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The Constructed Identities of Women in Unconventional Relationships and the Domestic Violence Law in India: Towards a More Feminist Legal Framework

By

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Thesis submitted in partial fulfilment of the requirements for a
Doctor of Philosophy (PhD) Degree in Law

University of Warwick, School of Law

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Contents

Dedication	vii
Table of Cases	viii
Acknowledgements	xi
Declaration	xiii
Abbreviations	xiv
Abstract	xvi
INTRODUCTION	1
1. International Context	1
2. Indian Scenario	3
3. Statement of Problem	6
4. Objectives and Specific Research Questions	9
5. Methodology	12
6. Chapterisation	13
7. Conclusion	16
Chapter One	17
1. Introduction	17
2. Constructions of Feminine Identities in Phase 1: the Hindu Nation, the Nationalist Movement	20
2.1 Gandhi's Women	26
3. Construction of Feminine identities Phase 2: Indian Women's Movement, Post-Colonial Period	28
3.1 Continued Constructions, Women's Empowerment 1950 to 1970s	32
3.2 Mathura and the Anti-Police Sentiment	36
4. Phase 3 1980s Constructions of Feminine Identities	40

4.1	Legal Reform	43
5.	Phase 4 1990s to the Present.....	45
5.1	Public Interest Litigation	46
5.2	Women's Representation in Politics	49
5.3	The State, the Female Body and Indian Feminism	50
6.	Notions of Familial Honour and Women	57
7.	Conclusion	59
	Chapter Two.....	62
1.	Introduction.....	62
2.	WUR within Broader VAW Literature	64
2.1	The Sacred Space, Sacred Sexuality and the Three Levels of Transgressions 65	
3.	Constructions of WUR: Post-colonial Legal Feminist Debates	74
3.1	WUR within the Victim Rhetoric.....	74
3.2	WUR within Third World Feminism and Activism.....	78
3.3	WUR within the DVA and the VAW Scholarship.....	81
3.4	WUR: Victim-Survivor Dichotomy and Agency.....	87
4.	Methodology.....	89
4.1	Starting Point- Personal Narrative.....	89
4.2	Feminist Reflexive Research	93
4.3	Research Design Mumbai.....	95
4.4	Power Dynamics in the Field.....	95
4.5	Research Design Delhi.....	100
4.6	The Ethics of Research	102
5.	Conclusion	103
	CHAPTER THREE	105

1. Introduction.....	105
2. Constructions of WUR in the VAW Framework Prior to DVA.....	107
2.1 WUR and 498 A.....	108
2.2 WUR and Anti-dowry Legislation	111
2.3 WUR and the Laws on Rape.....	112
3. WUR within the DVA.....	116
3.1 DVA Authorities and the Initiation of Procedure	119
3.2 Remedies Available to WUR under the DVA	122
4. Constructions by the Higher Judiciary	124
4.1 Constructions prior to DVA.....	126
4.2 Constructions of WUR in Cases Relating to ‘Live in Relationships’	129
4.3 Construction of WUR in Cases Relating to Maintenance	131
4.4 Shared Household and Non-Resident Indians (NRI) Marriages.....	138
5. Conclusion	144
CHAPTER Four	145
1. Introduction.....	145
2. New Delhi: City Profile.....	147
3. Institutional Context: LCWRI	148
3.1 The LC: Shaping Debates, Constructions of Victims of DV and WUR	151
3.2 WUR- The Conference, the Reports	155
3.3 The DVA: The Government and Civil Society.....	158
4. WUR through the Eyes of the Police	160
4.1 The Deputy Commissioner of Police.....	167
5. Protection Officers and Related Authorities (Services Providers and District Welfare Officer)	168
5.1 Protection Officers	168

5.2	Marital status of Victims	170
5.3	Protection officers and DVA	172
5.4	WUR and Reconciliation of the Family	173
5.5	General Findings from PO Interviews.....	174
6.	Stakeholders and WUR	178
7.	Conclusion	182
CHAPTER FIVE		185
1.	Introduction.....	185
2.	Mumbai – The City Profile.....	187
3.	Institutional Context: Special Cells for Women and Children	188
3.1	Voice of the Social Worker.....	192
4.	Survivors- The Interview Context.....	193
5.	Voices of Survivors.....	197
6.	Conclusion.....	222
CHAPTER SIX		228
1.	Introduction.....	228
2.	The Victim Model	230
2.1	Formality of Procedure	230
2.2	The Police and the Civil Society Safety Space	232
2.3	WUR within This Formality	238
2.4	WUR and Institutional Challenges.....	240
2.5	Treatment of Legal Agency and the Worthy Legal Female Subject.....	241
3	Survivor Model	247
3.1	Izzat Boundary and its Transgression.....	248
3.2	Fear of harm to children and the need for financial security of children .	250

3.3	Life Threatening Violence	251
4	Giving Back to the Law: Agentive Subjects and the Language of Rights	252
5	Towards a Feminist Model of DV framework: Best Practices	254
6	Conclusion	257
CONCLUSION		260
1.	Introduction.....	260
2.	The Evolving DV Law	264
3.	WUR as Agentive Legal Subjects.....	265
4.	The Judicial Constructions of WUR	268
5.	Best Practices	269
6.	Conclusion	272
BIBLIOGRAPHY		274
Appendix A		300
Appendix B		302

Dedication

This thesis is dedicated to:

All the WUR who overcame and survived

My Supervisor, Ann Stewart

The beloved memory of my father Dr. Varghese Puthuran

Table of Cases

Adarsh Prakash versus Saritha AIR 1987 Del 230

Alok Kumar versus State & Anr. CrI.M.C.No. 299/2009

Apparel Export Promotion Council versus AK Chopra AIR 1999 SC 625

Aruna Pramod Shah versus Union of India (Uoi) WP.Cri. 425/2008Del

Badri Prasad versus Deputy Director of Consolidation AIR 1978 SC 1557

Bijoy Kumar Mohapatra & Ors. versus State of Orissa, 1982 CrLJ 2161

Chanmuniya versus Virendra Kumar Singh Kushwaha (2011) 1 SCC 141

D.Velusamy versus D.Patchaiammal 2010 STPL (Web) 856 SC / AIR 2011 SC 479

Harpal Singh & Anr. versus Himachal Pradesh, 1981 CrLJ 1

Heartwin Wessley Biju versus State CRL.O.P. (MD).No.9832 of 2007

Ishpal Singh Kahai versus Ramanjeet Kahai Wr. P. No.576 of 2011

Jane Antony, Wife of Antony versus V.M.Siyath M.A.C.A.NO. 1324 OF 2004

Kalpana Biswas versus Sukamal Biswas (2004) 1 CHN 93

Khushboo versus Kanniammal & Another (2010) 5 SCC 600

Krishnalal versus State of Haryana, AIR 1980 SC 926

Madhavan Balasundaram versus Madhavan Saeasamma AIR 2004 Ker 79

Manoj Bhimrao Wankhede versus Unknown Criminal Application No. 3833/2007

Mrs Mary Roy Etc versus State of Kerala and Ors 1986 AIR 1011

MedhaKotwalLele versus Union of India and Others W.P. (Cr I) No 173-177/1999

Mohammed Ahmed Khan versus Shah Bano Begum and Others 1985 AIR 945, 1985 SCC (2) 556

Mrs. Savita Bhanot versus Lt. Col. V.D.Bhanot CrI.M.C. No.3959/2009 & CrI.M.A.13476/2009

Prakash Kaur versus Hari jinderpal Singh AIR 1999 Raj 46

Premchand versus Haryana (1989) Supp.1 SCC (286)

Rajagopal Pillai vs Paikkam Ammal (2004) 3 CTC 119

Reema Agarwal versus Anupam AIR 2004 SC 141]

S.P.S Balasubramaniam versus Suruttayan (1994) 1 SCC 460

S.R. Batra versus Taruna Batra (2007) (1) 4LRC SC

Sarla Mudgal versus Union of India (1995) 3 SCC . 535. 13

Savitaben Somabhat Bhatiya versus State of Gujarat and others AIR 2005 SC 1809

Shalu Bansal versus Nitin Bansal CC 1250/1 (Delhi, Unreported Judgment January 3, 2007).

Shobha Rani versus Madukar AIR 1988 SC 121

Smt.Narinder Pal Kaur Chawla versus Shri Manjeet Singh Chawla AIR 2008 Delhi 7

SR Bommai versus Union of India 1994 (3) SCC 1

Tukaram versus State of Maharashtra (1979) 2 SCC 143

Tulsa and Ors. versus Durghatiya & Ors. 2008 (4) SCC 520

Varsha Kapoor versus Uoi & Ors WP (Crl.) No. 638 of 2010

Varun Malik versus Payal Malik Crl. Rev. P. No.252/2010, 253/2010 & 338/2010

Vijay Verma versus State Nct Of Delhi &Anr . Crl. M.C. No.3878/2009

Vineetha Devi versus Unknown Cr. Rev. No. 444 of 2007

Vishaka and others versus State of Rajasthan AIR 1997 SC 3011

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Declaration

I declare that this thesis is my original work and that it has never been submitted for publication or for examination in any institution of higher learning.

Anna Varghese Puthuran

Abbreviations

AIR	All India Reporter
Anr	Another
AP	Aggrieved Person
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CPC	Code of Civil Procedure
CPI	Communist Party of India
Cr P C	Code of Criminal Procedure
Crl. Rev. P	Criminal Law Review Petition
DB	Division Bench
Del	Delhi
DIR	Domestic Incidence Report
DV	Domestic Violence
DVA	Protection of Women from Domestic Violence Act
DVR	Protection of Women from Domestic Violence Rules
EA	Indian Evidence Act
IPC	Indian Penal Code
Ker	Kerala
LC	Lawyers Collective

LCWRI	Lawyers Collective Women's Rights Initiative
NCW	National Commission for Women
NFIW	National Federation of Indian Women
NGO	Non Governmental Organisation
NSWB	National Social Welfare Board
Ors	Others
PO	Protection Officer
POW	Progressive Organisation for Women
Raj	Rajasthan
SC	Supreme Court
SCALE	Supreme Court Almanac
SCC	Supreme Court Cases
SP	Service Provider
SSS	Stree Shakti Sangatana
UN	United Nations
UNIFEM	United Nations Development Fund for Women
VAW	Violence against Women
WUR	Women in Unconventional Relationships

Abstract

The Indian legal system has been dealing with the problem of domestic violence in the recent years especially since the advent of the new legislation the Protection of Women from Domestic Violence Act, which was brought into effect from the 26th of August, 2006. The original contribution that this thesis makes to knowledge is that it identifies a potential category of users of this law- Women in Unconventional Relationships (WUR), and tests the support systems and the ease of access available to this category of women within two different domestic violence frameworks in India. This thesis locates the constructions of transgressive WUR identities in history, society and theoretical discourse and investigates whether these constructions adversely affect their legal subjectivity under the domestic violence law in India.

It locates WUR within the domestic violence framework in Delhi, named the Victim Model for the purposes of this research, and within the Survivor Model in Mumbai. It privileges the voices of ten WUR who articulate their experiences of survival, domestic violence and the law. The research uses a combination of inter-subjective reflexive research and a feminist analysis of the domestic violence framework. The constructions of identities and the levels of transgression that take place and its effects on survivor/victim legal agency are investigated. The thesis identifies the best domestic violence framework suited for WUR which encourages their rights-bearing capacity as full-fledged citizens of the Indian state.

INTRODUCTION

‘I had a good *ghar sansaar*. My husband was a good kind man and I have a beautiful child with him. His only flaw was that he could not provide for us financially. I left my husband for a man who is nine years younger than me. He took me home with a promise of marriage. We lived together for six years out of which I supported him for four. He was physically violent towards me to the extent to rendering me completely blind in one eye and partially in the other. He went back to his village and got married to someone else. I have had four eye surgeries. I have given up on my *Izzat* and now I will fight till justice is mine in heaven and on earth.’

Sarla, 42, WUR, Mumbai

1. International Context

Feminism has identified violence against women (VAW) as one of the major barriers to the realisation of women’s welfare and human rights (Gordon, 1986; Schneider, 1990; Mohanty and Russo, 1991; Dutton, 2001). VAW has been globally recognised as an issue of international and national concern. This is evident from the various recommendations on VAW by the resolutions on violence against women of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (UN, 2009). In the eighth session in 1989 the CEDAW committee recommended that states should include in their reports information on violence against women and on the measures introduced to deal with it. In its tenth session in 1991 the committee decided to allocate part of the eleventh session to the study of

violence against women and sexual harassment and exploitation of women. It also decided to discuss Article 6 and related Articles of the convention dealing with VAW. This was the topic chosen in anticipation of the 1993 world conference on Human Rights of the general assembly by the resolution 45/155 of 18th December 1990 (U.N., 2010). General Recommendation number 19 of the eleventh session of CEDAW held in 1992 dealt with VAW. The committee recommended that the signatory parties should take appropriate steps to eliminate gender-based discrimination by private and public acts. State parties were recommended to give adequate legal protection to ensure the welfare of women in the context of family violence and abuse. It was also recommended that research and compilation of statistics on the extent, causes and effects of violence and on the effectiveness of the measures taken to prevent and deal with such violence (U.N., 2009). The resolution specifically recommended gender-sensitisation and training of judges and legal officers dealing with cases of family violence. Finally, the general recommendation recognised gender based violence as a kind of discrimination that hampers women's ability to enjoy their rights and freedom as equal to men.

The committee concluded that some other reports of the state parties did not show the connection between the discrimination against women, gender based violence, fundamental freedoms and human rights violations. For its full implementation, the convention required state parties to take positive steps to eliminate all forms of violence against women. It was suggested to the states that they should inculcate the comments of the committee concerning gender based violence in reviewing their laws and policies and in their reports to the committee. The UN Commission on Human

Rights in resolution 1994/45 adopted on 4th March 1994, decided to appoint a special rapporteur on VAW in order to identify its causes and consequences (U.N., 2011). This was further extended by the commission in 2003 in resolution 2003/45. It recognised in this resolution as well, that VAW constitutes a violation of human rights and fundamental freedoms of women and curtails the enjoyment of such freedoms and rights (UN, 2012).

2. Indian Scenario

VAW has been dealt with differently by various countries, adhering to CEDAW recommendations. While DV has become an international issue, the Indian women's movement has followed its own route to the recognition of DV. The following is an account of how it finally arrived at a comprehensive law dealing with domestic violence. VAW has been an axis around which women's groups in India have negotiated a needs-based gender equality movement in India. The first VAW campaigns in India that focused on dowry murders and custodial rape brought both to 'sustained public attention through a combination of strategies like media exposure, public interest litigation, demonstrations and protests and lobbying for legal reform' (Kannabiran and Menon, 2006:6). Dowry is the gift given by parents of a bride to the newlyweds. Due to many cases of harassment and murders by grooms and their families for dowry, it has been banned in India by the Anti-Dowry legislation- Dowry Prohibition Act (Act 28 of 1961). This custom however continues unchecked in parts of India (Menski, 1998; Palkar 2003). A lot of research in India has focused on the

links between dowry and domestic violence (Mullender, 1996; Fernandez, 1997; Rao, 2000; Panda and Agarwal, 2005; Srinivasan, 2007, Gangoli, 2011). This thesis focuses on the gap identified within the research, which is the links between intimate relationships without the legitimacy of marriage and domestic violence.

Thus the landmark victories of the women's movement include the Dowry Prohibition (Amendment) Act 1984 and the addition of several new sections to the Indian Penal Code, the Codes of Civil and Criminal Procedure and the Indian Evidence Act. These new sections made significant advances on earlier provisions regarding rape in these laws, by recognising the importance of withholding the victim's name in published reports, redefining consent, criminalising custodial rape, recognising forced intercourse with a separated wife as rape (Kannabiran, 2006). The most important shifts as regards evidence have been the inversion of the 'innocent until proven guilty' principle in rape trials and the new section 114 A of the Evidence Act according to which if a woman states that she did not consent to sexual intercourse, the court would presume this in her favour. Thus in effect, the debates on VAW in post-colonial India have centred on the problem of dowry deaths in the 'private' and state-perpetrated violence in the 'public' (Baxi, 2006; Jaising, 2006; Kannabiran and Menon, 2006). Two main gaps were however identified by the Women's Movement. The first was the failure to incorporate marital rape into the amendments and the second was the failure to frame a comprehensive law on domestic violence.

