Justice V.C.Misra
Chairman

U.P. State Law Commission
Lucknow

Ra.Vi.Aa-141-/2010
Dated: September 22, 2011

Dear Chief Minister/Law Minister,

I have great pleasure in forwarding herewith Eleventh Report-2011 of the U.P. State Law Commission proposing certain State Amendments in **the Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005)** titled **"the Protection of Women from Domestic Violence (Uttar Pradesh Amdnement) Act, 2011".**

Since the comprehensive review of the Protection of Women from Domestic Violence Act, 2005 leads to various practical problems to the litigants particularly women, its certain provisions like **clause (q) "respondent"** and **clause (s) "shared household" of section 2, proviso to sub-section (1) of section 12, section 29** and **sub-section (1) of section 31,** requires amendments to make it practical, realistic and effective. It will also prevent delay in providing relief.

The Commission is confident that if recommendations are accepted and acted upon vide proposed amendment the litigants particularly the aggrieved women will be benefited and unwanted litigation will be checked and will prevent delay in providing relief.

With kind regards.

Yours sincerely

(Justice V.C.Misra)

Sushri Mayawati,
Chief Minister/Law Minister
Uttar Pradesh

Encl: A report with Proposed Draft Bill

ANNEXURE-1

MODEL BILL FOR

THE UTTAR PRADESH STATE LAW COMMISSION

ELEVENTH REPORT-2011

ON

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE (UTTAR PRADESH AMENDMENT) ACT, 2011

UTTAR PRADESH STATE LAW COMMISSION

ELEVENTH - REPORT – 2011

ON

The Protection of Women From Domestic Violence (Uttar Pradesh Amendment) Act, 2011

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UTTAR PRADESH STATE LAW COMMISSION
ELEVENTH REPORT-2011

ON

The Protection of Women from Domestic Violence (Uttar Pradesh Amendment) Act, 2011

CHAPTER-1

INTRODUCTION

1.1 Success of the Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005, hereinafter referred to as the Act, 2005, depends upon its effective implementation within India's legal system. In the implementation of the Act, 2005 it is being alleged that certain provisions of the Act, are arbitrary, unfair, unreasonable, unjustified, oppressive, contradictory, conflicting, discriminatory, and unconstitutional having no nexus with the real objective sought to be achieve, which need to be suitably amended. Consequently, to examine the practical aspect of implementation of the Act, 2005, U.P. State Law Commission has taken up the matter **Suo-motu.**

1.2 Miserable position of women has been described by ***M.D.R. Freedom, in violence in Home (1979), 239,*** *as under:-*

"From the cradle to the grave, women are objects of violence from those nearest and dearest to them. And it is a never ending cycle for there is considerable evidence of intergenerational transmission of domestic violence."

1.3 While, famine glory has been described in **Brahma-Vaivarta Prakriti Kanda** and **Anusasana Parva, Mahabharata** respectively, as under:-

"Insult to women is indignity to nature."

1.4 "Women are deities of prosperity. By Cherishing women, one cherishes the goddess of prosperity herself and by afflicting her, one is aid to pain the goddess of prosperity."

1.5 Where the women are held in reverence, there do the Gods reside, in an old Sanskrit adage. A society grows if the women grow, if they partake of the spirit of progress for they are the proverbial domestic legislators, they are the matrix of social life.

1.6 In India, till the advent of the turks Indian women enjoyed great freedom and prestige, but due to certain social, economic and political exigencies and the unhappy impact of alien ideologies, inhuman restrictions clamped upon them, they were relegated to a position of servility and insignificance and they were burdened with several taboos and restrictions. Indian Society has been a tradition bound society in which the traditionalists would present an idealized picture of women substantiating their claims on the basis of certain references from the Vedic and classical literature.

1.7 A proper assessment of Indian women necessarily involves a brief resume of the cultural background of Indian women through the ages. The highest place has been accorded to women in Indian religious and philosophical thought. The primordial one is conceived as a harmony of '**purusha' (male)** and '**prakrati' (femeale).** The concept of **'ardhanarishwara'** describes god-head as half female and half male. The '**Shakti'** cult is centered around the superiority and destructive strength of the females. Rivers and streams, dawn and twilight, flowers and seasons, knowledge and music are conceived of as feminine.

1.8 The position of power, status and disabilities of the daughter, the wife, and the widow went on changing in course of time. Women enjoyed considerable freedom and privileges in the spheres of family, religion and public life, but as centuries rolled on, the situation went on changing adversely,

1.9 Indian Woman, unlike her sisters in other nations, suffers untold misery and has been subjected to countless trials. Dowry, for example, is peculiar to Indian conditions that oppresses, married and unmarried women. Giving an altogether newer dimension to the concept of domestic violence across the globe. Similarly, there are other factors that maintain the unedifying status quo of the women in India.

1.10 During the Vedic period, women had an excellent position and they enjoyed full freedom and equality with men. After the Vedic period status of women gradually started declining. The wife's status in the matrimonial home was less satisfactory. Although, Manu describes wife as the divine institution given by God and that a husband cannot make any progress if there is no wife beside him to cooperate in all his activities, yet he also says, "husband is the Lord and Master of his wife.

1.11 In the British Rule, the position of women in the family and society had reached the maximum degree of deterioration. The wife's position in the household was in a sorry state of affairs because of the evil of socio-religious practices, sinister custom, irrational religious rites and inhuman superstitions unknown in the ancient period which has crept into the society during British period. The reform movements in favour of women during the British period tackled, the problems of Sati, Hindu widow remarriage, denial of education, Purdah, prevalence of child marriage, women property rights etc. In the British period to prevent the social evils, **the Child Marriage Restraint Act, 1929, Hindu Widow Re-Marriage Act, 1856** and like were enacted. However, these laws proved ineffective and remained a dead letter for a long time though women's unequal position was sought to be rectified. The freedom struggle also paved the way for their emancipation from socio-religious taboos.

1.12 After independence, the Government of India has made efforts to promote the welfare of women. The Constitution of India envisages that all are equal before law irrespective of their religious, race, caste, sex or place of birth. The fundamental rights contained in **Articles 14, 15 and 21 of the Constitution of India.**

1.13 **Violence against Women (VAW),** although frequent across cultures, is surprisingly an under recognized issue in human rights. It was only in 1993 that **Violence against Women** was formally recognized in the **United Nations Declaration on Elimination of Violence against Women,** and defined not only as freedom from violence but also from the threat of violence. Norm setting around the issue of **Violence against Women,** was an outcome of the sustained advocacy efforts of the global women's rights movement, and brought about the **Vienna Accord of 1994, Beijing Declaration and Platform for Action of 1995, and on December 18, 1979 the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), was adopted by the United Nations General Assembly,** which came into force on September 03, 1981. The Government of India has ratified the above resolution on June 25, 1993.

1.14 The Supreme Court has issued direction against the sexual harassment and exploitation of working women in the matter of **Vishaka vs. The State of Rajasthan, AIR 1997 SC 3011** and observed that "sexual harassment of working women amount to violation of rights of gender equality and right to life and liberty and also as a logical consequence amount to violation of right to practice any profession, occupation or trade".

1.15 Consequently, in the year of 2005, the Parliament has enacted **the Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005),** which came into force w.e.f. October 16, 2006.

