Disabilities: Needs of survivors of gender-based violence and services offered to

them - occupied Palestinian territory

(<https://reliefweb.int/report/occupied-palestinian-territory/women-and-girls-disabilities-needs-survivors-gender-based>).

57. UNODC, Topic Three: The Right of Victims to an Adequate Response to their Needs, (<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-11/key-issues/3--the-right-of-victims-to-an-adequate-response-to-their-needs.html>).
58. Vasundhara, Use and Misuse of Section 498-A, 1
http://www.legalserviceindia.com/legal/article_652_use_and_misuse-of_section_498_a.html.
59. www.jananeethi.org.

ARTICLES

1. A.K. Patnaik, Compensation to Victims and Convicts after Imprisonment, 117 Cri. L. J. 197 - 208(2011).
2. Abhinav Shrivastava, Effect of Media in the Adjudication of Criminal Trials 113 Cr. L. J. 1289 (2005).
3. Ameer Yajnik, Domestic Violence - Protection of Human Rights, Guj. L. Herald J. 1, 2 (1999)
4. Avina J, The Evolutionary Life Cycles of Non-Governmental Development Organizations, 13 Pub. Admin. Dev. 466 (1993).
5. Bharama Gouder & Ratna R., Violence Against Women and Justice in Changing World: An Analysis Indian Socio-Legal Journal 34, 51(2007).
6. Bhatt & Anil, Voluntary Action in India: Roles Trends, 30 Economic & Political Weekly 872 (1995).
7. Chaturvedi H R, Role of Voluntary Organizations in Rural Development, 33 Indian J. Pub. Admin. 548 (1987).
8. Chopra Nirman, Section 498A, Indian Penal Code and it's Repercussions on the Society, Cr. L. J. 190, 197(2004).
9. Dr. Pallavi Thakur, A journey of Hindu Women from Shakthi to Sati in Ancient India, Vol. 4 IJETS, Issue 6, 381, 383 (2017).
10. Dr. Ramesh, Cruelty as compoundable offence: A Critique, 1112 Cr.L.J. 1280 (2006).
11. Dr. Shobharam Sharma, Legal Terrorism in India – Need for change in the law, 117 Cr.L.J.1344 (2011).

12. Dr. Span Ivare, The Supreme Court of India on right to speech trial – A critical evaluation, Nyaya Deep (2010).
13. Dr. Suman Gupta, Protection of Women from Domestic Violence Act 2005 – Some Concerns / Reflections / Issues, 114 Cr.L.J. 1305 (2008).
14. Himanshu Bhatia, Domestic Violence Against Women: A severe violation of Human Rights, Cr.L.J. (1) 316 (2011).
15. Jyoti and Deepanshi, Being a Women: How much you have to pay in life, Cr.L.J..(1) 225 (2011).
16. K. Vijaya Lakshmi, Cruelty as a Matrimonial Offence: Changing Trends XXX C. U. L. R. 417 – 431 (2006).
17. Kalicharan M. L., The Role of the Victim in the Indian Criminal Justice System, 117 Cri. L. J. 285 - 291(2011).
18. Kavitha Balakrishnan & Deepthi M, Role of Media, NGOs AND Women’s Commission in protecting Female Victims in India: Issues and Practices Vol. 1 part II, CKS 23, 24, 2014.
19. Ms. Kiran & Ms Renu Kumari, Human Rights - Needs, Provisions and Realisations, Vol. 5, Iss. I, 29, 35 Bhartiyam International Journal Of Education & Research (December 2015).
20. P.B. Sawant, Media and the Law, Freedom of Speech or Unbridled Freedom, Vol. 3, Issue 2, Halsbury’s Law (2009).
21. Petras J, NGOs: In the Service of Imperialism, 29 J. Contemp. Asia (1999).
22. Praveena Y. Bagde, Protection of Women from Domestic Violence Act, 2005: A Critical Appraisal, Cr.L.J. (1) (2011).
23. Puja Jaiswal, Live in Relationship and Law, Nyayadeep VOL. XIII, ISSUE 3 JULY

24. R. Jaganmohan Rao, Dowry System in India - A Socio - Legal Approach to the Problem, 15 (4) J. I. L. I. (1973).
25. R. Velmurugan, Implications of Social Media Among Working Women in Coimbatore, 2IJCIS 15(2015).
26. Ratna Bharama Gowder, Protection of Women against Domestic Violence, XXX C. U. L. R. 452 (2008).
27. Rigveda Mandala, Developing Human Rights Jurisprudence, Judicial Colloquium, Vol. XV 24-26 (1988).
28. S. Shanthi, Domestic Violence Act - A New Dawn in Gender Justice XXXIII C. U. L. R. 197 – 217 (2009).
29. S. Siva Kumar, Role of Media in Democracy 3 Halsbury's Law (2009).
30. Salil Shringarpure, Trial by Media: Indian Perspective, 1 BLR. 4, 147(2013)
31. Santosh Nandal, Violence against Women: Violation of Human Rights, Cr. L.J. Vol 112, (2007).
32. Sheeba S. Dhar, Protection of Women from Domestic Violence Act, 2005 - An Appraisal, 32 Ac. L. R.165 (2008).
33. Shobha Ram Sharma, Judicial Activism of Media, IX Nyaya Deep, (Oct). 47 (2008).
34. Shojan Jacob, Trial by media, May 2007, Vol.118 part 1289, Cri.LT P.No. 106-109.
35. Sunitha D. Adhav, Trial by Media: A Legal Dilemma 1(4) BLR. 98 - 106 (2013).
36. Taranga Pandit, Domestic Violence / Cruelty to male and need to for Legislations, Cr.L.J. (1) 341 (2011).

NEWS PAPER

1. Flavia Agnes, The Making of High Profile Rape Trial Vol.XLIX No.29 ECONOMIC AND POLITICAL WEEKLY July 19, 2014.
2. Indyayil Garhika Peedhana Kesukal Kurayunnu, MATHRUBHUMI, Mar. 16, 2015 At 6.
3. Niyamam Karsanam: Sthreekalkethiraya kutakrithyangal niyanthranaatheetham, THEJUS, Oct. 13, 2013.
4. Prasanna R, 1996, Great NGO Fraud: Most of the Funds They Get Never Reach the Poor, 14 THE WEEK 32.
5. Roy & Bunker, Spirit of Volunteerism: The New Parasites, INDIAN EXPRESS (New Delhi edition), October 7, 1994 at 8.
6. Shalini Nair, S.498A Battered, 5, THE INDIAN EXPRESS, June 26, 2018.
7. T. K. Rajalakshmi, Gender Issues Law and Loopholes, FRONTLINE (02 Jan. 2, 2010) 29.
8. THE INDIAN EXPRESS (Sep. 23, 2017) at 1.

FILMS

1. *22 Female Kottayam*, Flux Brewery (2012)
2. *4 Pennungal*, Emil And Eric Digital Films (2007).
3. *Achuvinte Amma*, Grihalakshmi Films (2005)
4. *Adyathe Katha*, Chitranjali Studio (1978)
5. *Agnipareeksha*, Azeem Company (1968).
6. *Agnisakshi*, Srishty Films (1999)
7. *Akashadoodh*, Anupama Productions (1993)
8. *Amma Ammayiamma*, Classic Cini Vision (1998);
9. *Ammu*, Lotus Pictures, (1965).
10. *Aparadhini*, Vasanth Pictures (1968).
11. *Artist*, Sunitha Productions (2013)
12. *Avan Oru Ahankari*, Chanthamani Films (1980).
13. *Ayisha*, Udaya Productions, (1964);
14. *Bandhukkal Sathrukkal*, Amrutheswary Productions (1993)
15. *Bhagya Devatha*, Day Night Creations (2009).
16. *Bharyamar sookshikkuka*, Jayamaruthi Productions (1968).
17. *Brahmachari*, Sippy Films (1968)
18. *Charli*, Friday Cinema (2015)
19. *Chayam*, Merriland (1973)
20. *Chettathi*, Central Pictures, (1965)

21. *Commissioner*, Sunitha Productions (1994).
22. *How Old Are You*, Magic Frames (2014)
23. *Jeevitha Nouka*, K & K Combines, (1951);
24. *Kalimannu*, *Cherumutadathu* Films (2013)
25. *Kanmadham*, Pranavam Arts (1998)
26. *Kannezhuthi Pottumthottu*, One Two One Creations (1999)
27. *Kudumba Puranam*, Central Pictures (1988);
28. *Kuppivala*, Lotus Pictures (1965);
29. *Kuttyedathy*, Menon Productions. (1971).
30. *Midumidukki*, Deepthi Films (1968)
31. *Nakhangal*, Supriya,(1973).
32. *Nathoon*, Malithra Productions (1974);
33. *Panchagni*, Grihalaksmi Productions (1986)
34. *Panitheeratha Veedu*, Chithrakalakendram (1973)
35. *Pavangal Pennungal*, Excel Productions (1973)
36. *Penpattanam*, MS (2010)
37. *Peramakkal*, Udaya Productions, (1966)
38. *Puthiya Mugham*, Bethesha Productions (2009)
39. *Rani Padmini*, Frount Entertainment (2015)
40. *Sahadharmini*, Thomas Pictures, (1967).
41. *Sambhavami Yuge Yuge*, Ganesh Pictures (1972)

42. *Santhana Gopalam*, Central Productions (1994);
43. *Snehathinte Mukhangal*, Priyadarsini Movies (1978)
44. *Spirit*, Ashirvad Cinemas (2012).
45. *Sthree Dhanam*, Rise Sun Pictures (1993);
46. *Sthreehridhayam*, T & T Productions, (1960);
47. *Tharavattamma*, Madras Movies, (1966)
48. *The King*, Mac Productions (1995).
49. *Thira*, I.J. Films (2013)
50. *Thurakkatha Vathil*, Sanjay Productions (1970);
51. *Trivandrum Lodge*, Time Arts Entertainment (2012)
52. *Udhaharanam Sujatha*, The Scene Studio (2017).
53. *Umma*, Udaya Productions (1960);

ACTS AND STATUTES

1. 73rd, 74th Constitutional Amendment Acts.
2. Bengal Sati Regulation Act, 1829.
3. Criminal Law (Second Amendment) Act, 2 (1983).
4. Dowry Prohibition Act, 1961
5. Female Infanticide Prevention Act, 1870.
6. Hindu Marriage Act, 1955
7. Hindu Succession Act, 1956
8. Hindu Widow's Remarriage Act, 1856.
9. Indian Divorce Act, 1969
10. Kerala State Commission for Women Act, 1990
11. Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
12. Maternity Benefit Act, 1861
13. National Commission for Women Act, 1990
14. Prohibition of Women from Domestic Violence Act, 2005.
15. Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal Act, 2013.
16. Special Marriage Act, 1954
17. Suppression of Immoral Traffic of Women and Girls Act, 1956
18. The Family Court Act, 1984
19. The Indecent Representation of Women (Prohibition) Act, 1986
20. The Medical Termination of Pregnancy Act, 1971
21. The Prohibition of Child Marriage Act, 2006
22. The Special Marriage Act, 1954

RULES

Protection of women from Domestic Violence Rules, 2006.

REPORTS

1. Annual report of Kerala Women's Commission, 2015 – 16
2. 84th Law Commission Report.
3. 185th Law Commission Report.

INTERNATIONAL INSTRUMENTS

1. Beijing Declaration and Platform for Action , (1995).
2. Convention on the Elimination of All Forms of Discrimination Against Women, (1979).
3. Declaration on the Elimination of Violence Against Women, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993).
4. First World Conference on Women, Mexico, (1975).
5. General Assembly Resolutions on the Elimination of Domestic Violence Against Women, (2000).
6. Second World Conference on Women, Copenhagen, (1980).
7. The Vienna Accord 1994, Beijing Declaration and Platform for Action (1995).

APPENDIX - I

QUESTIONNAIRE TO VICTIMS

1. What is your age?
2. What is your religion?
3. Your educational qualification?
4. Your husband's educational qualification?
5. In which year your marriage took place?
6. Does husband cause physical violence on you?
7. Did husband say anything to humiliate you in front of others?
8. When you experienced Domestic Violence, whom did you approach?
9. Did you know that children exposed to Domestic Violence are more likely to become adult perpetrators?
10. Whether you know about protection officers of Domestic Violence?
11. What service you got them protection officers?
12. Have you approached Women's Commission or women cell?
13. Do you know that Women's Commission is giving assistance to victims of Domestic Violence?
14. Do you know *Jagratha Samithi*? Did you get any help from them?
15. Did you know anything about PWDV Act before you file Petition?
16. Did you suffer any ill treatment at husband's house for extracting more dowry?
17. Is your husband an alcoholic; whether he is having any illicit relations?
18. Whether you have undergone any pre marital counselling?
19. Whether you have received any free legal aid from District Legal Service Authority?

20. Did you approached any women organization/NGO for redressal?
21. Did you get any relief from them?
22. Do you know where nearest shelter home for women is located?
23. During the case, whether you had counselling /meditation?
24. Do you believe PWDV Act is helpful for women and children who are suffering domestic violence situation?
25. What remedies did you get after filing petition under PWDV Act?
26. What is your present status of life? Are you more happy now?
27. How is your relation with husband's family now?
28. At any point, have you thought that it was better not to file petition under PWDV Act?
29. Did anybody compel you to file case against husband? If yes, Who?

APPENDIX - II

QUESTIONS TO JUDICIAL OFFICERS

1. Your length of service as judicial officer?
2. According to you what are the reasons for increase in Domestic Violence?
3. Do you think that there is speedy redressal under Domestic Violence Act compared to S.498-A?
4. Do you think that there is misuse of the provisions of Domestic Violence Act?
5. Do you think that PWDV Act is one sided?
6. Do you think that girls are very adamant today and they are reluctant to adjust with in- laws and husband?
7. What is the advantage of PWDV Act over S.498-A IPC?
8. Whether this Act has become a catalyst for disintegration of families?
9. According to you, what are the merits of PWDV Act?
10. What are the demerits of PWDV Act?
11. Do you think that girls, at the time of divorce, claim gold, more than they owned as dowry?
12. Whether women can claim maintenance both under Cr.P.C S.125 and under PWDV Act simultaneously?
13. There is provision under Maintenance and welfare of Parents and Senior Citizens Act for eviction of son and daughter- in- law by mother -in -law from mother in law's house. Similarly in PWDV Act, there is provision for eviction of husband and in- laws from husband's home. a) Are these provisions contradictory to each other? b) What will be your stand in such cases?
14. What are your suggestions for improvement of application of PWDV Act?

APPENDIX - III

QUESTIONS TO ADVOCATES

1. Your Bar Experience in years?
2. According to you what are the reasons for increase in Domestic Violence?
3. When any woman approach you complaining about cruelty by husband, do you educate them about provisions of PWDV Act?
4. Do your clients complaint about their husband's illicit relationship or alcoholism in addition to torture?
5. Do you think there is speedy redressal under PWDV Act compared to S.498-A?
6. Do you think that there is misuse of the provisions of PWDV Act?
7. Do you think that PWDV Act is one sided?
8. Do you think that girls are very adamant today and they are reluctant to adjust with in -laws & husband?
9. What is the advantage of PWDV Act over S.498-A IPC?
10. Do you know about services rendered by *Jagratha Samithi*?
11. Whether this Act has become a catalyst for disintegration of families?
12. According to you, what are the merits of this Act?
14. What are the demerits of PWDV Act?
15. What are your suggestions for improvement of application of PWDV Act?
15. Are you of the opinion that role of protection officers are inconspicuous?
16. Are you of the opinion that Women's Commission & NGOs have neglected victims of Domestic Violence?

APPENDIX - IV

INTERVIEW QUESTIONS TO PROTECTION OFFICERS

1. What are the Major problems in Implementation of Protection of Women from PWDV Act, 2005?
2. Who refers victims to you?
3. Do you refer them to Shelter Homes?
4. Does alcoholism and extra marital relationships of husbands trigger wife to file Domestic Violence Case?
5. What are the causes of increase in Domestic Violence Cases?
6. What are your suggestions for improvement of the Act?
7. Is there any misuse of the Act?

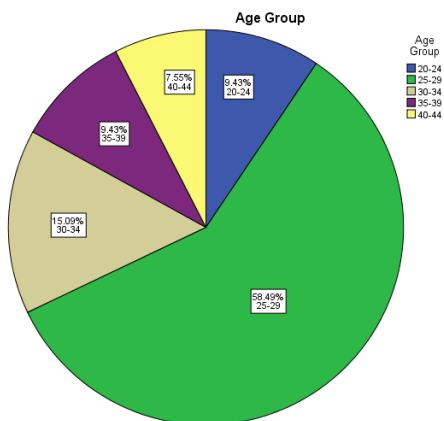
APPENDIX – V

PIE CHART

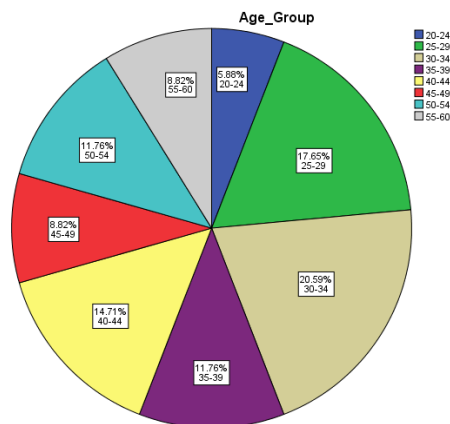
A. EMPIRICAL STUDY AMONG VICTIMS

1. Age Group of victims

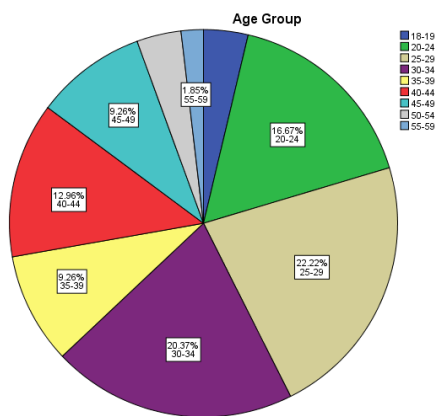
South Kerala



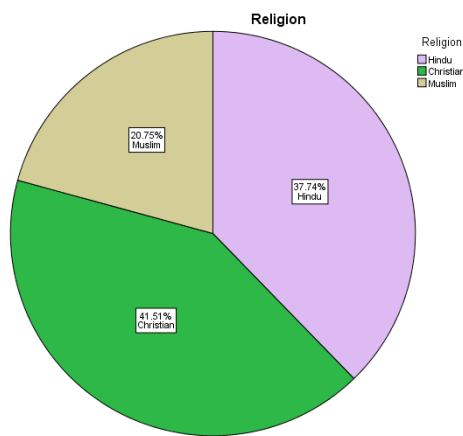
Central Kerala



North Kerala

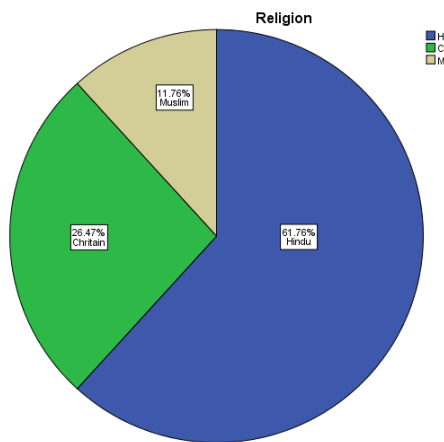


South Kerala

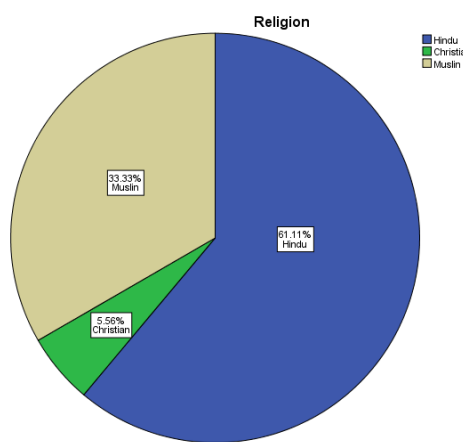


2. Religion of the victims

Central Kerala



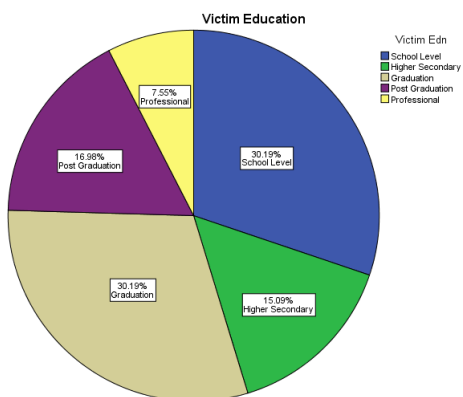
North Kerala



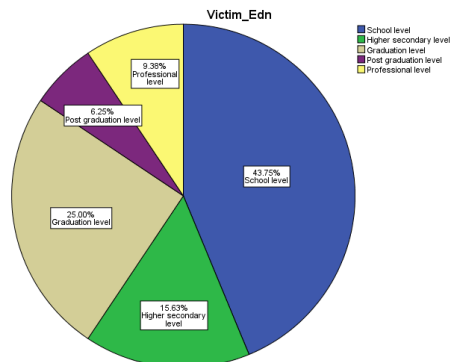
* Pie diagram is prepared based on number of people who answered questions

3. Victim's Education

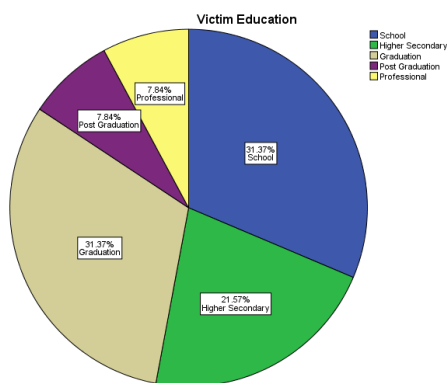
South Kerala



Central Kerala

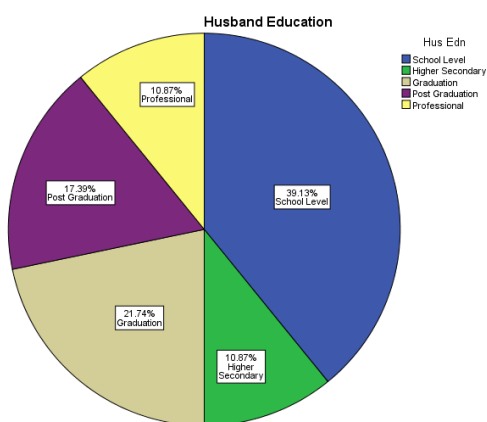


North Kerala

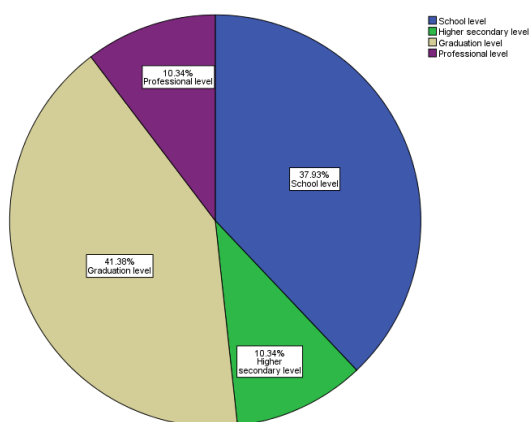


4. Husband's Education

South Kerala

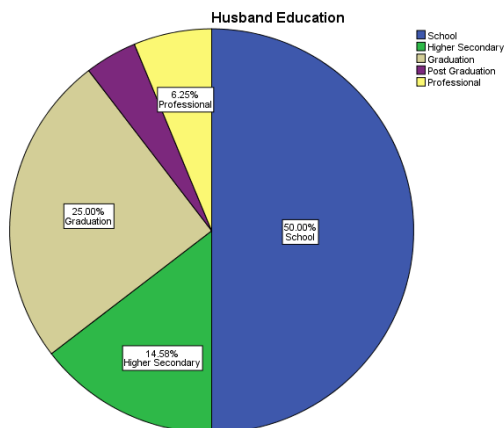


Central Kerala



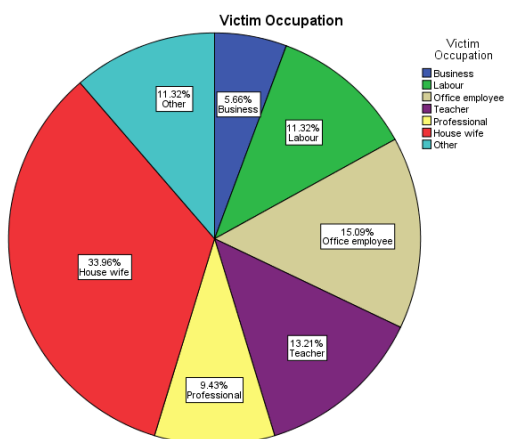
* Pie diagram is prepared based on number of people who answered questions