Until the year 2006, there has been no mention of the phrase ‘domestic violence’ in Indian legislation. Through a sustained campaign aimed at legislative and judicial reform, the women’s movement in India succeeded in moving the houses of parliament to pass a comprehensive Act dealing with domestic violence in October 2006. The first serious attempt to draft a bill on domestic violence was by an NGO called the Lawyers Collective in 1992. After this bill was circulated amongst women’s group, the National Commission for Women (NCW) came forth with its own draft in 1994. By now, it was agreed that it was a gender specific harm and that the government was reluctant to encroach the sanctity of the home and make legislation that was potentially home-breaking. In 1999, the Lawyers Collective drafted a new bill in accordance with the UN Framework for Model Legislation on Domestic Violence which finally won the support of many women’s groups (Jaising, 2002). The first bill introduced by the government in the parliament was the Protection of Women from Domestic Violence Bill 2001. Jaising (2002) called the bill ‘flawed from its inception’ because of its requirement of ‘habitual assault’ by the partner, to constitute domestic violence. This definition did not receive the support of women’s groups.

The bill that finally became the law was the Protection of Women from Domestic Violence Act, 2005 (DVA) with effect from the 26th of October 2006. The new legislation meets the requirements of the CEDAW prescription regarding domestic violence. It is a gender specific law dealing with emotional, sexual, verbal, economic and physical violence within the four walls of a home. It has been appreciated as

landmark legislation with several progressive features including the definition of the aggrieved person (AP), the concept of shared household and the definition of violence not merely restricted to the physical aspect. The central government published the Protection of Women from Domestic Violence Rules (DVR) in 2006 in order to meet the requirements of the DVA that demands greater governmental participation and budgetary allocation for the implementation of the new legislation. The DVR deals with the appointment of the authorities prescribed by the DVA, the procedural requirements of the DVA and with the consequences of the breach of its provisions (C.S.R., 2010).

3. Statement of Problem

It is in this crucial phase in the development of VAW law in India that the research has been undertaken. The aim of this research is to identify and trace the use of law by women in unconventional relationships that are or have been violent. This research will also look at the constructions of identities of Indian womanhood by the law and how the women in unconventional relationships (WUR) fare as users of the law, as a result of or in spite of these constructed identities. The thesis thus critiques the DV law in India in the context of WUR in the light of the different identities that the law gives women and the resultant complex legal subject positioning of such women. The thesis will rely on post-colonial feminist theories, particularly in the legal context.

The thesis will also show that there is an inherent exclusion in the word ‘domestic’ in the Indian context. The ‘domestic’ sphere in the context of this thesis refers to a

familial space legitimised by marriage. India being predominantly a patriarchal society, women are protected within this sphere. The Indian society, bound by tradition and cultural values is reluctant to accept the sexual independence of women outside of a marriage. Sexuality outside of the domestic sphere is 'illegitimate' as far as society is concerned. Thus women who are sexually active outside of this legitimate sphere often find themselves without credibility in the eyes of the law. The term 'domestic' implies a space that is often alien and unavailable to women who do not have the legitimacy of marriage.

In the context of India, the domestic sphere is the space within which the family unit exists and the essential precursor of such a family is a socially recognised marriage. The importance of marriage in the Indian society is perhaps best evident from Jaising's (2010) reference to divorce as a 'civil suicide' for women. According to Puri (1999) there is a link between the 'Indian stereotypes of womanhood, gender and sexuality' and the 'Indian cultural identity'. In social relationships there seems to be almost a 'compulsory heterosexuality' and men and women are expected to live together as 'husband and wife in clearly defined roles' (Puri, 1999). Ganesh (2006) argues that '*jori*' or the notion of a two-person identity of a married couple in India beyond which patriarchy dictates that the woman's identity is weaker and more vulnerable to social disapproval. Thus women who are in unconventional relationships are deemed to be less worthy of the law's protection.

The thesis adopts the concept of women in unconventional relationships (WUR). WUR is used because there are many categories of 'single' women- such as unmarried women, second and third wives, women betrayed into false marriages. It is used to refer to all such women who are not in 'socially sanctioned' marriages, with the acknowledgment that there are several different categories of such relationships. The study is restricted to women in heterosexual relationships and this is the point of departure of WUR from the '*ekal nari*', used by Bachchetta in 1980 to refer to single women in lesbian relationships in Delhi (Menon, 2007). According to Menon 'lesbians, celibates, ascetics, unmarried and divorced women, widows' can be included within this term because they all have 'disrupted patriarchal genealogies' (2007: 15). The term WUR however is the category identified for this thesis because it has various sub-categories of single women in relationships with married men, married women in second relationships and other relationships that may be perceived by the society as morally transgressive.

WUR in India are disadvantaged in many ways when compared with women who have the legitimacy of marriage. Culturally and socially the idea of a woman cohabiting with a man 'taboo' and such relationships are often not recognised by the society and as a consequence by social institutions. The mention of intimate relationships between unmarried people is absent in religious texts (Srivastava, 2009). When relationships are not socially sanctioned and are considered social crimes, a 'criminal' could not possibly raise her voice when violence occurs in such a relationship (Srivastava, 2009: 46).

There are various intersecting links between class, caste, religion and violence against WUR (Talwar-Oldenberg, 2001; Menon, 2005; Gangoli and Westmarland, 2011). Related to the concept of shame and honour, middle class women in marriages or virtuous/ virginal women are more likely to be believed than women who belong to minorities or those who belong to the working class (Gangoli and Westmarland, 2011). Shame can also be experienced individually by a victim of sexual violence (Gangoli et al, 2006). In India the concept of shame is associated with any form of sexual activity outside of a legitimate marriage. This thesis whilst taking into consideration the links between caste, religion class and violence against WUR narrows its focus down to the category WUR as a group of women (far from homogenous) have been in violent heterosexual relationships and are in one way or the other familial or societal outcasts because of their moral choices. It also acknowledges the existence of violence in same sex couples but finds its focus in violent heterosexual intimate relationships.

4. Objectives and Specific Research Questions

It is in the midst of debates and controversies surrounding the new legislation on domestic violence in India that this research has been undertaken. The thesis investigates the support systems and legal options available to WUR that are facing violence, within two very different domestic violence frameworks in India- set in

Delhi and in Mumbai. It acknowledges that similar frameworks can exist in both Delhi and Mumbai and in other cities but the choice of the organisations gives it the Survivor/Victim dichotomy bearing which is central to this thesis. It investigates the various constructions of the identities of WUR and tests how these constructs affect WUR in accessing the law. It explores how WUR emerge as a category of users of the law in spite of the hurdles they are faced with. It is based on the presumption that women's sexual and transgressive identities deeply affect their subjectivity within the law.

The specific questions that this thesis seeks to answer are to what extent are identities constructed for WUR within the law and how do the provisions of the DVA and related laws address the issues relating to WUR? How do these constructed identities of WUR affect their subjectivity within the DV law in India?

Engle Merry (2003; 2006) identified two different approaches to domestic violence framework- the legal advocacy method and the social work method. The different ways in which international human rights ideals are translated to the local happen in two different ways. One is the legal advocacy approach by which lawyers and legal institutions work for and advocate the cause of victims of domestic violence. The other is the social work approach which works on giving the victims adequate support in order to encourage victim activism and to support their agentive rights. She established in her research on battered women that women take on rights in different ways when they encounter the authorities within a domestic violence framework. The

presumption in my research is that the approach in Delhi because of its proximity to the drafters and the legal institutions will be closer to the law as a tool method with intermediary institutions structuring the understanding of WUR as victims. The other approach represented by Mumbai is more likely to understand WUR as survivors. The thesis contributes to knowledge by developing Merry's understanding of these approaches in the light of WUR in India.

The final question to be addressed here is to what extent do the WUR as transgressors become victims or survivors within the law. The thesis will also show that although WUR are not expressly excluded by the definition of victim in the new domestic violence legislation, traditional norms and perceptions of Indian act as hindrances in allowing women to access legal help and support within the system. The law also seems to demand that the women can access it only by transgressing the private. After this the law comes to the aid. Thus the law seems to be reluctant to enter the 'sacred space' of the private.

It has been argued that it is within the 'realm of sexually experiencing themselves as sexual beings, women create a free space of their own' and that 'every time a woman recognises her body as her own, she takes a step outside imprisoning ideological boundaries that restrict her' (Franco, Macwan and Ramnathan 2007: 161). The thesis will extend this argument to WUR and their ability to assume legal agency on their own behalf and for others. WUR, who have thus transgressed norms, are in an awkward legal position. Their transgression has both negative and positive

ramifications. On the one hand, they have managed to break away from the rigid and often forced identities that society and the law have constructed for them. On the other hand, it becomes difficult for them, as transgressors of such norms to go back to seeking law's protection in troubled times of violence. They are often deemed as less worthy subjects of the law and struggle more with reclaiming their legal agency.

The thesis explores this uneasy relationship between WUR and the law. Its framework will provide a way of thinking about WUR, intimate partner violence and the law. In going to the law, WUR take on a new subject position, thus redefining the norm in dominant discourses and social practices. The thesis will argue that WUR rupture ideological strongholds when they transgress the '*Izzat*' (honour) boundary and access the law.

5. Methodology

The study relies on post-colonial legal feminist theories to critique the DV law in the context of WUR. It combines different methods to situate WUR within the DV framework. The first involves a textual analysis of the DVA and the broader VAW laws with WUR as the subject and focal point of the enquiry. This is complemented by a fieldwork analysis involving qualitative research methods to find the WUR through their engagement with the law. Two sites are used to identify the institutional differences in the relationship between law and WUR in the context of DV. The

fieldwork was carried out in Delhi and Mumbai, both being major sites of feminist legal activism in India (Kumar, 1989; Agnes, 1992; Sen, 2000).

It combines inter-subjective reflexive feminist research (Klien, 1983; Wolfe, 1996) with a feminist legal analysis of the DV framework in the context of WUR. It privileges the voices of ten WUR who tell their stories of violence and their consequent encounter with the law. The research relies on library and archival research. It uses the rules and commentaries and literature regarding the domestic violence legislation. It relies on the Monitoring and Evaluation Reports published by the Lawyers Collective. Books, journals and articles on the subject have also been used as secondary sources. Along with this it also relies on a textual analysis of judgments relating to DV and WUR in order to identify constructions of WUR within precedent forming case law. The methods used include participant research with the organisation that drafted the DVA combined with qualitative interviews with WUR and key stakeholders, triangulated by research using secondary sources relating to the legal framework.

6. Chapterisation

The thesis contains six chapters excluding the introduction and conclusion. Chapter one traces the inception of WUR identities within the history of the Indian women's movement and the development of the law regarding VAW. It traces this alongside

the political positioning within the national political movement. The concept of the Hindu nation (*Rashtra*), the nationalist identities and the related construction of feminine identities are explored. A history of the major incidents in the women's movement and the parallel constructions of feminine identities in post-colonial India are also addressed in the context of the constructions of 'good' and 'bad' identities for women. It also argues that the awkward relationship between the police and the women's movement is responsible for the civil society activism in the context of women's rights.

In the second chapter I argue that studying the WUR in their legal encounters can help with the exploration of their multi-layered subjectivities. The chapter also locates WUR within the VAW and post-colonial feminist discourses by a substantive analysis of the existing scholarships on the subject of WUR within VAW. Chapter Two also identifies the research methodology best suited for this thesis. The use of mixed methods triangulates findings of this thesis. The heart of the thesis is in the incorporation of women's experiences with violence and law in the survivors' own voices as a part of the feminist methodology.

Chapter three investigates the DVA in the context of the marginality (if there is) of WUR within its structures. It also locates the constructions of WUR in the VAW framework prior to the advent of the DVA. It then analyses the important decisions of the higher judiciary in dealing with DV and the related laws, specifically in the context of the constructions of WUR identities. It traces the development of judge

made law in the context of the issues regarding maintenance and the definitions of domestic relationships, wife and mistress in the wider legal framework of DV law.

Chapter four provides a detailed description of the field research undertaken in Delhi. It gives the composite legislative DV framework that this study identifies as the Victim Model based on the subject position of WUR, their limited agentive rights and the formalism of procedure based on a strict adherence to the letter of the DVA.

Chapter five discusses the details of the fieldwork undertaken in Mumbai. Based on the observations of the working of the DV framework in Mumbai, the study identifies this as the Survivor Model. It discusses the DVA and the broader DV access to justice issues in the voices of the survivors of domestic violence interviewed as a part of this study.

Chapter six provides the detailed analysis of the field work findings in Mumbai and Delhi and tests this in the light of the wider discussions in the thesis. It discusses the acquisition of agentive rights within the DV framework by WUR. It also analyses the enabling factors and the rupture points at which the WUR break the norms to access the law in spite of the barriers they face because of societal limitations.

The thesis concludes with a discussion of the result and its wider implications; and the possibilities for further research.

7. Conclusion

The identification of WUR as potential and actual users of the law within the new and protean DV framework in India contributes to knowledge by investigating the legal agency acquired by the law's least favoured subjects. It examines the DV law in the light of the legal subjectivity and the agency of WUR, a category previously unidentified and thus contributes originally to knowledge.

Chapter One

Constructions of WUR Identities: History, VAW and Indian Women's Movement

1. Introduction

‘The law is never not a cultural fact’ (Sunder Rajan , 2003: xii)

The operation of the law makes sense in terms of its larger social context. Even as it holds the possibility for the political transformation in the position of women, it is in itself a result of the political and social historical context. The assertion of legal claims and claims of rights has been shaped by political struggle. This is the ‘dialectic relationship’ between rights and politics which is set within the social and political meaning of legal claims in the feminist struggle (Schneider, 2000: 6).

The overall argument this chapter makes is that WUR are disadvantaged in law and society because of historical constructions of various identities. This is a part of the

different arguments developed in the various chapters in order to support the hypothesis that when provided with an enabling feminist DV framework, WUR can break free from the barriers that restrict their use of the DV law. Consequently they emerge as agents of law and of their own empowerment.

For the purposes of this research the phrase ‘Indian women’s movement’ will be used to refer to the central and progressive movement that affected a change in the condition of women in law and society; although it is acknowledged that the phrase is far from satisfactory to encompass the various independent movements of women that arose all around the country to work towards a better future for Indian women. Indian feminists are uncomfortable with the use of the phrase ‘Indian women’s movements’ (Kumar, 1999; Sen, 2000). The word Indian cannot be used to include or describe the diversity and the differences that define women in a country that occupies almost an entire continent. The ‘political and cultural singularity’ of the phrase ‘obscures the Movement’s diversity, differences and conflicts’ (Sen, 2000:1). The word women also includes vast differences in thought, culture, life style and backgrounds (Kannabiran, 1993; Sen, 2000; Menon and Kannabiran, 2007). However without ignoring these pluralities, the generic Indian women’s movement can be traced back to the ‘Woman Question’ and the need for women’s emancipation as a part of the anti-colonial struggle (Sen, 1993). In the next section, we will examine the Indian nationalist identity and the constructed feminine identities in the anti-colonial struggle.

In this chapter we will be introduced to the ways in which the women's movement has developed particularly in relation to its positioning in the national political movement. This is divided into four phases. One of the main themes used to develop each phase is the parallel development of the binary constructions of women as good and bad and the consequent derivation of the prototypes of the early imaginations of WUR that find their stock in 'bad women'. The other theme is the movement's focus on VAW. The third theme in tracing the episodic history is the 'love-hate' relationship of the movement and the law which has been discussed by using controversial cases. Aside of grounding the project in its historical background one of the implications of the arguments made in this chapter for the rest of the research is that it goes to explain the awkward relationship that the women's movement has had with the police. Thus the discussion of the state leads later in Chapters Five and Six to a more specific discussion of the role of the state enforcement agency – police. The chapter also provides the basis for understanding why the DVA was drafted by a women's group and the political struggles that preceded the passing of the DV bill as law by the houses of parliament. It thus traces the active involvement of the civil society in campaigning for VAW law.

2. Constructions of Feminine Identities in Phase 1: the Hindu Nation, the Nationalist Movement

This section explores the prototypes of the Indian women's movement and the first phase which addresses the 'Women Question', the first negotiation of the rights of woman in the form of protective and punitive legislation even as the traditional ideals of Indian womanhood continued to be the dominant construction in the society.

The precursors of the constructions of WUR identities can be traced back to the interpretations of female sexuality in Hindu philosophy. In Hindu philosophy the recognition of 'the spiritual in the physical' means that 'the female sexuality is subsumed to the spiritual leaving behind the physical desire and pleasure' (Kazmi, 2010: 64). The suffering of women in Indian tradition is 'dangerously glorified'. This is done with the use of mythological figures. Girls are taught to seek inspiration from submissive self-sacrificing historical and mythological characters. They are trained when they are young in order to prepare them for the suffering in the roles of wives and mothers. *Sita*, *Sati* and *Savithri* have all been glorified as the ideal wives. Films, dance, drama and religious rituals emphasise suffering as 'purifying and even inevitable for women' (Kazmi, 2010: 63).