1.16 Domestic violence is one of the most traumatic forms of violence that is inflicted on women. The violence occurs within the safe confines of a home at the hands of a close family member. Violence within the home is considered to be a strictly private matter and as such has been endorsed over centuries. Prior to the enactment of the **Protection of Women from Domestic Violence Act, 2005** in India, domestic violence was addressed through Section 498A of the Indian Penal Code, 1860 (IPC). Under Section 498A, physical or mental cruelty to the wife by the husband or his relatives was made a cognizable and non-bailable offence punishable with imprisonment up to three years and fine. Subsequently, Section

304 B was introduced in the IPC in 1986 which created a new offence of “dowry death”.

1.17 While criminal law provides for prosecution of perpetrators, it does not take into account the women’s immediate needs of protection, shelter and monetary relief. Also, criminal law alone does not fully recognize the responsibility of the State towards the victims of violence. On the other hand, existing civil law remedies of divorce and maintenance were unable to provide effective reliefs to women facing violence and the proceedings under the civil law were time consuming. Even when injunction orders were available, the enforcement of the same was weak due to absence of penalties for violation. The Act, 2005 was thus enacted with the objective of protecting women from all forms of domestic violence. In defining domestic violence, the Act went beyond mere physical forms of violence, to include mental, sexual and economic violence. In its written form, its distinctive feature is that it provides a civil remedy to the woman. It also prescribes strict penalties for the breach of protection orders. Moreover, the role of the Protection Officers as a primary link between the victim and the court has emboldened women to initiate legal action against the perpetrators.

1.18 The big challenge in front now is to enforce it in true sense. In this regard **Flavia Agnes** has said as under:-

“A law is as good as its implement ability, despite the lofty aspirations. The responses to the enactment are polarized, with one section fearing its misuse by an elite class in metro cities and another segment predicting its futility for the mass of rural women saddled with the yoke of patriarchy to which courts are as yet alien”.

1.19 To find out the various practical problems in the implementation of the Act, 2005, a Seminar/Workshop was organized by the State Law Commission on February 13, 2011, which was participated by Hon'ble Mr. Justice F.I.Rabello, the then Chief Justice, Allahabad High Court, as Chief Guest and Hon'ble Mr. Justice R.B.Misra, Senior Judge, Himanchal Pradesh High Court, as Guest of Honour, besides other Hon'ble Judges, Professors, Lawyers and Legal Luminaries.

1.20 Several suggestions have been put forward by the Hon'ble guest speakers which may be summarized in the following manner:-

. The Act, 2005, should be titled the "Law of social Harmony" or the "Harmony Act" instead of" the Protection of Women from domestic violence Act."

. Act must be gender neutral and abused men should also be covered under the Act.

.Certain provisions like definition of "aggrieved person", 'domestic relationship', 'respondent' and 'shared household' and sections 12, 29 and 31 of the Act should be amended to make them more practicable, comprehensive and effective.

. Law must be implemented in its letter and spirit.

. Domestic Violence is a social problem, and not a legal problem. What is needed is a change in mindsets. Therefore, to mobilize the society against such evil, services of social reformers or social activists, through N.G.O's, may be taken.

. Economic conditions of women should be improved.

1.21 Detailed analysis of the above issues will be made in the later chapter.

1.22 To deal with the various issues raised at the Seminar/Workshop and to find out the way by which Act, 2005, which is a Central Act, enacted by Parliament, could be made practicable and more effective, various meetings of the Commission were held at its Head Quarter and its Camp Office at Allahabad as well.

1.23 An outcome of the discussions at various meetings of the Commission a Draft Report with a Model Draft Bill for "**The Protection of Women from Domestic Violence (Uttar Pradesh Amendment) Act, 2011**", prepared by Shri Ishwar Dayal, Full-Time Member of the Commission, was finally circulated to all the Members of the Commission and their views were invited thereon. The views on the Draft Report and Model Draft Bill was discussed at a meeting of the Commission held on September 06, 2011.

1.24 The Commission is of the view that State Legislature cannot enact a new legislation by repealing the Protection of Women from Domestic Violence Act, 2005, as it is a Central Act, enacted by Parliament. Article 15(3) of the Constitution of India provides for making special provisions favouring women and children. The Act, 2005 has been enacted by Parliament in tune with Article 15(3). The contention of learned speakers that the Act, 2005 is discriminatory and ultra vires the Constitution of India on the grounds that it accords protection only to women and not to men and placing the status of "a relationship in the nature of marriage" at par with married status in section 2(f) of the Act leads to the derogation of the rights of the legally wedded wife, are wholly, devoid of any merit. Though, we do not rule out the possibility of a man becoming the victim of the domestic violence, but such cases would be few and far between.

1.25 As State Legislature may make state amendments in the Act, 2005, we are proposing certain state amendments in the Act. Consequently, the Report of the Commission which proposed certain amendment in **clause (q) "respondent'**, and **clause (s) "shared household" of Section 2, proviso to sub-section (1) of Section 12, Section 29 and sub-section (1) of section 31 of the Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005)",** as per recommendations contained in the chapter-IV of the Report, to be submitted to the State Government, has been finally settled, approved and signed by the Chairperson and Members of the Commission at its meetings held on Septermber-19, 2011.

1.26 We wish to express our appreciation for valuable services and assistance received from Shri Santosh Kumar Pandey, Secretary of the Commission.

1.27 We also acknowledge the valuable services and assistance rendered by the other staff and officials of the Commission.

CHAPTER-II

ANALYSIS OF CERTAIN PROVISIONS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, IN THE LIGHT OF SUGGESTIONS

2.1 Regarding Change of name of the Act, 2005, the gender-specific nature of the Act and expression "domestic relationship" in Section 2(f) of the Act.

2.1.1 Some of the Speakers at Seminar/Workshop suggested that the Act should be titled the "Law of Social Harmony" or the "Harmony Act" instead of "the Protection of Women from Domestic Violence Act". In their support they argued that when both male and female are victim of Domestic Violence, the Act must be gender-neutral and abused man should also be covered under the Act. Therefore, the Protection of Women from Domestic Violence Act, 2005 is violative of Article 14 and 21 of the Constitution of India.

2.1.2 Domestic violence is a Worldwide phenomenon and has been discussed in international fora, including **the Vienna accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly** on December 18, 1979, which has been ratified by the Government of India on June 25, 1993, has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence but such cases would be few and far between, thus not requiring or justifying the protection under the Act.

2.1.3 This matter was raised before the Hon'ble Delhi High Court in Aruna Parmod Shah vs. Union of India in W.P. (Crl) 425/2008. The petition challenged the constitutionality of the Protection of Women from Domestic Violence Act, 2005, on two grounds-

(1) The gender-specific nature of the Act by excluding men, is arbitrary and, hence, violates Article 14 of the Constitution.

(2) The petitioner contended that placing of "near or like marriage" status (relationship in the nature of marriage) at par with "married" status in section 2(f) of the Act leads to the derogation of the rights of the legally wedded wife.

2.1.4 Very briefly stated, the petitioner admits that a Ring Ceremony had been performed between him and respondent no. 2 but no marriage had been celebrated. Respondent no. 2, however, appears to have taken the stance that their marriage was duly solemnized. The petitioner has assailed the virus of the Act on the ground that inasmuch as it provides protection only to women and not to men, the statute offends Article 14 of the Constitution of India.

2.1.5 The Hon'ble Delhi High Court dismissed the first contention on the grounds that, what Article 14 of the Constitution of India prohibits is "class legislation" and not "classification for purpose of legislation". If the legislature reasonably classified persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved, hence, was held to be constitutionally valid.

2.1.6 The Court rejected the **second contention** by saying that there is no reason why equal treatment should not be accorded to a wife as well as a women who has been living with a man as his "common law" wife or even as a mistress. The court opined that, "like treatment to both does not, in any manner, derogate

from the sanctity of marriage since an assumption can fairly be drawn that a 'live-in-relationship' is invariably initiated and perpetuated by the male."