North Kerala

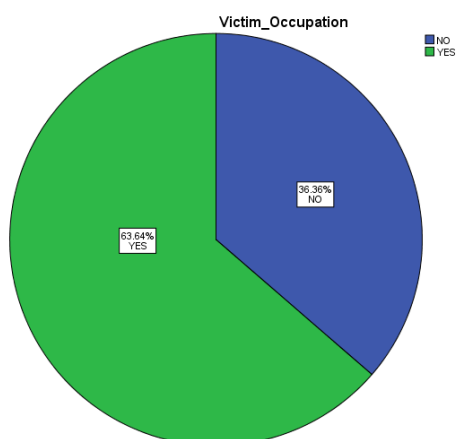


5. Victim's Occupation

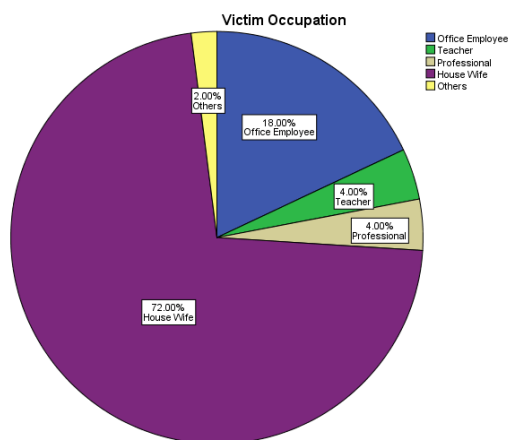
South Kerala



Central Kerala



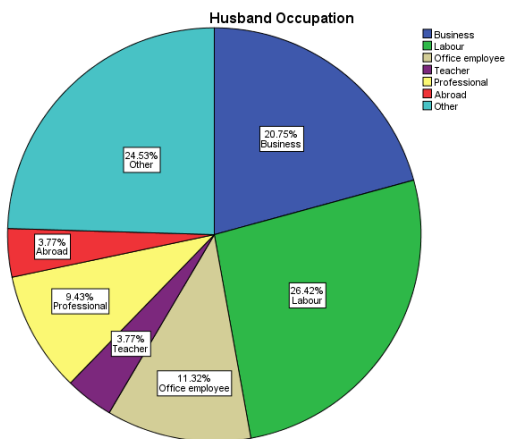
North Kerala



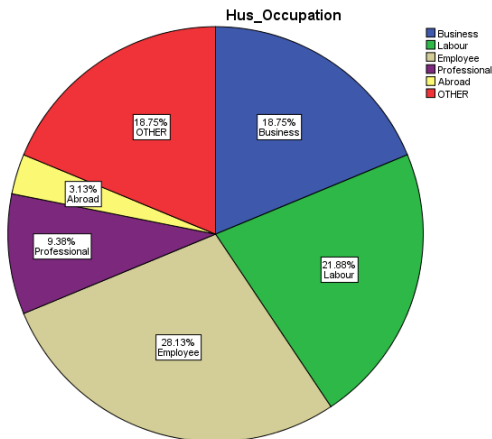
* Pie diagram is prepared based on number of people who answered questions

6. Husband's Occupation

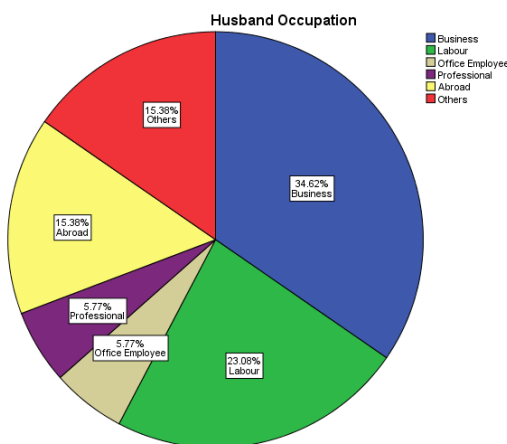
South Kerala



Central Kerala

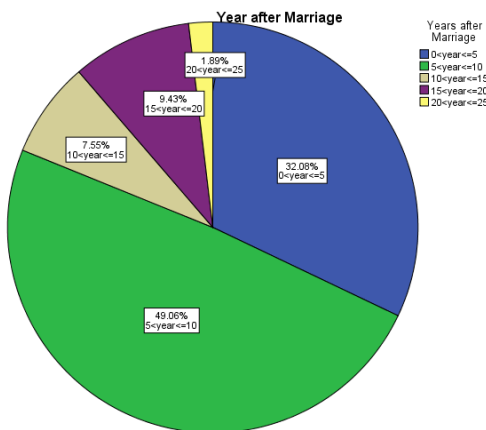


North Kerala

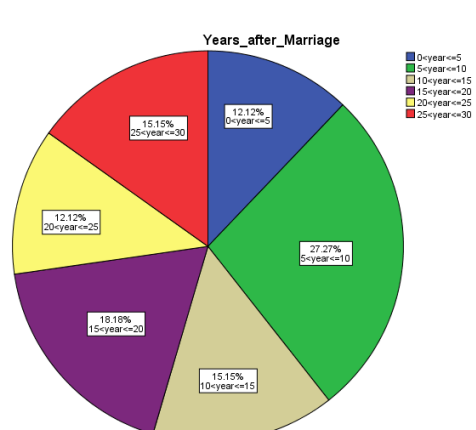


7. Years after Marriage

South Kerala

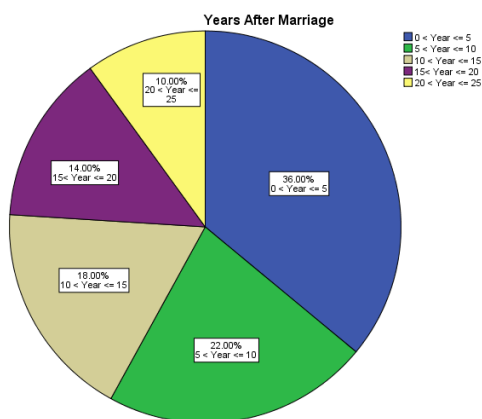


Central Kerala



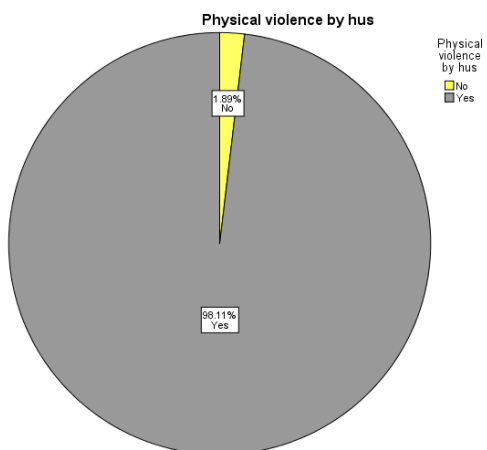
* Pie diagram is prepared based on number of people who answered questions

North Kerala

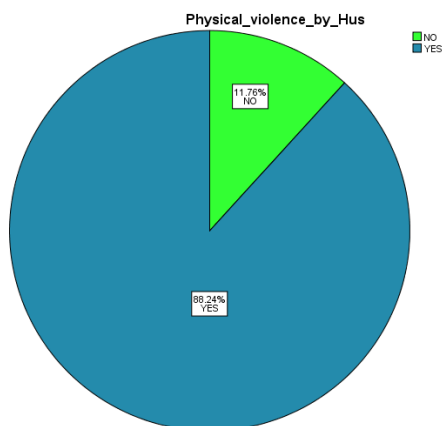


8. Physical Violence by Husband

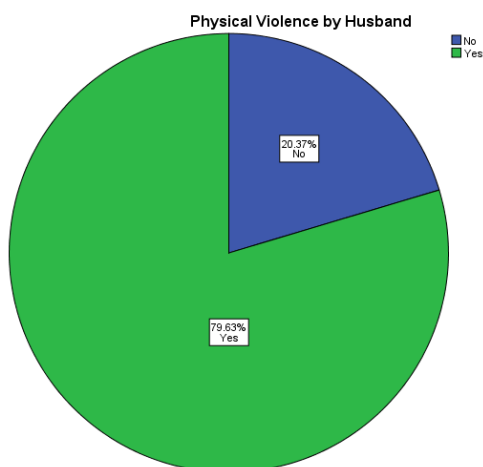
South Kerala



Central Kerala



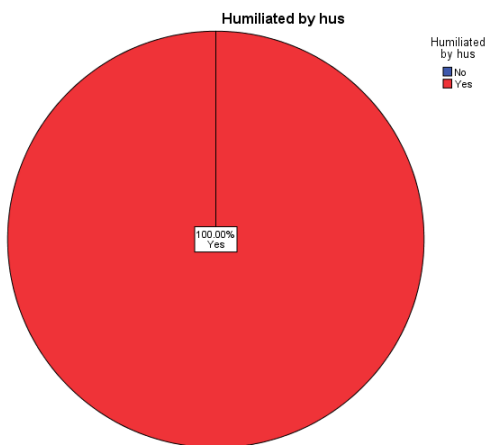
North Kerala



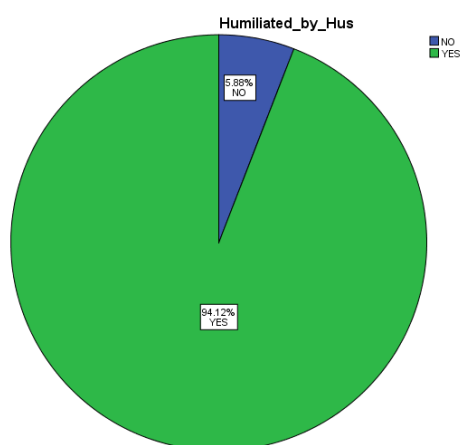
* Pie diagram is prepared based on number of people who answered questions

9. Humiliated by Husband

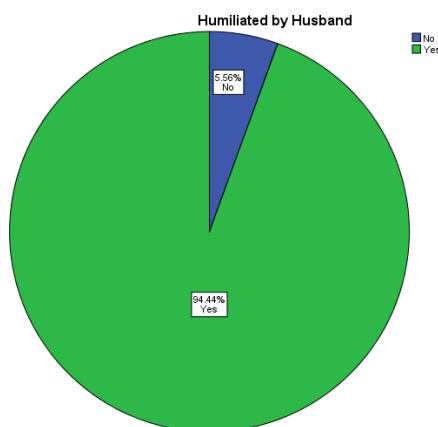
South Kerala



Central Kerala

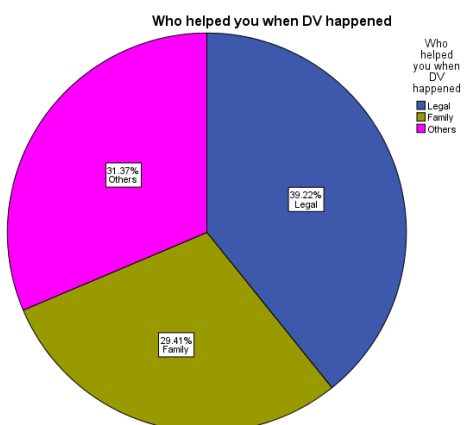


North Kerala

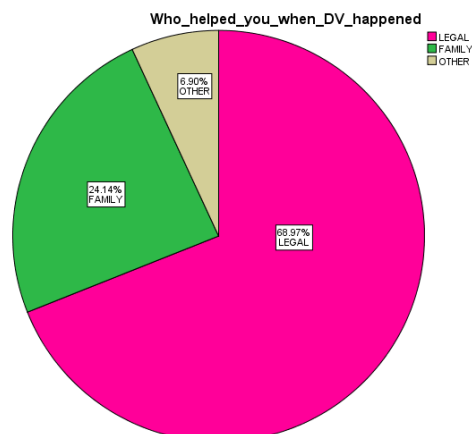


10. Who Helped You When DV Happened?

South Kerala

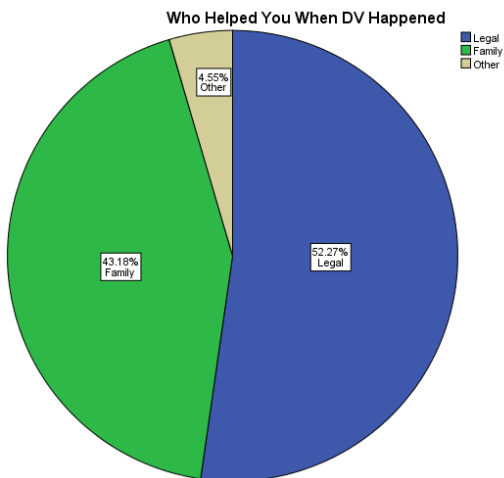


Central Kerala



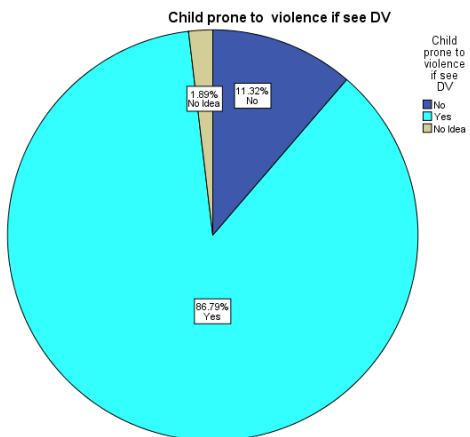
* Pie diagram is prepared based on number of people who answered questions

North Kerala

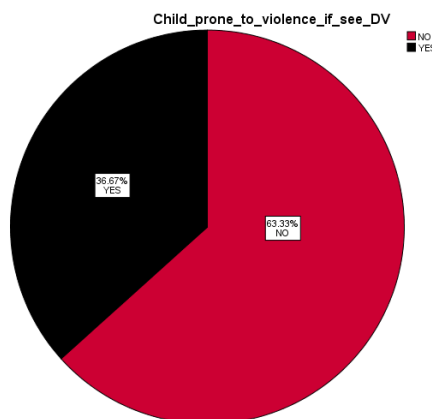


11. Awareness that child prone to DV will become future perpetrators

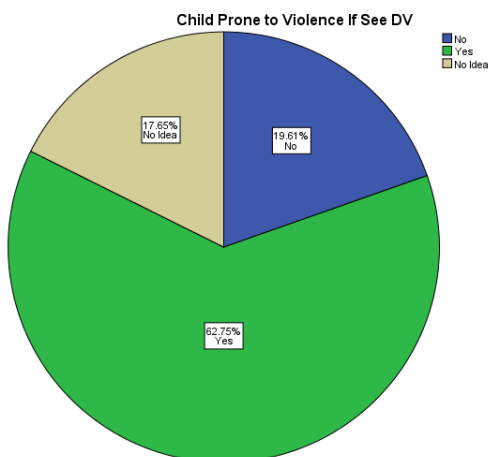
South Kerala



Central Kerala



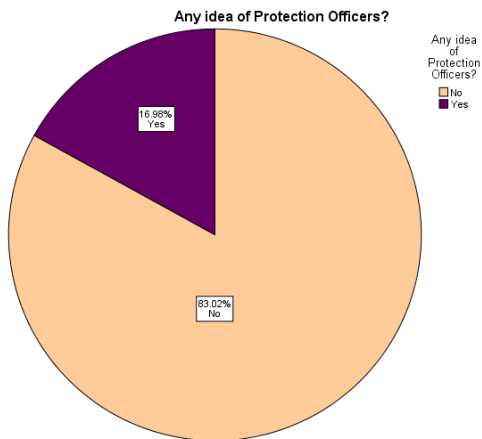
North Kerala



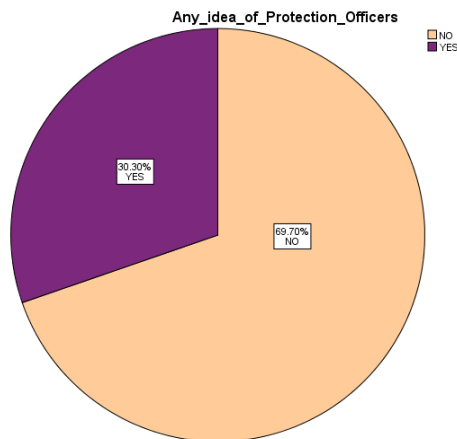
* Pie diagram is prepared based on number of people who answered questions

12. Any Idea of Protection Officers?

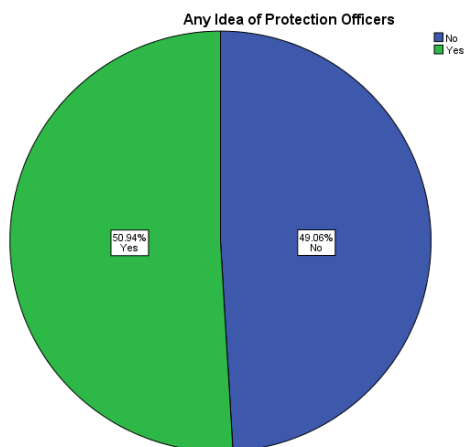
South Kerala



Central Kerala

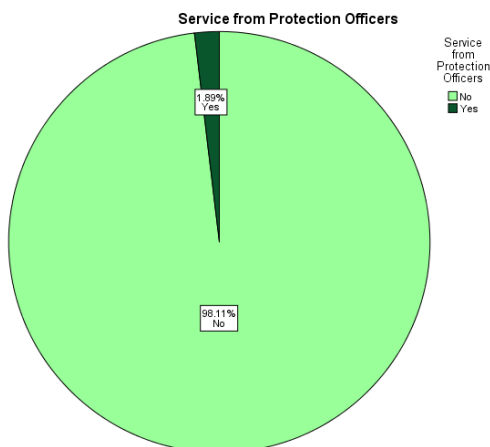


North Kerala

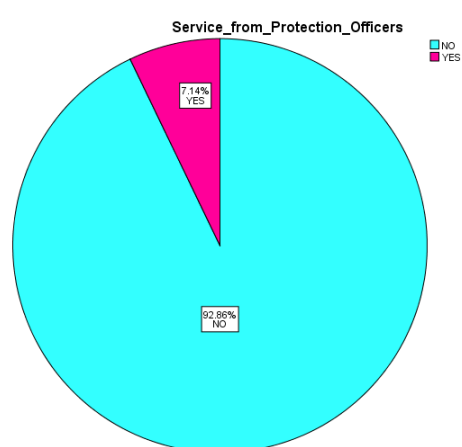


14. Service from Protection Officers

South Kerala

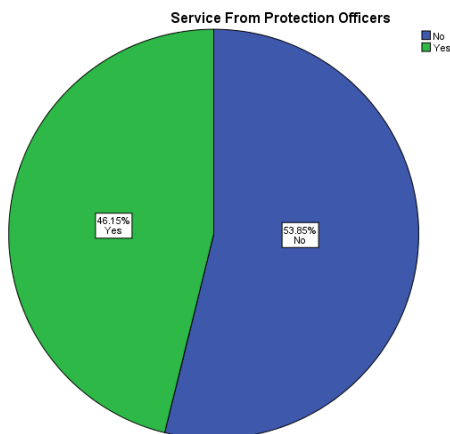


Central Kerala



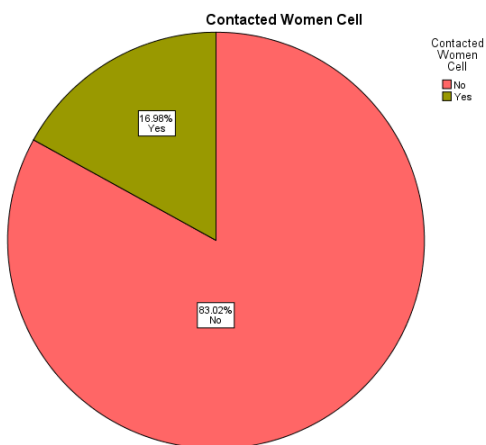
* Pie diagram is prepared based on number of people who answered questions

North Kerala

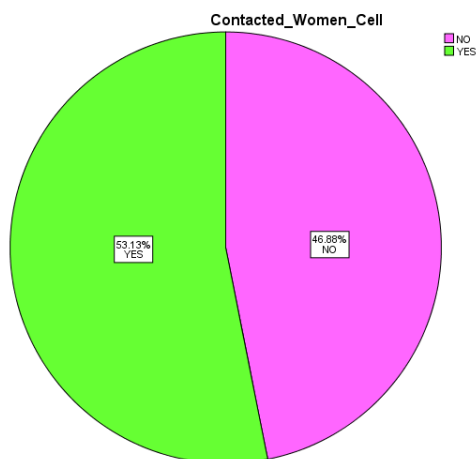


15. Contacted Women Cell

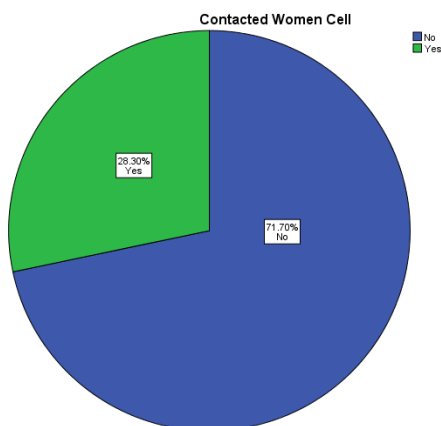
South Kerala



Central Kerala



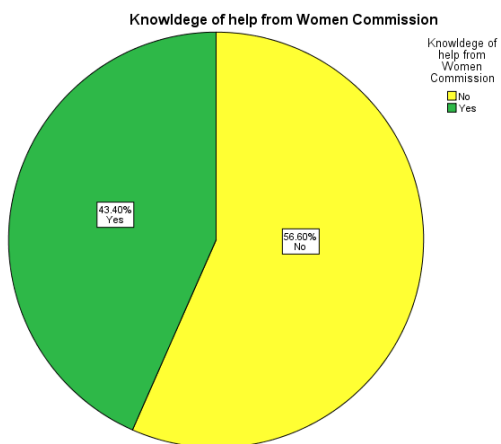
North Kerala



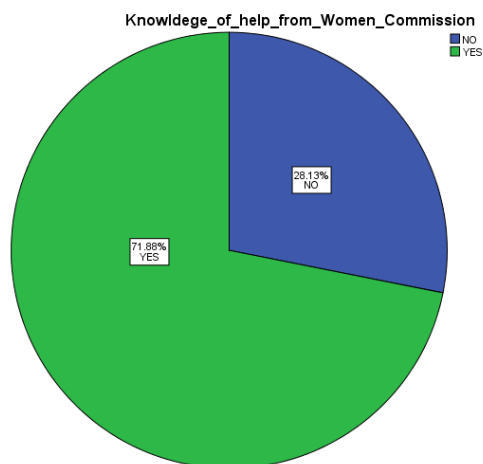
* Pie diagram is prepared based on number of people who answered questions

16. Knowledge of Help From Women Commission

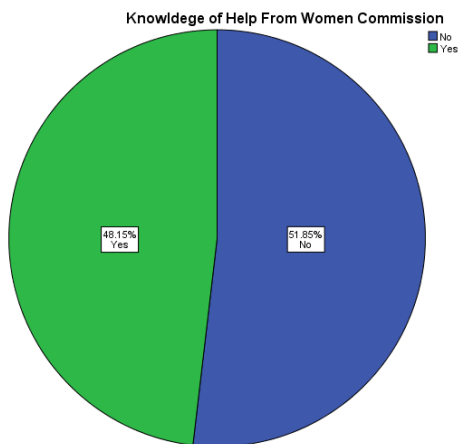
South Kerala



Central Kerala

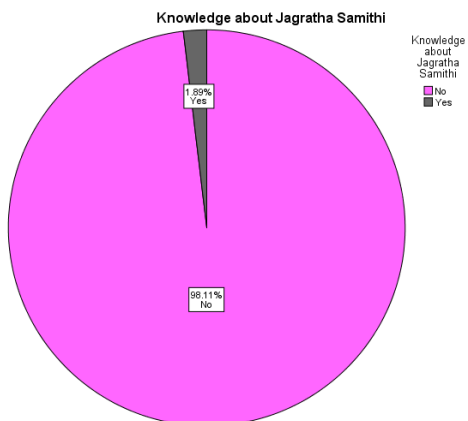


North Kerala

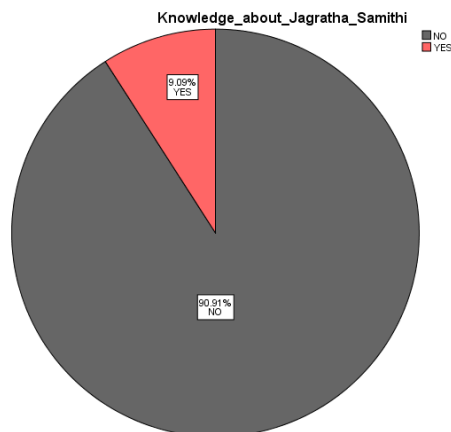


17. Knowledge About Jagratha Samithi

South Kerala

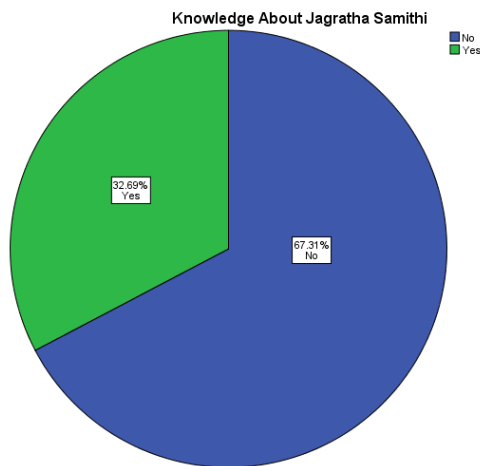


Central Kerala



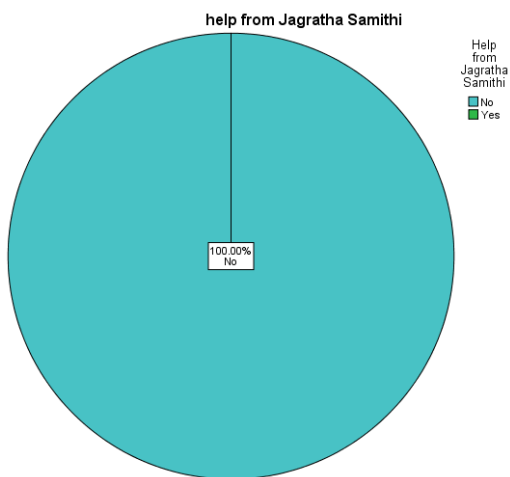
* Pie diagram is prepared based on number of people who answered questions