Prior to the year 1947 when India became a country free from British colonial rule, the social reforms for women initiated by the new educated middle class in India were viewed as a part of the struggle for freedom and associated with the nationalist movement (Sen, 1993). Even so, the virtue of the woman was a decisive factor in enabling reforms. The British government passed Acts like the Widow Remarriage Act 1856 and the Commission of Sati (Prevention) Act 1829 as a result of these initiatives (Sharma, 1988; Kumar, 1993). The Widow Remarriage Act was the result of a campaign by several social reformers led by Eshwar Chandra Vidyasagar in Calcutta. During the 1850s the Hindu educated middle class were beginning to influence the political scenario especially in Bengal. The campaign started when Vidyasagar wrote a pamphlet in Bengali which showed that remarriage was legitimated by the ancient Hindu text called the *Shashtra*. This resulted in a discussion with the Hindu priests in Sanskrit. These discussions soon gained negative and positive press. Subsequently the British officials advised him to petition the governor general in 1855 requesting a law recognising widow remarriage.

In the same year a bill was introduced by J.P. Grant in the legislative council. The arguments for the passing of the bill were that not allowing remarriage would result in the prostitution of widows and immorality. Thus the constructions of the 'good women' entailed that if they were under the protection of the 'conventional relationship' of marriage, they would be free from immorality. The 'higher class' Hindus were disgruntled by the suggestion as it would mean a disregard of an existing Hindu custom and about 40 petitions were submitted against this bill. The law was finally passed in

1856. However in practice not many marriages resulted with even high caste reformers themselves being reluctant to marry widows. It is relevant to note that the Hindu petitioners did not mention morality in the petitions.

Sathi was the name given to the act of a woman sacrificing her life on the funeral pyre of her husband. This custom was considered despicable as far back as 1325 when the *Mughal* rulers tried to curb its extent. For any *Sathi* to be performed permission has to be sought from the *Sulthans*. However the formalisation of the law happened only in 1829 under the governorship of Lord William Bentinck. Bentinck was inspired by the Hindu reformist movement in his province, Bengal, called Brahmo Samaj. It was led by Raja Ram Mohan Roy. He was also under pressure from the missionaries to encourage social change. However Bentinck was worried about protest from Hindus and ensured that his army would not revolt against him. The Commission of Sati (Prevention) Act 1829 was passed amidst protest by orthodox Hindus who maintained that the commission of *Sathi* was not just a sacrifice but a customary privilege for believers.

Beyond such reformatory legislation by the British government the women's movement was beginning to take shape within the anti-colonial struggle and the 'Women Question', as women's emancipation was then referred to, was a part of the idea of nationalism and nationhood in colonial India (Chatterjee, 1987; Chakravarty, 1990; Sen, 2000; Forbes, 2005; Roy, 2005). There was a growing concern amongst Indian nationalist about the

preservations of Indian culture and the need to keep it separate and distinguished from the culture of the colonisers. They found their answer in what they believed was the nucleus of Indian culture – spirituality. Women were identified as the ‘embodiment of spirituality’ and as long as this status quo was preserved, the nationalists were free to modernise (Chatterjee, 1987:249). The ‘Woman Question’ was the centre of several debates and it has been argued that the women’s reform movements were initiated by men in India and later taken forward by women (Mazumdar, 1999; Raman, 2005; Roy, 2005). This was the result of the revivalist movement which believed that women’s education would help to preserve the culture through the institution of the family. They believed that women needed to be educated to influence the men in the family there by reintroducing Indian culture and values back into the family. Thus whilst confining women to the private sphere by deeming them as custodians of Indian culture, the cultural nationalists addressed the women question in public debates (Phadke, 2003). Thus in the private the construction of women as the guardians of Indian spirituality continued while the prostitutes and other women who were ‘immoral’ were considered outside the purview of male protection and hence unconventional and bad.

The Indian province of Bengal has played a key role in the feminist movement in India (Basu, 2004). The educated Bengali middle class were the initiators of the reform movement for women. The condition of Indian women deteriorated after the Muslim conquerors because of the disturbance within the economy and society due to foreign invasion and the dependence of women on men increased and undesirable social customs

were introduced to reduce the status of Indian women (Basu, 2004). However the less than equal status of women in India can be traced back to the Vedas, the ancient Hindu texts where it is stipulated that a woman should never be free, she must be dependent on her father in her childhood, on her husband in youth and her son in her old age (Agnes, 2004). Despite differing opinions on the origins of the oppression, it is argued here that Indian nationalist identity has depended on the notions of the 'ideal nurturing woman' to promote cultural exclusivity resulting in stereotyping and confining women to traditional gender roles.

Identities were constructed for ideal Indian womanhood as a means of maintaining cultural exclusivity of the new educated middle class, from the colonising west and the other Indian classes (Chatterjee, 1990). The emerging middle class developed the ideologies of Hindu and Indian womanhood to distinguish and maintain their differences and these notions were then 'constructed and popularised through social reform and the nationalist movement' (Sangari and Vaid, 1990: 9). The 'traditional' woman was praised for traits such as suffering, modesty, unconditional love, purity and chastity (Chatterjee, 1990; Katrak 1992). The ideal Indian Hindu feminine had to be kept separate and protected from pollution from the west, other classes and religions (Radhakrishnan, 1992; Rao, 1999).

With the rising popularity of British education amongst the Indian middle class, the men considered themselves equal to the colonisers in the public sphere. The private sphere was a different, culturally sacred zone. Partha Chatterjee made this 'inner outer' argument about Indian nationalism whilst addressing why the 'women question' suddenly disappeared from the social debates for a while after independence. In order to maintain cultural superiority from the colonisers, Indians maintained that the private sphere was totally unaffected by colonisation. Thus although in the public sphere, Indians perceived themselves as being the same as the British, in the private realm Indians considered themselves spiritual and 'their' women, the bearers of such spirituality. Hence women had to be protected and kept 'chaste' (Chaterjee, 1989; Menon 2007: xxii).

Thus Chaterjee's (1989) concepts of *ghar* and *bahir* provide an insightful way of understanding the disappearance of the 'woman question' in the immediate post colonial era. This inner outer argument defined the spheres of life as *ghar* and *bahir*. Literally *ghar* means home and *bahir* means outside. The separation of the social sphere into home and outside is also symbolic of the external world that stands for the domain of the material and the home represents the true spiritual self and identity. The home is sacred and represented by the woman. The profanity of the outside must be kept away from this space. We thus get the identification of social roles by gender to correspond with the separation of the social space into *ghar* and *bahir* (Chaterjee 1989: 238). Chaterjee further argues that 'once we match the true meaning of the home/ world dichotomy with the identification of the social roles by gender, we get the ideological framework within

which nationalism answered the women question' (Chatterjee 1989: 239). Thus non-heteronormative sexuality was criminalised and disavowed because it was seen as a threat to the nation, the home and the family (Alexander, 1997).

Aside of the reforms within the nationalist movement, that the first precedents of the Indian feminist movement evolved in the 1920s and 1930s (Kumar, 1989). The initial documentation of such uprising and movement among the Indian women is mostly from the writings, autobiographies and biographies of individual women. The reform movements thus initiated as a part of the new middle class identity resulted in a new division of the private and the public and a 'redescription' of women of different classes (Sangari and Vaid, 1990:9). The next section will explore the conceptions about Indian womanhood within Gandhian philosophy and its influence on the Nation.

2.1 Gandhi's Women

'To me the female sex is not the weaker sex; it is the nobler of the two: for it is even today the embodiment of sacrifice, silent suffering, humility, faith and knowledge'

M.K Gandhi (Jayavaedena et al 1986:85)

The Gandhian era witnessed a further reinforcement of cultural stereotyping of women and the binary divisions into 'good' and 'bad or deviant' women (Mazumdar, 1992). M.K. Gandhi, the main leader of the struggle for freedom praised traits like suffering,

obedience and chastity in women during the anticolonial struggle (Rao, 1999). He was a believer in the ideology which makes a distinction between '*Rashtra*' (the Hindu nation) and '*Rajya*' (the state as a political tool). The *Rashtra* is eternal whilst the *Rajya* is transitory, drawing the metaphor from the Hindu belief of the *Atma* (eternal soul) and the transient body (Bacchetta, 2004: 19). Gandhi was a disciple of Rama and believed that *Rama Rajya* (Rama's State) was the ideal *Rashtra* (Habib, 1995). *Rama* the Hindu God becomes a hero in the epic *Ramayana* for abandoning his wife *Sita* for fear that she might have been sexually assaulted when in captivity. He does this for the sake of his subjects whilst *Sita* is worshipped in India for embodying the ideals of the sacrificing, pure Hindu woman who abandons her life in the palace for the sake of her husband's honour (Mazumdar, 1992). Gandhi preached that a woman's first duty was to her husband and chose *Sita* as the Gandhian ideology of the ideal Indian womanhood (Kant, 2003).

The binaries of good and bad women, of the pure and the polluted became more prominent during the Gandhian era within the anti-colonial struggle. Gandhi took a very firm stance against prostitutes joining the anti-colonial struggle because of issues of chastity and immorality. He believed that such immorality would 'pollute' the sanctity of the struggle for independence (Tambe, 2009). He has been held responsible for the 'creation of a new myth of Indian womanhood' (Kant, 2003: 65). Gandhi used the example of *Sita* to preach that women 'could find sufficient strength in their purity to resist even the physical violence of men' (Kant, 2003: 65). For Gandhi a woman could be

pure and noble if she renounced sex altogether. In the nationalist movement, sexual abstinence was linked with nobility and service.

The main influence pre independence on the women's movement was the colonial influence whereas, post- independence; it has been India's experiments with democracy (Kumar, 1989). It was post 1947 that the empowerment of women became a national issue and an index of the development of the state (Sen, 1993). The relationship of Indian women's identities with the state is dichotomous. On the one hand, women are citizens, participants in the democracy but on the other hand their lives are defined in relation to cultural institutions and families (Rajan, 1999). In the next section, we will trace the history of the women's movement in post-colonial India and the continued constructions of feminine identities.

3. Construction of Feminine identities Phase 2: Indian Women's Movement, Post-Colonial Period

The binaries of pure and impure can be traced back not just to the culturally exclusive anti- colonial struggle as discussed in the previous section, but also to the partition and the struggle for a specific Hindu identity. As the historical instances described above have shown, national identity was always entwined with the pure Indian feminine. Women have been represented as icons or bearers of tradition (Mani, 1987; Mankekar,

1993: 544) The popular culture in the forms of films, television and the theatre have reinforced such feminine identities and stereotypes (Mankekar, 1993). These notions of ideal Indian womanhood continue to have ‘profound significance for the construction of identity in the post- colonial context’ Mankekar (1993: 544).

After a century of colonial rule, India became an independent nation on the fifteenth of August 1947. Following the partition of British India into India (a secular union of states, in principle) and Pakistan (a theological state), thousands of women were abducted and displaced by religious fundamentalist groups from both the states who believed that controlling the bodies of the women in the ‘enemy population’ would somehow give them power over their enemies (Roy, 2010). The Government of India passed a law called the ‘Abducted Women Act’ and it took more than a decade before many of these women were ‘recovered’ (Bhasin and Menon, 1993). The Hindu and Sikh women were ‘restored’ to their ‘nations and homes’ whereas the Muslim women were placed in detention camps in India until their government ‘claimed’ them (Das, 1995; Roy, 2010). Muslim women were perceived as ‘impure body populations’ who had no claims to Indian citizenship and the notions of national honour were instituted through the law (Baxi, 2009:4). Despite these dichotomies, the Constitution of India which would appear on the pages of history within three years of Indian Independence continues to call India a secular state.

This Constitution, drafted in 1950 (Sripati, 1998) is the most authoritative and powerful legal document in India (Johari, 2007). Any law that defies or undermines its Articles are repealed or amended. In order to locate women as citizens of India and subjects of the Constitution, it is instructive to consider draft Article 42 which was deleted without a debate.

‘The state shall endeavour to secure that marriage shall be based only on the mutual consent of the sexes and shall be maintained through mutual cooperation with equal rights of husband and wife as a basis. The state shall also recognise that motherhood has a special claim upon its care and protection’. (Shiv Rao, 2004; Kannabiran, 2007:55)

Although proposed by the drafters as a part of answering the ‘women question’ the government did not deem it necessary or satisfactory for a constitutional debate. Such a dismissal of a section that deals with the equality of sexes raises questions about the actuality of the constitutional guarantee of the equality before the law. Despite the fact that it was a draft of an equal rights Article, the special claim that motherhood had on this State shows the patriarchal nature of the law and the paternal attitude it has for the nurturing role of the mother. The section of the Constitution which finally gained the approval of the government is Article 14. It states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15 addresses discrimination. It states the following:

- (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.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this article or in clause (2) of article 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.] (The Constitution of India, 1951).

As can be seen from above, subsection 3 of Article 15 qualifies the general provisions by accepting affirmative legislation for women and children (The Ministry of Law and Justice, 2007). Article 13 gives the power to the State to repeal any law that is inconsistent with the constitutional guarantee of fundamental rights. These are the main provisions in the Constitution of India that deal with gender equality and women's empowerment in the form of affirmative legislation.

No person shall be deprived of his life or personal liberty except according to procedure established by law according to Article 21. This Article has often been described as the heart and soul of the Constitution. It has been interpreted very widely to encompass a range of human rights. Article 21 has been used by many feminist groups in their legal claims against the state and has played a critical role in the fights of women's organisations against VAW (Menon, 2007). It has been the focus for claims made under public interest litigation (PIL) procedures. Article 21 and PIL will be discussed in the later section in this chapter which analyses the development of the case law of that period.

3.1 Continued Constructions, Women's Empowerment 1950 to 1970s

The next phase in the growth of the Indian women's movement and the constructions of feminine identities was marked by three major events which lay the foundations for the different approaches found in Delhi and Mumbai because of the different ways in which women's allegiances were formed. The first of these is the formal recognition given by the government to the strongest women's organisation. This led to the formation of the National Federation of Indian Women (NFIW) in 1954, under the aegis of the Communist Party of India (CPI) (Katzenstein, 1989). The key founder was Vibala Farooqui who, along with her CPI women colleagues called a national conference to address women's issues. They called for equality and identified the need to 'improve

women's lives and living conditions' (Forbes, 1996: 225). This was a powerful organisation of women as they remained allied to one amongst the most prominent political parties in India (Subramaniam, 2006). Following suit other 'loosely associated organisations' like the Progressive Organisation of Women (POW) and Stree Shakthi Sangatana (SSS) and other Congress-supported Allegiances were formed. These organisations had better bargaining power than organisations of women in the past due to their political clout (Katzenstein, 1989). They were institutionalised (formally recognised by the government), and had offices and working staff, post- independence. Parallel to this, the National Social Welfare Board (NSWB) appointed block development officers and health and welfare officers concerned with the welfare of women (Forbes, 1996). For the first time, women had politically- backed power for empowerment and women were now their own agents because of the rise of women leaders in the public sphere.

Parallel to the organisation of women's groups, the notion of 'personal laws' or different civil law for different religious groups was being codified. The effect of this on women's empowerment was that women belonging to different religious groups were to be treated differently by their own personal laws. The personal laws for Hindus are contained within separate Acts of 1955 and 1956. The uniform civil code was already being discussed by the ruling party and the opposition in the 1950s (Everett, 1981; Parashar, 1992; Sen, 2000). Previously, first Congress government headed by Jawaharlal Nehru and his law minister B.R Ambedkar preferred the idea of having a uniform civil code for secularisation and democratisation of the country. But they concentrated on reforming the

Hindu law first and suggested a Hindu Civil Code. Debates on the need for uniform civil code have emphasised the inequality associated with personal laws in the matters of marriage, divorce, custody, inheritance and property rights for women from different communities (Chawan and Kidwai, 2006; Mukhopadhyay, 1994).

The second major event that marks this phase is the rise of the power of the first woman prime minister, Indira Gandhi in 1966. The fact that Indira Gandhi was the second woman prime minister in the world has been discussed widely (Silva, 2004). Her appearance in the political scene marks a very tumultuous era in terms of Indian feminisms (Sen, 1993). This period was a time of National Emergency and led to a united uprising of the various women's organisations in India. Indira Gandhi had been made the head of the Indian National Congress in 1959. She was appointed by party officials who thought she would be easy to control. She was stronger than they ever imagined and supported the war against Pakistan for Bangladeshi independence (Forbes, 1996). Despite the reasons for her appointment, the fact remains that she was the first woman to have actual political power. This period marked a change in gender relations as women were encouraged to work and the sporadic growth of women's organisations resulted in an increased pressure on the government for policy change regarding women's empowerment.