2.1.7 "Regarding domestic relationship" **Hon'ble Supreme Court in D. Velusamy vs. D. Patchaiamma, (2010) 10 SCC 469,** held that the expression "domestic relationship" in Section 2(f) of the Domestic Violence Act, 2005 includes not only the relationship of marriage but also a relationship in the nature of marriage. Parliament has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either case, the person who enters into either relationship is entitled to the benefit of the Act. Parliament has taken notice of a new social phenomenon which has emerged in India known as live-in-relationship. This new relationship is still rare in India, and is sometimes found in big urban cities in India, but it is very common in North America and Europe.

2.1.8 The question, therefore, arises as to what is the meaning of expression "a relationship in the nature of marriage". **Hon'ble Apex Court in D. Velusamy case (supra)** observed in the following manner:

"31. In our opinion a "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

2.1.9 In our opinion a "relationship in the nature of marriage" under the 2005 Act must also fulfill the above requirements, and in addition the parties must have live together in a "shared household" 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."

2.1.10 A number of judicial pronouncements have been made on the aspect of the "presumption as to marriage". The **Privy Council** considered the scope of the presumption that could be drawn as to relationship of marriage between two persons living together. In **A. Dinohamy vs. W.L.Blahamy, AIR 1927 PC 185,** their Lordships of the Privy Council laid down the general proposition that:

"Where a man and women are proved to have lived together as man and wife, the law will presume, unless, the contrary be clearly proved that they were living together in consequence of valid marriage, and not in a state of concubinage."

2.1.11 In Mohabbat Ali vs. Md. Ibrahim Khan, AIR 1929 SC PC 135, their Lordships of the Privy Council once again laid down that:

"The law presumes in favour of marriage and against concubinage when a man and women have cohabited continuously for number of years."

2.1.12 It was held that such a presumption could be drawn under Section 114 of the Evidence Act.

2.1.13 In **Badri Prasad vs. Dy. Director of Consolidation and Others AIR 1978, SC 1557,** Hon'ble Supreme Court held that:

"Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardly. "

2.1.14 In **Gokul Chand vs. Parvin Kumari AIR 1952 SC 231,** Hon'ble Supreme Court observed that continuous cohabitation of woman as husband and wife and their treatment as such for number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is

rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

2.1.15 In Tulsa and Others vs. Durghatiya and others, AIR 2008 SC 1193, Hon'ble Apex Court has applied the same principle as laid down in aforesaid cases. In this case the trial court held that there was a presumption of valid marriage, as for decades Radhika and Plaintiff No. 1 lived together, their daughters were given in marriage by Radhika. Loli the defendant no. 1 was earlier married to Magala Katchhi and after his death she married Radhika. The first appellate court observed that Loli started living with Radhika during the lifetime of Mangala Katchhi, so the presumption of valid marriage was not there. The High Court held that the findings recorded by the appellate court may be erroneous, but it does not appear to be perverse. Hon'ble Supreme Court held that the evidence on record clearly shows that Loli and Radhika were living together after death of Mangala. The judgment and decree of the first appellate court and the High Court are set aside and those of the trial court stand restored.

2.1.16 The issue was also raised before the **Madras High Court in Dennison Paulraj and others vs. Union of India and Others, AIR 2009 (NOC) 2540 (MAD)** in a writ petition filed by the husband and his family members challenging constitutionality of the Act on the following grounds:-

(1) The Protection of Women from Domestic Violence Act, 2005 is violative of Article 14 and 21 of the Indian Constitution as the law does not permit a husband to file an application against the wife.

(2) Sections 4,12, 18, 19, 23 & 29 of the Act were challenged as providing preferential treatment to the wife and hence, affecting the right to file and liberty of the husband and his relatives. Section 23 in particular was challenged as arbitrary and conferring unrestricted powers on the Magistrate.

2.1.17 Hon'ble Madras High Court has held that provisions of Act of 2005 giving preferential treatment to wife over husband inasmuch as under Act husband cannot file any application, is not violative of Article 14 or 16 of the Constitution of India. In fact constitution itself by virtue of Article 15(3) provides for making

special provisions favouring women and children. Act of 2005 has been enacted in tune with Article 15(3), hence, not unconstitutional.

2.1.18 Clause (3) of Article 15 of the Constitution of India runs as follows:-

"(3) Nothing in the article shall prevent the State from making any special provision for women and children."

2.1.19 This clause is an exception to the rule against discrimination provided by clause (1) as well as (2) of Article 15. Thus, the provision of maternity relief for women workers (Article 42) will not be a contravention of the prohibition against discrimination under clause (1) of Article 15; nor will be the provision of free education for children (Article 45) or measures for provision against their exploitation (Article 39 (f). Similarly, the prohibition of separate accommodation, entrances etc., for women and children at places of public resort will not be a violation of Cl. (2) of Article 15.

2.1.20 The special provision referred to in clause (3) need not be restricted to measure which are beneficial in the strict sense. Thus, it would support a provision like that in section 497 of the Indian Penal Code, which says that an offence of adultery, though the man is punishable for adultery, the women is not punishable, as an abettor. Section 125 Cr.P.C. enacted for social justice and specially to protect women and children as also old and infirm poor parents and falls within the constitutional sweep of Article 15(3) reinforced by the Article 39 of the Constitution. Separate colleges or school for girls and appointment of only lady Principals or lady teachers in them, is justified.

2.1.21 In view of the above discussion, it is quite clear that legislature is empowered to enact a law or make special provisions for the betterment of women and children under clause (3) of Article 15 of the Constitution of India. As stated earlier the gender-specific nature of the Protection of Women from Domestic Violence Act, 2005 has been held to be a reasonable classification in **Aruna Parmod Shah case (supra)** while in **Dennison Paulraj case (supra)** it has been held that provisions of Act, 2005 giving preferential treatment to wife over husband inasmuch as under Act husband cannot file any application, is not violative of Article 14 or 16 of the Constitution of India. Article 15(3) provides for making special provisions favouring women and children. Act of 2005 has been enacted in tune with Article 15(3), hence, not unconstitutional.

2.1.22 Regarding expression "relationship in the nature of marriage " in Section 2(f) of the Domestic Violence Act, 2005 in **D. Velusamy case (supra) Hon'ble Apex Court** held that the expression "domestic relationship" includes not only the "relationship of marriage" but also a "relationship in the nature of marriage". Parliament has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either case, the person who enters into either relationship is entitled to the benefit of the Act.

2.1.23 Therefore, the Commission is of the view that the contention of the speakers that Act, 2005 is discriminatory and ultra vires the Constitution of India because it accords protection only to women and not to men is, wholly devoid of any merit. As far as change of name of the Act is concerned, under the circumstances it is also not acceptable, as it is for the protection of women, enacted in the tune with Article 15(3) of the Constitution of India, by Parliament.

2.2 Interpretation of Section 2(q) "respondent"

2.2.1 Clause (q) of section 2 of the Protection of Women from Domestic Violence Act, 2005 defines "respondent" in the following manner:-

'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 husand or the male partner."

2.2.2 In this regard in **Ajay Kant and others vs. Smt. Alka Sharma, 2008 Cri. L. J. 264,** respondent Smt. Alka Sharma has filed an application under section 12 of the Act against the petitioner no. 3 and 4 also who are the ladies. Therefore, question arises whether application under Section 12 of the Act, 2005 could not be filed against the ladies. **High Court of Madhya Pradesh, Jabalpur Bench at Gwalior** has held that the application under section 12 of the Act which has been filed by the respondent against petitioner no. 3 and 4 were not adult male person, is not maintainable.