North Kerala

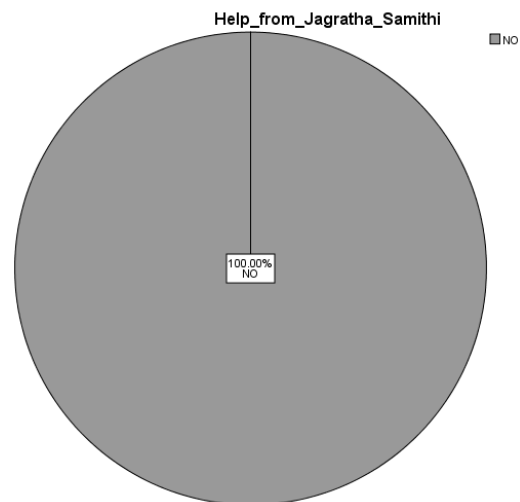


18. Help From Jagratha Samithi

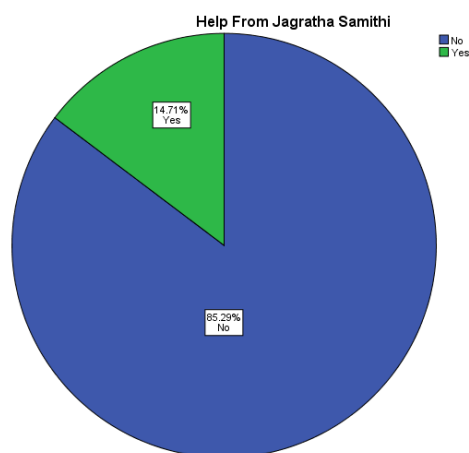
South Kerala



Central Kerala

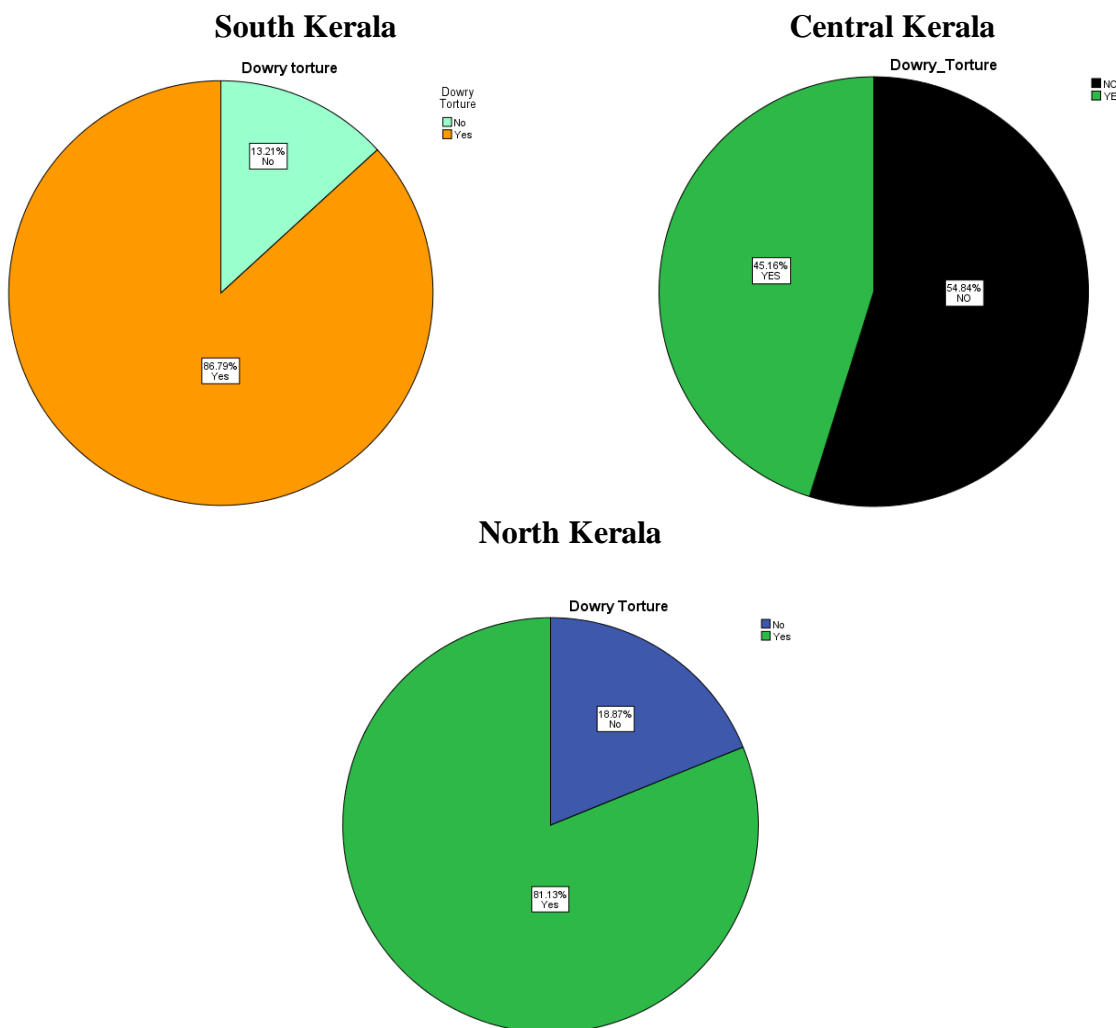


North Kerala

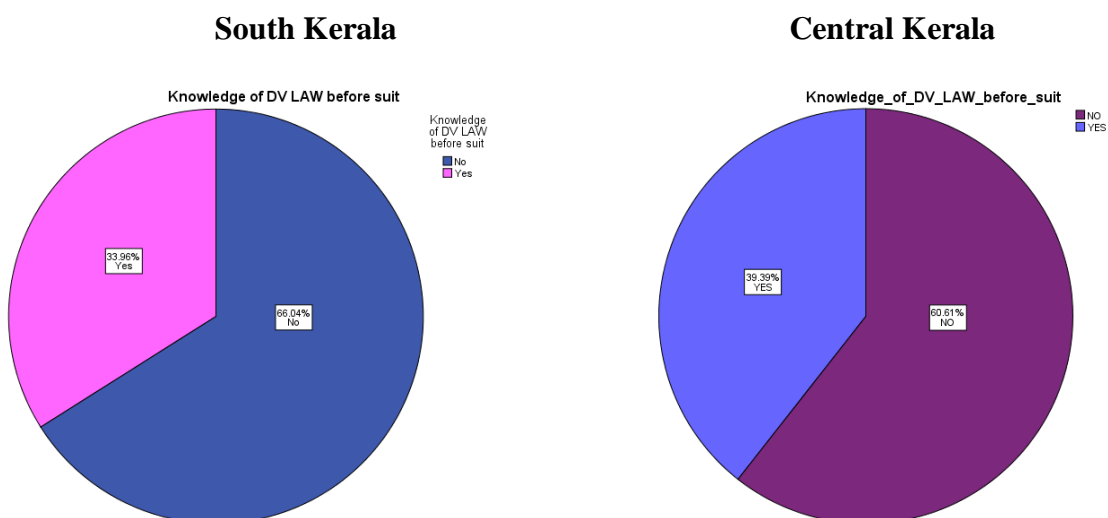


* Pie diagram is prepared based on number of people who answered questions

19. Is There Dowry Torture?

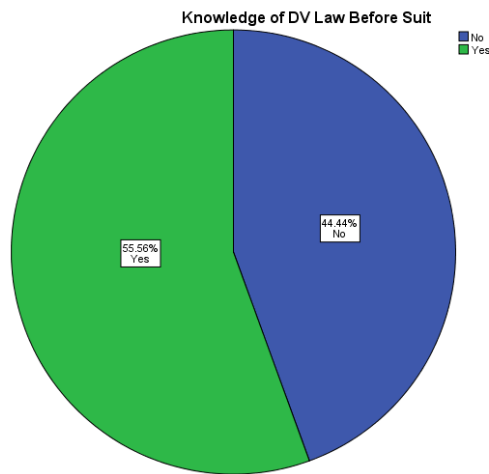


20. Knowledge of DV Law Before Suit?



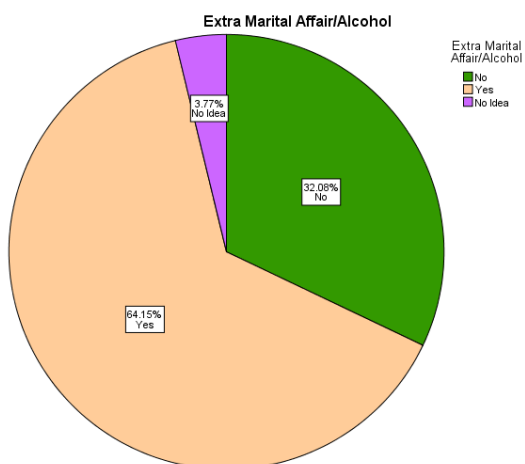
* Pie diagram is prepared based on number of people who answered questions

North Kerala

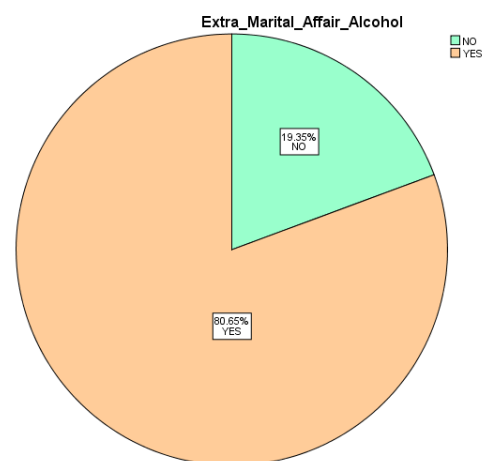


21. Is There Extra Marital Affair/Alcohol Addiction?

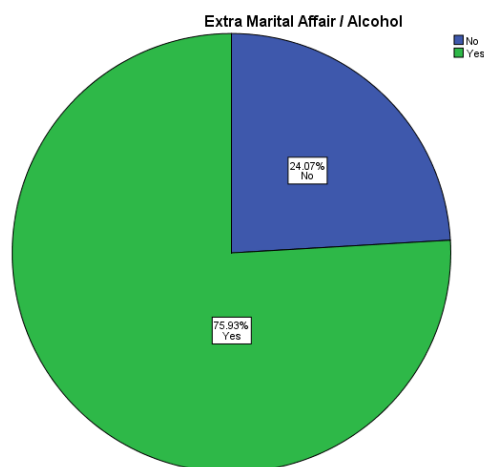
South Kerala



Central Kerala



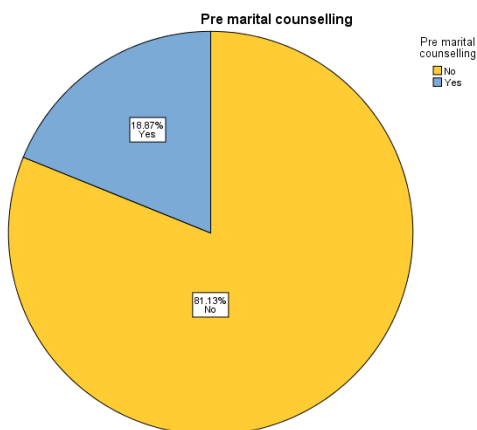
North Kerala



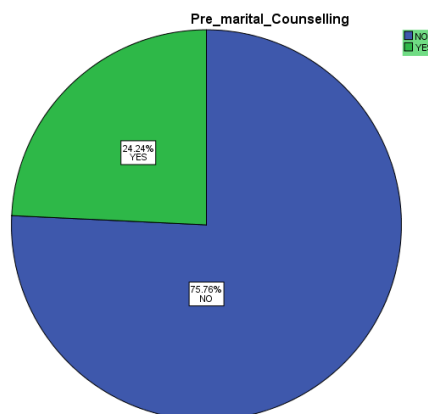
* Pie diagram is prepared based on number of people who answered questions

22. Pre-Marital Counselling

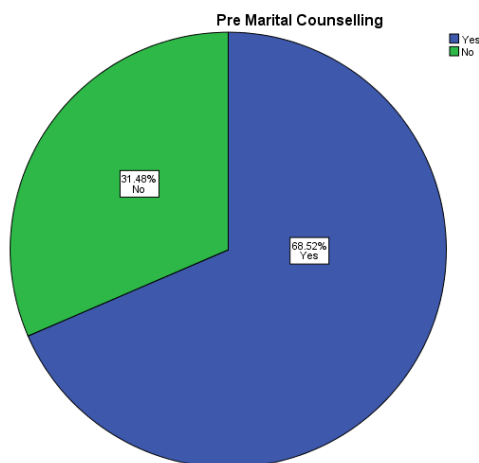
South Kerala



Central Kerala

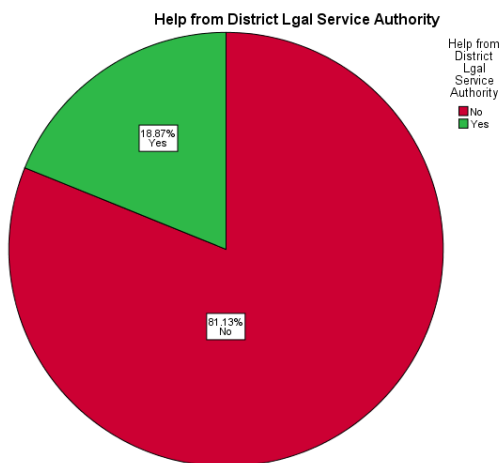


North Kerala

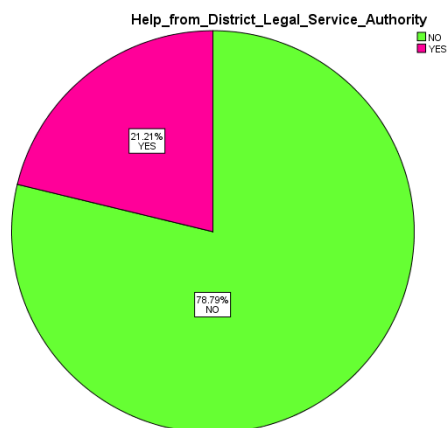


23. Help From District Legal Service Authority

South Kerala

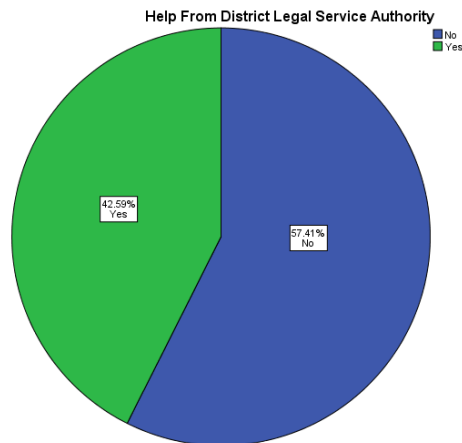


Central Kerala



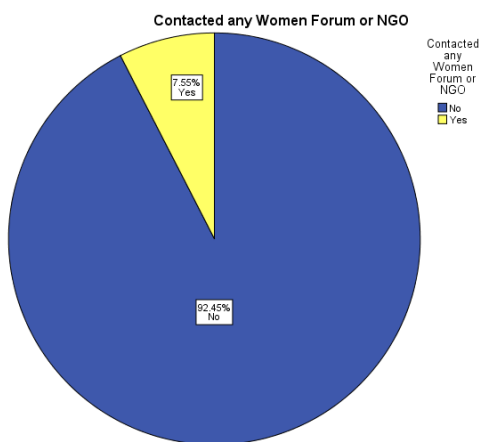
* Pie diagram is prepared based on number of people who answered questions

North Kerala

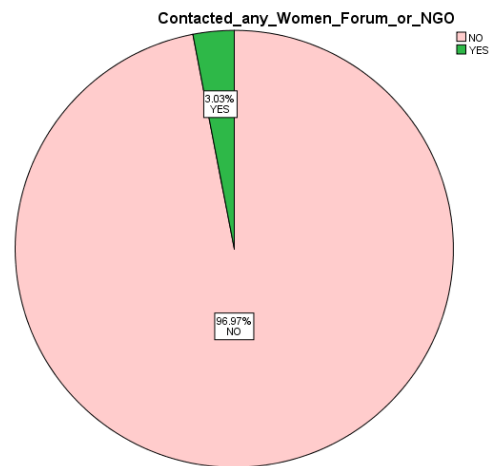


24. Contacted Any Women Forum or NGO

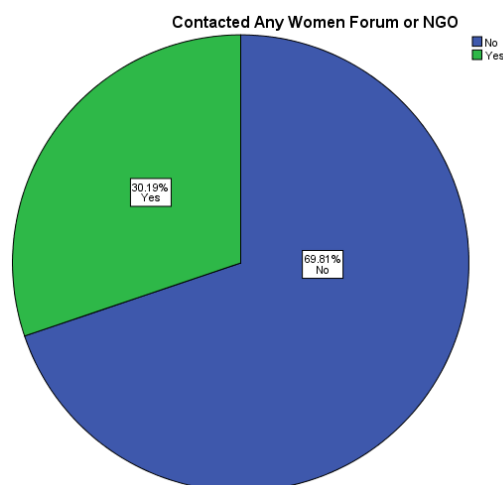
South Kerala



Central Kerala



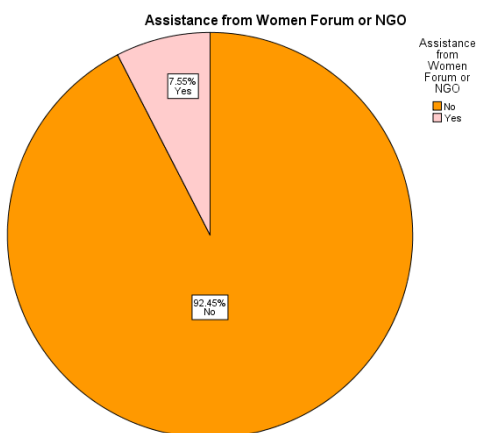
North Kerala



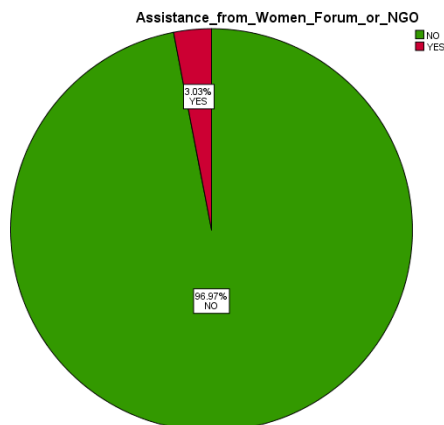
* Pie diagram is prepared based on number of people who answered questions

25. Assistance from Women Forum or NGO

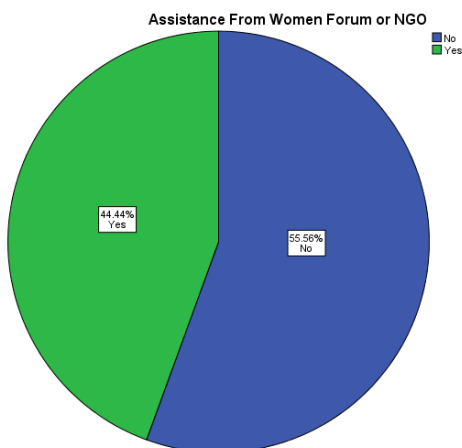
South Kerala



Central Kerala

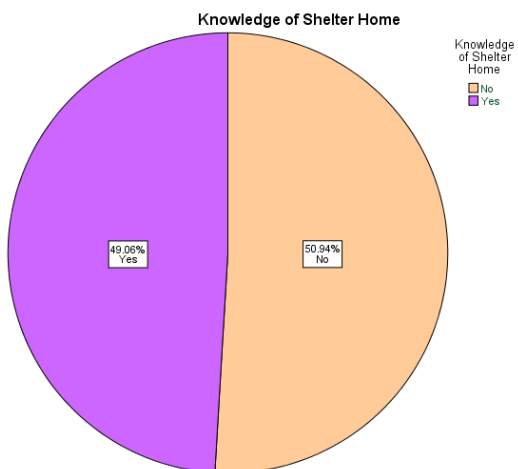


North Kerala

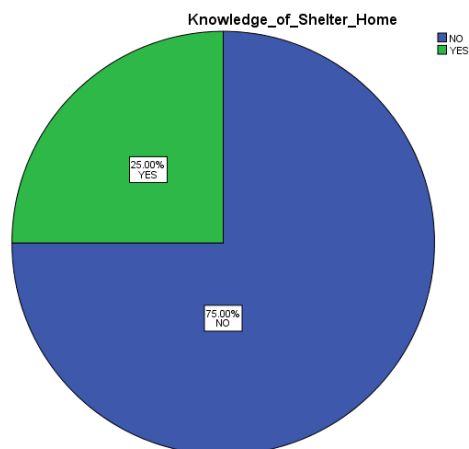


26. Knowledge of Shelter Home

South Kerala

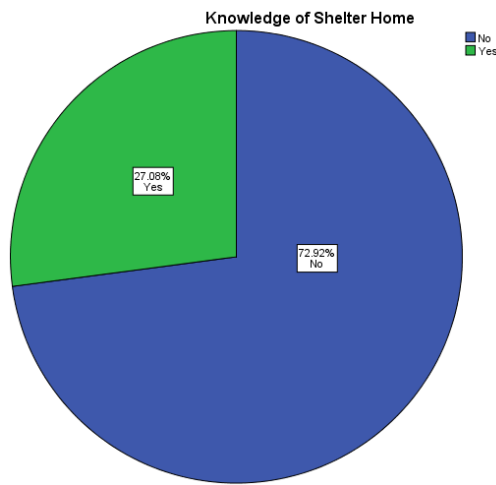


Central Kerala



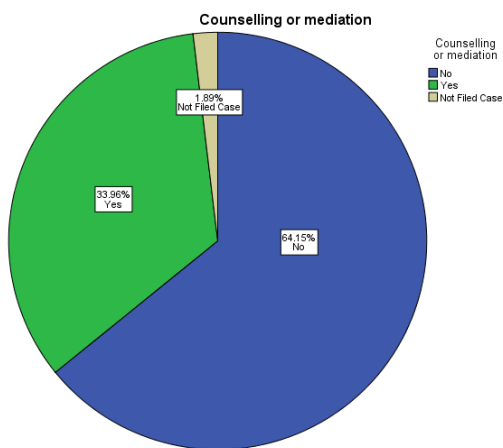
* Pie diagram is prepared based on number of people who answered questions

North Kerala

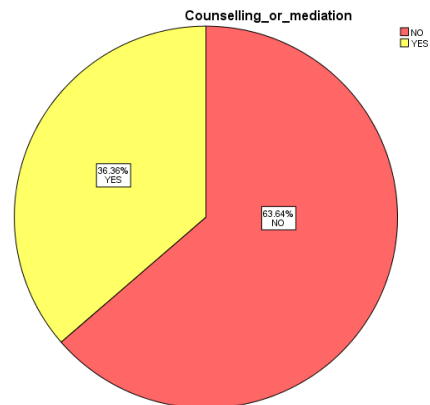


27. Counselling or Mediation

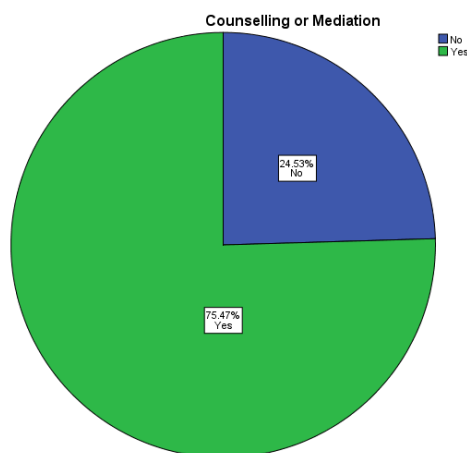
South Kerala



Central Kerala



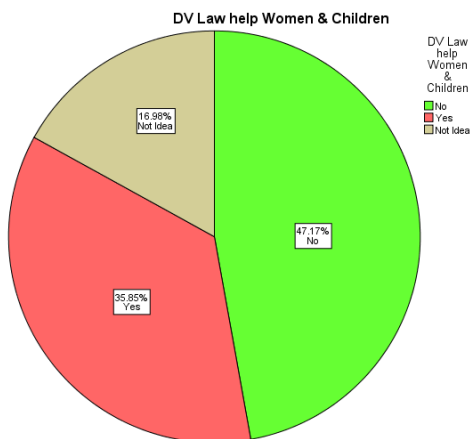
North Kerala



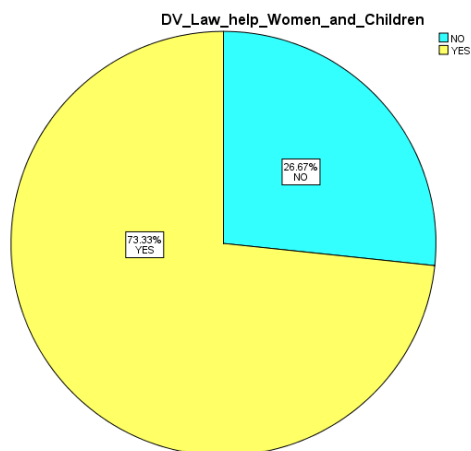
* Pie diagram is prepared based on number of people who answered questions