The third major event is the publication of the report on the status of women in 1975, following a request by the U.N for such a report from the Indian government in 1974 (Kumar, 1988). In 1975 the Committee on the Status of Women in India (CSWI) published a document named 'Towards equality: report of the committee on the status of women in India' which showed the dismal statistics regarding women's issues post-independence (Ministry of Education and Social Welfare, Department of Social Welfare, 1974). There was widespread consensus that the state had failed its women (Katzenstein, 1978; Ghosh, 1997). The indices of women's status as reflected in sex ratio, life expectancy, literacy and violence against women were dismal. The laws were discriminatory and the representation in political bodies, paltry. With the publication of this report, it became clear to women all over that the constitutional guarantee of equality was not a realistic promise (Sen, 2000). The report on the status of women had in no uncertain terms, also addressed the issue of the need for a uniform civil code. The report led to the development of a more independent women's movement. This is evidenced in the 1979 publication of the first journal about women and society in New Delhi, in English and Hindi. *Saheli*, a woman's organisation was the first to address the issues of rape and domestic violence. In this period most of the uprisings were regarding the issues of rape and bride burning (Kumar, 1999). Women were now aware that they had agentive responsibilities in their empowerment as they became increasingly disillusioned with the ability of the law and the government to enable women's empowerment.

3.2 *Mathura* and the Anti-Police Sentiment

Various controversies have unified and separated the women's movements over time. The history of a contemporary women's movement in India can be traced back to the 'chaotic gender relations' of the 1970s (Jaising, 2006). The main issues of violence against women in the context of rape, dowry demands and matrimonial cruelty recognised by section 498 A of the Indian Penal code as being the main concerns of this reformist movement in that period (Jaising, 2006). The uneasy relationship that the women's groups have had with the police is rooted in history in the Mathura rape case (*Tukaram versus State of Maharashtra* (1979) 2 SCC 143).

The facts of the case are as follows. *Mathura* a sixteen year old tribal girl was raped by two policemen *Ganpat* and *Tukaram* in the compound of *Desai Ganj* Police station in Chandrapur district of Maharashtra. Her relatives, who had come to register a complaint, were waiting outside even as the act was being committed in the police station. When her relatives and the assembled crowd threatened to burn down the police station, the two guilty policemen reluctantly agreed to file a first information report (F.I.R.). In the court of Sessions, the judge ruled in favour of the policemen when it came up for hearing on the first of June 1974. On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused *Tukaram* and *Ganpat* to one and five years of rigorous imprisonment respectively. The reason given by the Court

was that passive submission due to fear induced by serious threats could not be taken to mean consent or willing sexual intercourse. On further appeal the Supreme Court acquitted the accused policemen. The High Court called her a ‘shocking liar’ (Gangoly, 2007:81). The Supreme Court held that she seemed to be ‘habituated with sexual intercourse’ and admitted medical evidence of the fact that she failed the ‘two finger test’ and that her hymen showed old ruptures (Gangoli, 1998:334; Kolsky, 2010).)

However as a result of the public outcry concerning the case, the Criminal Law Amendment Act, 1983 made a statutory provision in the face of Section.114 (A) of the Evidence Act, which states that if the victim girl says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent.

One of the most significant impacts of this case was the general mistrust of the police by women’s organisations. The legal enforcement agency which was entrusted with the safety of the people had violated the code of trust by raping a girl in their custody. It was not merely seen as a ‘one off’ incident by rogue police officers but was perceived as being indicative of a far wider problem. Although women in India are very different in their experiences of caste, class, religion and education their experiences of inequality, oppression and discrimination in the public and private spheres form ‘intersecting axes’

that bring them together. Women's organisations have looked at individual cases of rape as a broader issue of the increasing violence against women and have protested against the state's callousness in dealing with victims of rape.

The state of Emergency declared by the Prime Minister Indira Gandhi in 1975 made the anti-rape movement effective because the middle classes who had some faith 'in the benevolent and progressive nature of the Indian State since 1947' lost their trust in the State and the 'middle class women saw the oppressive machinery of the State in Action' (Gangoli,1998:334).

The national campaigns by women's organisations during this period focused on custodial rape as well as dowry deaths, exposing injustices to the public using demonstrations and protests, intense lobbying for changes in law and what is known in India as public interest litigation (PIL) (Kannabiran, 2007).¹ These have been used extensively by women's organisations in order to negotiate women's human rights.

¹ PIL is a writ petition filed in a High Court or the Supreme Court by any individual who believes that a public wrong needs to be put right. This follows from the Articles 32 and 226 of the Constitution of India which

By 1978 when a socialist feminist conference was held in Bombay it was becoming clear that women's organisations had begun to align themselves according to their political and regional loyalties. Their main identification was regional - the Bombay group, the Delhi group and so on (Kumar, 1989). The groups started sharing and learning from each other and coming together for the achievement of common goal, one of which was the politicisation of the private. The movement held the state and society responsible for the atrocities and the suffering of women perpetrated within the family (Mahantha, 1998). Even as the Courts seemed to be consistently distinguishing between 'virtuous or good women' and 'bad women', the women's organisations had begun to identify certain issues of VAW that they thought needed addressing and started negotiations and public debates on such issues (Agnes, 1992). In this process of adopting certain working principles and causes, the organisations began to differ in their ways of organisation and working policies. Thus the women's movements around the country have never been monolithic and have had various beliefs and ideologies about women's rights. However the differences increased greatly with the Shah Bano case and the debates about the need for introducing a uniform civil code in the place of personal laws of minorities which will be discussed in the next section.

4. Phase 3 1980s Constructions of Feminine Identities

A major impetus to the women's movement occurred with the controversy that followed the Shah Bano case (*Mohammed Ahmed Khan versus Shah Bano Begum and Others* 1985 AIR 945, 1985 SCC (2) 556). As mentioned, various women's groups became divided in the debates about the need for a uniform civil code instead of various personal laws for different religious communities. Liberal feminists have argued for the need for a uniform civil code which set them against the supporters of minority rights (Mullally, 2004). The facts of the case are as follows. A 60-year-old woman went to court asking maintenance from her husband who had divorced her. She relied on section 125 of the Code of Criminal Procedure which was applicable to all women in India and was primarily to protect from vagrancy. The court ruled in her favour. The judgment was not the first granting a divorced Muslim woman maintenance under Section 125. A large section of the orthodox Muslim population declared the verdict an attack on Islam. The Congress Government, panicky in an election year, caved in under pressure of the orthodoxy. It enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. The most controversial provision of the Act was that it gave a Muslim woman the right to maintenance for the period of *iddat* (about three months) after the divorce, and shifted the onus of maintaining her to her relatives or the Wakf Board. The Act was seen as discriminatory as it denied divorced Muslim women the right to basic maintenance which women of other faiths had recourse to under secular law.

The Hindu right wing party Bharatiya Janata Party saw it as 'appeasement' of the minority community and discriminatory to non-Muslim men, because they were still bound to pay maintenance under Section 125, Cr. PC. It contains provisions which have left it open to liberal interpretation. Flavia Agnes, a Mumbai-based lawyer, says that liberal interpretation has not been wanting. Clause A in Section 3 (1) of the Act says that a divorced woman shall be entitled to 'a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband'. The injunction that 'a reasonable and fair provision is made' and 'maintenance paid' leaves enough scope for gender-sensitive judgments. This was reconfirmed by the Supreme Court in *Danial Latifi and Another versus Union of India* (AIR 2001 SC 3958). The Shah Bano case taught the country that personal laws can become political battlegrounds because religions influence personal law. In cases that challenge personal laws, it becomes nearly impossible to delineate the historical, personal and political elements from each other. The Court emphasised the need for a uniform civil code envisaged by Article 44 of the constitution in the Shah Bano Case. Although the Supreme Court Judge mentioned and followed Sharia principles in the judgment, the emphasis on the uniform civil code raised old fears that the code was just a tool for establishing Hindu hegemony (Upadhyay, 1992). The increasing popularity of the right wing Hindu oriented Bharatiya Janatha Party and its support of the code cemented these fears. Many believed that the uniform civil code would be nothing but a revised Hindu Code (Grewal, 1999).

The personal laws versus the uniform civil code debates have been political tools of manipulation. Women suffer humiliation, harassment and violence whilst the nation still tries to choose between the civil and religious rights of minorities. Women's groups have resisted and rejected all forms of VAW. Feminists have debated on and differed in opinion about the uniform civil code issue. While many liberal feminists support the code as a necessary instrument to achieve equality of women's rights, others have found a way to bypass the issue and focus on gender justice rather than personal laws (Jaising, 1986). The Forum against Oppression of Women (Bombay-based) has suggested gender just legislation in areas such as marriage, inheritance, divorce and social security. The Delhi based Working Group of Women's Rights (supported by the Human Rights Law Network) has proposed a new national secular civil code (Sen, 2000). Some organisations support the idea of the civil code with an option to choose personal whenever necessary (Ahmed, 2010).

Despite the colonial national reforms discussed in the earlier section, various practices continue in the different parts of India. Along with dowry and rape, a battle against the custom of bride burning has been a part of the Indian feminist agenda. Bride burning is a practice in the northern parts of India when a woman 'sacrifices' her life on her husband's pyre. Women are forced on to the pyres and they are burned to death by their relatives. This practice is common among the Rajputs of India. After Roop Kanwar's sati in 1987, there were protests among women's organisations and academics about the complicit nature of the society and the state in such practices (Courtright and Goswami,

2001).The Hindutva ideology as discussed previously, is that women are 'pure' and maintain their chastity by being loyal to their husbands, even unto death. Women are seen as representing culture and protecting their purity is a way of protecting the purity of the culture.

4.1 Legal Reform

The nineteen eighties also witnessed a wide range of pro women legislation. According to Agnes (1992) if the oppression of women could be reduced by the passing of laws, this decade should be known as the golden age for Indian women with most campaigns against VAW resulting in legislation. The women's organisations had a dichotomous relationship with the state and its law. On the one hand, the women's groups depended on the states to make laws, sponsor reports, set up commissions and involve women in the drafting of laws. On the other, the state continued to fail women in its promises of equality and emancipation. Another crisis, the inability to curb sex selective abortions and female infanticides in spite of legal regulations to prevent such acts was also becoming increasingly evident.

Meanwhile the movement won major victories in the context of legal reform. Additions to the Indian Penal Code (IPC), the Code of Criminal Procedure (CRPC) and the Indian

Evidence Act (EA) included significant advances (Dube, 2008). The provisions now recognised the importance of withholding the names of victims of rape in published reports. Consent was redefined and forcible intercourse with an estranged wife was recognised as rape (Roy, 2002). The most significant perhaps is the inversion of the ‘innocent until proven guilty’ principle in rape trials.. Soon, corroboration of such evidence also became unnecessary (Menon, 2007). The punishment for the crime of rape was also amended (Kumar, 2003) again. A minimum of ten years rigorous imprisonment for rape in custody, rape by a gang and rape of pregnant women, and girls below the age of 12 was decided on. A minimum term of 7 years was decided on, for all other cases. ‘Custody’ would include police officers, public officials, the staff of hospitals, jails, remand homes and all government institutions for women and children. The maximum term could extend to imprisonment for life (Menon, 2007).

The Dowry Prohibition (Amendment) Act of 1984 was also a major victory for the mobilised women’s movement. However, two major gaps were recognised in the legislation by a review held in Bombay (Agnes, 1988). One was the absence of a comprehensive law on domestic violence and the other was the failure to include marital rape into the amendments. The campaign against dowry started in Delhi in 1979 and for the first time dowry suicides started being called dowry murders (Kumar, 1989).

While the Indian Women's Movement was making progress in the North of India, a major case was filed by Mary Roy in Kerala, the southernmost province of India which resulted in the reform of the law of succession. In 1986, the Supreme Court declared the Keralean Travancore Succession Act unconstitutional in the Mary Roy Case (*Mrs Mary Roy Etc versus State of Kerala and Ors* 1986 AIR 1011). It recognised the Christian woman's right to equal inheritance. However the equal inheritance right is limited to intestate succession (Phillips, 2003). The debates about the gendered nature of personal laws and its disabling effects continued during and after the Mary Roy decision. Phillips (2003) writes that in an interview with Mary Roy, she said that the decision was a very limited victory for women. It just means that men will be 'wiser' in writing wills. She also writes that Mary Roy met with severe hostility from her community including women. She was spoken about as 'the crazy lady who married a Bengali Hindu (Phillips, 2003: 255).

5. Phase 4 1990s to the Present

The personal law versus the uniform civil code debate continued into the 1990s. The legislative and political battle for the uniform civil code has resulted in women being at the losing end of the struggle. Women find themselves let down by the civil system and by their personal law. In *SR Bommai versus. Union of India* (1994 (3) SCC 1), the Supreme Court held that religion is a matter of private faith and should not be mixed with

secular issues. In *Sarla Mudgal versus Union of India* ((1995) 3 SCC 535. 13), the Supreme Court held that a Hindu man could not convert to Islam in order to bypass the bigamy law.

5.1 Public Interest Litigation

Surveys and studies conducted by the organisations such as the Centre for Research on Women, national level findings by the first and second rounds of the National Family Health Survey and by Sahayatrika, the Lesbian Collective in India revealed that VAW was an issue in grave need of addressing by the state and the law (Sen, 2000). The movement against VAW gained considerable momentum after the Bhanwari Devi incident. Bhanwari Devi is a social worker in Rajasthan, an Indian province. She was in her mid-fifties in 1992 when she was gang raped by upper caste men as a punishment for reporting child marriages. She was a grassroots worker, a child bride herself who worked for the organisation because she needed the money. She was ostracised by her family and her community for failing to compromise with her rapists. Her case has resulted in changes to anti-rape and sexual harassment laws although she still awaits justice (Sunder, 1996; Sinha, 2003).

Taking up Bhanwari Devi's cause as a class action, social activists filed a writ petition for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India and to prevent the sexual harassment of women. The case came to be known as *Vishaka and others versus State of Rajasthan* (AIR 1997 SC 3011). This judgment set out a set of guidelines for dealing with sexual harassment and made employers and institutions responsible for implementing preventive and remedial measures (Kannabiran 2007: 45). For the first time in Indian judicial history, sexual harassment at workplace was recognised a problem. By the court's own admission, it was declared that the Beijing Platform for Action and the CEDAW resolution both required the states to ensure women's safety in working environments (Kannabiran, 2007; Sood, 2008). In another sexual harassment in the work place case involving a complainant referred to as Miss X , *Apparel Export Promotion Council v. AK Chopra* (AIR 1999 SC 625), the decision in *Vishaka* found new grounding when the Supreme Court found no difference between 'outraging the modesty of a woman' and 'attempting to outrage the modesty'.

In *Medha Kotwal Lele versus Union of India and Others* (W.P. (Cr I) No 173-177/1999 dated 26.04.2004), the Supreme Court accepted the writ petition which requested that the *Vishaka* guidelines should be implemented by the state. The petitioner was Dr. Medha Kotwal Lele, coordinator of Aalochana, a centre for documentation and research on women and other women's rights groups. She documented incidents of sexual harassment of women and the courts's defiance of the *Vishaka* guidelines and one such case was that

of a post graduate student at the University of Baroda who was allegedly sexually harassed by her guide since 1995 (HRLN, 2007). The draft Protection of Women from Sexual Harassment Bill 2005, amended in 2007, awaited its fate till the 6th of November 2010 when the Union Cabinet finally approved its introduction in the parliament. These cases are examples of women's organisations having taken up the cause of women empowerment and effectively affecting legal change. The anti-rape campaign was the most influential movement in affecting such change (Gangoli, 1998; Dasgupta, 2002).

In their struggle against the crime of rape, women around the country have sometimes provided an effective alternative justice dispensing system. A prominent example is of the Muslim women in the city of Pudhukottai, in the southern province of Tamil Nadu (Zawahir, 2010). Feeling weighed down and short-changed by both the formal courts and by the customary, they found their own court, a Jamaat. This Muslim women's court heard cases of domestic violence and harassment and provided relief to women appealing to them. They successfully managed to subvert the dominant laws (Menon, 2007).