2.2.3 In Amruth Kumar & another vs. Smt. Chithra Shetty & Another, AIR 2010 (NOC) 687 (KR), Karnataka High Court also held as under:

(i) The definition of the word 'respondent' under Section 2(q) of the Act does not include women;
(ii) The word relative appearing in the proviso to Section 2 (q) of the Act only means other than woman relative of the husband or male partner of the aggrieved person;
(iii) The definition of 'respondent' means only adult male member who is or has been in domestic relationship with aggrieved person and not at adult male members."

2.2.4 In view of the following judgments of the High Courts and Supreme Court the above interpretations of section 2 (q) of the Act by some of the High Courts has gone against the spirit of the law.

2.2.5 In this regard **In Smt. Sarita vs. Smt. Umrao, 2008 (1) R.Cr. D 97,** a revision petition was filed challenging the order of the appellate and trial court, which withdrew proceeding under the Protection of Women from Domestic Violence Act against the mother-in-law on the basis that women cannot be made respondent under the Act. The Rajasthan High Court held that the term "relative" is quite broad and includes all relatives of the husband irrespective of gender of sex, thus including abusive female in-laws. Similar judgments have also been passed clearly stating that women can be made respondent under the

Protection of Women from Domestic Violence Act, 2005 by **Rajasthan High Court are Kerala High Court** respectively in **Nand Kishore and others vs. State of Rajasthan, MANU/RH/0636/2008 and Rema Devi vs. State of Kerala 1 (2009) DMC 297.**

2.2.6 In **R. Nivendran and Others vs. Nivashini Mohan @ M. Nivashini, AIR 2010 (NOC) 688 (MAD),** an application under Section 12 of the Act, 2005 was filed by the respondent (wife) against the first respondent husband, his parent, his sister and other family members. To quash the proceedings the petition was filed before the **Madras High Court,** in which one of the grounds raised was that respondents 3, 4 and 6 in the application under Section 12 of the Act are women and Section 2 (q) of the Protection of Women from the Domestic Violence Act, 2005, would require the respondents in the application. When this question raised before the Hon'ble Single Judge it was found that there was a conflict of views on whether women could be added as respondents in an application under Section 12 of the Act, in the decision in **Uma Narayanan vs. Priya Krishan Prasad, (2008) 3 M.L.J (Crl) 756 and K. Kamala and others vs. M. Parimala and another, (2009) 3 M.L.J (Crl) 450.** Therefore, a reference was made to the Division Bench, which held that view taken by **Madhya Pradesh High Court in Ajay Kant case (supra)** and this Court in **Uma Narayanan case (supra)** are not correct. Hon'ble Court further held that the respondent as defined under section 2(q) of the Act includes a female relatives of the husband or the male partner and women could be added as respondents in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2.2.7 A Division Bench of **Andhra Pradesh High Court in Afzalunnisa Begum and others vs. State of Andhra Pradesh & another, 2009 Cri. L.J.4191** held as under:-

"16. statement of objects makes it clear that the complainant shall necessarily be a women and the respondent also shall necessarily be a male except in case where the complainant is a wife, the respondent may be a female relative of the husband ore male partner. The definition of the expression "domestic relationship" also has to be taken into consideration in appreciating the meaning of the word "respondent" and the purpose for which legislation was

enacted from the preamble attached to the Act. Thus, the Act does not exclude women altogether in a proceeding initiated under the Act.

17. In view of the above, we are of the view that the Act do not exclude woman altogether in a proceeding initiated under the Act."

2.2.8 The Hon'ble Supreme Court in Sandhya Manoj Wankhade vs. Manoj Bhim Rao Wankhade and others, (2011) 3 SCC 650, held as under:-

"14. From the above definition it would be apparent that although Section 2 (q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

15. 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 the relative of the husband or the male partner.

16. 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."

2.2.9 In view of the aforesaid judgments it appears that main problem with the section 2(q) which defines the "respondent" is using the words, "means any adult male person…..", and in the proviso the expression "relative", while the expression "female" or "female relative" has not been used, which create some confusion and give grounds for unwanted litigation particularly to those person who wanted to delay the proceedings initiated by the aggrieved person before the Magistrate, though the issue has been finally settled down by the **Hon'ble**

Apex Court in Sandhya Manoj wankhade case (supra). It means definition of "respondent" is not happily worded, therefore, it requires amendment to make it more clear and effective, as per recommendations contained with the report.

2.3. Section 2(s) Shared Household-

2.3.1 Clause (s) of Section 2 of the Protection of Women from Domestic Violence Act, 2005, defines "shared household" which runs as follows:-

"(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

2.3.2 Regarding definition of "shared household" many speakers have alleged that it is not happily worded and is confusing and thereby giving various grounds for litigation, therefore, it should be simplified by amendment. It is also contended that is said definition of shared household is implemented in true letter and spirit, then it will mean that wherever the husband and wife lived together in the past that property become a shared household. It is quite possible that husband wife may have lived together in dozens of places e.g. different houses of the husband's relatives as well as rented houses which have already been vacated. We think, if the wordings of section 2(s) is interpreted and accepted, in its letter and spirit all these houses of the husband's relatives or rented houses which have already been vacated will be shared households and the wife can well insist in living in the all these houses merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

2.3.3 In this regard in **Vandana vs. Mrs. Krishnamachari & others, (2007) 6 MLJ 2005 (MAD)** an interim application in a suit for permanent injunction was filed by the wife restraining the respondents from dispossessing here, the **Madras High Court** provided a broad interpretation to "shared household" and "domestic relationship" as defined under section 2(s) and section 2(f) of the Protection of Women from Domestic Violence Act, respectively. The respondent the husband contested the right of the aggrieved wife to reside in the shared household under section 17 of the Act, 2005 because the parties had not "lived together" in the shared household for even a single day after their marriage. The parties disputed even the very fact of the marriage. The Court, upholding the right of the aggrieved wife to reside under Section 17, held that she has a de jure right to live in the shared household because of her status as a wife in domestic relationship.

2.3.4. in **S.R. Batra & another vs. Smt. Taruna Batra, AIR 2007 SC 1118, Hon'ble Supreme Court** held as under:

"16. There is no such law, in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law."

"17. Here, the house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house."

2.3.5 In this case learned counsel for the respondent Smt. Taruna Batra stated before the **Hon'ble Apex Court** that the definition of shared household includes a household where the person aggrieved lives or at any state had lived in a domestic relationship. He contended that since admittedly the respondent had live in the property in question in the past, hence the said property is her shared household.

2.3.6 In this regard Hon'ble Apex Court further observed as under:

"25. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand-parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared household and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd."

2.3.7 Regarding definition of shared household **Hon'ble Apex Court** further observed:

"29. No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

2.3.8 Thus, **Hon'ble Apex Court** is also of the view that definition of 'shared household' is not very happily worded, and appears to be the result of clumsy drafting.

2.3.9 In **P. Babuy Vankatesh and others vs. Rani AIR 2008 (NOC) 1772 (MAD),** a criminal revision petition was filed by husband and family seeking reversal of an order of the lower court in an application filed by the wife under section 23(2) of the Act, 2005, alleging possession from the matrimonial home. The Magistrate had granted a residence order and allowed the police to break open the lock of the shared household. It was contended that the house in question was, in fact, owned not by the husband but, by his mother, in whose name it was registered.