28. DV Law Help Women and Children

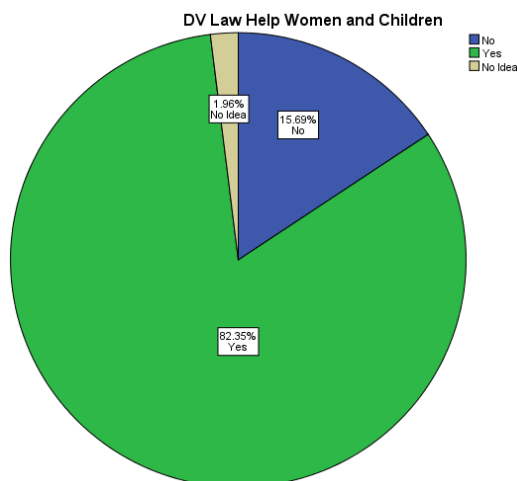
South Kerala



Central Kerala

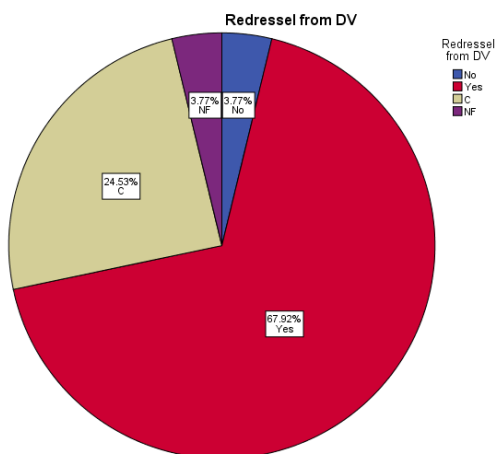


North Kerala

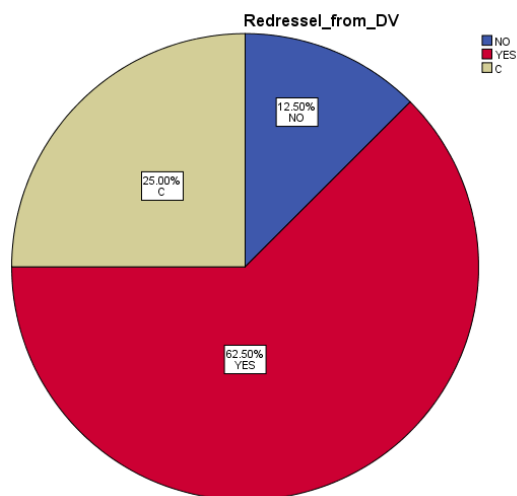


29. Redressal From DV

South Kerala

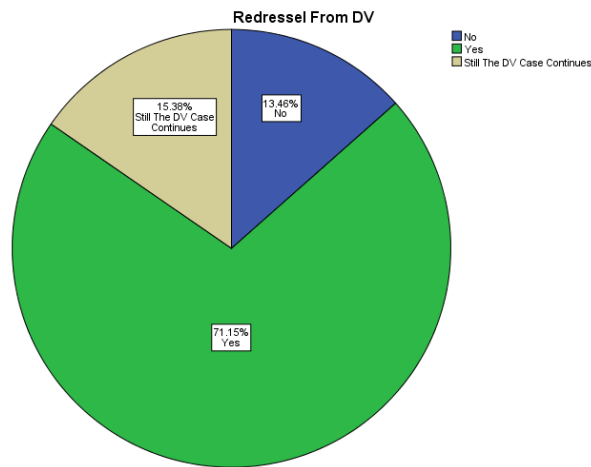


Central Kerala



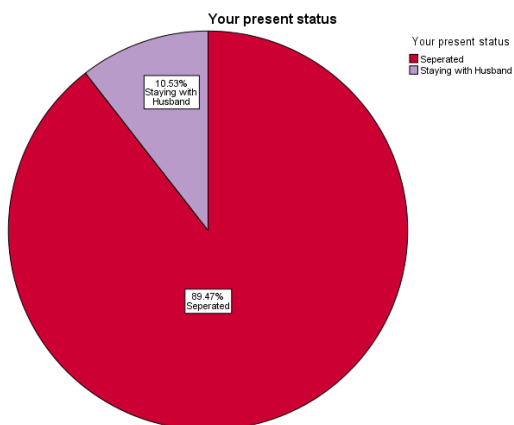
* Pie diagram is prepared based on number of people who answered questions

North Kerala

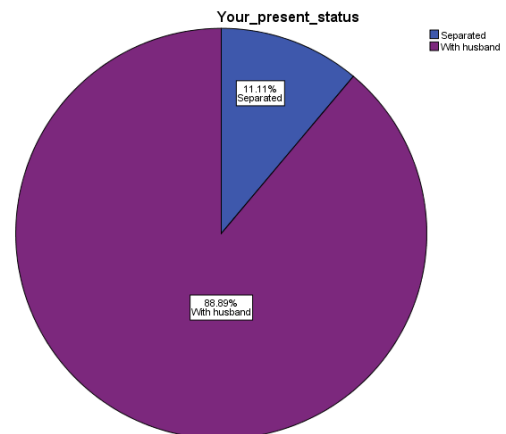


30. Your Present Status

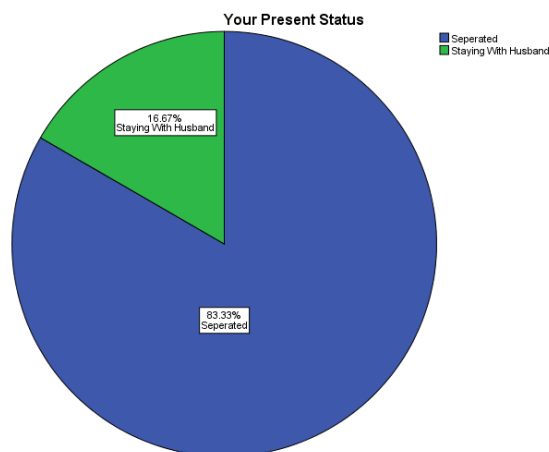
South Kerala



Central Kerala

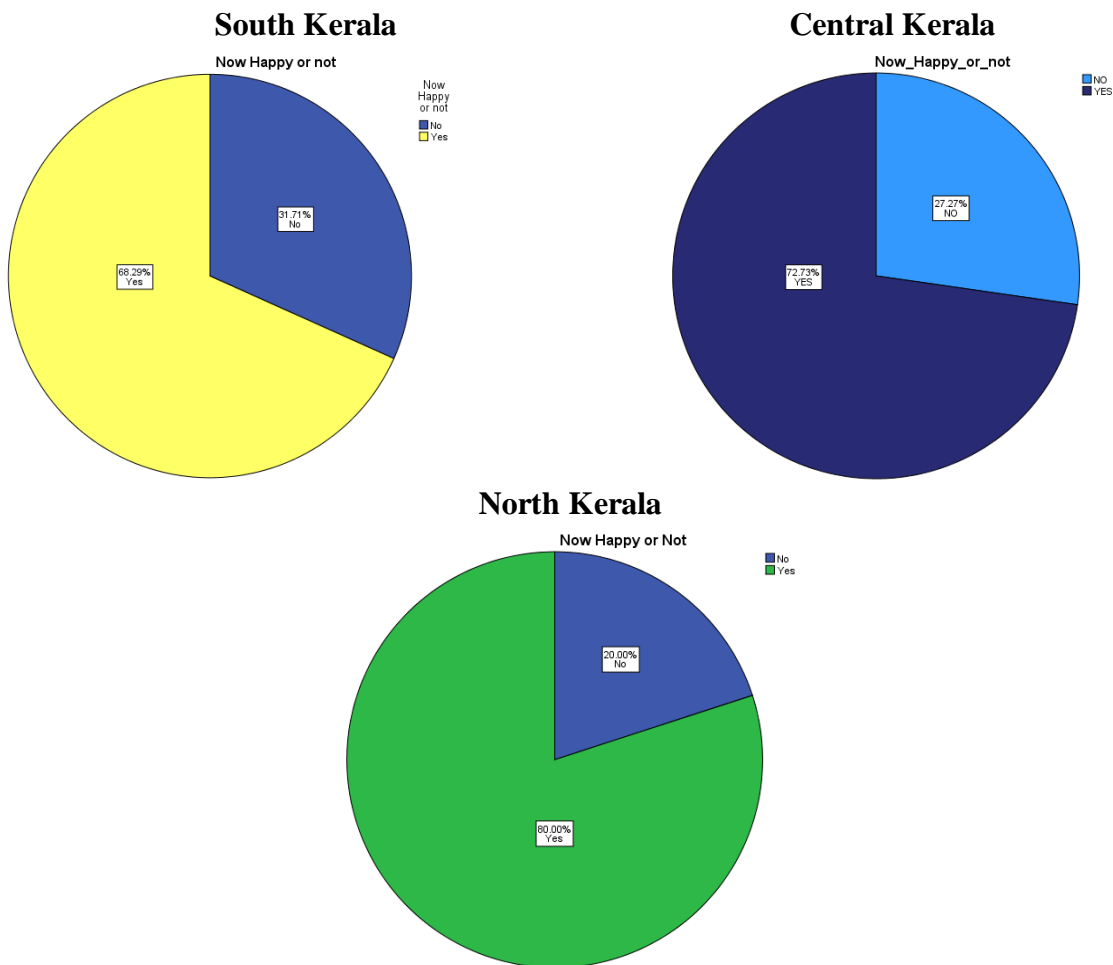


North Kerala

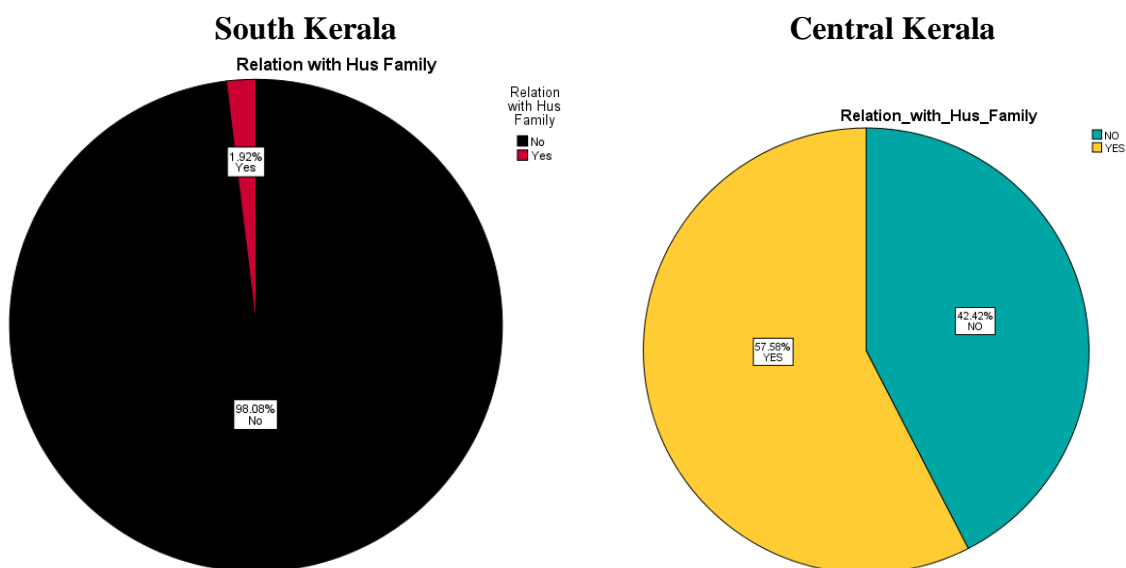


* Pie diagram is prepared based on number of people who answered questions

31. Now Happy or Not?

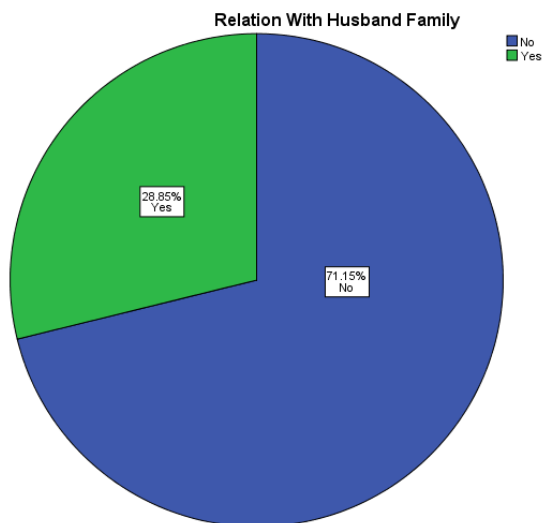


32. Relation with Husband Family



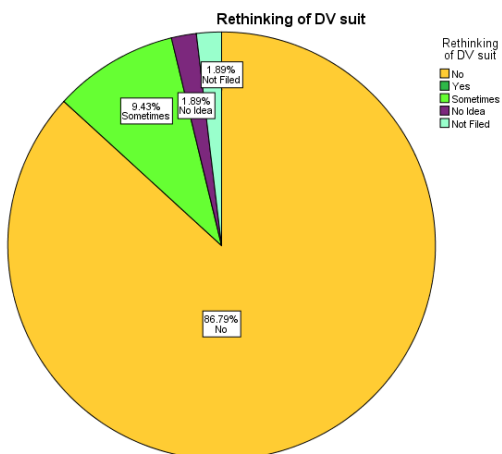
* Pie diagram is prepared based on number of people who answered questions

North Kerala

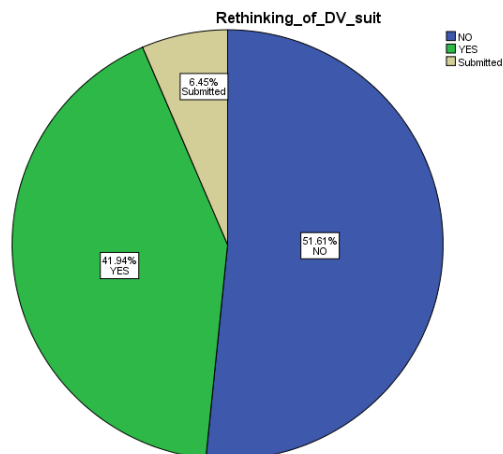


33. Rethinking of Filing DV Suit

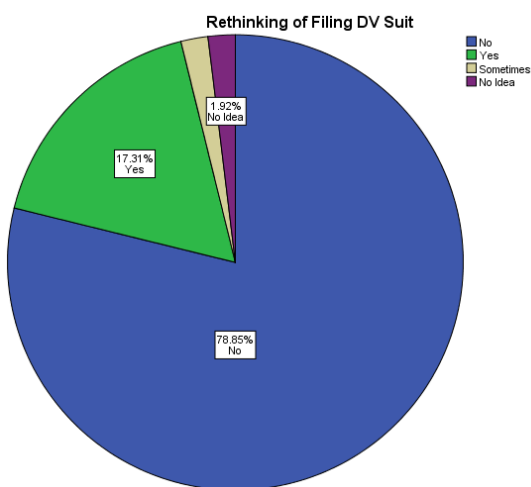
South Kerala



Central Kerala



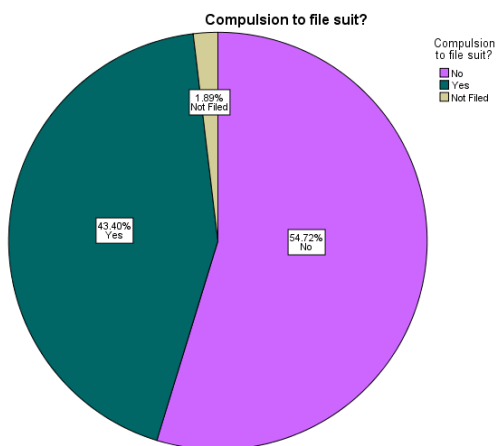
North Kerala



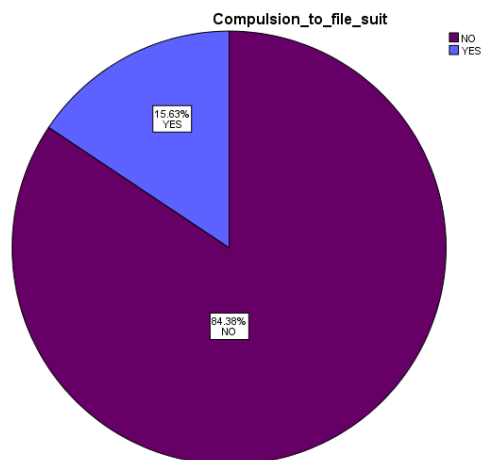
* Pie diagram is prepared based on number of people who answered questions

34. Is There Compulsion to File Suit?

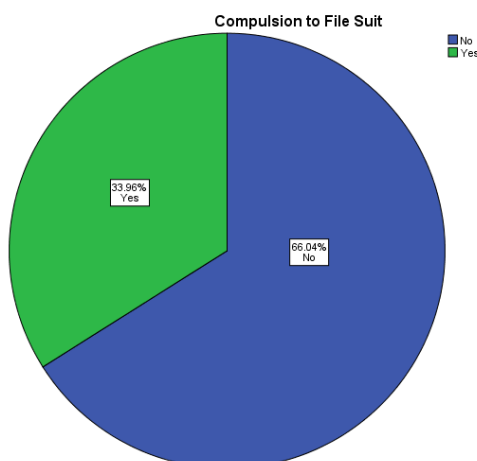
South Kerala



Central Kerala

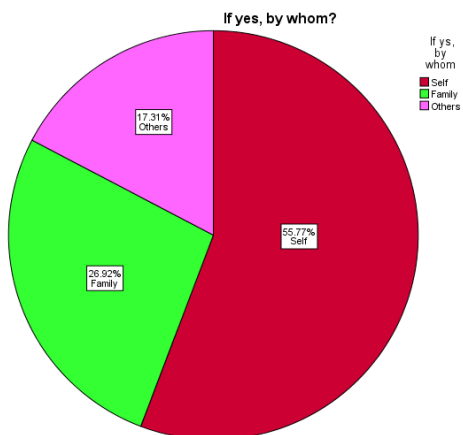


North Kerala

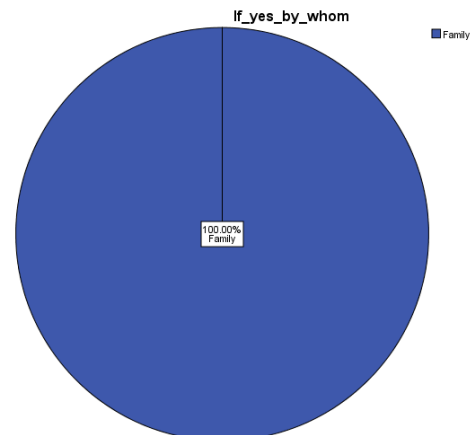


35. If Compulsion to File Suit, By Whom?

South Kerala

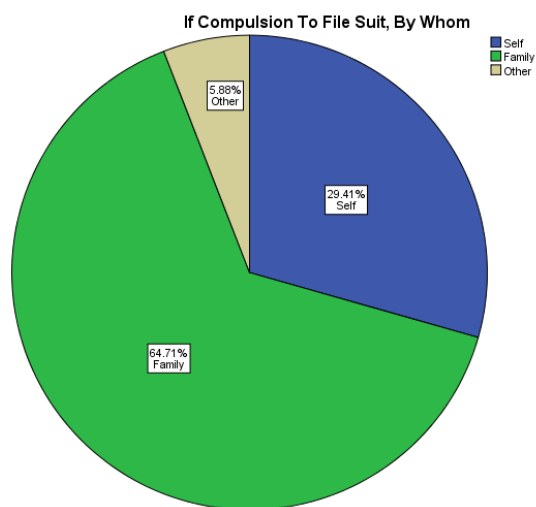


Central Kerala



* Pie diagram is prepared based on number of people who answered questions

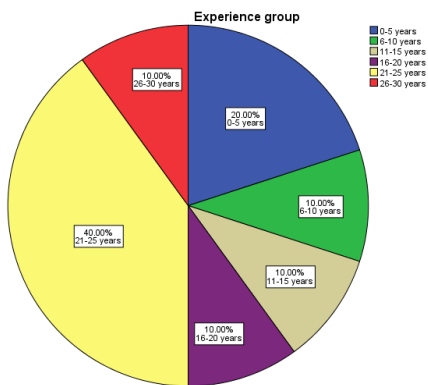
North Kerala



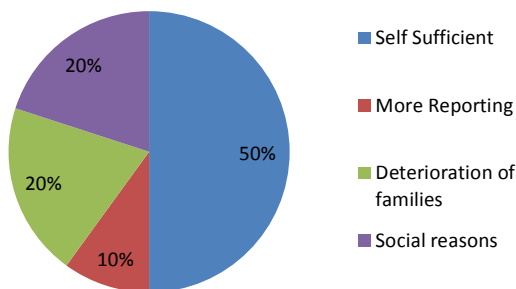
* Pie diagram is prepared based on number of people who answered questions