The decision in the Vithura case was perceived, for a while as a major victory for women activists in Kerala (Bhatkal, 1999; Devika, 2009). This case involved the abduction and repeated rape of a minor girl by forty two men, many of them public servants. The special court of appeal convicted thirty six of the accused. However in a decision that caused public outrage and had women all around Kerala protesting, the High Court reversed the

decision and acquitted all the accused. 'StreeVedi' an 'umbrella' organisation of all the women's groups in Kerala have taken on the case to appeal to the Supreme Court on behalf of the girl. Taking a stance against sexual harassment and VAW, a defence committee was formed which would raise the finances for the case (Sreekumar, 2007).

5.2 Women's Representation in Politics

It was now clear to the women's movements that empowerment of women was possible only by securing adequate representation in the public bodies. It was, for instance, only in 1993 that the National Census started counting women's unpaid labour and work in the informal sector. In order to counter victimisation, it was necessary to have women in social and political power (Sen, 2000). Thus women's empowerment requires them to act in the field of politics (Jain, 1997). Reservation is the name given to the process of ensuring that minorities and weaker sections of the society are given adequate representation in the houses of the parliament. The demand for the reservation of seats in the parliament did not arise from the women's movements in India but it was adopted by the women with the understanding that in order to actualise a transformative society, power had to be redistributed in the political and state level amongst women. This was a new shift in the women's movement.

In September 1996 the United Front government (UF) introduced the Constitution (Eighty-first) Amendment Bill that reserves one third of the parliamentary seats for women. In the previous years, most of the governments had avoided this controversial Bill despite the fact that they promised it in their election manifestos. The bill was referred to a joint select committee under the chairpersonship of Gita Mukherjee, a member of the Parliament from the Communist Party of India. The resubmitted bill was hotly debated in the House in 1997 and 1998. Since then the bill has been stalled. It remained on the agenda in each parliamentary session; no party was willing to take on such a controversial issue (Sen, 2000). The Rajya Sabha, the upper house of the parliament passed it in November 2010.

5.3 The State, the Female Body and Indian Feminism

The relationship between Indian women's identity and the Indian state's role and functioning has thus been constantly evolving. Citizenship has been viewed as a public and hence men's domain, women's identities and lives have been subsumed or excluded. WUR identities have been examined in relation to cultural institutions and families. There is a gendering of citizenship and the state constructs women in a different way from men by formulating laws and policies specific to them but also differentiates among them women are different in law and policy according to their various religious identities or in terms of good and bad (wives and prostitutes), normal and deviant, working and

nonworking, child and adult. But the rights of citizenship propel women into equality with men (Sunder Rajan, 2003).

The state has grown to be a pressing concern for Indian feminism in the recent years following the Shah Bano issue in the 1980s which posed a choice for the women of all communities whether to choose between a uniform civil code or to help minority communities maintain their identity. While the state has been the main focus for feminism in India it became a significant site of construction of gender and citizenship. Many authors opine that it was the Shah Bano case that brought it into sharp focus as a theoretical as well as a political issue for the Indian women's movement. Three major developments in the years since then, all related to policies of the state have been critical for feminism- the new economic programme of globalisation and liberalisation, the uniform civil code debates and the proposal for women's reservation (Sunder Rajan, 2003).

The Indian state has failed women as is evident in the poor indices of women's status as reflected in sex ratios, literacy, life expectancy and violence against women. Discriminatory laws, low representation in political bodies have meant that women have not been treated as equal citizens by the state. The state has constitutionally guaranteed women's equality and has responded to pressures from outside mostly from women's groups, by setting aside some of its patriarchal interests. The state has sponsored reports,

set up commissions involved women's groups in the drafting of laws participated in international forums and subscribed to international norms of gender equality.

In the 20 odd years between the 1980 protest by the Forum against Rape and the demonstration by the Manipuri women in Imphal (resulting in a major feminist uprising in the state of Manipur), women's organisations, feminist workers and academics had to deal with VAW spiraling out of control and they had to rethink their strategies (Menon, 2007). Various forms of violence heterosexual, homophobic, familial, caste based violence were recognised. This wave of the movement rejected any sort of violence against women and its rationalisation. There has also been recognition of the 'complex interlocking field of violence' (Sunder Rajan, 2007).

Many organisations wanted legal reform especially regarding VAW but at the same time they also recognised these campaigns as having a broader agenda. This was the challenging of the inferior position of women in society and for the redefining of women's rights by publicising the private for legal and social recognition. The period also saw the alliance of women's groups with justice and human rights organisations in the hope that such association would result in better and more legal and judicial results. The movement has had to address a whole range of VAW issue in the years between Mathura and the Rameeza Bi revenge rape case (Rameeza Bi was gang raped by police men in Hyderabad in 1978) and the Maya Tyagi rape case (raped by police men in 1980).

There was recognition of communal sexual violence, women of a lower social class were being raped by men and there were ethnic and honour killings and their increasing reports (Menon, 2007)

Women who had sufficient financial assets could take on court battles, but often to invoke the law is to invoke the state (Basu, 1999). Getting the state involved in private matters is still often unheard of in many parts of India. Furthermore the law alone cannot affect change unless cultural practices are transformed by widespread state intervention. Property rights are the major tools of women's empowerment in order to challenge their numerous oppressors including the state and the family (Basu, 1999). The state and the law often do not speak with one voice (Sangri, 1995). The state is a protector and an oppressor of women. Women use the state to protest against patriarchal institutions that are actually the mainstay of state power. The female body has been an object of torture and repression in times of ethnicised or communalised violence (Menon, 2007). The patriarchal state supports the male ownership of women. Perhaps nowhere is it more evident than in the Gujarat genocide of 2002. The state government actively assisted and participated in the violence against Muslims. It refused to provide aid and rehabilitation and it became the perpetrator of the genocide. The tolerance of sexual crimes against women is intrinsic to the culture (Baxi, 2005). It affects all the state agencies and forms of articulations of state power.

The new energetic rethinking of state developed by Indian feminists rather than a disengagement from the state would serve the purpose of gender equality (Sunder Rajan, 2003). All authors reiterate that the movement has never been monolithic. There have been questions of rights, equality, legal justice, minority and group rights and civil society that have been prompted by reflection on the perceived failure of the efforts of the past two decades.

The perceptions about WUR and their transgressive sexual identities continue to this day. Female sexuality was found highly problematic and the sexual restraint and adherence to differentiated gender roles are both necessary for the advanced level of civilisation that can be achieved according to patriarchal demands (Sangri and Vaid, 1989). The biggest threat comes from women who severely challenge notions of innate female modesty and passivity as evidenced in too much sexual desire and excessive sexual activity thereby inverting their assigned role. Female sexual desire is perceived as particularly dangerous. The sexually agile and promiscuous women belong to other faiths especially Islam, and lower classes as they are barbaric, immoral and characterless and the metropolitan elite of the upper classes who have been seduced by the west. Middle class women who have stayed faithful to the Hindu cultural roots are praised as the Hindu *pativratanari* who are the embodiment of feminine ideal and modesty and who only find happiness in being wives and mothers. Girls are warned not to talk to strange men and not to dress 'provocatively'. This helps in constructing a system whereby the victims are themselves held responsible for the violence inflicted on them. The man is deemed as aggressive and

violent and woman, submissive and docile. Thus a woman's sexual identity is defined in terms of men. After the rape of a sixteen year old girl by a police officer in the marine drive of Bombay *Saamna*, the magazine of the former ruling party of Maharashtra, Shiv Sena (a right wing Hindu party) reported the incident in a front page article thus:

'There seems to be a competition among youngsters to show their undergarments in the name of 'below waist' fashion. It is no longer feasible for a family to roam on Chowpatty. To see girls dangle a cigarette openly is worrisome. If a man is incited by such clothes, who can one blame?' (Quoted in the Indian Express 25 April 2005, Kazmi 2010:71)'

This quote shows the attitudes of the right wing Hindu political ideology in terms of making moral judgments and the blaming the victims for the violence that they are subjected to. WUR identities are heavily bound up to their transgressive sexualities and the bias against them, in the society continues due to their non-adherence to the ideal Hindu woman. It is argued that these cultural and social perceptions influence the legal and judicial perceptions of WUR as less than ideal subjects of law, which will be investigated in Chapter Three.

The National Commission for Women (NCW) in its report Rape – A Legal Study based its main argument as follows:

‘In India, in ancient times, women had enjoyed an able position in the household and in society. As the ‘queen’ of the household, her position is envied by her counterparts elsewhere. Unfortunately constant invasions by foreign elements from about the eighteenth century changed the scenario to the detriment of women’ (Kazmi 2010: 73).

Thus the RSS ideology divorces sexuality from ideal models for Hindus but does not remove it from the discourse altogether (Bachetta, 1994). Instead it projects sexuality on to the other. The counterpart to the chaste Hindu male is the Muslim male polygamist or rapist and to the chaste motherly Hindu woman is the Muslim prostitute. Muslim women are seen as merely the reproductive tools used by Muslim men to increase the Islamic population by polygamy. The Hindu men start to promote higher birth rates as ideal for the concept of *Hindutva*. Thus women whether Muslim or Hindu are both baby factories for their cultural nations. During the Gujarat 2002 genocide, after the Babri Masjid demolition Muslim women were raped, mutilated, murdered and unborn children were pulled out of their wombs. These women were also made to witness the similar suffering of men and women (Baxi, 2008)

6. Notions of Familial Honour and Women

Two broad distinctions in the definition of the status of women can be made: status derived from autonomy, power, and control over resources and status derived from prestige, respect, and honour (Ahmed-Ghosh, 1995). In India, the former construct is the privilege of a small minority of women. The latter is highly valued, as it is in the conduct, actions, and social performance of the women that the family invests their *Izzat* (honour and prestige). In a caste-ridden and closed community of extended households, the prestige of the group and the family is considered paramount. Hence, this safeguarding of family *Izzat* can be interpreted as a method of social control over women's behaviour. A family's *Izzat* must be preserved at all costs to the extent that family interests take precedence over individual interests (Ahmed-Ghosh, 1995). Consent to patriarchal norms, caste, religion, and class is glorified and is reflected in the manner in which the woman is perceived by her marital family. But Sangari (1999) warned that "careful analytical distinctions need to be made between consent resting on material arrangements which guarantee women rights, compensation, or protection and consent resting on forms of coercion which push women towards normative behaviour" (373). Indeed, it is this latter distinction that underlies the vulnerability that renders women susceptible to abuse, servility, and voicelessness.

Izzat has been described by authors as being a male essentiality but the repositories have always been the women in the family (Wilson, 1978; Yuwal Davis, 1992). The women's

lives and actions affect it the most and yet a woman's *Izzat* is not her own but belongs to her father, her husband or is a reflection of the family in totality. Preserving a woman's *Izzat* and through it the family's *Izzat* often becomes the greatest responsibility of a woman's guardians. *Izzat* is a very broad concept encompassing caste and class status, public reputation and it covers related issues of shyness (*Lihaz*), shame (*Sharam*) (Kandiyoti, 1991). A woman's awareness of her own body and the *Sharam* related to it is also an awareness of the social body. *Sharam* is a concept associated with physical modesty and is a means of maintaining social distance from men, other caste and class. It is also a tool for maintaining social distance between men and women, between what is public and private and between one social group and another. *Sharam* and the related *Lihaz* are vital to maintaining the *Izzat* of a woman (Thomson, 1981). In certain villages a woman's *Izzat* can be damaged even if she is seen talking to certain men. It is necessary for the woman to not be a subject of public criticism. She may be referred to as *Besharam* which means a woman without shame. This would mean that the men in the family would lose their *Izzat*. Das (1976) has argued that women are the gateways to caste and family membership. Men are not similarly placed. Hence if women are not protected the boundaries between caste and clan start becoming blurred. The idea of *Izzat* is thus a collective concept. It reaches out beyond the individual to the immediate family, the larger extended family, the clan, the caste and the social caste. Thus *Izzat* is a means to control a woman's sexuality and any transgression by women including the wives and the daughters of the family would be an imputation that patriarchal control has not been exercised (Yuwal Davis, 1992:78).

7. Conclusion

The women's movement's strategic engagement with the Indian state in tackling what might be described as the post-colonial element of the State has opened up a space for public debates on VAW and women's rights (Sunder Rajan, 2003). Women and civil liberties groups have campaigned to stop excesses, to reduce state power and to increase the space for civil society. It has repeatedly campaigned against the abuse of power by the state officials and gender violence even when it is state generated. Yet, the other element of the state is a product of its nationalist past, which established a constitutionally secular state committed to equality for all its citizens and in particular for women. This aspect of the state seems to carve out a place for women in a civil society. This space is transient and protean and at constant risk of disintegration from threats of religious fundamentalism and communalism. The women's movement steers this space despite these limitations, campaigning against state induced gender violence, and seeking greater rights for women.

Women continue to face another constructed dichotomy between tradition and modernity. The women's movement, particularly through its legal and social engagement with women's rights, is associated with the urban middle class and is thus seen as tied to a secular, modern, Westernised desire to create a pan-Indian identity (Asad, 2003). While

there are diasporic sprouts of women's groups and activism in the rural areas, the urban elite and middle class have managed to dominate the discourse of women's rights even as the movement is criticised for speaking with an urban elitist bias sometimes.

This chapter had the objectives of grounding the thesis in its historical background and drawing the history of the constructions of WUR within the nationalist and the post colonial movement. It also had the objective of explaining the reasons for the uneasy relationship that the women's movement has had with the police in order to understand the marginalisation of the police from the implementation of DVA to be investigated in Chapters Four and Six. The final objective of this chapter was to trace the reasons for the active involvement of the civil society in drafting the DVA.

This chapter has argued that the ways in which women's identities have been constructed parallel to the development of the women's movement and its positioning in relation to national political have influenced the constructions of WUR. It has shown how the movement has focused on VAW even as there was a simultaneous cultural and historical development of the binary divisions of women as good and bad. Thus the prototypes of the early imaginations of WUR find their stock in 'bad women'. The 'love hate' relationship between the movement and state has been explored. It has investigated the origins of the awkward relationship that the women's movement has had with the police which will be explored in more detail in Chapters Four and Six in relation to the way in

which the DVA was drafted to minimise the role of the police and the gradual taking over of the space by the civil society in the implementation of the DVA. The *ghar-bahir* argument continues to the present day even as the WUR rupture the boundaries between them as it is argued in Chapter Five. Thirdly it has provided aids for understanding why the DVA was drafted by a women's group and the political struggles that preceded the passing of the Act as law by the Houses of parliament. It has traced the active involvement of the civil society in campaigning for women's rights and the various ways in which the problems of VAW has been addressed in the country. It has investigated the complex history of the battles for space and voice that the groups have had to fight against the state for the equal treatment as citizens for its women and the positions of WUR within these spaces. The next chapter analyses the secondary sources in the form of existing scholarships on VAW illuminated by WUR. It also develops the research design and explains the methodology adopted by this research.

Chapter Two

WUR as Constructions of Post-colonial Women in India

1. Introduction

The law often works on the presumption of the ideal legal subject (Smart, 1992; Lacey, 1998; Naffine, 2003). This legal subject is rational, capable of ‘sticking to her story’ and if the subject is gendered, she ‘fits the bill’ of certain pre-conceived constructions of Indian womanhood. Thus when women turn to the law in times of violence, they become legal subjects located within multiple subjectivities (Moore, 1994; Merry, 2006). The ‘post structuralist gendered subject’ takes up multiple subjectivities ‘within a range of discourses and social practices’ and these subjectivities are held together ‘by experiences of identity, the physical grounding of the subject in the body and the historical continuity of the subject’ (Moore, 1994: 141). This chapter argues that a WUR approaching the law in times of violence is breaking the historical continuity of the ideal legal subject. Her gendered position is a complex subset of socio-cultural and legal positioning. The thesis investigates the subject positions that WUR take up when they are faced with the DV framework in Delhi and in Mumbai. Just as Moore’s (1994: 141) gendered subject is not ‘singular, fixed or coherent’, WUR bring a change in the historically fluid concept of the ideal female legal subject. WUR do not have the support of family or kinships as they are

transgressors of familial values and honour (*Izzat*). This will either have the positive effect of WUR adapting to the new subject position because of the absence of familial ties or it will negatively influence the shift in subjectivity as they feel reluctant to invoke the law even as their families have abandoned them their new subject position in law that of autonomous person rather than defined through the abusive relationship. In this chapter we examine the extent to which WUR as transgressors rid themselves of the status of victimhood through their exercise of legal agency. It explores the extent to which this new subject position in law of WUR is that of an autonomous person rather than defined through the violent and transgressive relationship.