Hence, it was not a shared household for the purpose of the Act, 2005. It was also alleged that because there was a divorce proceeding pending between the parties, the wife was not entitled to any relied under the Act.

2.3.10 Dismissing the aforementioned contentions, **the High Court of Madras** held that the ratio laid down by the **Supreme Court in S.R. Batra v. Taruna Batra case (supra)** could not be applied to the instant case as the facts clearly demonstrated that the husband, with the intention of defeating the rights of the wife, had transferred the household into the name of his mother, after the after the matrimonial dispute arose. In arriving at its conclusion, the Court recognized the fact that before the wife's dispossession, both parties resided jointly in the said household. The Court also held that pending divorce proceedings did not affect the granting of relief (s) under the Act, 2005.

2.3.11 In **Neetu Mittal vs. Kanta Mittal and others, AIR 2009 Delhi 72, Delhi High Court** held as under:

"8. 'Matrimonial Home' is not defined in any of statutory provisions. However, phrase "matrimonial home" refers to the place which is dwelling house used by the parties, i.e. husband and wife or a place which was being used by the house of the parents of the husband. In fact the parents of the husband may allow him to live with them so long as their relations with son (husband) are cordial and full of the love and affection. But if relations of son or daughter-in-law with parents of husband turn sour and are not cordial, the parents can turn them out of their house. The son can live in the house of parents as a matter of right only if the house is an ancestral house in which son has a share and he can enforce the partition. Where is house is self acquired house of the parents, son, whether married or unmarried, has no legal right to live in that house and he can live in that house only at mercy of his parents up to the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life.

9. It is because of live, affection, mutual trust, respect and support that members of a joint family gain from each other that the parents keep supporting their sons and families of sons. In turn, the parents get equal support, live, affection and care. Where this mutual relationship of love, care, trust and support goes, the parents cannot be forced to keep a son or daughter in law with them nor there is any statutory provision which compels parents to suffer because of the acts of residence and his son or daughter in law. A woman has her rights of maintenance against her husband or sons/daughters. She can assert her rights, if any, against the property of the husband, but she cannot thrust herself against the parents of her husband, nor can claim a right to live in the house of parents of her husband, against their consult and wishes."

2.3.12 Having regards to the aforesaid decisions of the **Hon'ble Supreme Court and High Courts** on the definition of the "shared household", we are of the view that definition of "shared household" should be more practicable, realistic and effective which can we make by amendment only, in the light of above judgments, it will minimize the scope of litigation also. Therefore, we are proposing amendments in sub-section 2(s), in accordance with the recommendations, contained with the report, in the later chapter.

2.4 **Amendments of proviso to sub-section (1) of section 12 of the Act, 2005**

2.4.1 Sub-section (1) of section 12 runs as follows:

12. Application to Magistrate:- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more relief (s) under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report receive by him from the Protection Officer or the service provider.

2.4.2 It is noticed that the proviso to section 12 (1) of the Act, 2005, which states the "before passing any order on such application, the Magistrate shall take into

consideration any Domestic Incident Report received by him from the Protection Officer or the Service Provider", has caused considerable confusion amongst the Magistrate. While some courts interpreted the proviso has making the Domestic Incident Report a mandatory requisite for every application, others continued to accept applications without Domestic Incident Reports. Therefore, there is no uniform practice. The Magistrate sometimes accepted applications without Domestic Incident Report and at other time they did not.

2.4.3 The High Court of Bombay has made a protection officer report mandatory for granting an interim order. In the case of **Shri Darshanand Markendey Rai vs. the State of Maharashtra and others (Criminal Revision Application No. 484 of 2008), Hon'ble Court held that** "In absence of any report of the Protection Officers, under Section 12 even though exercise is not futile, but is required to consider whether in fact there is domestic violence for which the complaint is lodged by the applicant-second respondent. In absence of this exercise, the order passed by both the Courts below is irregular which cannot be cured."

2.4.4 This has been the cause of many delays and refusal to grant interim orders by the Magistrate even if a Domestic Incident Report from the Service Provider is in place. It is alleged that this proviso should not be used as a reason to refuse interim orders under the Domestic Violence Act. **Hence, the proviso to section 12(1) of the Act must be deleted,** and it should be left to the discretion of the Magistrate to decide whether or not to ask for a Protection Officer Report at that stage. This amendment has been suggested to ensure that the Magistrate cannot refuse an application for the sole reason that the domestic incident report has not been recorded or attached. Since, the Domestic Violence Act is a welfare legislation, procedure cannot defeat the substance. This has been upheld by the **Allahabad High Court** in **Milan Kumar Singh and another vs. State of U.P. and another, 2007 Cri. L. J. 4742.** In this petition before the High Court of Allahabad the husband challenged the application filed by his wife under the protection of women form domestic violence Act, 2005 on the grounds that such application could not be filed directly before the Magistrate before approaching the Protection Officer and recording a Domestic Incident Report. The husband

also argued that the application was not in the prescribed format as provided in Form II. Hon'ble Court held as under:-

"7. A plain reading of the section shows that the aggrieved person can file complaint directly to the Magistrate concerned. This is the choice of the aggrieved person that instead of direct approaching the Magistrate, he or she can approach the protection officer in case of emergency, the service provider and with their help to the Magistrate concerned. The word "or" used in section 12 of the Act is very material, which provides a choice of the aggrieved person to approach in the aforesaid manner. There is no illegality in direct approaching the Magistrate for taking cognizance in the matter. This is for the Magistrate concerned to take help of Protection Officer and Service Provider after receiving the complaint provided, he feels it necessary for final disposal of the dispute between the parties. If the parties concerned or Magistrate takes help of the Protection Officer, he will submit a Domestic Incident Report to the Magistrate concerned."

2.4.5 in **Nand Kishore vs. Kavita and another, MANU/MH/0957/2009**, Court held that it is not necessary in each and every case to obtain a report from the Protection Officer or the Service Provider to decide an application for interim relief. It was further explained that if on the basis of the record available before the court, it is in a position to arrive at a just and proper conclusion, it should proceed and decide the matter accordingly.

2.4.6 It is also to be noted here that Magistrate has power to grant interim and ex-parte orders under section 23 of the Act, which reflects contradictory position between proviso to sub-section (1) of section 12 and section 23 of the Act.

2.4.7 Therefore, having regards with the aforesaid judgments of the High Courts and other reasons as state hereinabove, on the issue, Commission is of the view that instead of deleting the proviso to sub-section (1) of section 2 of the Act, it may be made practicable by amending it. In the proviso the wordings," the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. "are mandatory in nature, which may be made discretionary by amendment, and we are of the view that it will serve the purpose. Hence, we are proposing amendment of

proviso to sub-section (1) of section 2 of the Act, as per recommendations, contained with the report, in the later chapter.

2.5. Amendment of section 29, which runs as under:-

"29 Appeal- there shall lie an appeal to the Court of Session within thirty days from the date on which the order made by Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later".

2.5.1 Appeals can always result in considerable delays. However, in the case of domestic violence, given its urgent nature, speedy remedies are highly desirable. The analysis of orders conducted by the Lawyers Collective shows that appeals from interim orders is one of the most important reasons for the delay in disposal of cases. The relief the women were able to obtain were defeated when the respondent appealed against the decision, and stopped paying maintenance. This practice of the Appellate Courts shall encourage many respondents to prefer an appeal merely as a tactic to prevent implementation of the order of the lower court.