B. EMPIRICAL STUDY AMONG JUDICIAL OFFICERS

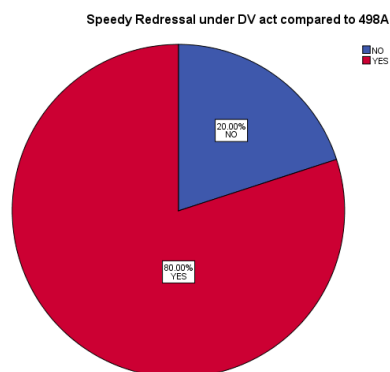
1. BAR EXPERIENCE IN YEARS



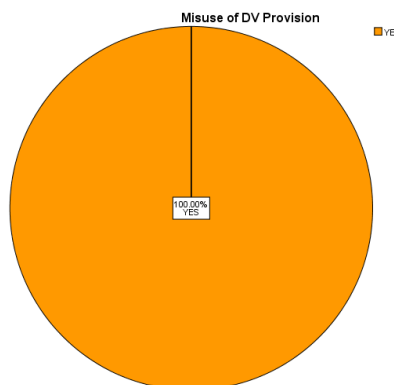
2. REASONS FOR INCREASE IN DOMESTIC VIOLENCE



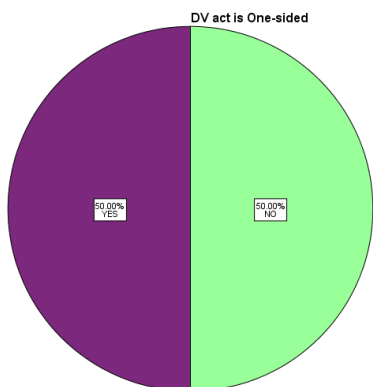
3. SPEEDY REDRESSAL UNDER DV ACT AS COMPARED TO 498A



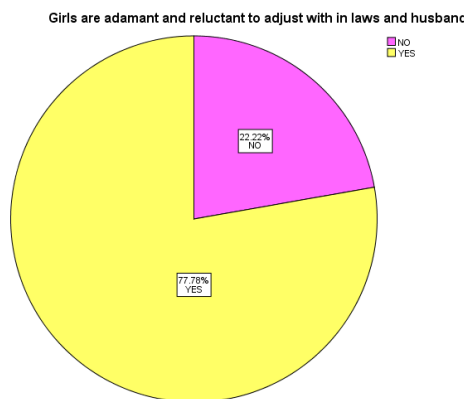
4. MISUSE OF DV PROVISIONS



5. WHETHER DV ACT IS ONE-SIDED

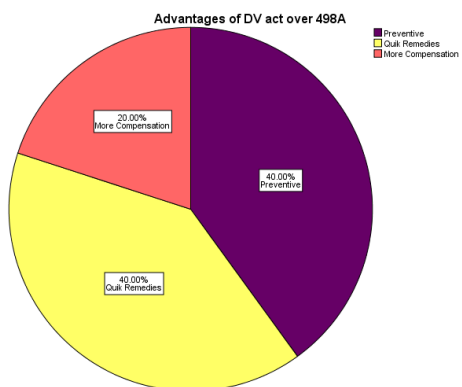


6. WHETHER GIRLS ARE ADAMANT AND RELUCTANT TO ADJUST WITH IN LAWS AND HUSBAND

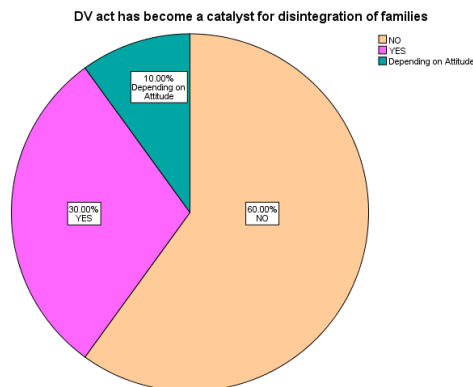


* Pie diagram is prepared based on number of people who answered questions

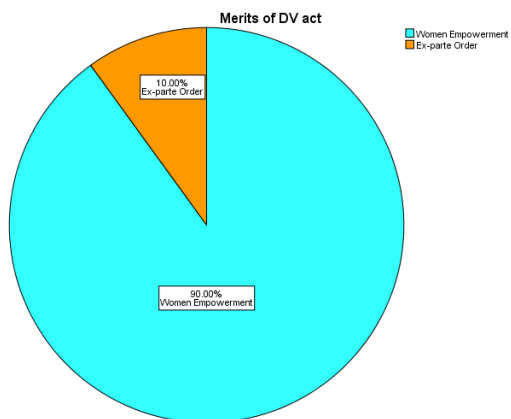
7. ADVANTAGES OF DV ACT OVER 498A



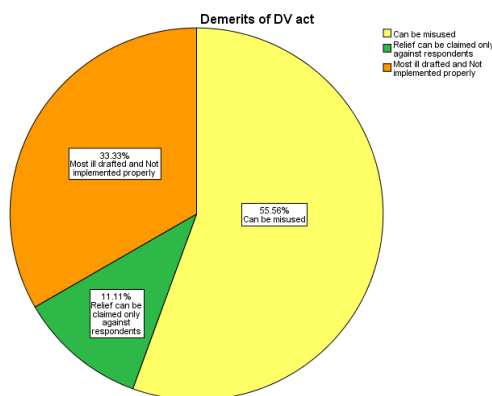
8. DV ACT HAS BECOME A CATALYST FOR DISINTEGRATION OF FAMILIES



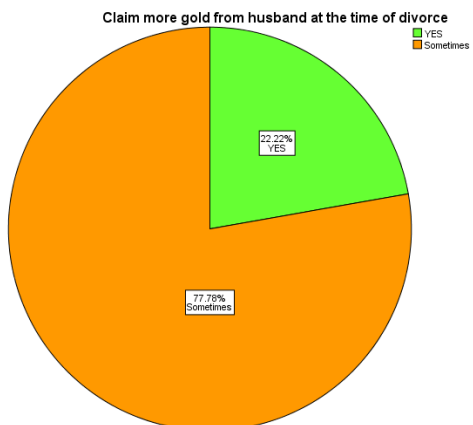
9. MERITS OF DV ACT



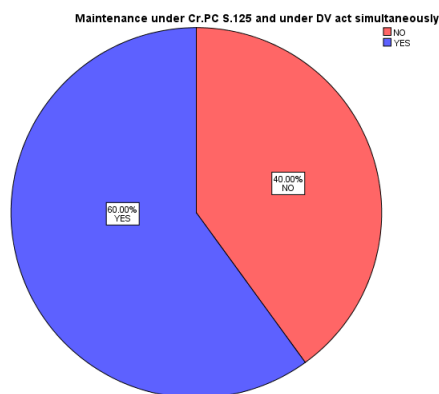
10. DEMERITS OF DV ACT



11. CLAIM MORE GOLD FROM HUSBAND AT THE TIME OF DIVORCE



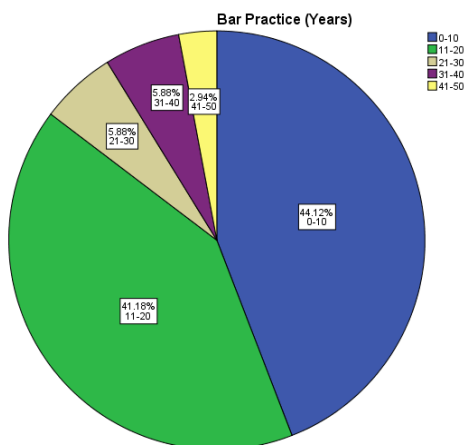
12. MAINTENANCE UNDER CrPC S.125 AND UNDER DV ACT SIMULTANEOUSLY



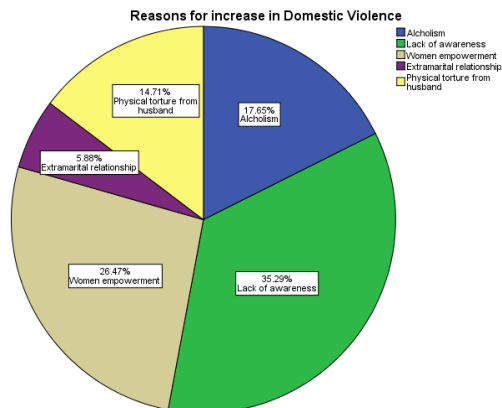
* Pie diagram is prepared based on number of people who answered questions

C. EMPIRICAL STUDY AMONG ADVOCATES

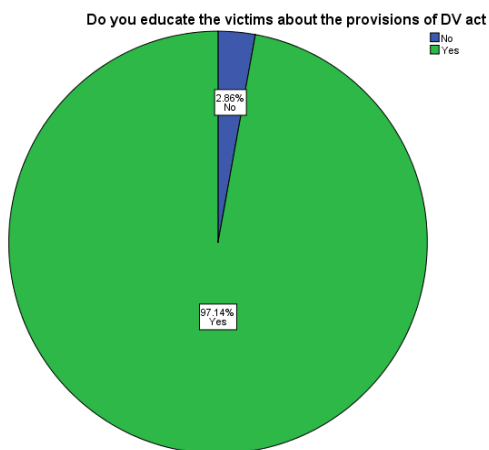
1. BAR PRACTICE (Years)



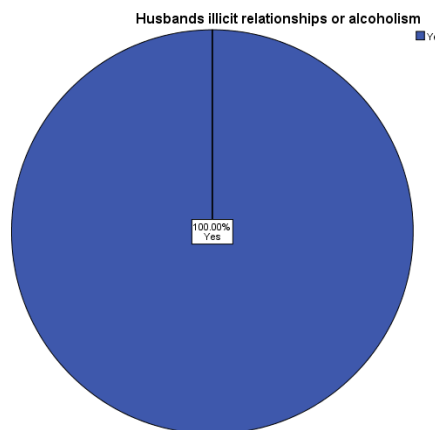
2. REASONS FOR INCREASE IN DOMESTIC VIOLENCE



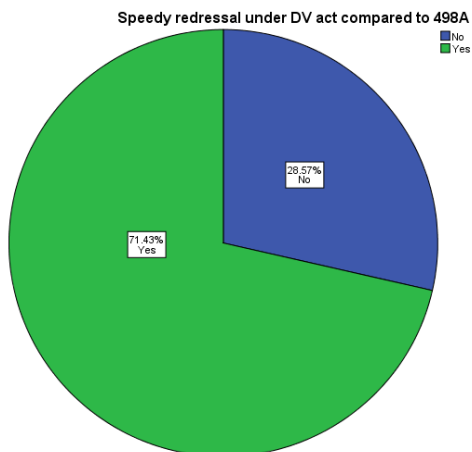
3. DO YOU EDUCATE THE VICTIMS ABOUT THE PROVISIONS OF DV ACT



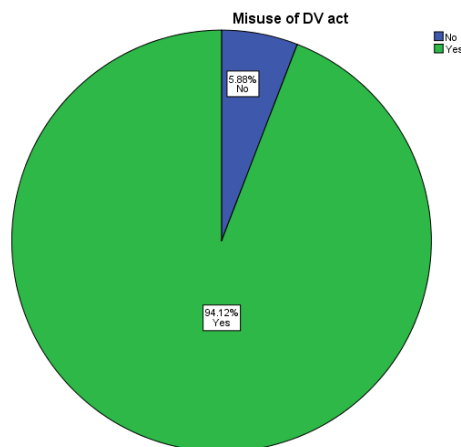
4. HUSBAND'S ILLICIT RELATIONSHIPS OR ALCOHOLISM



5. SPEEDY REDRESSAL UNDER DV ACT COMPARED TO IPC SECTION 498A

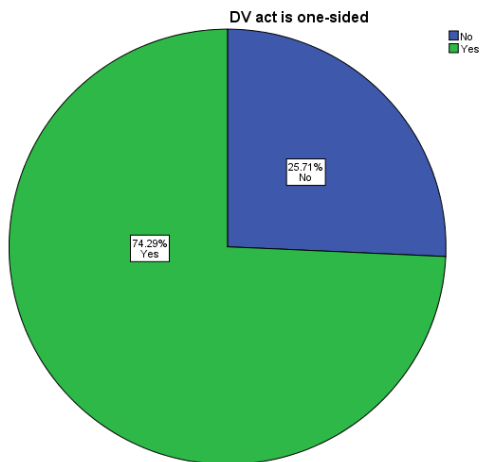


6. MISUSE OF DV ACT

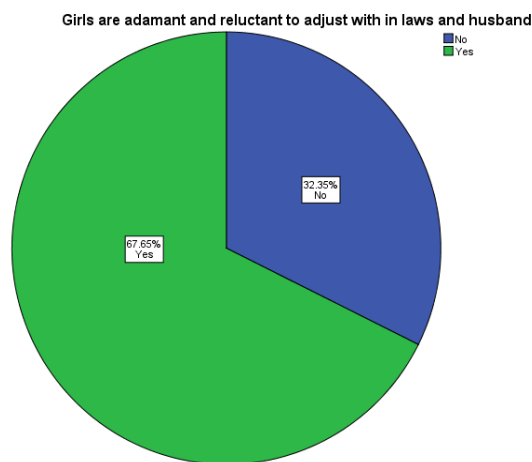


* Pie diagram is prepared based on number of people who answered questions

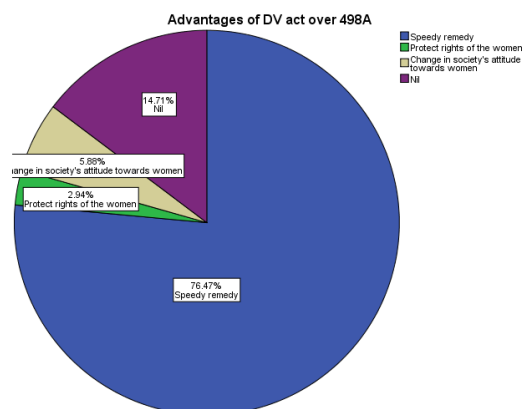
7. WHETHER DV ACT IS ONE-SIDED



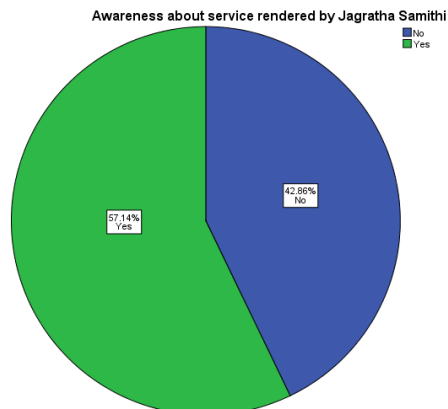
8. GIRLS ARE ADAMANT AND RELUCTANT TO ADJUST WITH IN-LAWS AND HUSBAND



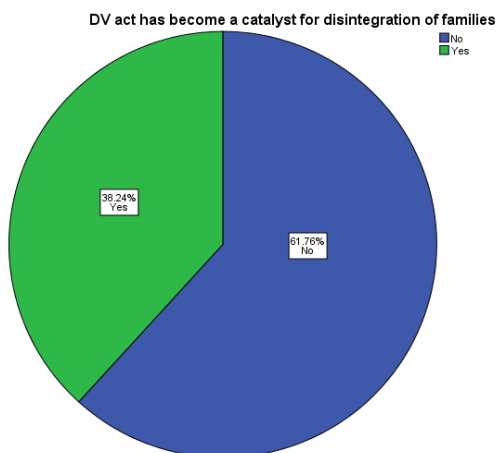
9. ADVANTAGES OF DV ACT OVER IPC SECTION 498A



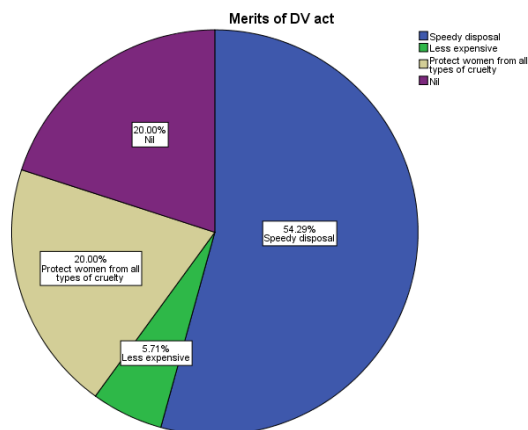
10. AWARENESS ABOUT SERVICE RENDERED BY JAGRATHA SAMITHI



11. DV ACT HAS BECOME A CATALYST FOR DISINTEGRATION OF FAMILIES

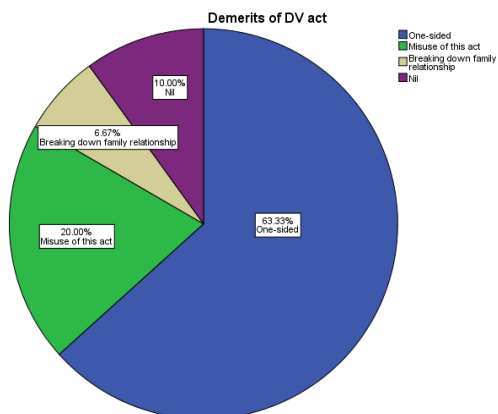


12. MERITS OF DV ACT

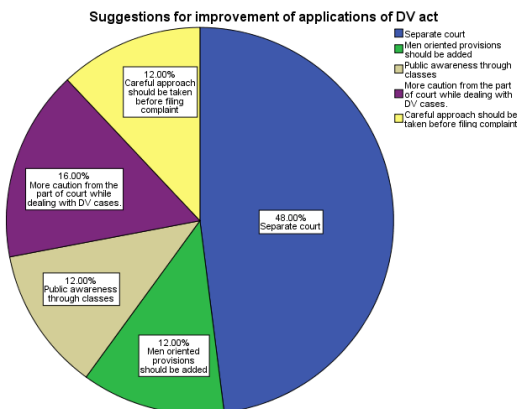


* Pie diagram is prepared based on number of people who answered questions

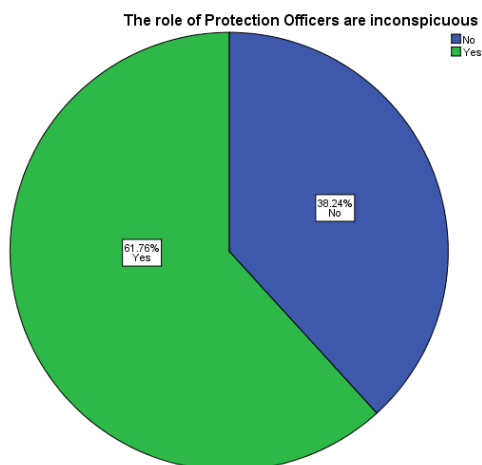
13. DEMERITS OF DV ACT



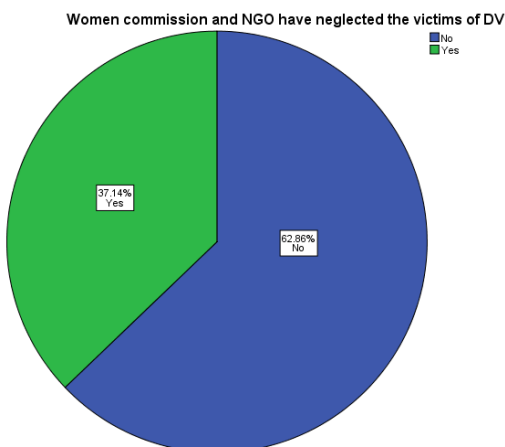
14. SUGGESTIONS FOR IMPROVEMENT OF APPLICATIONS OF DV ACT



15. THE ROLE OF PROTECTION OFFICERS ARE INCONSPICUOUS



16. WOMEN COMMISSION AND NGO HAVE NEGLECTED THE VICTIMS OF DV



* Pie diagram is prepared based on number of people who answered questions

APPENDIX – VI

PUBLISHED ARTICLES

International Research Journal of Socio-Legal Studies

08

ISSN 2455-0000 VOL 8, 2017

FAILURE AT IMPLEMENTATION LEVEL : AN AVIAN VIEW OF DOMESTIC VIOLENCE ACT, 2005

Ms. Kavitha Balakrishnan *

Though the Domestic Violence Act, 2005 guarantees justice to women who suffer domestic violence, but the Act hasn't been implemented properly and there is a dire need to raise awareness among people, especially in rural India. In a country, where constitution guarantees equal rights to women and men, it is a shame that women still have to struggle even for small things. A simple example of this is the domestic violence against women. Considering the fact and problems regarding the domestic violence, government of India framed Protection of Women from Domestic Violence Act 2005, which came into force on October 26, 2006, but as far as the justice is concerned, victims are less aware about the provisions of the Act. The act is mainly to protect the victim (woman) from the offenders and to reduce the domestic crime in the society. But due to some negligence by government, the victims are unable to raise their voice against the harassment.¹

In a society that treats issues of the welfare of women too casually, some stringent measures are necessary to keep in check the unscrupulous and unbridled male of the species. But this needed to be brought about not by adding to the statute book with-ill-advised measures but through proper enforcement of the existing legal framework. In an endeavour to strike a balance between the mutual rights and obligations of men and women the framers of the law seem to have gone overboard to load the dice totally against the former. The above mentioned facts of the Domestic Violence Act² are only some of its features that leave one in a disturbed state of mind. The Act has created a framework which is leading towards anarchy and representing a paradigm shift of tectonic plates supporting civil society. The consequences are bound to be disastrous for the "wife"³ as the "other woman" now has equal claims over man in matters of maintenance and shelter, two issues that count the most. The law projected as welfare measure for women might boomerang destroying the life of the women who reposed trust in the sanctity of marriage as institution. One dreads at the prospect of a day when society and the polity would be picking up pieces of aftermath, may be within a decade from now.

When this Act was enacted some people stated that definitions and forms of relief drafted show a clear effort on the part of the legislators to provide adequate redressal and protection. They also hoped that Domestic Violence Act is a step in the right direction. But unfortunately, years of misuse has proved them wrong. The term "respondent" in the Protection of Women from Domestic Violence Act means any adult male person who is, or

has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person⁴ 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. This means that the wife can file a petition against the husband's relatives⁵ also. She can demand for secure household and even force her husband to leave his own house.

On the face of it, the law appears to be a blessing for people in abusive or violent relationships. However, let's understand it this way, most of the real domestic violence cases in the country go unnoticed because in most cases the victim is an uneducated woman, mainly in the rural areas or in urban areas who is not fully aware of her rights and is the worst sufferer. She also sometimes fears to approach the court because of the consequences of her action in her social circle. Statistics show that even if they complain it is very rare. Also the cases mostly reported under Domestic Violence Act or under Section 498-A IPC are in urban areas, mostly in metropolitan cities where women are fully aware of their legal rights area and are smart enough to use it to their advantage in order to harass their husbands or his family members or extort money from them. The Domestic Violence Act is so biased that even for small trivial matters it can be misused in the hands of a malicious wife. This becomes clear from the definition of domestic violence itself which is too expensive and hence it is bound to be misused. Also, few definitions in the Act are very relative. Harassment is defined in the Act from women point of view only. It can also be connoted from the definition of "economic abuse" that if the male partner refuses to pay exorbitant monetary demands of the woman, she can accuse him of domestic violence. When any property is held by a male partner and if the woman has any "interest" in the property, the woman has the right to demand what she wants and not giving her will invite imprisonment. "Verbal" and "emotional" abuse is again very abstruse. There are hypersensitive persons who perceive hurt and imagine insults when none is meant or intended "If the wife is fervently for hanging convicted criminals by the neck till they die, the male in exasperation may call her a blood thirsty moron."

In the above examples it would be absurd to hold that the man has indulged in verbal abuse and is thus guilty of domestic violence. But that is precisely what would happen in view of the indiscriminate and imprecise definition of verbal abuse. Hence, there is a need to define verbal abuse narrowly and with precision and to prevent the Domestic Violence Act from being a paradise for lawyers, a hell for husbands and nightmare for enforcement authorities. Hence, definitions of "abuse" are sometimes so broad that nearly any man can be accused of it by his wife. Even the former President Pratibha Patil herself being a woman expressed her views on the misuse of domestic violence laws accepting that there have been instances whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores the fair invocation of legal provisions and their objective and honest implementation. She also condemned it by stating that it is unfortunate if laws meant to protect women get abused as instruments of oppression. Earlier there was reluctance amongst the Indian women⁶ who used to experience domestic violence⁷ to report or prosecute against such genre of

crimes. Domestic violence was often not handled as a substantial crime or complaint, but more of a personal or family matter. But now this trend has changed. Section 498-A introduced to protect women from domestic violence is the most misused law in India and accounts for the most suicide cases among men in India. Now let us come to Section 498-A IPC which is a very potent weapon⁸ and is often misused by women to wreak havoc on husband's family and by police to make money. As far as section 498-A is concerned, 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.

As per the Act, the victim can directly approach the Protection Officer (PO) for justice. But, it is found that, not a single person has directly approached PO in any domestic violence case. Most of the time, victims approached the police and then they informed the POs about the case. The Government delivered the charge of Protection Officer to senior officers who already have other responsibilities⁹. And those officials who are appointed as Protection Officers, are unaware about their responsibility. Similarly, no recruitment of Protection Officer was done in last seven years. As per the survey, the victim should get protection within 60 days of the registration of a case. Even, the first hearing will be done within that 60-day period, but due to the delay by officials it takes a long time. Most of the time, the cases reach the officials at the last stage of the domestic violence, due to lack of awareness.

The Protection Officers are very lenient about their work. They handle the cases just as a work and not to show their performance to help someone. The domestic violence act is very beneficial for the victims. As per the law, the result should come up within 90 days. But, due to leniency of officials not a single case was solved during the time period. The awareness among the people regarding the act is very essential. Even, media is the best way to increase the awareness among the people. Some improvement is needed in the law as well as in the behaviour of the officials.

As an improvement, Separate Protection Officer should be recruited by the government to reduce domestic violence, The court or legal procedure should be easy for the victims and proper protection should be provided to them by the authority, Justice should be delivered in the mentioned time period (60 Days), Majority of POs are male but victims are females- hence government should recruit female POs for the benefit of female victims, Proper implementation of the Act and quick decision making should be done during solving a case.¹⁰

After coming in force of the Domestic Violence Act the general perception among the public seems to be that domestic violence is an offence but contrary to this, reality is that domestic violence per-se is not an offence under Domestic Violence Act. What has been made criminal is the conduct of the male offender vis-à-vis the women in the domestic environment amounting to breach of protection order obtained by the women from the Magistrate. In order to understand the true meaning of this, it is very important to know how and what kind of protection order can be obtained by the woman whose breach amount to

offence under Domestic Violence Act. As per Sec. 18 of Domestic Violence Act magistrate is empowered to issue protection order upon prima facie satisfaction that domestic violence has taken place or is likely to take place i.e., woman can approach magistrate not only when she is actually subjected to violence but even if she is apprehending such violence. Now, this protection order is actually a prohibiting relief calling upon respondent to refrain from certain acts against the complainant.

The jurisdiction vested in magistrate to pass these prohibiting orders goes against the legal principles that are applicable to law of injunction e.g., injunction cannot be granted when equally efficacious relief can be obtained by other usual mode of proceeding. Since all the acts which have been treated as unlawful under Domestic Violence Act, have been the part and parcel of criminal law of the country and therefore every person is expected, even without a prohibiting order (in the form of protection order) to refrain from causing any harm or injury to mental or physical health of women. The question arises: is that husband against whom no protection order has been passed free to cause harm to his wife? If the answer is obviously "no", then it is beyond comprehension that how the issuance of protection order would add to her protection against the repetition of violence in the future. Hence, it is submitted that the remedy in the name of protection order is a camouflage. Moreover, the order which may be passed by the magistrate to protect the aggrieved women from possible domestic violence includes an injunction asking the respondent from being in the vicinity of any place that may be frequented by aggrieved persons or from operating a bank account enjoyed by parties, even if it were held singly by the respondent. The law makers in their anxiety to provide legal protection to the women seem to have gone overboard. The place frequented by the aggrieved person would undoubtedly include house where both parties may have been living together before their relations turned sour. By asking the male respondent to stay away would in fact be throwing out the male respondent from his own house; similarly, by asking the male respondent to refrain from operating bank account held singly by him only because he had shared its credit assets with the aggrieved woman at some stage, the magistrate would in fact be depriving the former from his daily substance, in the name of affording protection to the woman. Furthermore, Sec. 23 of Domestic Violence Act empowers the magistrate to pass an interim order in the course of any proceedings before him that would include under Sec. 18. Under some provision, upon prima facie satisfaction (on the basis of affidavit) inter alia, that application discloses that there is likelihood of domestic violence being committed, he may grant ex parte protection order. There is nothing in the entire statute to indicate as to how long such an ex parte order would remain in force. In this view, dicta of Sec. 25 that a protection order under Sec. 18 shall be in force till the "aggrieved person applies for discharge" would operate with equal force even for an interim order. The general rule under CPC is that in case ex parte injunction has been granted, the application for injunction has to be finally decided within thirty days cannot apply to these proceedings under Domestic Violence Act, as Sec. 28 renders it subservient to Cr PC. In the face of provision¹¹ contained in Sec. 28 this shall be the position even if relief under Sec. 18 is claimed by virtue of Sec. 26 before civil court¹². Bearing in mind the above referred provisions of law, the possibility cannot be ruled out that women should introduce some

doubts about the conduct of the male respondent with whom she has lived for some time in a shared household and in her anxiety to bind him, approach a magistrate with an application under Sec. 18 read with Sec. 23 asserting, an affidavit, that the latter is likely to subject her to some emotional abuse and seek an ex parte interim protection order prohibiting him from entering his own house or operation of his own bank cannot thereby by rendering him totally at her mercy. The incongruity of the impact hits in the face when one reads these provisions in conjunction with the penal clause under Sec. 31 that renders breach, even of interim order, a cognizable offence attracting substantive sentence. In this scenario, the concerned male respondent is likely to be deprived of all possibility of presenting his side of the story since there is nothing stopping an unscrupulous woman from following the grant of an ex parte interim order immediately with an application of that order has been passed.