This chapter argues firstly that the various constructions of post-colonial women in India contribute to the WUR legal subjectivity. The second argument is that WUR women manage to 'rupture or transgress' the heterosexual/familial matrix and their status falls 'outside the heterosexual institutions of family and marriage' (Menon, 2007:15). WUR thus free up a space for themselves outside such ideological strongholds by experiences of knowledge of themselves as being sexual beings (Franco, Macwan and Ramnathan, 2007: 161). In this way the women who are relegated to the margins of society because of the societal preoccupation with women's appropriate sexual conduct find themselves in the centre of political and legal discourse by making the transition from a victim of violence to a legal subject claiming her rights as a wronged citizen.

This chapter is divided into three main sections. The first section argues that the broader literature on VAW contributes only marginally to an understanding of the position of WUR. Legal feminist perspectives on the constructions of female sexual identity, the bifurcation of social life into private and public spheres assist with an understanding of the influence of such a transgression by WUR in terms of private sexuality and public complaint. Developing the theme from Chapter One that Indian identity is heavily bound up with understandings of female sexual normative transgression and with women's position in public sphere. It thus argues that the private transgression of WUR translates into a public identity. The second section situates WUR within post-colonial feminist debates while the third section argues that feminist methodology and research methods best address the study's research question which involves the capture of WUR identities and legal subject positions.

2. WUR within Broader VAW Literature

In the last chapter we saw how the colonial legacy, political debates and religion contributed to the constructions of the identities of WUR. In this chapter we focus on the societal and cultural perceptions of sexual identities that have resulted in the constructions of WUR identities. This section introduces the concept of the 'sacred space', the division of the legal spheres of influence to private and public in the context of VAW to understand how the law and society divided up spaces in order to 'protect' women and to recognise the private domain as being under a man's personal jurisdiction

with which the law refuses to interfere (Chakrabarty, 1993; Yuval-Davis, 1997; Gole, 2002). It demonstrates the impact of the transgression by WUR by a rupture of the boundary that divides the private and the public by making private complaints public and by the exit of sexuality of the WUR from the private to the public. Thus the transformation of WUR from personal victimhood to legal agency involves a change of space from the private to the public. The new subject position of WUR is fixed in the public and the sanctity of the so called sacred space comes under threat. The family and kinships remain within the private sphere and in the public sphere WUR find themselves isolated and in a position where they are forced to take on a specific, legal subject position as an autonomous legal subject. In their transgression of sexuality and sexual identity they also rupture the boundary between the private and the public in order to access the law as WUR.

2.1 The Sacred Space, Sacred Sexuality and the Three Levels of Transgressions

The empowerment of women occurs by the transformation of power relations when women move from being objects of subordination in relationships to becoming legal subjects, in control of their own lives. Empowerment strategies address those power structures that subordinate women at different societal levels – household, community, nation – and which must be transformed so that women can take ‘full control over their lives’ (UN/CSW 2002:50). In this sense the DV law is empowering as it entails a transit

from the WUR being objects of violence in their homes to being subjects of the law – citizens whom the law addresses as its subjects. Such an empowerment however pre-requisites a certain fluidity between the private and public and a blurring of the constructed boundary between these spheres. The three levels of transgression addressed in this section begin to achieve this fluidity of space and object/subject.

The division of the society into the public and private spheres is inextricably linked with the constructions of sexual identities (Kandiyoti, 1994; Kapur, 1996). The sexuality of women is controlled by the society in one way by limiting them to the confines of the private (Alexander, 1994; Fernandez, 1997; Parameswaran, 2002). The two spheres are gendered and women's bodies are relegated to the private by regulating women's sexuality thus maintaining domesticity (Tamale, 2004; 2005; 2007). As far as WUR are concerned, in their encounter with domestic violence there are three levels of transgression that take place. Firstly the rupture of the private and public divide by their sexuality and the transcendence of the divide by their 'illegitimate' sexual experience. The second transgression of the private-public divide takes place when the WUR make their private complaints, public. In the third instance the DV law makes the transgression. The previously 'sacred' of the private is now stepped into by the law in order to aid its new legal subjects – the victims of domestic violence and the DVA and the WUR find themselves in the newly merged sub- space of the private-public, as a result of such transgressions.

Chapter one argued that the constructions of sexuality and its transgressions have divided women as ‘good’ and ‘bad’ women depending on their adherence or non-adherence to ideal sexual behaviour. These ‘bad’ women form the first prototypes of the WUR. By transgressing ideal sexuality and marriage ‘good’ women also find themselves in the undesirable category of ‘bad’ women. This chapter furthers this argument by addressing these specific transgressions. Historically and culturally the boundaries set between the private and public for women can be traced back to the religious books of the Hindus. The clear demarcation of the sanctity of the private from the profanity of the public is evidenced in the Hindu epic Ramayana. As we saw in Chapter One, Sita the female protagonist in this epic, was idolised in the nationalist movement specifically by Gandhi and by right wing Hindu philosophy as a role model for the ideal Indian womanhood. In a specific and central incident, Lakshmana the main male protagonist brother, who was put in charge of protecting Sita’s chastity, draws a line on the ground around her before he has to leave on an urgent errand (Bhadur, 1972; Mainkar, 1997). Literally called the *Lakshman rekha* or Lakshmana’s boundary, Sita is specifically instructed not to cross the boundary. The demonisation of female sexuality begins when Sita is tricked into stepping out of the boundary by the demon king Ravana. In the rest of the epic Sita finds herself ostracised because she is no longer the protected private female figure. In the pretext of protecting women from harm they are controlled by regulating their sexuality in the private sphere. WUR break the historical continuity by tearing away from such a confinement of ideal sexual conduct. Thus even as the control of sexuality of women by confining them to the private is the part of a greater scheme of controlling women as the

lesser subjects of patriarchy, WUR attain a new and distinctive subjectivity and thus add on another layer to their subject position in the society.

Another element of the multi-layered legal subjectivity of the WUR is informed by caste and religion. In a community oriented society such as India caste and religion also play a definitive role in sexual control (Hale, 1989; Chakravarty, 1993; Abraham, 1999; Mahalingam, 2007). The female sexuality is controlled, primarily through arranged marriages, in order to maintain caste purity (Fisher and Bowman, 2003; Franco and Macwan and Ramnathan, 2007). Caste purity and female sexual purity prevent the breaking up of the social order of caste hierarchies and social stratification (Bailey, 1963; Chowdry, 1997). Women's roles as child bearers and nurturers are glorified and their roles as sexual beings are controlled (Kielmann, 2002; Chakraborty, 2005; Franco and Macwan, 2007). Families that reinforce a particular definition of gender relations by conventionally allocating gender roles encourage women's oppression. The oppression is not inherent in the fact that women are carers but in the fact that their labour goes unpaid and unrecognised (McIntosh and Finch, 1979; Finch, 1996). WUR often over step these boundaries of caste and religion when making their personal choices of sexual conduct. This forms another layer in their new subject position with the effect that they have stepped away from the help of their community based support systems which they may need if their intimate relationships turn violent. On the other hand, they are making a further break in the historical continuity of the ideal legal subjectivity by the secular choices represented by their intimate relationships.

The protection of the female purity and its confinement within the private is fundamental to most castes in India (Fruzeti, 1989). The symbolic tali (mangalsutra) tying ritual has the dual functions of expressing a union between the girl and a man outside her lineage (removing the horror of incest from her lineage) and becoming the symbolic representation of her 'defloration' (Fruzetti, 1989). This is one of the main customs in a traditional Hindu marriage. Traditionally the domestic domain is perceived as the Indian woman's safe haven, the home and hearth. In fact the main association of kinship and marriage is to help keep the domestic hearth secure. In WUR often this symbolism is missing as they are not legally married to their partners.

Discussions on VAW in India often begin with the inequalities faced by a girl child in her family and her community (Bhattacharji, 1990; Agnihotri, 2001; Ghai, 2001; Pandey, Sengupta, Mondal et al., 2011). VAW begins in the 'very womb' when foetuses are denied the right to be born because they are 'of the female sex' (Dhagamwar 2005:46). Although amniocentesis and sex selective abortions are banned in India, the falling sex ratio is proof that the practices are still prevalent in various parts of India (Jeffery, 1984; Mazumdar, 1994; Agnihotri, 2000; Rajan, 2003). If the girl child manages to be born, she then becomes a victim of gender bias and is given less in terms of nutrition, education, health care and other resources necessary for her human development (Devasia, 1991; Chowdry, 1991; Karlekar, 1995; Premi 2001; Tripathy, 2003). As she grows, her sexuality is entrusted to her father until she is married when her sexuality and

chastity are given to her husband (Gupta, 1994; Schlegel, 1995; Seymour, 1999). At no point is her sexuality hers to know or keep. It is a part of the honour of the family (Dube, 1988; Puri, 1999). Arranged marriages are also a way of continuing the control and possession of female sexuality (Shore, 1981; Seymour, 1999; Abraham, 2001; Beckett, 2001). By way of taking control of their sexuality by choice or by chance WUR break free of the strangle hold of familial sexual control. Their transgressive sexualities result in two major consequences. Firstly, they have managed to change stereotypical sexual identities. Secondly, their rejection of the constructed identities means that as a victim and survivor of domestic violence they find themselves without familial support. Thus in the absence of familial safety nets they are forced to act as full autonomous subjects and agents of their own redemption.

Within the debates on VAW, violence in the private has been identified as a will rather than a phenomenon and has been blamed on the unequal power relationship in a sexual partnership (Kappaller, 1995; Fernandez, 1997; Masaki, Wong., et al, 1997). The enslavement and oppression of women begin even as sexuality defines the power relationships within the gender roles and the masculine imaginations of the ideal loving submissive, private woman (Alston, 1990; Orloff, 1993, 1996; Rao, 2005). There is an ideological violence involved in the relegation of women to the private and the reluctance of women to seek legal redressal is often attributed to women's reluctance to disrupt this private realm (Smart, 1989; Alston, 1990; Kappaller, 1995). By means of their transgression WUR represent a change in the binaries of private and public in the

imagination of a subset of private-public where sexuality is one's own to keep, private violence becomes public and the law can regulate the safety of its female subjects.

The third transgression is made by the DV law by intercepting the private space and the newly imagined private-public subset. The law is often reluctant to enter what can be called the sacred space of the home and the hearth (Poyd, 1997; Rose, 1987; Romany, 1993). In the public sphere, the law is free to negotiate rights and duties with the citizens. In patriarchal societies however, the home is considered a man's private sacred space, the place where the man as the head of the household has certain rights over his family that the law is reluctant to assume or usurp. The origin of this gendered division of the public and private and the law's differential influence on both can be traced back to the conflict of interest between the family and the working environment (Elshtain, 1981; Dowd, 1989; Cornell, 1999; Burns and Shlozman, 2001). The societal division of life into the public and private were deemed to suit the particular characteristics of men and women and ensured the uneven distribution of power between men and women (Pateman, 1988, 1989; Wolff, 1989; Fraser, 1990; Milroy, 1994). The private and public binary division was not limited to work, finance education and politics, and the domestic sphere but distinguished where the law is forbidden to enter (Bridgeman, 1998). The state and the law are the regulatory mechanisms in place in the public sphere but there is a sanctity attached to the private sphere that cannot be violated by state regulation (Eisenstein, 1981; Donovan, 1985; Bridgeman, 1998). When the law does not regulate the private sphere there are control mechanisms in place that leave women with less economic clout

and bargaining power than men (Donovan, 1985; Stern, 1997). Such unequal powers and the absence of regulatory power in the private would mean that women are vulnerable to violence and there is a danger of the normalisation of such violence (Donovan, 1985; Stellings, 1993; Hien, 1999; Kannabiran, 2005; Vishwanath, 2007; Roy, 2008). Feminists have criticised the inability of the law to protect women in the private sphere and as a result there has been a shift in what was previously considered private to the public sphere (Donovan, 1985).

The public and private spheres of struggle are constantly being challenged and transgressed by women who are searching for alternate forms of justice in the form of meetings of women's justice groups, non-formal litigation and public protest (Mohanty, 1985; John, 1998; Verma, 2004; Rajaram, 2000). Even as the struggles of the WUR are not confined to the private or situated wholly in the public, this new space is imagined in the context of WUR and their experiences with violence and the law.

WUR are reluctant to take on rights even as it is recognised that women in violent relationships are slow to take on rights even when the support systems are available to them (Schechter, 1982; Schneider, 2000; Merry, 2006). Women may decide not to continue with taking up a legal subject position in spite of initially approaching the system for help (Merry, 2006). They are now torn between their sense of loyalty to the kinship and their intimate relationship, and the new more autonomous self that they are

prescribed to have by the legal system. The new subject position that they assume when they invoke the law against their abusive partners is a difficult one because of religious and familial values and they resist the shift in subjectivities just as they are reluctant to encounter their new more powerful self-protected by the state (Merry, 2006). When women in violent relationships approach the law, it is often a 'signalling device' to their abusers (Farmer and Tiefenthaler, 1996; Eshwaran and Malhotra, 2009:3). It communicates a sense of external support to the abusers and the possibility that they may leave if the violence continues. These arguments are captured by the process by which WUR approach the law with the deviation that they do not feel tied down by religious values and familial pressures as they have already transgressed such support systems. Their abusers may feel less threatened by their public complaint as they are not bound by marriage.

Finally the third transgression by the shifting positions of the courts and the legislative intent to make laws to regulate violence in the private also reveals the permeation of the boundaries of the private and public domains of law and from domestic to state local and global terrains (Krishnadas, 2007). The spheres also become relocated when women organising reflexive research look for new locations or 'unique spaces (Esteva and Prakash, 1998: 199). Women have tried to enter, exit or disrupt the existing locations in their research especially in the field of VAW and the search for an autonomous space may also be traced in the feminist critiques of existing VAW frameworks (Krishnadas, 2007). The binary understandings of the public and private have been subject to

challenge because they fail to acknowledge the various possibilities that feminist activism can take up in the various spaces that intersect when women step out of the private (Dhanda, 2002). Thus in certain social and legal domains the lines between public and private, state and autonomous locations were ‘blurred and transient’ (Krishnadas, 2004: 145).

3. Constructions of WUR: Post-colonial Legal Feminist Debates

In the discussions of DVA and the larger frame work of VAW, WUR can be located in order to identify the different constructions of post-colonial women and their identities. WUR also capture the multi-layered subjectivities of the legal subject and challenge the essentialism in the gender relations and the rights discourse of liberalism.

3.1 WUR within the Victim Rhetoric

In domestic violence debates the subject seeking legal redressal is imagined as an ideal female victim who has been severely wronged (Morrison and Davis, 2005). In effect the victim subject has found favour in the VAW discourses (Krishnadas, 2006). WUR however find themselves occupying an uneasy position in victim centered debates. Their

moral choices seem to take away from their victimhood. Particularly in the context of human rights and law, the victim subject is the one who seeks rights as she is the one who has had to deal with the worst that has happened (Merry, 2003; Krishnadas, 2004). This has enabled women all over to speak out about the abuses that have otherwise been hidden or ignored in the human rights discourse (Kapur, 2002). Women's conferences like 'Global Tribunal on Violations of Women's Rights' held in the UN World Conference held in Vienna in 1993, have provided a means to give voice to the victims in the international community. Video links were used to share horrifying and graphic personal testimonials that had been made public and are told by the location of the victim subject (Bunch and Reilly, 1994). These testimonials provide a concurrent location for women from all over the world to speak about similar experiences thereby sharing legal subjectivities. However, it still builds around a victim subject who has been subjected to untold violence and the location was still that of a victim subject. The fear is often that the different subjectivities and their fragmentation will deprive women of the power to claim for rights and for a broader global recognition of claims for truth (Kapur, 2002).

WUR form a category that defies the essential notion of an ideal legal subject claiming redressal. They have a multi-layered legal subjectivity which the law is forced to take notice of. In this sense they defy the essentialism that sometimes plagues feminist legal debates. This essentialism assumes that 'women have a coherent group identity within different cultures...prior to their entry into social relations' (Mohanty, 1991: 7; Kapur, 2006). The articulation of the ideal victim subject is based on gender essentialism as the

victim subject relies on a universal subject that sometimes cannot accommodate a multi-layered subjectivity. WUR find themselves outside this ideal because of their transgressive identities and their multi-layered subjectivities. The case against constitutionalism and against universal norms is that they marginalise especially as regards the impossibility of appealing to women as a category without other identities (Menon, 2004). The feminist movement is not under the illusion that the law is a transformative tool (Gandhi and Shah, 1998). Legal movements are more successful when they depend on a broader strategy aimed at the achievement of public awareness and legitimacy along with short term goals (Merry, 2006).