2.5.2 Under these circumstances it is to be seen that how such practice may be checked or restricted. Keeping in mind section 19 of the Family Court Act, 1984, which states that appeal shall not be allowed from interim orders. Following the same principle, section 29 should be amended and appeal should be allowed only from final orders to ensure timely disposal of cases. Since the domestic violence cases can be called as matters relating to family, we can restrict appeals from interim orders. It should also be ensured that appeals are not filed by the respondent only to stall the payment of the maintenance. Therefore, there should be some mandatory provisions to make some payment of maintenance amount during the period of appeal or revision also.

2.5.3 Hence, we are of the view that section 29 should be amended accordingly, therefore, we propose amendment in the section 29 of the Act to ensure that the respondent does not defer the payment of maintenance by filing an appeal or revision, secondly filing of appeal or revision from interim orders is also restricted, as per recommendations of the Commission, contained with the report in the later Chapter.

2.6 Amendment of sub-section (1) of section 31

2.6.1 Section 31 deals with the penalty for breach of protection order, by respondent.

2.6.2 sub-section (1) of section 31 runs as follows:

"31. Penalty for breach of protection order by respondent (1) A breach of protection order, or of 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."

2.6.3 It shows that a breach of protection order or of an interim protection order, by the respondent shall be an offence under the Act. Protection orders are passed under section 18 of the Act on various grounds mentioned therein. While resident orders under section 19, orders regarding monetary relief under section 20, custody orders under section 21, compensation orders under section 22 and interim and ex-parte orders under section 23 of the Act, are also being passed by the Magistrate. The Magistrate also passes the orders under Section 12 of the Act. It shows that under sections 12, 18, 19, 20, 21, 22 and 23 of the Act the Magistrate used to pass various types of orders. Section 31(1) reflects that breach of protection order or of an interim protection order, by the respondent shall be an offence. It creates some confusion and it is contended that section 31 (1) applies only to those orders which are passed under section 18 of the Act, and it does not cover the other various orders passed under other sections of the Act as stated earlier. Therefore, to remove such confusion or ambiguity and to make it more clear and specific sub-section (1) of section 31 requires amendment. We are of the view that to meet such situation sub-section (1) of section 31 be amended, as per recommendation of the Commission, contained with the report, in the later chapter.

2.6.4 Men's organizations such as **Protect Indian Family** and **Save Family Foundation** have criticized the law since it is not gender neutral and abused men are not covered. Moreover, it might be abused by women and their families during family disputes. **Protect India Family was started in 2006 by Mr. M.R.**

Gupta, an engineer from the IIT. He says he is not against laws that protection women, but, "laws should not interfere in a marital relationship. This is a social problem. There should be workshops to help inculcate tolerance. Laws break marriages". The legal scrutiny of marital relationship has striped the Indian middle class home of its privacy like never before.

2.6.5. Indian anti-dowry and domestic violence laws, says **Nivedita Menon Professor of political thought at Jawaharlal Nehru University's School of International Study** treat the family as a public institution to which public laws apply. "That is obviously going to create a huge crisis for the family. It is not surprising that the category of people who benefitted from this kind of ordering of society will resist these laws. What is surprising is that it hadn't happened earlier."

2.6.6 Staying Alive, the Women's Rights Initiative (WRI) of the Lawyers Collective has been bringing out a report on the progress of the implementation of the Act. The Fourth Monitoring and Evaluation Report on the Protection of Women from Domestic Violence Act, 2005 (PWDVA), which was released in December, 2010 highlights several challenges in the way of the effective implementation of the Act.

2.6.7 The report says that though the number of cases filed under the Act has increased, certain interpretation of its provisions have often gone against the spirit of the law. In the preface to the report, Indira Jaising, executive director of Lawyers Collective, refers to a 2007 order of the Supreme Court where a statutory guarantee of the right to reside in the shared household was linked to the ownership of the home rather than the fact of residence in the joint household. "The effect of this judgment was to deny to hundreds of women living in joint families the protection of a roof over their heads only for the reason that the parents-in-law owned the home, notwithstanding that it was the actual and the only place of residence of the women." This, she says, "betrayed a mindset which was fixated on the right to protect property rather than human rights". Another recent interpretation having an impact on the rights of women in the household pertains to the expression "relationship in the nature of marriage". The PWDVA at

present does not extend to women who are in relationships “in the nature of marriage”. Also, strains of dissent have appeared regarding alleged misuse of the PWDVA, just as there has been an outcry against the misuse of Section 498A.

2.6.8 The report says that while there has been progress in terms of responsiveness by the enforcers of the Act and the State machinery, sufficient funds are yet to be allocated for its effective implementation.

2.6.9 We think that fresh discussions on these issues which have been raised by the **Protect Indian Family and the Save Family Foundation and Women’s Rights Initiative of the Lawyers Collective** are not needed because all these aspects have already been discussed during earlier discussion under this chapter, but we would like to mention here the views expressed by **Nilanju Dutta, project associate at the violence intervention team at Jagori, a New Delhi based feminist resource centre,** in favour of the Act (as shown in the website of the Save Family Foundation), as under:-

“For hundreds of years, women have had no option but to suffer silently. Now that we have been given a law against domestic violence, the men are up in arms? This is unfair. Let them bark. I do not think we should worry. When there is change, there is always upheaval.”

CHAPTER-III

CONCLUSIONS

3.1 This is a new law with multiple agencies in place to assist women and the courts. The Service Provider have been mandated by the Act to perform the much required pre litigation services and the Protection Officers to assist the court, they are as we have been saying, the eyes, ears and arms of the court. Concepts such as these being new to the law are slow to be accepted and understood. Nevertheless they have the potential for unfolding their role over a long period of time to become permanent features of any social legislation. They provide the outreach required for access to justice.

3.2 The Protection of Women from Domestic Violence Act is intended to give effect to the Constitutional guarantees of equality for women and non-discrimination based on sex. It is grounded within the framework of **the Convention on Elimination of all forms of Discrimination Against Women (CEDAW),** which outlaws direct and indirect discrimination against women. No one can dispute that all human beings have a right to live with dignity and freedom from fear of violation of their bodily integrity, hence, the need for such a law, which addressed gender-based discrimination. The passage of a law does not automatically guarantee that it will be implemented. The perspectives and conviction of all the implementers need to be moulded to appreciate the intent of the law, before effective and concrete changes can be seen. The more progressive and "different" a law, the greater is the learning curve to imbibe new ways of thinking and doing.

3.3 It will take more than ringing a bell and asking for a cup of milk in order to prevent the occurrence of domestic violence nationwide. The enactment of the Act, 2005 is an important first step for India, but there is much more to be done regarding the Act's effective implementation. It must now be used not only to interrupt abuse, but to stop domestic violence permanently by opening the door and entering the fight.

3.4 Domestic violence takes place in all social, economic and cultural settings worldwide, in India the difference is that families are conditioned to tolerate, allow, even rationalize domestic violence. Most of the violence takes place inside

homes which should offer the women maximum security. The Act, 2005 focuses on the prohibition of marital aggression, the issue of protection and maintenance orders against husbands and partners who abuse a women emotionally, physically or economically. This sounds fine on paper, but a one-size-fits all approach ignores women who need such protection the most.

3.5 "Domestic violence is a burden on numerous sectors of the social system and quietly, yet dramatically, affects the development of a nation…..batterers cost nations fortunes in terms of law enforcement, health care, lost labour and general progress in development. These costs do not only affect the present generation; what begins as an assault by one person on another, reverberates through the family and the community into the future". (Zimmerman).