There are innumerable examples of misuse of domestic violence laws. For instance, these laws are being rampantly misused by some brides and her parents who conceal true facts about her mental health and educational level at the time of marriage, thereby adopting fraudulent means to forge the alliance. When these facts are unearthed by the groom and his family, the bride and her family prefer to take recourse to Section 498-A IPC. The language, content and structure of this law has enabled implication of thousands of innocent families in false cases. A complaint, without any authenticity and without any weight of evidence, is enough to arrest the husband, in-laws and anyone else name in the complaint, irrespective of whether a crime occurred or not. This has led to arrest of lakhs innocent citizens (thousands of families), with many committing suicide as they are unable to bear the indelible stigma on their honour and reputation.

In **Sushil Kumar Sharma v. Union of India**¹³, the Supreme Court held that mere misuse of provision of law does not per se invalidate legislation. But it also accepted that in many instances, complaints under Section 498-A were being filed with an oblique motive to wreck personal vendetta and clearly said that it is for the legislature to find ways on how to deal with misuse of this law as well as on how to wipe out the ignominies suffered during and after the trial by the falsely accused. It also condemned the misuse of Section 498-A IPC by stating that it amounts to unleashing legal terrorism. In **Saritha v. R. Ramachandra**¹⁴ also, the court did notice that the reverse trend and asked the Law Commission and Parliament to make the offence a non-cognizable and bailable one. The Hon'ble Supreme Court in **Mohd. Hoshan v. State of A.P.**¹⁵, observed as : Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education, etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out. In **Arnesh Kumar v. State of Bihar**¹⁶, a two-Judge Bench of the Supreme Court reviewed the enforcement of Section 41-A CrPC which instructs State of following certain procedure before arrest, and went on to observe that the Section 498-A had become a powerful

weapon in the hands of disgruntled wives where innocent people were arrested without any evidence due to non-bailable and cognizable nature of the law.

The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives.... The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. "**Crime in India 2016 Statistics**" published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2016 for the offence under Section 498-A IPC, 9.4% more than the year 2015. Nearly a quarter of those arrested under this provision in 2016 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

In case of marital or domestic disputes, children are denied access to their fathers, which in result causes great pain to the fathers and children. The relatives of the husband are also prone to harassment. The easily abused laws like IPC Section 498-A and Domestic Violence Act are creating a situation of fear, mutual distrust and adversely affecting interpersonal relationships between men and women in the society. There is a sense of fear and insecurity among men, who find it difficult to repose faith in women or marriage. The data/information from various sources reveals that urban and educated women are mostly coming forward to file the complaints under the domestic violence laws. Unfortunately, a man accused of domestic violence is considered guilty until proven innocent in contrary to normal principles of justice. Most importantly, fraudulent claims of domestic violence are common and unpunished in many States. It is also a favoured divorce tactic in many States. It can be said that provocation of spousal abuse by a woman is encouraged by these laws. Often, a wife might deliberately provoke a husband to slap her with an ulterior gloat of gaining a very favorable divorce settlement. Women are taking undue advantage of the fact that they are referred to as the "weaker sex" and on the foundation of rights ensured to them are violating others rights and misusing certain provisions of law. At the same point of time, I am of the opinion that mere misuse shouldn't be the ground for the repealing the provisions of law like Section 498-A IPC or Protection of Women from Domestic Violence Act. But some very important measures and amendments are suggested in both these domestic violence laws to avoid these menace.

Conclusion

Today the world scenario holds the position in which crime against woman is doubling with passage of time. In primal times, women were regarded inferior to men and were

subjected to some pitiful acts which are continuing since time immemorial. Be it a girl child or fully grown women, most of them are subjected to some kind of violence in their lifetime. Females are ill treated, beaten and abused again and again and then expected to keep mum about it. And if they are aberrant, they are further suppressed by the norms of the society of what is right and wrong according to them. These type of activities which not only forces a woman to stop and think before doing anything, but to live in constant fear of being beaten up by her own so called well-wishers, to be trashed and cheated by her own relatives, this inhuman activity is called domestic violence. However, this act has failed miserably in its purpose to provide complete justice to the females all over the world. Women are taking undue advantage of the fact that they are referred to as the "weaker sex" and on the foundation of rights ensured to them are violating others rights and misusing certain provisions of law.

End Notes

- * Head of the Department & Assistant Professor, School of Legal Studies, Kannur University, Kerala.
1. Available at <http://www.merineews.com/article/loopholes-in-domestic-violence-act/15876451.shtml>, last seen on 09/11/2017
 2. Siddharth shankar mishra, Drawbacks in domestic violence Act, 2012, 18/9/2017, 5.00 pm
 3. Nitish banka, Misuse of domestic violence Act, 2013, 16/9/2017, 4.30 pm, see www.bangladeshsociology.org, last seen on 03/11/2017
 4. Aparna das, Domestic violence act-2005-A boon or a ban?, 2013, 18/9/2017, 7.30 Am
 5. <https://www.thehindu.com>; [18/9/2017], 6.30 pm
 6. <https://www.insightsonindia.com>; [19/9/2017], 6.30 pm
 7. <https://www.mainstreamweekly.net>; [19/9/2017], 6.30 Am
 8. <https://www.indiastudtchannel.com>; [17/9/2017] 5.30 pm, see <http://www.merineews.com/article/loopholes-in-domestic-violence-act/15876451.shtml>, last seen on 09/11/2017
 9. <http://www.lawyersclubindia.com>; [16/9/2017] 4.30 pm
 10. Available at <http://www.merineews.com/article/loopholes-in-domestic-violence-act/15876451.shtml>, last seen on 09/11/2017
 11. Available at pm <http://www.bangladeshsociology.org>, last seen on 16/9/2017, 4.30 pm
 12. <http://www.feminisminindia.com>; [16/9/2017] 4.15 pm, see Available at <http://www.bangladeshsociology.org>, last seen on 16/9/2017
 13. Wp(civil)141/2005
 14. 2002 (6) ALD 319
 15. Appeal (crl.) 871/1996
 16. (2014) 8 SCC 273

WOMEN EMPOWERMENT IN INDIA - RECENT TRENDS

Ms. Kavitha Balakrishnan *

*"It is better to light a Candle than to Curse Darkness"*¹

Introduction

Ever in 21st Century, woman is treated as a second class citizenry. Through the half of the world's population is women, still they suffer even today, discrimination in every walks of life. The women comprise 66% of world's illiteracy and 70% of world's poor. The convention on elimination of all forms of discrimination against women² is the main foundation of rights is respect of women. Women Empowerment as a phenomenon is not something absolutely new. What could be considered as new is its increasingly coming out is public, its having been shifted and respected from women's welfare to their development to new women's empowerment. Empowerment means decentralisation of authority & power. It aims at getting participation of deprived sections of people in decision making process³. According to Gandhi's goal of empowerment depends on three fold revolution.⁴ Firstly to change people's heart. Secondly, to create a change in their lives. Thirdly to change the social culture. He says grass root level empowerment can be made only at village level and ultimate aim of empowerment is sarvodaya. Feminist researchers differ widely in their assessment of Mahatma Gandhi's theory & practice of women's emancipation during Indian Nationalist Movement.⁵ Discrimination against female child starts from home itself. Even family members give more consideration to male child. They will get better educational opportunities compared to girl child, girl child has to assist in domestic chores which taken away their study time. Family members give more attention to male child under a belief that he will look after them at old age. Even after getting job, male has the freedom to spend, but female has to give her earning to husband. Women are paid less for similar jobs. Healths of females are neglected.⁶

* Assistant Professor and head, School of Legal Studies, Kannur University

¹ A Proverb

² CEDAW, 1979 came into force in 1981

³ K.D. Gangrad, "Gandhi and Empowerment of women: Miles to go", in *Empowering the Indian Women*, publication division, Ministry of Information & Broadcasting, Govt of India.

⁴ Gandhi M.K, *An Autobiography*, Navjivan Publishing house, Ahmadabad, Edition, 1992, p.4.

⁵ Johnson Richard, Gandhi and Feminism: Towards-Affirming Culture of peace, Gandhi Marg, VolXX11, No.1, April June, 2000 pp.37-56.

⁶ Venkataraman, S.N., "Born to die", India Today, June 15, 1986, pp.26-33.

It is fact that our ancient scriptures have clearly indicated that girls can practice Brahmacharya women have also been described as administrators, Judges etc. From the period of Manu Smirti, a teacher ten-fold superior to mere lecturer, a father a hundred fold to a teacher and a mother thousand fold to father⁷. In ancient India, women were highly educated and perfect scholars of the Vedas.⁸ There were women scholar who remained unmarried for long time devoted themselves to higher studies During the period 200 BC to 1200 AD women education received setback due to the deterioration of the study to women and the lowering of the marriage age. The girls gradually lost privilege of Upanayana, and were not considered fit to recite Vedic mantras or perform Vedic scarifies⁹ and ultimately the importance of education of women declined. Women are paid less for equal kind of work with man. The equal Remuneration Act 1975 specifically mentions that men and women should receive equal pay for equal work or works of the same value. There is Maternity Benefit Act for organized sector workers. It given less than one half of the percent of the state's female labour force. In some companies, many married women workers in the organized sector have undergone a tubectomy and hold documents proving this fact. These documents are then shown to employers to prove that maternity benefits will not be required.¹⁰ Women workers are mostly seen in unorganized sectors. In Beedimakers-56%, handloom industry- 53%, match box factories 65%, cashew nut factory-78%. In Rajasthan, women are mostly employed in chilly factories as only they will be available at cheaper rate.

Policy issues in women empowerment

Policy issues in women empowerment after extensive discussion with women in the informal sector and with other state holders, following issues have emerged.

1. Education and capacity building.
2. Sufficient and regular income.
3. Assets in her own name.
4. Access to housing.

⁷ P.H.Sethu Madhava Rao, "Education for women's empowerment", in *Empowering the Indian Women*, promilla Kapoor, Govt of India publication 39.

⁸ Mentioned in Sath patha Brahmana

⁹ Supra n.7 p.40

¹⁰ Ronana Jhabvala, "Empowerment and the Indian working women", *Empowering Indian Woman*, Romilla Kapoor at p.71

5. Access to health care.
6. Access to childcare.
7. Access to insurance.

The women in unorganized sector service through their own hard work. Even if we exclude domestic work of cooking, cleaning the house and rearing the children, caring old people etc. There has are counted by nobody. Main barriers to in organizing women are their fear of their men, employers and their communities. Traditional attitudes towards women. Assets are a means of carrying livelihood. If we have assets is our own name, our confidence level will shoot up. For women the ownership of assets is connected not only with class and community, but also with gender. A woman who has no assets has no identity.

Gender Justice and Constitution studies

The framers of the constitution were well conscious of the discrimination and unequal treatment meted out to the fairness sex, from prehistoric time, giving women certain rights in order compensate them for their reproductive function is not a charity, but an obligation. In order to minimize the via direct, Art 15(3) were introduced¹¹ in the constitution so that state may make special provisions for woman. Provisions relating to women are seen both in Fundamental rights and Directive principles.¹² By introducing Art 243-D & 243-T, reservation of seats women in punchayath and nagarpalika is made.¹³

In part 1V-A which consists of only one Article, 51-A specialises a code of ten fundamental duties or citizens also contain provision for protection of women.¹⁴

Concerted efforts towards women empowerment through legislation

Realizing the need of setting up an agency to fulfill the redressal of the grievances of women, National Commission for women Act, 1990 has been enacted. Main functions of the commission include;¹⁵ investigating and examining matters relating to safeguards

¹¹ Art 15(3) says

¹² Art 39-a) that the citizen, men and women equally have the right to an adequate means of livelihood.

a) equal pay for equal work for men and women.

Art 42-state shall make provisions for securing justice and human conditions of work for maternity relief.

¹³ Art.243-D Art 243-T

¹⁴ Art.51A

¹⁵ S.10 of NCW Act, 1990

provided for women under the constitution and other law, present reports to central govt., take remote actions. In Factories Act, 1948, Mines Act, 1952, The Beedi and Cigar workers (conditions of employment) Act, 1966, Employees state Insurance Act, 1961, Equal remuneration Act, Domestic Violence Act,2005, prevention of sexual harassment of work place Act, 2013 etc are major steps towards women empowerment .Prohibition employment of women near cotton openers¹⁶ provision for separate latrines and Vimals,¹⁷ Creches¹⁸ are contain positive steps made towards women empowerment. Equal pay for equal work disregarding gender is to welcome step in female empowerment¹⁹ prenatal diagnostic techniques (Regulation & Prevention of misuse) Act, 1994 prohibitions sex selection. Commission of sati prevention Act, 1987 was enacted by the parliament in the thirty eight year of the Republic of India to provide for more effective prevention of commission of sati and its glorification. The Hindu Widows Remarriage Act, 1856 was made by the Govt. of East India Company to render remarriage of Hindu widows.

Dowry evil is essentially a social one having relation with property rights of women. Hence the parliament has passed the Dowry prohibition Act, 1961. The Act has been substantially amended by the Amendment Act in 1984 and 1986. In 1983 parliament also passed Criminal (Second Amendment) Act, 1983 to amend IPC to include there is a provision for punishment of cruelty to a married woman by the husband relatives of husband on ground of non receipt of dowry or insufficient dowry. Necessary consequential amendments in the Code of Criminal procedure, 1973 and in Indian Evidence Act have been made. In 1956, prohibition of immoral traffic in women (prevention) Act has been passed.

Parliament enacted the indecent representation of women (prohibition) Act, 1986 to prohibit indecent representation of women through advertisements, publications, writings, painting, figures or in any other manner.

Conclusion

Domestic Violence Act is undoubtedly a human rights issue and serious detriment to development. The phenomenon of domestic violence is widely prevalent but has

¹⁶ S.27 of Factories Act, 1948

¹⁷ S.19(1)

¹⁸ S.48 of Factories Act

¹⁹ AIR India V.Nargesh Meerza, (1981) 4SCC 335

remained largely invisible in the public domain. In order to protect women from this evil. In 2005, Domestic Violence Act has been passed. Apart from there legislation, IPC also several crimes against men.²⁰ In 2013, prevention of sexual Harassment at work place Act has been passed. The Act is vast and encompasses even unorganized sector. Through the legal provisions, ray of hope for emancipation of women hood is lighted. Still there are a dark alley who needs careful supervision from enforcement agencies.

²⁰ Dowry death-S.304B, Abetment of Suicide (SS.306& 307) presumption of abetment of suicide by married women (s.113A) cruelty (S.498A) causing miscarriage (S.312-318), outraging the modesty (s.354) sexual offences (s.376, offences relating to marriage, (Chapter:XX)

**ROLE OF MEDIA, NGO'S AND WOMEN'S COMMISSION
IN PROTECTING FEMALE VICTIM IN INDIA:
ISSUES AND PRACTICES**

*Smt. Kavitha Balakrishnan**
& *Deepthi M***

Introduction

Women's are the wealth of India and they have contributed in almost every field and made country feel proud at every occasion. They are in front, leading the country, making mile stones and source of inspiration for many. However, another reality of Indian society is that there is systematic discrimination and neglect of women's in India, which could be in terms of inadequate nutrition, denial or limited access to education, health and property rights, child labour and domestic violence etc. The fear of sexual violence has been a powerful factor in restricting women's behavior and sense of freedom. The struggle against violence is actually the struggle against the unequal distribution of power both physical and economic between the sexes.

Media is the mirror of society and media reports are reflection of happenings in the society. Media has immense power to influence the masses and communication and IT revolution has further increased its importance. Unfortunately, nowadays media is wavering from its actual role and giving biased information which makes development of the society more difficult.

Portraying women as equals in the society is a subject that has been given low priority by the Indian media. The Indian media needs to be sensitized to gender issues and now must focus on women issues in a decisive way as their role is detrimental for the women empowerment in India. Indian society and role of media in addressing the issues. Media had still not played effective roles in minimizing domestic violence against women even; media can play a lead role in the society's fight against violence against women. As media is the eye, ear and limbs of the society they could help a great deal in mitigating violence against women.

The media's role should be to expose and generate awareness against society's ills and evils, therefore their role should be still more effective. The media has to be more aware of violence against women. Even, many women have said that the media coverage (of rape or other violence) was

* *Director, School of Legal Studies, Kannur University, Kannur, Kerala*

** *LL.M Student (4th Sem) School of Legal Studies, Kannur University, Kannur, Kerala*

like a second assault all over again, because of their insensitivity in using pictures, publishing names, and other violations of privacy. Media also have a duty to report accurately on acts of violence against women. Media should highlight injustices meted out to women by the male dominated society. Media's growing role in highlighting violence against women and stressed the need for creating awareness among the victim women about their rights, so that they could protect themselves.

The role of media is crucial to the issue of violence against women, both in terms of how media cover the issue, and how media may be used as a tool to help activists and governments raise awareness and implement programs on this issue. Many organizations around the world dedicate their efforts to protecting human rights and ending human rights abuses.

Public support and condemnation of abuses is important to their success, as human rights organizations are most effective when their calls for reform are backed by strong public advocacy. Non Governmental Organization is one of the examples of such groups. In every part of the globe, there are Non-Governmental Organizations'(NGOs) working every hour of the day to document the injustices heaped upon women, children and the under-class, standing beneath the bottom rung of the society. By their active campaigning, they remind Governments to keep their promise in order to give practical shape to goals set by various national and international conventions on human rights. India is estimated to have between 1 million and 2 million NGOs.¹

The NGO are a necessary corollary to the democratic machinery of the government, they are means of democratic empowerment of those who are less powerful and less advantaged as the government machinery and its authorized institution are not always sufficient to guarantee the protection of human right.²

The society needs to be apprised that the protection of women is most important for a countries progress and the god man of different religious needs to be to be changed. It is also essential that women must be changed. Awareness in the women as well as in society should be created and their equal rights should be effectively implemented. The presence of three entities- The Media, NGO's and Women's Commission- contribute a lot "to regain their lost ground or also help "to break their confined existence". Due to the efforts of the social reformers, the governmental agencies and the visual and the printed media along with the gaining popularity of higher education and the resultant economic

1 Kalindri, "*Women as Victims of Sexual Harassment at Work Place*", Oct.2013, Vol.100:-Part-1198, AIR

2 <http://www.legalservices.com>

independence among girls, the concept of equality and liberation is slowly gaining ground in the Indian soil. Thus the distant dream of women empowerment in India can be realized with the support of media, government, NGO's and women's commission³.

Role of Media

The press and the media have been recognized as the greatest influencing factors. The power with them carries with it an obligation to act with responsibility and creativity. But, there are symptoms of negativity in the media.⁴ In the context of the judiciary, the positive performance is not highlighted, but failure, however insignificant it may be, is picked up, blown out of proportion and publicized. Media should be a tool to achieve justice and not to defeat it.⁵

The accountability of the judiciary has also to be increased and bad judgments should be critiqued. Media is the voice of the public and has a major effect on making of the public opinion, it should be used judiciously.⁶ Freedom does not mean license and what is sought to be made accountable is a licentious use of freedom by the media as in the case of all others. Media being the most powerful institution of the society naturally carries more responsibility. Those who resist the device of accountability cloud the fact that it is only the black sheep in the profession who violate the law or the ethics and may be called upon answer for their misconduct and that too by a body which may have a substantial representation of media itself. It is no use falling back on the experience of the authoritative regimes which tried to muzzle the media. We are now in a democratic regime and the law, if any, made to setup a correcting mechanism will be by the people's representatives which have as much concern for democracy as for the media.⁷

The media derives its rights from the fundamental right to free speech and expression guaranteed to every citizen.⁸ They are two facets to the legal right involved. One is media's own rights under which it enjoys like any other citizen. The second facet of media rights is, therefore, the right to collect and transmit to the citizen information of public importance.⁹

3 ibid

4 Supra no.1

5 Dr.shobha Ram Sharma, "Judicial Activism of Media", Oct 2000, Vol.ix:-Issue4, Nyaya Deep

6 Abhinav Shrivastava, "Effect of Media in the Adjudication of Criminal Trials", May 2005, Vol.113:-1289, CriLJ

7 Justice P.B.Sawant, "Media and the Law, Freedom of Speech or Unbridled Freedom?", Feb2009, Vol.03:-Issue 02, Halsbury's Law

8 <http://www.shodhganga.inflibnet.ac.in>

9 Supra no.7

The law commission in its 200th report, trial by media, free speech versus fair trial under criminal procedure (Amendments to the contempt of courts Act 1971), has recommended a law to debar the media from reporting anything prejudicial to the rights of the accused in criminal cases, from the time of arrest to investigation and trial.¹⁰ The commission also stated, Today there is a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witness and even judges and in general on the administration of justice.¹¹

Though there are cases such as the priyadarshini matoo case¹², the Jessica Lal case¹³, the Nitish Katara murder case¹⁴ and the Bijal Joshi rape case¹⁵, which would have gone unpunished if the media has not stepped up their coverage, there are also cases like the Malegaon blast and the Mana susairaj case where the media pointed fingers at innocent persons, conveniently forgetting the virtues of accuracy, truth, fairness and balanced reporting. In the Arushi Talwar murder case¹⁶, apart from the police, the media drew serious criticism for shoddy and insensitive reporting that made several insinuations on the character of the victim as well as her parents when the trial was underway. In most western countries, there are restrictions on the coverage of criminal cases to ensure that juries are not influenced, and that the accused gets fair trial. But in India, while there is no jury system, trial by media can lead to drumming up of sentiment against the accused, and goes against the grain of a fair trial.¹⁷

In the era of globalization and with revolution in means of communication and information technology, the media role has become more crucial for women empowerment in India. The Indian media now must focus on women issued in a decisive way as their role is detrimental for the women empowerment in media. It is essential that media should devote a good percentage of their programmes to create awareness among women and the society at large, give information about women's rights and machineries to approach for their all round development.

10 Dr. S, Sivakumar, "Role of the Media in a Democracy", Feb 2009, Vol.03:- Issue 2, Halsbury's Law

11 *ibid*

12 *Santhosh Kumar Singh v. State* (2010) 9 SCC 747

13 *Dr. Mrs. Nupur Talwar v. CBI Delhi and Anr* (MANU/SC/0009/2012)

14 *State v. Vikasyadav and Antr*

15 *Bijal Revashankar Joshi v. State of Gujarat* (1997) 2 GLR1147

16 MANU/SC/0009/2012

17 *Supra no.11*

Thus the distant dream of women empowerment in India can be realized with the support of media, women's commission and NGO's. Therefore, in pursuit of making India a great nation, media should work towards giving women their much deserved status. Freedom of expression is a very important right. Press freedom is a right that must have limits. Some of these limits concern an accused person's right to a fair trial.

The freedom of the press cannot outweigh the right to fair trial. Recent publication bans illustrate that the courts consider this an important issue similarly, when it comes to victims, the courts have the power to order the prohibition of a child victim/witness name or a sexual assault victim's name, unfortunately the media can report anything that want outside the limits of the publication ban publication bans do not prohibit reporters from taking pictures of body bags or from showing up at funerals. Victims deserve more. The media cannot be trusted to police themselves, guidelines to protect are necessary.¹⁸

Role of NGO's

There are different types of NGOs categorized in to groups depending upon the aim they are made for. Some may have charitable status, while others may be registered for tax exemption based on recognition of social purpose. Other may be fronts for political, religious or other interest groups. Among these NGOs protecting female victims of sexual harassment and human trafficking, which is one of the major issues facing by the government, plays an important role.¹⁹ In every part of the globe, there are Non- Governmental organizations (NGOs) working every hour of the day to document the injustices heaped upon women, children and the underclass, standing beneath the bottom rung of the society. By their active campaigning, they remind Governments to keep their promise in order to give practical shape to goals setup various national and international conventions on human rights. India is estimated to have between one million and two million NGOs.²⁰

The following are some examples in which NGO take an action in court for protecting human right:

Vishaka & ors vs. state of Rajasthan & ors,²¹ where, on behalf of a women employee who was subjected to sexual abuse by her superior officer, a NGO (Vishaka) filed a petition to draw the attention of the court, as to the atrocities committed on the women folk in workplaces.