Opposing this pessimism is the view that law especially family law can ensure gender justice for women in India despite problems in accessibility (Parashar, 1997). It has been debated that focusing on how family law can help to end the oppression that the compulsion to marry places on Indian women and by doing away with the colonial construct of the religious nature of personal laws/the development of a uniform civil code can enable gender justice (Parashar, 1997). Many are sceptical that it is possible or desirable to reconceptualise marriage as a partnership within Indian family law. The questions then are whether such secular individualistic law is suitable for a community oriented society, whether legal reform works as a feminist strategy or whether legal reform is the merely the part of a larger strategy for gender reform (Parashar, 2007).

The location of feminist legal theory ‘within a dominant and phallogentric legal centralist paradigm’ has been subject to challenge urging feminists to move out of the patriarchal, legal framework ‘towards a feminist theory of legal pluralism’ (Manji, 1999: 435). Drawing upon theorists of the African state, Manji observes how women changed their relative position within state and non-state law through their physical mobility. As women migrated from the rural areas to the township ‘women encountered state law as a tool of social control’ which ‘necessitated the scope of state intrusion in their lives’ (1999: 444).

The logic of liberalism can be critiqued using post-colonial feminist theory which refuses to subscribe to the notion that more rights result in more freedom and equality (Kapur, 2002). In the context of law and political activism, it can be argued that the discursive struggle of the colonial past cannot be ignored in trying to understand the post-colonial society (Kapur, 2002). Liberalism perpetuates the subordination of subaltern groups by insisting on the universal notion of rights. In her analysis of the conditions of Indian women and marginally situated sexual subalterns, Kapur (2002) also interrogates the broader frame work of liberalism and western feminism. In the process of defining victims of the third world, it tends to offer legal protection on essentialist presumption of gender, culture and agency. Thus victimisation is perpetuated rather than remedied. Sexual subaltern is used to identify the law as a sight of domination and resistance where the dominant hegemonic culture other’s the sexual subaltern (Kapur, 2002). She argues that the law is not just an instrument of transformation and empowerment but also a

means of excluding others. She identifies the multi-layered post-colonial subject who defies the dictates of liberalism. She identifies that the public private divide in India which was partly the result of the colonial legal regime and how it informs the debates on sexuality and the identity of the nation state.

The victimisation rhetoric can be to expose the focus of the global feminist movements on VAW and the image of women as victims (Kapur, 2002). The problem with the focus on the victim subject used by VAW campaigns is that it perpetuates gender cultural essentialism. The post-colonial feminist argument is that the centre periphery cultural model continues to stereotype essentialist notions of the victim subject (Spivak, 1990; Mohanty, 1997). Post- colonial writers have thus challenged monolithic categories of the native victim subject as an imperialistic agenda (Said, 1978; Bhabha, 1983; 1990; Spivak, 1990).

3.2 WUR within Third World Feminism and Activism

The dimensions of the various roles of women that revolve around the nationalist project is also central to the ethnic project (Yuval-Davis and Anthias, 1989; 1993; 1997). The idea that women are mothers of the nation informs the gender roles in a society (Yuval-Davis and Anthias, 1989; 1993; 1997). Women are often pushed to the margins of polity even though their central importance in the identity of the nation is constantly reaffirmed

(Kandiyoti, 1994; 1998). As we saw in Chapter One, cultural difference and national identity are thus maintained by the control of women and their sexuality.

The third world feminism is the response to the various problems faced by women in the third world countries (Narayan, 2007). Although many anti feminists have tried to denigrate feminism by branding it an unnecessary western import, feminists have tried to address the problems that are specifically Indian. As we saw in Chapter One, feminist groups in India have tackled dowry murder and dowry related harassment of women, police rape of women in custody, health and reproduction; and issues on ecology and communalism that affect women's lives (Kumar, 2007; Bhavani, 2005). The Indian women's movement is not a 'mindless mimicking' of the western agenda but a movement that aims to improve the lives of Indian women by addressing culturally specific issues (Narayan, 1997: 13). Indian feminists whilst claiming solidarity with international women's group try to maintain a specific Indian sensitivity. In the 1970s, the rise of liberal and radical feminism in the West meant that the focus of the international decade of women 1975-1985 was around demands for equal opportunities in education and employment and focus on ending violence against women. In India the newly emerging movement based its appeal to these varied values and concepts while examining the ways in which women in India have not benefited from international development. Therefore the 'Status of Women' report commissioned by the state focused both on liberal issues of women's education and employment and on the radical ones on violence (Guha et al., 1976; Gangoli, 2007:6).

Indian feminists have often made demands to the Indian State for amendments in law and policy based on international developments; most often the appeal is based on the Indian State being a signatory to of international conventions. One of the ways in which women in India legitimise their demands to legislate against specific forms of gender based violence is by appealing to conventions such as the CEDAW and the Convention on Combating the Crimes of trafficking in Women and Children (Gangoli, 2000). In spite of nuances within the feminist conceptualisations of Indian society, the rhetoric of ‘westernisation’ has been used consistently as a charge to embarrass and silence feminists (Gangoli, 2000:7). For instance feminist opposition of servile portrayals of ‘Hindu’ women as ideal wives in cinema or opposition to Sati in 1984 (Nandy, 1998) or support for cinematic representations of lesbianism (Kapur, 2000) have all been criticised for being influenced by western ideas. The rationale behind such critique can be seen as the threat posed by feminists to the personal sphere of the home, manifested in feminist critiques of ‘traditional’ sexual and personal relations based on female subordination.

The main case of legal feminism has been the gendered nature of the law and its basis on the reasonable man (Myneni, 2002). Women are altered and othered and law fails women as a group. Different schools of legal feminist thought have different perspectives about how this oppression started. Liberal feminists who seek equality, equal rights and equal legal subjectivity for women base their ideas on the fact that patriarchal myths are projections of the male psyche (Myneni, 2002). They are also concerned with the ‘overt’

and ‘implicit’ discrimination against women in the social order and the solution is to ‘outlaw’ such discrimination (Owens, 1997). This is evident in the scholarships on the DVA in India.

3.3 WUR within the DVA and the VAW Scholarship

A scholarship specifically in relation to the DVA has emerged (Panda, 2005; Vyas, 2006; Srinivasan, 2007; Babu and Kar, 3009). Whilst many authors (Revathy 2004, Acharya 2006) have hailed the legislation as a milestone in the women’s rights legislation, there has been a hoard of controversy regarding this legislation. The history of the domestic violence legislation can be traced back to the international scenario skimming the Vienna Declaration, the Beijing Conference and the CEDAW (Revathy, 2004). The Indian law relating to violence against women has been discussed as regards dowry deaths, female infanticide and domestic violence (Revathy, 2004). WUR as a category is yet to be identified in the literature even as many authors have discussed ‘live in partners’ and the DVA (Basu, 2008; Sen, 2010; Rajesh, 2010; Mahajan, 2011).

Three causes for the resistance against change as regards domestic violence laws in India are the structural patterns of society which witnesses domestic violence, shortcomings existing in the laws and the lack of sensitisation of the members of the criminal justice system (Acharya, 2006). In traditional societies the law is gender biased and most laws

have their roots deeply entrenched in patriarchy and there is a 'negation of women's interests' (Acharya, 2006). As a consequence of a marriage being a norm in such patriarchal societies, most discussions of domestic violence laws in India have focused on marriages (Acharya, 2006).

When the effective implementation of the amendments in criminal law failed to take off, women lost their faith in the legal system to check VAW (Agnes, 1992). It was difficult for women to access the law and because of this the conviction rates were very low. Courts often interpreted the laws either too narrowly or too formally (APCLC, 1991; Elizabeth, 1999; Vindhya, 2000; Singh, 2004). Law as a discursive site is sometimes better understood than an instrumentalist view of the law (Kapur and Cossman, 1996). However they argue that the law as a subversive site can only be understood by studying its struggles and limitations. It should not merely be assumed. This view of 'law as a subversive site' is contested by Menon (2004) who argues that while rights are discursively constituted in and through feminist politics, the legal discourse adjudicates them through fixed binary categories. Menon examines arguments of women's groups and the judicial discourse on the rape law, abortion and reservations and finds that the legal rights discourse reinforces the dominant understandings of sexuality, gender and caste. She further contends that in post-colonial societies, this discourse may no longer offer emancipatory spaces for feminist politics. Very few accounts of early women's groups' use of the law in individual cases of domestic violence are available to us today because of the lack of reports (Menon, 2008). Also, autonomous women's groups have

maintained a certain distance from the law in the early phase of the women's movement (Gandhi and Shah, 1992). Discussions on dowry death issues, has shown how natal families press forward for their interests contrary to the interests of justice for the women (Kishwar, 1998).

Others would argue that the law sometimes does not work as a subversive site for feminists (Kapur and Cossman, 1996). The laws on domestic violence and rape have not benefited the lives of women (Menon, 1995, 2004; Gangoli, 2007). Laws have instead categorised and regulated sexual conduct and have compromise the interest of marginal group (Menon, 2004; Gangoli, 2007). The pessimism of certain authors regarding the legal solution to domestic violence has slightly lifted with the possibilities of alternatives that are different from the formal structure of law (Gandhi and Shah, 1989; Agnes, 1992, 1995; Menon, 2004; Gangoly, 2007).

It may be that alternate justice systems, which have emerged in myriad areas are better placed to help women's fights against VAW. In cases of familial violence, early women's groups in Bombay have preferred the strategy of popular mobilisation to shame the husband and the marital family, rather than taking resort to the law (Gangoli, 2007). Vindhya (2003), drawing on her experience in the Andhra Pradesh Civil Liberties Committee, notes that most actions in issues of deaths of women in the family has consisted of making the police register cases under appropriate sections. This has often

involved publishing educative pamphlets about the laws and amendments. Sandhya (2000) describes her early work in the Progressive Organization of Women in Hyderabad in similar terms. Studies of feminist activism around domestic violence in the late 1990s, on the other hand, note that the law has come to occupy a central part of its agenda. Women-centred experiments such as *nariadalats* in Gujarat have been initiated, which seek to enable women to avail of the effects of this law, stopping abuse without actually complaining in the police station or going to the courts. Women's groups in other parts of the country, including Andhra Pradesh, have sought to use such methods in tackling domestic violence issues. Large-scale women-oriented government programmes such as Mahila Samatha have incorporated it into their agenda in Karnataka and Andhra Pradesh.

‘The pre-eminence of law in feminist activism in the 1990s can be attributed to the growing dominance of the global discourse on human rights and development within the entire voluntary sector:... almost all of [which] defined equality and justice in terms of a rights discourse, that is, in terms of actions that would restore rights to those that did not have them ... [Here] the law became central to this vision of social change, more so than those economic and social structures of deprivation and exploitation which earlier were central to development debates and, to an extent, action in the voluntary sector’ (Geetha, 2009: 11).

Thus whether or not this mediation and translation succeed, such work falls outside the framework of legal rights, into that of the political. Therefore, it needs be recognised and theorised on its own terms. Within the everyday workings of these groups (of varied ideological persuasions), women's right against violence appears more as an important political end/goal, rather than as an actual guarantee against it (Geetha, 2009: 11). Such a position is derived from an awareness that the promise of this right stands in contrast to the operations of the institutionalised rights regime modelled on the gendered 'liberal subject' (Geetha 2009: 11). This new 'language' addresses the many vulnerabilities of the woman rather than merely punishing the guilty, a characteristic of Section 498A IPC. Yet, certain limitations remain in the tenets of criminal jurisprudence of violence. The first is that it does not protect women from violence in relationships that are not matrimonial in nature. The second limitation inherent in criminal laws is that it is not aimed at providing reliefs, namely maintenance, shelter and custody aside of the limited use of Section 125 which will be discussed in Chapter Three. Merely recognising and providing for the offence does not ensure that women will take recourse in law, as they do not, in most circumstances, have the support of families, friends and relatives. Third, criminal law provisions, being state driven, have little space to gauge or reflect the victim's needs. A complimentary civil law in the nature of DVA hopes to address the subjectivities of women's suffering within the legal definition of verbal and emotional abuse (Geetha, 2009: 11).

Feminists in the women's movement may 'strategically define their relationship to victimised women' (Sundar Rajan, 2005:161). The means to judge the goodness of a state of affairs in India can be in terms of the greatest benefit of the least advantaged (Rawls 1971:83). It is the deconstructive method that teaches us to reconceptualise the centre in relation to the margin, to interrogate the positivity with reference to the differenced, and to invoke the contingent and the singular to bring the normative to crisis: a methodology for reflexive feminism. Above all the ambiguities within and the overlaps between schemes for social control and social welfare that a feminist politics brought to light as the scandal of institutional care illustrate the intimate, indeed constitutive connections between actual violence and ostensible protection in the relationship between women and the state. The 'denial of individual volition is violence', it is expressed in 'myriad ways, each more horrific than the other', with states and often families as well 'participating in and justifying the denial of active choice in decision making' (Kannabiran, 2005:19).

Thus in the discussion of DVA and the larger frame work of VAW, WUR can be located in order to identify the different constructions of WUR and their identities. WUR also capture the multi-layered subjectivities of the legal subject and challenge the essentialism in the gender relations and the rights discourse of liberalism.

3.4 WUR: Victim-Survivor Dichotomy and Agency

The constructions of the victim-survivor dichotomy have been studied in the light of agency (Merry, 2006). In the context of a victim of domestic violence, it is always possible to locate a certain degree of agency. When a woman negotiates with the man to stop being violent, when she is contemplating, leaving him and when she asks for help she is exercising agency (Suneetha, 2010). Institutional response must foster and encourage such agency. Thus sometimes the only difference between a victim and survivor is the exercise of agency.

Feminist consciousness is as much a consciousness of weakness as it is a consciousness of strength (Carlson, 1992). This would mean that it would lead to the search for overcoming those weaknesses in ourselves which support the system and in forms of direct struggle against the system itself. Thus whilst trying to locate agency, it proves to be dynamic with a constant negotiation with power relation. In the case of WUR the question becomes that of a transcendent outside the context of her constitution.

WUR do not stand the test of ideal victim women. The resultant dichotomy is between the attributes of innocence, dutifulness and obedience and decisional autonomy, moral responsibility and legal subjectivity (Kapur, 2005: 98). This is problematic because even as they are being taken as mutually exclusive, they share the ideal subject of liberal

discourse as rights bearing. Brown (1995) defines the liberal subject as a person who is essentially an individual operating in the public sphere through contractual relationships and who is not weighed down by needs or familial relations. '[As] the attributes and activities of citizenship and personhood within liberalism produce, require and at the same time disavow their feminised opposites, then the liberal subject emerges as pervasively masculinist not only in its founding exclusions and stratifications but in its contemporary discursive life' (Brown 1995:145). This victim women empowered women dichotomy sometimes becomes a limitation on the ways in which women's responses to domestic violence can be analysed within the present domestic violence discourse, it led to the identification and prioritisation of formal and public institution as the legitimate space of women's actions. As a consequence what women do prior to, the actions afterwards, along with and more often outside the realm of public institutions in order to deal with the violence that they face is neglected. These actions contribute to the complication of access to justice discourse within the broader human rights framework of domestic violence law. Thus within this DV framework the constructions of WUR are lost somewhere between the ideal victim subject and the liberal popular imagination of the empowered women.

Women break their silence not just when they approach the legal institutions. Several of them have tried going to their natal families, leaders of the community, local caste *sangam* (organisation), *basti* level (village level) women's groups and even local people with influence before approaching a family counseling centre or in the case of Mumbai –

the special cells. Several women who are not WUR go to the special cell accompanied by a member of the natal family.

4. Methodology

The project adopts mixed methods to test the propositions made by the thesis. The field work followed two distinct path ways in testing the proposition of the thesis regarding WUR and their legal subjectivities in Delhi and Mumbai. This section sets out the research design and methods used. The starting point of this feminist research is personal experience. In Mumbai the research conducted was reflexive and feminist and included discussion with other survivor WUR. In Delhi the field work adopted a number of qualitative methods: semi-structured interviews, observational research and participant observation.

4.1 Starting Point- Personal Narrative

This project began as a personal emotional journey for me. Ten years ago, a marriage was arranged for me by my family. My husband was psychologically and emotionally abusive resulting in my becoming acutely depressed. I had to fight my family for them to finally allow me to divorce him. There was suppressed rage and a sense of outrage about the

injustice that had been done to me. Almost immediately afterwards, I started a relationship with one of my close friends. The abuse I suffered at this man's hands was completely different because it was very physical and there were days I could not open my eyes because they were swollen from the beatings. To this day, I carry around an inhaler in my bag because I suffer from panic attacks and memory flashbacks.