3.6 Domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. This problem is not only widely dispersed geographically, but its incidence is also extensive, making it a typical and accepted behaviour. Domestic violence is wide spread, deeply ingrained and has serious impacts on women's health and well-being. Its continued existence is morally indefensible. Its cost to individuals, to health systems and to society is enormous. Yet no other major problem of public health has been so widely ignored and so little understood.

3.7 Domestic violence can be described as the power misused by one adult in a relationship to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. This violence can take the form of physical assault, psychological abuse, social abuse, financial abuse, or sexual assault. The frequency of the violence can be on and off, occasional or chronic.

3.8 "Domestic violence is not simply an argument. It is a pattern of coercive control that one person exercises over another. Abusers use physical and sexual violence, threats, emotional insults and economic deprivation as a way to dominate their victims and get their way". (Susan Scheter, Visionary leader in the movement to end family violence)

3.9 Domestic violence is the most common form of violence against women. It affects women across the life span from sex selective abortion of female fetuses to force suicide and abuse, and is evident, to some degree, in every society in the world.

3.10 The World Health Organization reports that the proportion of women who had ever experienced physical or sexual violence or both by an intimate partner ranged from 15% to 71%, with the majority between 29% and 62%.

3.11 India's National Family Health Survey-III, carried out in 29 states during 2005-06, has found that a substantial proportion of married women have been physically or sexually abused by their husbands at some time in their lives. The survey indicated that, nationwide, 37.2% of women "experienced violence" after marriage. Bihar was found to be the most violent, with the abuse rate against married women being as high as 59%. Strangely, 63% of these incidents were reported form urban families rather than the state's most backward villages. It was followed by Madhya Pradesh (45.8%), Rajasthan (46.3%), Manipur (43.9%), Uttar Pradesh (42.4%) Tamil Nadu (41.9%) and West Bengal (40.3%).

3.12 The trend of violence against women was recently highlighted by the **India's National Crime Records Bureau (NCRB)** which stated that a total of 1,95,856 incidents of crime against women (both under IPC and Special & Local Laws) were reported in the country during 2008 as compared to 1,85,312 during 2007 recording an increase of 5.7% during 2008. These crimes have continuously increased during 2004-2008 with 1,54,333 cases in 2004, 1, 55, 553 in 2005, 1,64,765 cases in 2006, 1,85,312 cases in 2007 and 1,95,856 cases in 2008.

Andhra Pradesh accounting for nearly 7.1% of the country's population has accounted for 12.3% of total crimes against women in the country by reporting 24,111 cases. Uttar Pradesh, with nearly 16.6% share of country's population has accounted for 12.0% of total crime against women by reporting 23,569 cases to 2008.

3.13 The rate of crime has increased marginally from 16.3 during the year 2007 to 17.0 during 2008. Tripura reported the highest rate of crime against women at 40.2 during 2008.

3.14 The proportion of IPC crimes committed against women towards total IPC crimes has increased continually during last 5 years from 7.8% in 2004 to 8.9% during 2008.

3.15 A recent United Nation Population Fund Report also revealed that around two-third of married women in India were victims of domestic violence.

3.16 Domestic violence against women is an age old phenomenon. Women were always considered weak, vulnerable and in a position to be exploited. Violence has long been accepted as something that happens to women. Cultural mores, religious practices, economic and political conditions may set the precedence for initiating and perpetuating domestic violence, but ultimately committing an act of violence is a choice that the individual makes out or a range of options. Although one cannot underestimate the importance of macro system-level forces (such as cultural and social norms) in the etiology of gender-based violence within any country, including India, individual-level variables (such as observing violence between one's parents while growing up, absent or rejecting father, delinquent peer associations) also play important roles in t he development of such violence. The gender imbalance in domestic violence is partly related to differences in physical strength and size. Moreover, women are socialized into their gender roles in different societies throughout the world. In societies with a patriarchal power structure and with rigid gender roles, women are often poorly equipped to protect themselves if their partners become violent. However, much of the disparity relates to how men-dependence and fearfulness amount to a cultural disarmament. Husbands who batter wives typically feel that they are exercising a

right, maintaining good order in the family and punishing their wives' delinquency-especially the wives' failure to keep their proper place.

3.17 Economic dependence has been found to be the central reason. Without the ability to sustain themselves economically, women are forced to stay in abusive relationships and are not able to be free from violence. Due to deep-rooted values and culture, women do not prefer to adopt the option of separation or divorce. They also fear the consequences of reporting violence and declare an unwillingness to subject themselves to the shame of being identified as battered women. Lack of information about alternatives also forces women to suffer silently within the four walls of their homes. Some women may believe that they deserve the beatings because of some wrong action on their part. Other women refrain from speaking about the abuse because they fear that their parents will further harm them in reprisal for revealing family secrets, or they may be ashamed of their situation.

3.18 Violence against women is a violation of basic human rights. It is shameful for the States that fail to prevent it and societies that tolerate and in fact perpetuate it. It must be eliminated through political will, and by legal and civil action in all sectors of society.

3.19 In view of the discussions in the preceding chapters and having regards to the various decisions of the Hon'ble Supreme Court and High Court we are of the view that to make the Protection of Women from Domestic Violence Act, 2005 more practical, comprehensive, realistic, effective and to prevent delays in providing relief, its certain provisions like **clause (q) "respondent" and clause (s) "shared household" of section 2, proviso to sub-section (1) of Section 12, Section 29 and sub-section (1) of Section 31** require amendments in accordance with the recommendations contained in the Chapter IV of the Report.

CHAPTER-IV

Recommendations

4.1 An effective response to violence must be multi- sectoral; addressing the immediate practical needs of women experiencing abuse, providing long-term follow up and assistance; and focusing on changing those cultural norms, attitudes and legal provisions that promote the acceptance of and even encourage violence against women, and undermine women's enjoyment of their full human rights and freedoms.

4.2 The health sector has unique potential to deal with violence against women, particularly through reproductive health services, which most women will access at some point in their lives. However, this potential is far from being realized. Few doctors, nurses or other health personnel have the awareness and the training to identify violence as the underlying cause of women's health problems.

4.3 The health sector can play a vital role in preventing violence against women, helping to identify abuse early, providing victims with the necessary treatment and referring women to appropriate care. Health services must be places where women feel safe, are treated with respect, are not stigmatized, and where they can receive quality, informed support. A comprehensive health sector response to the problem is needed, in particular addressing the reluctance of abused women to seek help.

4.4 Domestic violence against women has been identified as a public health priority. Public health personnel can play a vital role in addressing this issue.

4.5 Since violence against women is both a consequence and a cause of gender inequality, primary prevention programmes that address gender inequality and tackle the root causes of violence are all essential. Public health workers have a responsibility to build awareness by creating and disseminating materials and innovative audio-visual messages, which project a positive image of girl child and women in the society. An integrated media campaign covering electronic, print and film media that portrays domestic violence as unacceptable is the need of the hour. The role of increasing male responsibility to end domestic violence needs to be emphasized.

4.6 Programmes are required which intend to address battered women's needs, including those that focus on building self-efficacy and livelihood skills. The significance of informal and local community networks should be acknowledged in this regard. The survivors of domestic violence can be involved in programmes planning and implementation in order to ensure accessibility and effectiveness. Rather than spotlighting women as victims in non negotiable situations, they should be portrayed as agents capable of changing their own lives. The public health experts have a vital role to play in networking with NGOs and voluntary organizations as creation of social support networks.

4.7 The public health experts have a potential to train personnel specialized to address the needs of victims of domestic violence. In the field of research, public health personnel can contribute by conducting studies on the ideological and cultural aspects which give rise to and perpetuate the phenomenon of domestic violence. Similarly, the execution and impact of programmes must be assessed in order to provide the necessary background for policy-making and planning. However, the health sector must work with all other sectors including education, legal and judicial, and social services.