18 ibid

19 Supra no.4

20 ibid

21 AIR 1997 SC 3011

The case was a land mark decision towards the self empowerment of women. For the first time, courts have decided based on an international instrument, when there was no law specifically in force in Kerala, for matters relating to sexual harassment.

People's Union for Democratic Rights v. state of Bihar and Ors,²² laid down the Working principle for the payment of compensation to the victims of ruthless and unwarranted police firing. In this case about twenty one persons including children died and many more were injured due to the unwarranted firing of the police. The court further added that without prejudice to any just claim for compensation that may be advanced by the relations of the victims which had died or by the injured persons themselves, for every case of death, Compensation of rupees twenty thousand and for every injured person compensation of rupees five thousand shall be paid.²³

Bandhua Mukti Morcha v. Union of India and ors,²⁴ the SC entertained a matter concerning release of bonded labor raised by an organization dedicated to the cause of release of bonded labor. The court explained the philosophy underlying PIL as follows: Where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court of judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public acting bonafide can move the court for relief²⁵ and a fortiori also,²⁶ so that the fundamental rights may be

22 (1987) 1 SCC 265

23 <http://www.ebc-india.com>

24 1984 (3) SCC 161

25 Art 32 of *Constitution of India*- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred b this part is guaranteed.

(1) The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of *habeas corpus, mandamus, prohibition, quowarranto and certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.

(2) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause(2)

(3) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

26 Art 226 of *Constitution of India*- (1) Notwithstanding anything in Art 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose]

meaningful not only for the rich and the well to do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress.²⁷

Saheli v. commissioner of Police,²⁸ the SC once again considered the question of granting compensation in case of police atrocities. In this case, a 9 year old child died due to assault and beating by the police officer. The SC held that the state is liable to pay compensation in case of police atrocities and accordingly it directed the state Government to pay Rs. 75,000 as compensation to the mother of the victim.

People's union for Democratic Rights v. police Commissioner Delhi, head quarters,²⁹ it is an unfortunate case where the police collected poor people and took them to the police station for doing some work. They were asked to work without labour charges. On demand they were beaten and it appears that one of them injured and the body has also been disposed of. It is unfortunate that the police to whom the citizen can approach for protection and help acted in such a manner.³⁰ The court held that state is liable to pay compensation in case of police atrocities. The NGO play important role to become a concrete expression of

- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause(1), without-
 - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order, and
 - (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated
 - (c) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause(2) of Art 32

27 <http://www.hrcr.org>

28 (1990) 1 SCC 422

29 (1989) 4 SCC 730

30 <http://www.punarjanicharitabletrust.org>

international, national and regional and local level voice to assist and stand up for those who can't speak themselves. Every human being is entitled to certain basis human rights which are available to them without gender discrimination. In India female victims are protected by the judiciary, women's commissions, apart from these organizations the non - governmental organizations also have an important role in protection of human rights. The Non- Governmental organizations work from grass roots level to the national and international level for protecting female victims³¹.

Role of Women's Commission:

Gender based violence is a brutal form of discrimination and violation of victims fundamental rights. It is both a cause and consequence of inequality between men and women. The fundamental role of women's commission is to bring down the inequality between men and women in any social background. With this aim women's commission has started to work all over the world to reduce the discrimination against women.³²

Sexual harassment, child marriage, women trafficking, dowry, violence against women in the work place are the major issued that the commission is facing. In the beginning of such women's commission, the number of people who approach such commission for solving the problems facing by them was very few. A major portion of women were still afraid to come out to solve their issued or problems. Different types of campaigns and advertisement some women to speak out and come forward. When the society felt that such women are getting justice, more and more women raised their voice against injustice/ violence against them. This voice gave motivation to women's commission to work with more sincerity.³³

From time to time the commission conducts seminars, workshops and conferences and sponsors such events by providing financial assistance to research organizations and NGOs. The important areas so far covered include women in detention, violence against women, sexual, harassment at work place, educational, health and employment aspects, women in agriculture and panchayathiraj sector, custodial justice and mental health institutions.³⁴

31 ibid

32 <http://www.pib.nic.in>

33 <http://www.hrcr.org>

34 Supra no. 32

The constitution does not contain any provision specifically made to favour women as such though Art 15 (3),³⁵ Art 21³⁶ and Art 14³⁷ are in favour of women; they are more general in nature and provide for making any special provisions for women, while they are not in themselves such provisions. The SC through interpretive processes has tried to extend. Some safeguards to women. Through judgments in cases such as *Bodhisattwa Gautam v subra chakraborty*,³⁸ and *The chairman Rly Board v. chandrima Das*,³⁹ where rape was declared a heinous crime, as well as the land mark judgment in *vishakha v state of Rajasthan*.⁴⁰ The courts have tried to improve the social conditions of Indian Women. But these have hardly sufficed to improve the position of women in India. Thus, in light of these conditions, the committee on the Status of women (India) as well as a number of NGO's social workers and experts, who were consulted by the Government in 1990, recommended the establishment of an apex body for woman.

The lack of constitutional machinery, judicial ability and social interest formed the impetus and need for the formation of the National

35 Art 15(5) of *Constitution of India*-

- (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-
 - (a) access to shops, public restaurants, hotels and places of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.
 - (c) Nothing in this article shall prevent the state from making any special provision for women and children.
 - (d) Nothing in this article or in clause (2) of Art 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
 - (e) Nothing in this Art or in sub-clause (g) of clause(1) of Art 19 shall prevent the state from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions referred to in clause(1) of Art 30

36 Justice P.B. Sawant, "*Media and the Law, Freedom of Speech or Unbridled Freedom?*", Feb2009, Vol.03:-Issue 02, Halsbury's Law

37 <http://www.indianngos.org>

38 AIR 1996 SC 922

39 AIR 2000 SC 988

40 Supra no.34

Commission for women. It is apparent from the prior mentioned conditional and problems that woman in India, though in a better position than their ancestors, were handicapped to a great extent in the early 1990s and these handicaps and injustices against Indian women prompted the Indian Government to constitute the first national commission for women in 1992.⁴¹

Conclusion:

The society needs to be apprised that the protection of women is most important for a country's progress and the gender gap of different religious needs to be changed. It is also essential that women must be changed. Awareness in the women as well as in society should be created and their equal rights should be effectively implemented. The presence of three entities- The Media, The NGO's and Women's Commission-contribute a lot "to regain their (the women folk) lost ground or also help "to break their confined existence". Due to the efforts of the social reformers, the governmental agencies and the visual and the printed media along with the gaining popularity of higher education and the resultant economic independence among girls, the concept of equality and liberation is slowly gaining ground in the Indian soil. In the era of globalization and with revolution in means of communication and information technology, the media role has become more crucial for women empowerment in India. It is essential that media should devote a good percentage of their programmes to create awareness among women and the society at large, give information about women's rights and machineries to approach for their all round development. Programmes to strengthen women development should be enforced and news adversely affecting their development should be censored or banned.

In some cases commission is not ready to take initiatives and not at all practical in the society. Commission enjoys and provides many privileges but not properly implemented, where it is necessary. More power should be given to the existing one and make it more representative.

While we compare Kerala women's commission with other states they are very active in their programmes and works. When we examine the life situation of Kerala. We can find out exciting reports. 100% literacy, 1084 sex ratio and has a long history of women going outside of their homes and working.

The atrocity against women in Kerala is lesser than other states. The rates of infant mortality, child marriage, human trafficking, sexual

41 Supra no.37

harassment, domestic violence are reducing day by day. The Kerala women's commission has played prominent role in this regard. Every NGO's plays vital role to become a concrete expression of International, national regional and local level voice to assist and stand up for those who cannot speak themselves. Now a day with the help of technology and social media. NGO's are able to react any violence against women especially in the backward sections of the society to react against different type of harassment against them. NGO plays pivotal role in minimizing the gender biased attitude of the society. Thus the distant dream of women empowerment in India can be realized with the support of media, government, NGO's and women's commission.

ABUSE OF SEC.498-A POSING CRUELTY AGAINST HUSBANDS

Kavitha Balakrishnan* & Jeeja B**

Introduction

Family is the basic unit of society, the centre for personal affection that enables and enriches human life. At the same time it is the most violence prone setting in the society.¹ From the view point of a social unit, family is defined as a group of persons of both sexes, related by marriage, blood or adoption performing role based on age, sex and relationship and socially distinguished as making up a single household or a sub-household. As a marriage is the union of two persons born and brought up in entirely different family back ground, the problems of adjustment are more in husband-wife relationship. The issue of domestic violence has always been cocooned by the impediment feeling of family privacy. This has kept the members of society and even state to avoid interference in such crimes. By the development of human rights and feminists movements, the problem of domestic violence has considered to be a serious social problem and got international attention.

The Indian concept of domestic violence is very much connected with the social evil of dowry. Consequently, dowries being the main cause for domestic violence, women were considered to be the victims of domestic violence. The problem of domestic violence in India has a deep root in long prevailing dowry system. The increase in the number of dowry death, even after the passing of Dowry Prohibition Act prompted Government to make several changes and add several provisions to the IPC, the Cr PC, and the Indian Evidence Act.² Thus initially, anti-dowry law became the main instrument of curbing the menace of domestic violence. Now these laws have expanded not only to cover the dowry related problems but also other forms of violence that are committed against women within the domestic relationship. In India, the beneficiaries of laws on domestic violence are women, even though violence is perpetrated by both male and female partners

*Kavitha Balakrishnan-Head of the Department of School of legal studies, Kannur University&Dean of faculty, Kannur University

**Jeeja. B, LL.M student of School of legal studies, Kannur University

¹ Sheeba.S.Dhar, "Protection of Women from Domestic Violence Act, 2005: An Appraisal", The Academy Law Review, Vol. 32, Nos. 1&2, 2008, p.no.165.

² SP.Sathe, "Empowerment of Women: Legal strategies", "Sociology of Laws", Oxford University Press, New Delhi,First Edition,2005, p.no.273

of a marital tie. It is a shield provided by the legislature to women, who suffer abuse of different forms in silence within the four walls of her house. The present laws against domestic violence come within the purview of strategies of women empowerment.³

Criminal Law Protection for domestic violence within marital ties

All forms of physical violence and some forms of emotional abuse such as threats of physical violence and demands of criminal conduct are covered under various general provisions of IPC such as abetment of suicide(Sec.306), hurt(Sec.323), hurt by dangerous weapons or means(Sec.324), grievous hurt(Sec.325), grievous hurt by dangerous weapons(Sec.326), assault(Sec.352), assault or criminal force in attempt wrongfully to confine a person(Sec.341), wrongful restraint(Sec.342), wrongful confinement(Sec.346), wrongful confinement in secret(Sec.506), criminal intimidation(Sec.406), criminal breach of trust(Sec.494), bigamy(Sec.312), causing miscarriage(Sec.304) etc.

IPC contains several provisions that protect the female victims of domestic violence eg. Dowry death (Sec. 304 B), causing miscarriage without women's consent (Sec. 313), assault or criminal force to woman with intent to outrage her modesty (Sec. 354), Sexual intercourse by husband upon his wife during separation (Sec. 376 B), adultery (Sec. 497), cruelty by husband or relatives of husband, (Sec 498 A), word gesture or act intended to insult the modesty of a woman (Sec. 509) etc.

Specific Provisions against Domestic Violence in IPC

Prior to 1983, Indian Law lacked specificity which could bring the violence committed within the family either in the natal or the spousal home for public trial. The main cause for this situation was the belief that domestic violence is a private affair, which is not open to public scrutiny, and state actions.⁴ Husbands could be convicted under the general provisions of IPC, most commonly under Sec. 323 of IPC. However this being a non-cognizable offence, where the offender cannot be arrested without a warrant, the victim was not able to secure immediate relief. This situation was technically remedied in 1984 by inserting Sec. 498-A in IPC, which makes domestic violence on women, a non-bailable and a cognizable offence. This section

³ Ibid. p.no.. 266-275.

⁴ Dr.Babitha Devi Pathania, "Protection of Women Against Domestic Violence", New Era Publications, Faridabad, First Edition, 2013.

can be invoked by a woman against her husband and his relatives. The new section not only covers 'harassment of dowry' but also 'cruelty' which has been explained as any willful conduct which would drive the woman to commit suicide or cause her grave injury, physical or mental.⁵ By the recognition of the fact that dowry is the genesis of domestic violence in the matrimonial home; the Dowry Prohibition Act 1961 criminalizes the giving and taking of dowry. But the legislation itself could not suppress the evil and there was an increase in the dowry death cases. This situation alarmed the government to amend the D.P. Act and to make necessary amendments in the criminal law of the country. Thus an amendment was made in 1983 to insert Sec. 498-A in IPC along with necessary amendments in the Indian Evidence Act and Cr PC.⁶ As observed by the Supreme Court, the object of introducing Chapter XXA in IPC was to prevent torture to a woman by her husband or relatives of her husband.⁷

Sec. 498-A of IPC and Domestic Violence

Chapter XX-A of IPC, 1860 refers to "cruelty by husband or relatives of husband" and includes Sec. 498-A. As per this section, where the husband of a woman or his relatives subjects such woman to cruelty shall be punished with the imprisonment for a term which may extend to 3 years and also be liable to fine.⁸ It affords protection to the wife against atrocities of her husband and in laws.⁹

The basic essential ingredients to attract Sec. 498- A are:-

- i) The woman must be married; ii) She must be subjected to cruelty or harassment and
- iii) Such cruelty or harassment must have been shown either by husband of the woman or by the relatives of her husband.

However the word cruelty has not been defined under the Code.¹⁰ Whether a particular act or conduct will amount to cruelty or not will depend upon the facts of each case. It depends upon the character, way of life of the parties, their social and economic conditions, their status, customs and traditions. Each case is to be decided on the facts of its own.

⁵ Rathna R. Bharamgoudar, "Protection of Women from Domestic Violence", CULR, Vol. XXX, Dec. 2006, Number 4, p.no.442

⁶ Criminal Law (Second Amendment) Act, 1983 (46 of 1983)

⁷ B.S. Joshi V. State of Haryana (2003) 4 SCC 675; 2083 SCC (Cri 848)

⁸ B. Ramaswamy, "Women and Law" ,Isha Books, Delhi, 2013, p.no.239

⁹ Dr. Neetu Nawal and Dr. P.K Sharma, "Domestic Violence Against Women: Legal Protection, Legislative and Judicial Aspects", Rgal Publications, New Delhi, 2013, p.no.173.

¹⁰ Sukumar Mukharjee V. Tripathi Mukharjee AIR 1992. Pat. 32.

The term 'cruelty' signifies any willful conduct driving the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman, harassment of the woman with a view to coercing her or any person related to her to meet any lawful demand for any property or valuable security. Cruelty or harassment need not be physical. Even mental torture would be a case of cruelty and harassment within the meaning of Sec. 498-A, Explanation (a). The term 'willful conduct', stated in the section refers to the *mens rea* which is an essential ingredient of the offence. In order to attract the provisions of Sec. 498-A, it must be established that harassment was with a view to force the wife to commit suicide or to fulfill illegal demand of the husband and in-laws.¹¹

Cruelty u/s 498-A is to be determined or inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty, continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as cruelty to attract the provision of Sec. 498-A of IPC. Causing mental torture to the extent it becomes unbearable, may be termed as cruelty.¹²

Supreme Court has pointed out that the object of Sec. 498-A is to strike at the very roots of the dowry menace. The consequences of cruelty, which are likely to drive a woman to commit suicide or cause grave injury or danger to life, limb or health, whether mental or physical of the woman, are required to be established for the application of Sec. 498-A.¹³

In *State of Punjab v. Iqbal Singh* it was ruled that even if Sec. 113-A of Indian Evidence Act is inapplicable in a case, in the absence of proof as to the occurrence having taken place during 7 years of marriage, legislative intent as evident from Sec. 304-B and Sec. 498-a of IPC as well as Sec. 113-A and 113-B of the Evidence Act which is to curb dowry deaths has to be kept in mind in deciding such cases.¹⁴ In *Harilal V. State (govt. of NCT), Delhi*,¹⁵ it was observed that, Sec. 498-A of IPC and Sec. 113-A of Evidence Act include in their amplitude past events of cruelty.

¹¹ Dr. S.R. Myneni, "Law of Crimes", Asia Law House, Hyderabad, II Edition, 2014, p.no.754.

¹² *Manju Ram V. State* (2002) (Cri) 1015: (2009) 13 SCC 330.

¹³ *Sushil Kumar V. Union of India* (2005) 6 SCC 281; AIR 2005 SC 3100.

¹⁴ *State of Punjab V. Iqbal Singh* (1991) 3 SCC 1.

Sec. 498-A of IPC and Sec 113-A of Indian Evidence Act

Sec. 498-A, Sec. 304-B of IPC and Sec. 113-A of Indian Evidence Act¹⁶, are inter linked provisions. So it is essential to consider the nature of Sec. 498-A along with Sec. 304-B of IPC and Sec. 113-A of Indian Evidence Act.¹⁷ Sec. 113-A was inserted in the Indian Evidence Act by the Criminal Law (Amendment) Act of 1983 side by side the insertion of Sec. 498-A of IPC. It deals with presumption of abetment of suicide by a married woman. This presumption arises when a married woman has committed suicide within seven years from the date of marriage.

The ingredients of Sec. 113-A of Indian Evidence Act are:

- i) The woman should be a married woman; ii) She committed suicide with 7 years of her marriage; iii) The law presumes that her husband or his relatives abetted her to commit suicide; iv) Her husband or his relatives subjects her to cruelty; v) The term cruelty in Sec. 113 -A shall have the same meaning as in Sec. 498-A of IPC.¹⁸

By the introduction of this section, the burden of proof is shifted to the accused than the prosecution having to prove the case, as was required earlier to this amendment.¹⁹ Sec. 498-A of IPC and Sec. 113-A of Indian Evidence Act intends to reduce the suicide among married women within 7 years of marriage. However the mere fact that a woman committed suicide within 7 years of her marriage, and that she has been subjected to cruelty by her husband does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the other circumstances of the case.²⁰ In *Shyama Devi V. state of West Bengal*²¹ it has been held that if it is not established that the deceased had been subjected to cruelty, Sec. 113-A is not applicable.

¹⁶ Sec. 113A of Indian Evidence Act, 1872, states :

“When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation- For the purpose of this section, cruelty shall have the same meaning as in section 498-A of Indian Penal Code (45 of 1860)”.

¹⁷ Dr.S.R. Myneni, “The Law of Evidence”, Asia Law House, Hyderabad, I Edition, 2012.,p.no.535

¹⁸ Supra No. 12, p.no.756

¹⁹ Lalitha Dhar Parihar, “Women & Law, from Impoverishment to Empowerment- A Critique”, Eastern Book Company, Lucknow, I Edition, 2011, p.no.316.

²⁰ Supra No. 17, p.no.538.

²¹ 1987 Cr.LJ 1163 (cal)

Threat of misuse of anti-dowry laws

Sec.498-A of IPC considers husband and relatives of husband as offenders. Sec. 498-A has given rise to many legal problems like, the questions pertaining to the nature of offence, its constitutionality, jurisdiction of courts, its misuse by women victims, whether to be made compoundable or bailable etc.²² The Apex Court has observed that there is no substance in the plea that Sec.498A has no legal or constitutional foundation. However, it was also held that merely because the provision is constitutional and *intra vires*, does not give license to unscrupulous person to wreck personal vendetta or unleash harassment. It may therefore become necessary for the legislature to found ways how the makers of frivolous complaints or allegations can be appropriately dealt with.²³ Once the husband and the in-laws are made to suffer the gallows on the complaint of wife, there remains very remote chance of her being accepted again in the matrimonial home. Many complaints under Sec. 498-A of IPC, irrespective of their results do end in divorce or irretrievable breakdown of marriage after consuming years after years in court litigations.

In causing abetment to commit suicide, Sec. 113-A clearly presumes that the accused, ie, the husband or his relatives, subjected her to cruelty. Contrary to the general principles of criminal jurisprudence, that the accused is presumed to be innocent until proven guilty, the presumption mentioned in Sec. 113-A and Sec. 113- B of Indian Evidence Act presumes the accused as guilty. Sec.498-A has tendency to destroy the whole social fabric as power to arrest anybody by extending or determining the definition of harassment or cruelty rests with the lower police functionaries and not with officers of higher rank.²⁴The tendency of implicating husband and all his immediate relations was observed by the Supreme Court in Preeti Gupta v. State of Jharkhand and another AIR 2007 SC 118, by stating that “the allegations of harassment of husband’s close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion.”

²² Santhosh Kumar Pathak, “Sec. 498- A of Indian Penal Code (An Interpretational Conundrum)”, AIR, Sep. 2013, Vol.100 - : - Part 1197, p.no.145-150.

²³ Supra No. 13

²⁴ *Savithri Devi V. Ramesh Chand & Ors* 2003 CrLJ 2759: 104 (2003) DLT 824.

The offence stated in Sec.498-A IPC is not compoundable, as per the table under Sec. 320 (1) or (2) of Cr PC. However as per Sec. 482 of Cr PC, the High Court has got inherent power to permit the parties to compound such offence, in order to sub serve the end of justice. It may quash the proceedings at the instance of husband and wife who have amicably settled the matter and are desirous of putting end to the acrimony.²⁵ Non-compoundable nature of Sec. 498-A outweighs the degree of social harm that may be caused by non prosecution.²⁶

Malimath Committee on Sec. 498 A- IPC

Committee expressed its bother about the provision, which makes cruelty by husband or relatives of husband, a non bailable and non-compoundable offence. Committee has observed that, less tolerant impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be suspension or loss of job. The offence being non-bailable, innocent persons languish in custody.” Moreover the committee warned that non compoundable nature of offence wipes out the chance of reconciliation, even if the wife wishes so. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non-compoundable. Thus the doors of returning to family life stand closed. It was also opined that, Sec. 498-A IPC helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person to undergo stigmatisation and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations.²⁷

Law Commission on Sec.498 of IPC

The law commission has made recommendations for the compoundability of Sec. 498-A of IPC, through its several reports. Over the last few years a number of representations had been received by law commission from individuals and organizations to make the said offence compoundable. The 237th Law Commission, after a depth study, identified certain offences that can be added to the list of compoundable offences under Sec. 320 of Cr

²⁵ Supra No. 7

²⁶ Vibha Yadav, “Compound ability of Cases under the Sec. 498 A of Indian Penal Code-1860”, <http://ujala.uk.gov.in/files>

²⁷ Government of India, Report: Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, 2003). www.mha.nic.in/hindi/sites/uphold_files/mhahindi/files/pdf/criminal-justice-system.pdf.

PC. In particular, the commission has suggested that Sec. 498-A of IPC should be made compoundable with the permission of the court.²⁸ The 243rd Law Commission noticed that Sec. 498-A IPC has been misused at several instances. This has been taken judicial notice through several cases. The committee pointed out the role of police and advocates in causing the misuse. It has suggested discouraging false and frivolous complaints leading to arrest and prosecution of the suspect or accused. The committee suggested that the offence u/s 498-A shall be made compoundable with the permission of the court and subject to cooling off period of 3 months as already recommended by this commission in its 237th report.²⁹

Misuse of Sec.498-A by wife and Cruelty against Husbands

False allegation of cruelty and demand of dowry would cause mental cruelty to husband.³⁰ Cruelty in human behavior is as old as the civilization itself. The perpetrator of cruelty, always remain to be the powerful one and the one upon whom the cruelty was perpetuated always remain to be weaker one. But as there was no forum to redress this grievance, the instances of cruelty remained confined to the four wall of house.³¹

Sec. 13 (1) (i-a) of Hindu Marriage Act, 1954 states that cruelty by husband or wife is a ground for dissolution of marriage by a decree of divorce.³² It is general notion that in matrimonial disputes, the perpetrator is always to be the husband. But it cannot be ruled out that wife had never perpetuated cruelty towards her husband. It is only for the first time in the history of legal system, the case of cruelty having been perpetuated by wife came before the Hon'ble Supreme Court for decision in Mr. N.G. Dastane V. Mrs. S. Dastane.³³ Court held that the cruelty is of two types. One is mental and the other is physical. This case is still considered to be an important case on cruelty against husband. Later in Bhagat V. Mrs. Bhagat,³⁴ Supreme Court

²⁸ Law Commission of India, 237th Report on Compounding of Offences, 2011 (Dec. 2011).

²⁹ Law Commission of India, 243rd Report on Sec. 498-A of IPC, 1860 (Aug. 2012)

³⁰ Rakesh Sharma V. Surbhi Sharma AIR 2002 SC 138.

³¹ A.S. Arora, "Laws on Cruelty Against Husband", Kamal Publications, New Delhi, 2010, p.no.1.

³² Sec 13 (1) (ia) of Hindu Marriage Act provides as follows:

"Any Marriage solemnized whether before or after the commencement of this Act, may on petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-ia) has after solemnization of the marriage, treated the petitioner with cruelty."

³³ AIR 1975 SC 1534: 1975 (2) SCC 326.