4.8 An Act alone will not help in preventing domestic abuse; what is needed is a change in mindsets.

4.9 Concerted and co-ordinated multi-social efforts are key methods of enacting change and responding to domestic violence at local and national level. The Millennium Development Goal regarding girl's education, gender equality and the empowerment of women reflects the international community's recognition that health, development, and gender equality issues are closely interconnected.

4.10 Success of any Act depends on its practicability and enforcement within India's legal System. As per various suggestions we are of the view that Act, 2005 requires improvements and its enforcement within India's Legal System are still greatly needed.

4.11 Keeping in mind the above discussions in preceding chapters, particularly chapter-II & III, we are of the view that certain provisions of the Act, 2005, **like clause (q) "respondent", and clause (s) "shared household", of Section 2, proviso to sub-section (1) of Section 12, Section 29 and sub-section (1) of Section 31 of the Protection of Women from Domestic Violence Act, 2005,** be amended in the following manner, and as per Model Draft Bill (Annexure-I) to make it more simple, practical, comprehensive, realistic, effective and to prevent delay in providing relief, besides this specific practice directions may also be issued for the role of Protection Officers, Service Providers, State Legal Aid Lawyers, Medical Facilities and Shelter Homes so that all of them may be better utilized by the Courts in discharging their duties. Related marriage and other laws may also be amended.

4.12 Hence we are proposing the following State Amendments in the Protection of Women from Domestic Violence Act, 2005, which is a Central Act, enacted by Parliament:-

4.12.1 Amendment of Section-2

(a) In **Clause (q) of Section-2** of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as the Principal Act, after the words "**means any adult male person"** the words "**or the relative"** shall be inserted.

(b) after **proviso to clause (q) of section 2** of the Principal Act, the following **Explanation** shall be inserted and be deemed always to have been inserted, namely:-

"Explanation,- for the purpose of this section relative of the husband also includes female relative."

(c) for **clause (s) of section 2** of the Principal Act, the following clause shall be substituted and be deemed always to have been substituted, namely:

(s) "shared household"- means the household belonging to or taken on rent by the husband, or the household which belongs to the joint family of which the husband is a member."

4.12.2 Amendment of section-12

In **proviso to sub-section (1) of section 12 of the** Principal Act for the words **"the Magistrate shall"** the words **"the Magistrate, if thinks necessary, may"** shall be substituted.

4.12.3 Amendment of section-29

For **section 29** of the Principal Act the following section shall be substituted and be deemed to have been substituted, namely:-

"29-Appeal (1) There shall lie an appeal from every order, not being an interlocutory order, under the Act, to the Court of Session 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 be, whichever is later:

(2) Where respondent prefers an appeal or revision against an order for maintenance amount passed in favour of the aggrieved person by the Magistrate, to the Court of Session, the respondent shall be liable to deposit such maintenance amount regularly by tenth of every month in the Appellate Court i.e. the Court of Session during the period of pending of such proceedings in the Court of Session.

(3) Where any maintenance amount is deposited by the respondent under sub-section (2), half of such deposited amount shall be released in favour of the aggrieved person by the Court and half of such amount shall remain deposited till disposal of such appeal or revision and shall be paid in accordance with the orders in such appeal or revision.

(4) Where in any case respondent fails to deposit maintenance amount under sub-section (2) during any month, such appeal or revision shall stand dismissed.

(5) The appeal or revision so dismissed under sub-section (4) may be restored to its original number if the restoration application with affidavit is moved within three months of the dismissal order and balance maintenance amount is deposited, on payment of costs and interest on the balance amount, as Court thinks fit.

Provided that restoration application shall not be entertained if it is moved beyond three months of dismissal order.

4.12.4 Amendment of section-31

For sub-section (1) of section 31 of the Principal Act, the following sub-section shall be substituted and be deemed to have been substituted, namely:-

"(1) A breach of any protection order, or of an interim protection order or any other order passed under the Act, 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."

4.13 We recommend accordingly.

(Justice V.C.Misra)

Chairman

(Prof. Balraj Chauhan)
Member (Part-time)

(Ishwar Dayal)
Member (Full-time)

ANNEXURE-1

MODEL BILL FOR

THE UTTAR PRADESH STATE LAW COMMISSION

ELEVENTH REPORT-2011

ON

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE (UTTAR PRADESH AMENDMENT) ACT, 2011

MODEL BILL

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE (UTTAR PRADESH AMENDMENT) BILL, 2011

(WITH ELEVENTH REPORT-2011)

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ANNEXURE-I

MODEL DRAT BILL

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

(UTTAR PRADESH AMENDMENT) BILL, 2011

A

BILL

to amend the Protection of Women From Domestic Violence Act, 2005, in its application to the State of Uttar Pradesh.

IT IS HEREBY enacted in the Sixty-second year of the Republic of India, as follows:-

1. Short title, Extent and Commencement

(1) This Act may be called the Protection of Women From Domestic Violence (Uttar Pradesh Amendment) Act, 2011

(2) It shall extend to the whole of the Uttar Pradesh

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section-2

(a) In **Clause (q) of Section-2** of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as the Principal Act, after the words **"means any adult male person"** the words "**or his relative"** shall be inserted.

(b) after **proviso to clause (q) of section 2** of the Principal Act, the following **Explanation** shall be inserted and be deemed always to have been inserted, namely:-

"Explanation,-for the purpose of this section relative of the husband also includes female relative."

(c) for **clause (s) of section 2** of the Principal Act, the following clause shall be substituted and be deemed always to have been substituted, namely:

(s) "shared household" means the household belonging to or taken on rent by the husband, or the household which belongs to the joint family of which the husband is a member."

3. Amendment of section-12

In **proviso to sub-section (1) of section 12** of the Principal Act for the words **"the Magistrate shall"** the words "**the Magistrate, if thinks necessary, may"** shall be substituted.

4. Amendment of section-29

For **section-29** of the Principal Act the following section shall be substituted and be deemed to have been substitute, namely:-

"29-Appeal,- (1) There shall lie an appeal **from every order, not being an interlocutory order, under the act,** to the Court of Session 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 be, whichever is later:

(2) Where respondent prefers an appeal or revision against an order for maintenance amount passed in favour of the aggrieved person by the Magistrate, to the Court of Session, the respondent shall be liable to deposit such maintenance amount regularly by tenth of every month in the Appellate Court i.e. the Court of Session during the period of pending of such proceedings in the Court of Session.

(3) Where any maintenance amount is deposited by the respondent under sub-section (2), half of such deposited amount shall be released in favour of the aggrieved person by the Court and half of such amount shall remain deposited till disposal of such appeal or revision and shall be paid in accordance with the orders in such appeal or revision.

(4) Where in any case respondent fails to deposit maintenance amount under sub-section (2) during any month, such appeal or revision shall stand dismissed.

(5) The appeal or revision so dismissed under sub-section (4) may be restored to its original number if the restoration application with affidavit is moved within three months of the dismissal order and balance maintenance amount is deposited, on payment of costs and interest on the balance amount, as Court thinks fit.

Provided that restoration application shall not be entertained if it is moved beyond three months of dismissal order.

5. Amendment of section-31

For **sub-section (1) of section 31** of the Principal Act, the following sub-section shall be substituted and be deemed always to have been substituted, namely:-

"(1) A breach of any protection order, or of an interim protection order of any other order passed under the Act, 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."