³⁴ AIR 1994 SC 710.

observed that mental cruelty could broadly be defined as that conduct which inflict upon the other party such mental pain and suffering as would make it not possible for that party to live with the other and the parties could not reasonably, be expected to live together or that the wronged party could not reasonably be asked to put up with such conduct and to continue to live with the other party. Moreover the court held that, false allegations leveled in the written statement or even during the argument would come within the definition of cruelty.

Sometimes the remedies are worse than the perils or disease. Having seen and experienced the enforcement of Sec. 498-A IPC, for decades, time has come to take stock and review them as thousands of marriages have been sacrificed, at the alter of this provision. A false allegation of domestic violence would cause cruelty to husband. Misuse of domestic violence provision especially Sec. 498 A, offers less chances for reunion of spouses, and has resulted in increase of dowry case, as when one member of the family is arrested without any reprieve of bail the chances of salvaging or surviving the marriage recede into background and marriage for all practical purposes becomes dead.³⁵

In the case of Niveditha Banerjee V. Sanat Kumar Banerjee,³⁶ the wife initiated criminal proceedings against her husband, who was a school of teacher, under Sec. 498-A IPC in which they were arrested and finally acquitted of the charges. The wife even filed revision against such acquittal, which was too dismissed. The wife had failed to substantiate torture on her in the criminal proceedings or as a defense in the present matrimonial case. The High Court held that the act of the wife in initiating baseless criminal proceedings amounts to cruelty. In the trial court also she had justified her actions and even in the written statement. Thus the husband suffered immensely for the acts of wife, he being humiliated before the society and being a teacher of the locality, his prestige had been lowered down in the eyes of local public including his students. The High Court was of the view that such reckless act on the part of the wife amounted to cruelty, and as a result the husband was rightly granted the decree of divorce in his favour on the ground of mental cruelty.

³⁵ Supra no. 24

³⁶ 2010 (1) CC 30 (Cal).

In *K. Srinivas Rao V. D.A. Deepa*,³⁷ Court has observed that, irretrievable breakdown of marriage is not a ground for divorce under Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. In the instant case allowing the dissolution of marriage, court observed that frequent filing of multiple cases against husband and his family including Sec. 498-A of IPC, has caused mental cruelty to husband and has caused irretrievable breakdown of marriage.

Recently Supreme Court has observed that false case under Sec. 498-A of IPC is ruining marriage.³⁸ This concern was expressed by the Court while deciding the case of *K. Srinivas V. K. Sunitha*.³⁹ While allowing dissolution of marriage u/s. 13 (1) (ia) of Hindu Marriage Act, to the appellant husband Court found that respondent wife had filed a false criminal complaint, even one such complaint is sufficient to constitute matrimonial cruelty.

Conclusion

The problem of misuse of legal process is a threat for the justice system of a country. Several laws are being misused in the day to day court litigations. However when the misuse is of anti-dowry or anti-domestic violence law, it creates threat to the survival of family relationship. Judiciary in several instances has observed the misuse of law which leads to cruelty against husbands. Many men experience a very rude awakening when they enter the justice system via false allegations of domestic violence. Perhaps the truth will prevail, but typically not without a considerable amount of collateral damage to themselves and their children. He may become caught into both criminal justice system and social service bureaucracies, which may result in jail time. Fighting to prove his innocence may take years and become unaffordable financial expenses for many men.⁴⁰ It is a common seen in Court litigations to misuse Sec. 498-A of IPC. Though it cannot be said that all cases coming u/s 498- A are fake, it is the most misused provision among

³⁷ Civil Appeal No. 1794 of 2013.

³⁸ Editorial : "False Cruelty cases under Sec. 498 A ruining marriage, Supreme Court says", The Times of India, December 9, 2014.

³⁹ Civil Appeal No. 1213 of 2006.

⁴⁰ <http://shrink4men.com/2011/08/24/false-allegation-in-divorce-and-custody-battles-the-personality-types-of-false-accusers-and-the-falsely>

the existing women protective laws.⁴¹ Judiciary has reminded the legislature to rethink on Sec.498-A of IPC. Even though several Law Commission Reports were prepared to that effect, no steps were taken by legislature to curb the problem, till now. Efficient investigating agency, vigilant judiciary and lawyers with social commitment are the need of the hour to reduce the problem of misuse of process of law. It is a ray of hope that the centre set to prevent misuse of anti dowry harassment law, by amending IPC to make the offence mentioned in Sec. 498-A a compoundable offence. Such an amendment would be a great relief for those who are willing to compromise and will reduce the pendency of cases in the lower courts.⁴²

⁴¹ Adv. Radhika, "Peedhana Virudha Niyamangal Peedhana Mavunnathu Pathivu Kazhcha : Niyamathinte Durupayogam", Malayala Manorama, August 22, 2014.

⁴² Harish Nair, "Centre set to prevent misuse of anti dowry harassment law", India Today, March 12, 2015.

**LAW ON PREVENTION SEXUAL OFFENCES IN INDIA:
AN APPRAISAL**

*Smt. Kavitha Balakrishnan**

“The day a women can walk freely at midnight on the roads that day we can say that India achieve Independence.” – Gandhiji’s speaking about freedom of movement for women¹.

Introduction

Man and women are two halves of humanity and neither can reach its highest creative excellence without the co-operation of the other. Through the ages we have placed women on a pedestal “mother of mankind”. Paradoxically, the most horrendous crimes have been inflicted on her, often without reason and mostly without just cause.

Crime against women has been a world wide epidemic. Though we have entered the new millennium the status of women has not improved mainly due to the traditional bias. In our country in every 7 minutes one woman is victimised by crime and in every 54 minutes one woman is raped². Thousands of people become victims of sexual crimes days after days, the recent Mega Incidents, Nirbhaya, Manipal gang rape, Shakti Mill rape cases, Delhi Uber cab drives case etc., are good examples. Sexual crimes apart from causing immediate physical harm, leaves permanent scars in the memory of the victim.

Over the years, radical changes have been introduced in the laws pertaining to women, which not only recognize their rights, but also afford protection against exploitation. Despite the efforts to curb the crime against women, it has never ceased to exist. On the contrary, it has multiplied beyond limits. The immediate cause for enactment of criminal law Amendment Act 2013 and The sexual Harassment of women at work place (prevention, prohibition and Redressal) Act, 2013 was the aftermath of brutal gang rape of young woman in the heart of the nation's capital in a public transport on December 16, 2012. In order to respond to the outcry of civil society, led by youth, against the failure of governance to provide a safe environment for the women of India. GOI appointed J.S Verma Committee to look into possible

* Chairman and Dean School of Legal Studies, Kannur University, Kerala

¹ Gandhi and Rape/ The Sabarmati Experiments with truth, the Sabarmati. Word pres:(january5,2013)

² Deepa.S, Crime against women in India ; a reality check, violence against women and children issues and concers, serials publications new Delhi (India), first published-2012

amendments of the criminal law to provide quicker trial and enhanced punishment for criminals committing crime against women.

The present work is to study the scope of recent legislations in preventing crime against women. Due to the vastness of the continuum of sexual crime, it is not possible to explore elaborately all of its forms in a single work. Hence Rape has been selected for detailed analysis of scope of recent legislations in preventing crime against women.

Legislative Approach

One of the characteristic features of several constitution systems across the world are doctrine of separation of powers. Separation of provided for state to stand on 3 strong pillars namely legislative, executive and judiciary.

Legislature makes the laws, the executive enforce them and the judiciary applies them to the specific cases arising out of the breach of law.³ However, social legislations have played an important role in bringing about social changes. Thus, the law and social transformation is a unique subject and studies the social problems of society and the societies through legal approaches.⁴

Historically, criminal sexual violence in India has been understood through the traditional language of rape. Originating in the 1860's, at a time when women had no influence over the shape or substance of legislation affecting them. The rape law remained on the statute books for 123 years before any attempt was made to challenge it.⁵

However, 'Mathura rape case' was land mark for the culmination of mass movement for the amendment of rape laws. The decision of higher judiciary was criticised by various bodies, public and profession of law⁶. The law commission has also reported that the victim needed sympathy,

³ A man chhibber – Separation of powers: Its scope and changing equations. www.legalserviceindia.com

⁴ Malik and Raval, Law & Social transformation in India, Phy: Allahabad Law Agency, Faridabad, Reprint 2012 Page No.1

⁵ Naina Kapur, Sexual Harassment and Law Reforms India. EGM/GPLVAW/2008/EP.03

⁶ Four legal academics, viz. Dr. UpendraBaxi, Dr. LatikaSarkar, Dr. VasudevaDhagamvas and Professor R.V. Kelkar wrote an open letter to the chief justice of India to get the Judgment reviewed. It was reviewed indeed but the bench situated its earlier stand

reassurance and sense of safety. Insensitivity of criminal justice system is reflected from the definition of rape. Thus lots of changes brought in the law relating to rape. On the basis of 84th law commissions, the parliament amended the provisions relating to rape and the criminal law Amendment Act 1983 was passed⁷.

Again it took three decades for the government to bring changes to rape law through criminal law Amendment Act 2013. The Act came into force on 3rd April 2013. It made certain amendments to the IPC, the criminal procedure code and the Indian evidence Act. One of the significance of the criminal law Amendment Act 2013 was that it enlarges the ambit of definition of rape.⁸

However, formulating suitable laws is an important process in a democracy, one that sets the tone for public discussion and lays out intent and promise. Thus the discipline of law is the very basis for many other freedoms that a democratic society enjoys.⁹ There have been continuous efforts on the part of society to improve the status of women. Judiciary and legislation also take several steps to prevent crime against women.

Definition of Rape

The word "rape" is derived from the Latin term "rapio" which means to seize. Thus it literally means a forcible seizure. The English common law defined rape as "the carnal knowledge of a woman forcibly and against her will."¹⁰ In other words, rape is violation with violence of the private person of a woman, an outrage by all means¹¹

Among all the crimes against women, rape is the most heinous and inhuman act of violence against women. The physical scar may heal up, but the mental scar will always remain.¹² Thus Rape is the violation of victims

⁷ Supra no 4

⁸ Criminal Law Amendment Act 2013

⁹ Lavanya Sankaran, Can India's new laws stop rape? www.the-guardian.com

¹⁰ K.D. Gaur, "The Indian Penal Code", Pby: Universal Law Publish Co. Pvt. Ltd, Delhi 3rd edn 2004, pre print 2005, page 586.

¹¹ *PhuaL Singh V. state of Haryana AIR (1980 SC 249)*

¹² Dr. Shallu, Punishment for the Offence of Rape. A Myth or Reality, CrLJ July 2006, Vol. 112 Part 1279.

most cherished fundamental right, that is, the Right to life contained in Article 21 of the constitution¹³.

In India rape is a crime under sec 375 of IPC, It is an offence affecting the human body. The criminal law (Amendment) Act 2013¹⁴, substituted new sections for section 375¹⁵ & 376, which also introduced several sections namely 376-A, 376-B, 376-C, 376 D & 376E of the IPC.

¹³ *BodhiswattaGautam V. SubhraChakraborty AIR 1996 SC (922, 926, 927)*

¹⁴ Dr. S.R. Myneni, Law of crimes (IPC) Pby: Asia Law House, Hyderabad, 2nd edn Page: 421.

¹⁵ Section 375 of the IPC states that "A man is said to commit "rape" if he-

- a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do with him or any other person; or
- c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do with him or any other person

Under the circumstances falling under any of the following 7 description.

First - Against her will.

Secondly- without her consent.

Thirdly - With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

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

Sixthly- With or without her consent, when she is under 18 years of age.

Seventhly - When she is unable to communicate consent.

Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation1 : For the purposes of this section, "vagina" shall also include labia majora

Ingredients of the Rape

The following are the essential ingredients of the offence of rape.

1. There must be sexual intercourse with a woman by man.
2. Such a sexual intercourse should be under any of the following.
 1. against her will
 2. without her consent.
 3. with consent obtained under fear of death or hurt.
 4. with consent given under misconception of fact that the man is her husband but the man knows that he is not her husband.
 5. Consent given by reason of unsoundness of mind intoxication or under influence of any stupefying or unwholesome substance.
 6. With a woman under 18 years of age with or without consent.¹⁶

Punishment for Rape

Sec 376 of the IPC deals with the punishment for the offence of rape. The criminal law (Amendment) Act 1983 has brought a lot of changes in the law relating to rape. The Act, for the first time recognised the existence of aggravated form of rape, viz, rape of minor, gang rape, rape of a pregnant women, custodial rape committed by a police officer, public servant, hospital, etc. Secondly it had inserted four kinds of illegal intercourses in the form Sections 376 A, 376 B, 376C and 376 D.¹⁷

The criminal law (Amendment) Act 2013, further to amend the IPC and substitution of new section for Section 376¹⁸, 376 A, 376 B, 376 C, 376 D of IPC. Hence the criminal law Amendment Act 2013 brought following sexual offences within the ambit of the penal provision.

Explanation 2:- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicate willingness to participate in the specific sexual act

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

Exception 1 - A medical procedure or intervention shall not constitute rape.

Exception 2 - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age is not rape

¹⁶ Supra Page No. 14 P-422-423

¹⁷ Supra no4

¹⁸ According Sec 376 IPC of criminal law amendment act 2013(1) whoever, except in the cases provided for in sub-section(2) commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 7 years, but which may extend to imprisonment for life, and shall also liable to fine.

- causing death or resulting in persistent vegetative state of the victim.¹⁹
- Sexual intercourse by husband upon his wife during separation.²⁰
- Sexual intercourse by a person in authority.²¹

¹⁹ Sec 376 A IPC of criminal Amendment Act 2013. "Whoever commits an offence punishable under sub section (1) or sub section (2) of sec 376 and in the course of such commission inflicts an injury which causes the death of woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that persons natural life or with death.

Offence under Section 376-A is cognizable, non-bailable and triable by court of session.

²⁰ Sec 376 B of IPC Criminal Law Amendment Act 2013. Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise description for a term which shall not be less than 2 years but which may extend to 7 years and shall also liable to fine.

Explanation- In this section, "Sexual intercourse" shall mean any of the acts mentioned in clauses(a) to (d) of section 375.

Offence under section 376-B is cognizable, bailable and triable by court session.

²¹ Sec 376 C of IPC sexual intercourse by a person in authority:- whoever being-

- (a) In a position of an authority or in a fiduciary relationship or
- (b) A public servant or
- (c) Superintendent or Manager of a jail, remand home or other place of custody established by or under any law for the time being in force or a women's or children's institution; or
- (d) On the management of a hospital or being on the staff of a hospital,

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but may extend to 10 years and shall also be liable to fine.

Explanation 1- In this section, sexual intercourse shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2 - For the purpose of this section, Explanation 1 to Sec 375 shall also be applicable.

Explanation 3- Superintendent, in relation to a jail, remand home or other place of custody or a women's or childrens institution, includes a person holding any other office in sub jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4- The expression, hospital and women's or children's institution "shall respectively have the same meaning as an explanation to sub-section (2) of Section 376.

Offence under 376-C is cognizable –non-bailable & triable by court of session.

- Gang rape.²²
- Custodial rape.²³
- Punishment for repeat offenders.²⁴

Thus measures of punishment in case of rape cannot depend upon the social status of victim or accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and gravity of the criminal Act.²⁵

Against the backdrop of the nation-wide outrage over the tragic Delhi gang-rape Nirbhaya Incident of December 16, 2012, propelled the Government of India (GOI) to drive the issue of violence against women (VAW) to the centre-stage of political discourse. Consequently, on December 22, 2012, GOI appointed a three-member Judicial Committee headed by the former Chief Justice of India, Justice J.S. Verma, Justice Leila Seth and Senior Advocate GopalSubramaniam requesting them to submit a report within 30 days.²⁶ The key objective of the commission was to review for possible amendments to the criminal law and suggest measures for faster trials and harsher penalties for vicious offences related to VAW.²⁷ In this scenario, the criminal law Amendment Act 2013, is a welcome step to prevent crime against women. But is the legislation in the right direction?

Justice Varma Committee Report

The voluminous report running into more than 650 pages was submitted in less than a month's time by the Verma Committee. The Committee emphasized 'failure of governance' as the root cause for the increasing offences against women. It opined that if the existing laws were to be implemented properly, the number of crimes would considerably be

²² Sec 376 D IPC Criminal Law Amendment Act 2013.

²³ Sec 376(2) (a) to (n) IPC of Criminal Law Amendment Act, 2013.

²⁴ Sec 376 E IPC Criminal Law Amendment Act 2013.

²⁵ *State of Karnataka V. Krishnappa* (2000) CrLJ 1993 (SC)] In this case, a 49 year old man raped a 7-8 old girl. The trial court convicted him and sentenced him to rigorous imprisonment for 10 years. But the Karnataka HC reduced the sentence to rigorous imprisonment for 4 years on the ground that the accused was "unsophisticated and an illiterate citizen belonging to weaker section of society he was a chronic addict. But S.C court held measures cannot depend upon social status of victim and accused.

²⁶ Prof. K.S. Suresh and Jagadis.A.T, An overview of Criminal law Amendment Act 2013 www.antimysore.gov.in/...../cri..../av

²⁷ Ibid page 11

reduced. The committee however suggested certain changes to the existing laws which according to Justice Verma were nothing but updating of the law. The core suggestions of the committee were:

Firstly, the committee rejected the demand of death penalty for rapists as the current trend is towards abolition of death sentence for all offences. Secondly, it also rejected the demand of castration for rapists as it is not in consonance with the constitution. Thirdly, it suggested that punishment for gang-rape should be not less than twenty years and may extend to life and the same punishment for raping a woman and leaving her in a permanent vegetative state. Fourthly, the panel suggested need to make acid attack against women as a separate offence.

Fifthly, it suggested certain new offences to be made punishable such as stalking, voyeurism and disrobing a woman.²⁸ Sixthly, the committee recommended that there should be no requirement of sanction for prosecution of armed forces personnel if they sexually assault anyone. Another recommendation of the committee was that the two finger test should be discontinued and also the previous sexual experience of a victim should not be taken into consideration while deciding whether the victim consented or not. Eighthly, the committee even went to the extent of suggesting that electoral reforms and education reforms are must in the country.²⁹ Therefore, the criminal law (Amendment) Act, 2013 amend the sections of IPC³⁰, CrPC³¹ & Evidence.³²

Analysis of the Provisions of the Criminal Law Amendment Act 2013

The amendment to the criminal law dealing with offences against women has come after a long time. The last changes to the Indian penal code regarding offences against women were made in the year 1983 as a result of the public outcry that followed after the controversial Mathura Rape Case. It took three decades for the government to bring changes to the rape law

²⁸ Ibid

²⁹ Ibid

³⁰ It amends section 100, 228 A, 354, 370, 370A, 375, 376, 376A, 376B, 376C, 376D and 509 of IPC, 1860. It also inserts new sections 166A, 166B, 326A, 326B, 354A, 354C and 354D in Indian Penal Code

³¹ It also amends section 26, 54A, 154, 160, 161, 164, 173, 197, 273, 309, 327 and first schedule of CrPC, 1973. It also inserts new sections 357B and 357C of Crpc 1973.

³² It amends sec 114, 119 and 146 of Indian Evidence Act 1872. It also inserts a new section 53A in Indian Evidence Act, 1872.

despite repeated protests from women activist groups and various NGO's. However, it is a welcome step in our fight to eliminate crimes against women in any form.

The Act enlarges the ambit of the definition of rape. Now sexual intercourse would include other forms of penetration namely penile/oral penetration, penile/anal penetration, finger/vaginal penetration, finger/anal penetration, object/vaginal penetration etc. Even an act of applying mouth to the vagina, anus or urethra of any woman or making her do the same without consent is rape now. This is a positive step as it removes the shortcomings which prevailed in the previous law where offenders got away with easy punishments due to the technicality of the definition.³³ The Act also makes it clear under Sec. 53 A of the Indian Evidence Act that no questions regarding the character of the victim or her previous sexual experience should be raised during prosecution.³⁴ Thus it seeks to do away with the loopholes that many defense lawyers used to protect their accused clients which at the same time had a damaging effect on a woman.

The legislature while framing the law took into consideration the fact that the numbers of rape cases that take place in our country are ten times more than the number of rape cases that reported. Therefore, now if a police officer refuses to lodge a woman's complaint in case of rape or other offences against women, he may face rigorous imprisonment up to two years.³⁵ New offences in the penal code like stalking³⁶ and voyeurism³⁷ will only help to make the laws stronger.

Another important section which has been added to the Indian Penal Code is Sec. 166B. Under this section all hospitals whether public or private are required to provide free medical treatment to rape victims or victims of acid attacks. Violation of this section imposes penalty up to 1 year. The punishment for gang rape has also been increased to minimum twenty years. This enhanced punishment may prove to be deterrent.³⁸ Also, recording of statements of victims is to be done mandatorily by a woman officer.³⁹ There

³³ Sec 375 IPC Criminal Law Amendment Act 2013.

³⁴ 53 A Amendments to the Indian Evidence Act, 1872.

³⁵ 166A of IPC

³⁶ 354 D of IPC

³⁷ 354 C of IPC

³⁸ 376D of IPC

³⁹ 154 of CrPC

also been special provisions have been made for recording of statements of those who are mentally and physically disabled. Such changes to the law are laudable.⁴⁰

An explanation has been added to section 197 of CrPC which makes it clear that no sanction will be required for prosecuting a public servant who is involved in any crime against women.⁴¹ Another very fundamental change brought in the law which needs special mention is the proviso added to Sec. 273 of the CrPC. This section provides that in case of victims below 18 years of age the court may take appropriate measures to ensure that victim is not made to confront the accused face to face. Confrontation with the accused may deter the victim from speaking the truth as there is history of embarrassment and humiliation.⁴²

The Act emphasized the need for speedy trial. Thus the Act provided that inquiry or trial related to an offence under Sec. 376, Sec 376 A, Sec 376 B, Sec 376 C & Sec 376 D of the IPC shall be completed within a period of two months from the date of filing of the charge-sheet.⁴³ The Act also established sympathetic approach towards rape victim, insertion of new sections Sec. 357 B⁴⁴ and 357C⁴⁵ are good examples. So that the victims reassure their faith in criminal justice system.

However, the Act itself is not sufficient to redress and seek justice for VAW. For this, the GOI needs to make colossal investments in building necessary infrastructure to deal with the crimes supplemented by meaningful reforms in judiciary (fast track women's courts, more engagement of women lawyers, women doctors to examine victims) and modernization of the police system across whole of India. In the wake of the Nirbhaya incident, the GOI has announced a Nirbhaya fund of 10 billion in the 2013-2014 union Budget,

⁴⁰ Sec 154(1)(a), Sec 164(5A) (a) &(b)

⁴¹ Criminal Law Amendment Act 2013

⁴² Ibid

⁴³ Sec 309 of Crpc Criminal law Amendment Act 2013

⁴⁴ Sec 357B-compensation to be paid in addition to fine under sec-326A or sec-376D of IPC- The compensation payable by the state Govt. under sec-357A shall be in addition to the payment of fine to the victim under sec-326A or sec-376D of the IPC.

⁴⁵ The treatment of victims- All hospitals public or private whether run by central Govt. State Govt. Local Bodies or any other person shall immediately provide the first aid under sec 326A 376 376A 376B 376C 376D or 376E of IPC and shall immediately inform the police of such incidents.

to enhance women's safety and security in public spaces. Moreover, to provide more women police officers to reduce the reluctance on the side of victims to report the crime. The police system in India plays a significant role in protecting the women and preventing gender based violence.⁴⁶

Conclusion

The Criminal Law Amendment Act of 2013 is definitely a welcome step to curb crimes against women which are happening at such a frequent rate that every woman in our country feels unsafe. However, Mere enactment of laws does not make the laws effective but proper implementation is necessary. Hence, the existing laws, if faithfully and efficiently implemented by credible law enforcement agencies, are sufficient to maintain law and order. Moreover, a speedy and fair trial is beneficial both for the accused as well as the victim and society, at large. The right to speedy trial of criminal offence has been well recognised in the broad sweep and content of art 21. Government agencies including the police whose primary duty is to ensure the safety and security of its entire citizen, including women, who make up half of the population, must function efficiently in order to ensure that the purposes and objectives of the legislation are complied with.

The need to impart appropriate education on sexuality is an important issue, therefore, my suggestion is, there should be an introduction of sex education in a clinical manner in school. Moreover, formal curriculum in Indian schools must be drastically revamped and sex education must be made an integral part of each Indian student's curriculum. It should be delivered by well trained and competent teachers and must necessarily involve the participation of counselors who are trained in the field of child psychology. Nevertheless, Awareness of the offence to all class of people is the best method to prevent crime against women.

While winding up I would like to say that no reforms can be successful, unless it is accepted by the people at large. To achieve this goal social workers and/or organisation must make sincere, intensive efforts and organise educative programmes, mass awareness camp and advertisements to change the social values. However, the last but the most important is the requirement of creating gender sensitisation in the society, which starts from every family.

Elimination of gender base by a single blow may not be feasible but constant effort at the societal level will definitely be immense to help to

⁴⁶Arun Ignatius, "Sexual Violence in India", [d space.mah.se/...](http://space.mah.se/)

modify and amend the patriarchal base of the society. The legislature has passed many laws to keep pace with the changing time and to meet the demands of women in India. Implementation of these laws in an effective manner obeying not merely the letter but also the spirit of such laws will certainly improve the conditions of the women.