After these two men I decided that I wanted to work with women who have been in abusive relationships. In 2006, the Protection of Women from Domestic Violence Act was passed in India amidst much controversy. I have often wondered if I would have taken advantage of the law if such legislation existed when I was with my partners. In hindsight, I probably would not have. If an educated woman from a relatively privileged background would not take advantage of the provisions and would feel tied down by the dictates of society, how much more disabled would an economically poor, uneducated woman feel due to the lack of exit options in similar relationships? I was able to divorce from my husband legally but once I was a WUR, I felt like the walls had closed in on me

like on Poe's fictional character in the 'Pit and the Pendulum'² and I could not escape the reality that the blade-like pendulum which was this destructive relationship would soon kill me. I finally found the strength to leave him and life went on.

Although, I felt more trapped in the second relationship I argue that these two very different yet equally abusive violent relationships place me in a position of privilege as far as my research is concerned: I have been there, I have felt that way. However, my dilemma is that whilst my personal knowledge of violent relationships works to my advantage in so far as I have been a victim, a subject and hence have a personal understanding of my subject, it puts me to the disadvantage of bias, of having preconceived notions of women and their experiences in situations similar to mine. Despite the fact that I was a victim of violence, in many ways I am aware of the potential of 'othering' the women because of the fact that I am my own starting point, my body and my mind the first references for violence and abuse at the hands of two men.

² The pit and the pendulum is a short story written by Edgar Allan Poe published in 1842. The unnamed narrator in the story is taken prisoner during the Spanish inquisition. No explanation is provided by the author about why the narrator is arrested. He is condemned to death and finds himself locked in a tomb. In the middle of the tomb there is a deep pit filled with water and when he looks up he sees a giant scythe-like pendulum moving towards him and his eventual death. He has no means of escaping and he feels fear like no other

Feminist dilemmas in field work are as much 'ethical and personal as academic and political' (Halle 1991 quoted by Wolf 1996). Wolf (1996) argues that since feminist dilemmas in field work revolve around power they prove to be contradictory and confusing to the researcher may result in a major identity crisis for many such researchers. As a researcher I was faced with the challenge of whether the research was moved by commitments to women rather than pursuing my own career and personal experience (Birch, Miller, Mauthner and Jessop, 2002). This was solved by a personal understanding that the research would aid to fill a gap in knowledge and thereby ultimately benefit women.

The need to hear the 'other voice' is not the need to establish a 'feminine essentialism or essence' but the need to 'displace' the 'gender hierarchy in the law' by challenging what the law is and its inherent masculinity (Mohanty 1991: 71). According to Cornell there should be a 'norm of consideration' when women seek redressal within the legal system which is based on women's experiences and their voices being a challenge to the notion of what law is and what it stands for (Cornell, 1989). Listening to the lives of others is a curious kind of voyeurism. It is like living the lives of many others by proxy. Vicariously the interviewer lives the memories told by the anecdotes. There is something very familiar about the interview. Its purpose is to uncover the truth, reveal realities and provide information. The 'texture' of women's experiences should not, according to the authors, be lost in statistics. The nature of changing methods in feminism is more accommodating, more generous to the needs and experiences of women thus helping

evolve a richer picture of their lives (Maynard, 1994). Private experiences become private knowledge (Ribbens, Jane and Edwards, 1998). In the context of India where women's experiences are different based on all the factors that affect their identities as members of different classes, castes, income groups and religions, there is a need to deconstruct the notion of this 'norm of consideration' as they based on the experiences of women that are different in 'unbridgable ways' (Kannabiran 2007).

4.2 Feminist Reflexive Research

Reflexive feminist research can be transformative in certain ways. This method of formulating research enables researchers working with female victims of domestic violence to understand the experiences of such violence as they are for the women and not as the 'researcher's imagination as derived from her own life'. (Wylie and Greaves, 1995; Burt and Code, 1995: 10). Sometimes analysis informed by experiences is held in less esteem in academia (Wylie and Greaves, 1995). The problem is then about how to locate the research within an academic community that clearly distinguishes between experience and evidence. However stricter methods have been evolved to make it credible (Madriz, 2003). In the 1990s, the question of methods became one of the top issues in the feminist agenda. Working with the 'Battered Women's Advocacy Centre' a counseling Centre for battered women, Wylie and Greaves came to the conclusion that any instrument that acts as a research method, for instance must 'embody women's experiences', must be 'women-centric' and 'non-coercive' and most of all should not

become a mere tool of defining the project of the researcher (Wylie & Greaves 1995: 321). The challenge for me was to get my data to speak to allow the voices of the WUR to come through and to find the balance between academic objectivity and passion.

The methods chosen sought to capture the extent to which the DVA and more generally the legal and institutional framework relating to VAW have constructed women as subjects and victim/ survivors of DV. The research was specifically informed by feminist methods which address the complex context of interviewing WUR who have experienced DV. Semi-structured in depth interviews were conducted with the WUR survivors and the social workers in Mumbai. Issues of confidentiality were established as a part of the ethical aspect of the research design. Whilst designing the research framework, there was an awareness of the possible unequal power relationships in the field. Often identified as the most central dilemma in feminist research especially in field work is 'power' and the 'unequal hierarchies or the levels of control that are often maintained, perpetrated created and recreated during and after field research' (Wolf 1996: 2). The power becomes evident in three dimensions during research: power difference because of the differences in the personalities of the researcher and the researched; the difference while 'defining the research relationship'; and power exerted post field, while writing up and representing (Wolf, 1996). Post- colonial feminist scholars who work in their own countries, according to Wolf, will at the very least 'experience class and educational privilege'. Many feminist researchers have 'encouraged relationships between the researcher and the researched as opposed to 'positivism and objectivity' (Wolf 1996: 4). Thus 'potentially

exploitative' and hierarchical relationships', according to Wolf, should be done away with by 'cultivating friendship, a sharing and closeness' 'that would enrich the picture of women's lives (Wolf, 1996:4).

4.3 Research Design Mumbai

Methods used included field notes, reflexive journal, structured and semi-structured interview and the analysis of documents and materials. The term narrative has been used by qualitative researchers with different meanings. Narrative inquiry refers to a subset of qualitative research designs in which stories are used to describe human action. In the context of narrative inquiry 'narrative' refers to a discourse form in which events and happenings are configured by means of a plot (Miles, 1984; Creswell and John, 1994).

4.4 Power Dynamics in the Field

Feminist research is more likely to address women's oppression if it respects and values women's experiences and their accounts of them creating a collective culture for the respectful sharing and examination of all relevant participant experiences contributes to women being able to identify new or better ways of understanding the situation. The interviewing women is a contradiction in terms (Oakley, 1981). Reflecting on the power

dimension of research and the way in which a more powerful woman who asks the question and the less powerful women who gives the answer constitutes an uneasy relationship (Pfeiper, 2000; Farber, 2001). In Mumbai, the dilemma of unequal power relationships was solved in three ways. Firstly, the interviews were conducted informally in the effective way a conversation would proceed with both the parties exchanging our experiences with violence. Secondly, permission was asked and a third party the social worker explained the possible ways in which their stories would be used in the project. Finally during the writing up stage, care was taken to ensure that the women's stories were represented exactly as they wanted their voices to be heard.

Two broad currents of criticism and disquiet have served to dislodge modernist visions of quality in qualitative research opening up the field to a more flexible and pragmatic relationship between research practice and methodology. Political perspectives have involved objections to the hidden values which modernist commitments to guiding ideals like objectivity and rationality have involved. In the wake of this, post modernism appears to have shaken the foundationalism on which much qualitative research has depended. Denzing's research practice contains elements that address both sources of criticism (Denzin, 1991). Marxist, feminist and other perspectives from critical theory argue that the quality of research should be judged in terms of its political effects rather than its capacity to formulate universal laws or apparently objective truth (Acker, Barry and Esseveld, 1996).

Various studies on domestic violence in India and in other countries have used different qualitative and quantitative research methods to identify various aspects of the problem of VAW. The Women's Studies Unit of the TATA institute of Social Sciences (TISS) in Mumbai has pioneered research on DV in India (Mitra, 1999, 2000; Burton, 2000; Ghosh, 2004). Mitra's (2000) report on the study of social responses to DV against women in the Indian states of Madhya Pradesh and Maharashtra used a methodology that involved the non-random survey of institutions that worked with victims of domestic violence. 15 different institutions were identified and surveyed. Ganesh (2006) based a study on DV in Maharashtra by analysing the data in the records maintained by the Special Cell.

As far as methodology is concerned the use of a highly structured intake form/ method would run counter to the ethos of the shelter movement and other feminist support group/ agencies but also to feminist research practice. In the case of feminist agencies and activists working to stop violence against women the articulation and legitimization of women's experience have been an absolutely central objective in these contexts the rejection of the coercive objectification, of any structure-imposing methodology (either of enquiry or intervention) has often been explicit (Greaves and Wylie, 1990; Alvesson, 2009)

Qualitative research cuts across disciplines and subject matters. Qualitative researchers aim to acquire an in-depth understanding of human behaviour and the reasons that govern them. Qualitative research relies on reasons behind various aspects of behaviour. It investigates the why and how of decision making and not just when, what and where. Hence the need is for smaller but focused samples rather than large random samples which qualitative research categorizes data into patterns as the primary basis for organising and reporting results.

Feminists throughout the world have sought to develop ways of bringing the integrity of their own and other women's experiences directly into practical and research contexts not necessarily treating those experiences as inviolate and sacrosanct but allowing them to inform their thinking and acting (Helium, 2000). Feminists are aware that their experiences and others' rarely speak for themselves hence they require analysis and interpretation. When the inquiry involves speaking for other people or about other person's experiences there is a tacit consensus amongst feminists about the responsibility a researcher or writer has to take for the position she occupies and about her accountability to the persons or groups about or for whom she claims to speak (Helium, 2000). Questions of authority and expertise are the issue here and the accountability is a central feminist concern which entails a principle commitment to trying to discover how things are with people one is studying or working with in on-going critical and self-critical yet respectful negotiations. Accountability often manifests itself too in a readiness to make sure that people who have participated in the research process as interviewees

remain active participants to the extent that the researcher makes her results available and ensures that they are accessible to them (Oakley, 1981). Ever since the 1981 publication by Ann Oakley's work on interviewing women many researchers have insisted that all such processes should be interactive rather than constructed according to the old subject/object (interviewer/interviewee) model. Amongst feminist researchers Oakley's work has produced a growing commitment to contesting and even rejecting the artificial stance of the objective observer. Yet her work has also generated what Reinharz describes as excessive demands especially in situations in which interests of the researcher and the person being interviewed are in conflict or otherwise incongruent with each other. While Oakley argues that interview encounters necessarily produced a relationship between the researcher and the people she interviews some theorists have extrapolated from this observation to conclude that researchers and the subjects must become friends.

Social research is difficult because one has to find the right balance between the theoretical frames and assumptions and sensitivity to the participants' voices whilst doing qualitative research. Women researchers who have done their research in domestic and intimate private lives have contributed their experiences carrying out qualitative research and expressed their shared concerns (Jackson 2002). The main concern of these researches is the process of making 'public' these private and personal voices for a professional or academic audience. Researchers have to be aware that voices of particular

groups might be ‘drowned out’, systematically silenced or misunderstood as researchers engage with dominant academic discourses.

One of the challenges of the research was in making public the private experience and writing one’s own ‘hearing’ voice (Ribbens, 2002). Another obstacle was the study of social invisible relationships in social institutions (Mathner, 2002). Song (2002) gives a useful account of hearing competing voices and locating oneself within the research and dealing with multiple perceptions in research and about gate keeping and overcoming the barriers of researcher allegiance. This was useful for me to negotiate between the institutions that acted as gate keepers and the interviewees and to strike a balance in my relationships in the field.

4.5 Research Design Delhi

In Delhi feminist methods continued to inform the research design but in a more subtle way than in Mumbai to fulfill the objective of understanding the constructions of WUR, within a DV framework which is closer to the legal advocacy approach. The other objective was to understand and investigate how WUR fare within this framework. Four main groups were identified in order to attain these objectives. The first of these was the Lawyer’s Collective, second, the Protection Officers, the third group the police and the fourth group consisted of stakeholders. The police attitudes were established by

participant observation in a police training session. Protection officer attitudes and the complexities of the environment in which they work were established with the aid of interviews and non-participant observation. NGO leaders were interviewed. Judges were not interviewed because the research design already made space for the means of establishing judicial attitudes towards the constructions of identities and WUR in the form of a feminist analysis of the judgments made in the context of DVA and WUR identities as ‘texts’.

The Delhi field study was based upon an internship which was undertaken with the Lawyers collective in order to understand the legislation and the constructions of the WUR from a centrally placed key stakeholder. The method used was participatory action research as an intern with the drafters of the DVA (Rapoport, 1970; Reason, 1991; Zuber-Skerritt, 1996; Whyte, 2001). Participatory action research involves problem solving and knowledge attainment by researching within a key organisation with the aim of understanding their strategies, practices and perceptions. It includes planning, action and fact finding as a result of such action. The ethics of such participatory action research should include benefit to the organisation and the researcher. Researching with the organization raised different questions relating to ethics and power relations in the field. The research here was more traditional in regard to interviews with protection officers and NGO activists. Strict anonymity was adhered to when requested and there was a constant awareness the changing power relations in the field.

The thesis also uses secondary research methods such as reviewing of the available reports and data. It uses a formal method of case study, in-depth interviews with stakeholders and officials under the DVA. The grounded theory approach to qualitative and interpretive research was also used in the research undertaken with the organisation Lawyer's Collective (Babbie and Earl, 1989; Shields, Patricia and Tajalli, 2006). Exploratory research methods were also used during organisational research in the Lawyer's Collective. Qualitative research methods involve the use of interviews, government documents and participant observation data in order to study social and cultural legal phenomenon. Qualitative data sources include observation, participant observation, interviews, documents, texts and the researcher's impression and reactions (Myers, 2009). Kaplan and Maxwell (1994) warn that the goal of understanding a phenomenon from the point of view of the participants and its particular social and institutional context is largely lost when textual data are quantified. The underlying philosophical assumption of my research is feminist, qualitative and critical.

4.6 The Ethics of Research

The research has complied with the ethical and legal requirements of the research in the UK and India. Permissions were obtained from the gatekeepers for conducting qualitative research. The research design methodologies and data are opened to scrutiny subject to confidentiality of personal data. The data has not been shared with any external body and confidentiality has been strictly adhered to in terms of data storage. The purpose,

objectives and the means in which the data will be used was explained in detail to the participants in the research. The decisions to grant the interviews were made by the WUR after they had been briefed by the social workers. In the case of the unsolicited interviews, the participants were informed in detail and their consent was obtained for the use of their 'voices'.

5. Conclusion

Studying women at these rupture points reveals aspects about them that might otherwise remain hidden (Mies, 1991). WUR transgress several aspects of cultural, social, religious and societal norms when they enter intimate relationships that do not have the legitimacy of marriage. Once this rupture of their previously sheltered identity has taken place and when they find themselves in situations of intimate violence, they take on a different legal subject position as opposed to the ideal female legal subject. In the process of becoming agents in their own empowerment, they encounter the law in a number of ways depending on the DV framework set in place. This will be examined in Chapters Four and Five with regard to Delhi and Mumbai respectively. The constructions of the sexual identities of the WUR and their new legal position after the transgression from the private

to the public have been examined. The methodological framework suited for an analysis of their experiences with the DVA and the larger VAW framework has been established.

This chapter had for its objectives the location of WUR within the existing scholarship on VAW and DV, and establishing the methodological framework for the research. This chapter has argued that WUR with their transgressive identities defy the liberal construction of the legal subject. It has argued that by transgressing the norms of family life, the WUR have made a place for themselves as a legal subject with multiple subjectivities. It has also argued that the existing scholarship do not account for WUR as a category. The chapter has built on the argument made in Chapter One about the historical constructions of WUR. In the next chapter we will locate the WUR in the legal judgments regarding the DVA and the wider VAW framework and within the procedural aspects of the DVA using an analysis of case law and the text of the DVA and the position prior to the DVA.

CHAPTER THREE

Constructions of WUR: The DVA and Case Law

‘Though it will remain a matter of never ending debate as to whether law brings social change or social changes in society brings law (i.e. whether law "leads" change or "follows" change), it has to be accepted that many times laws are passed to ensure normative changes in the society. Abolition of Sati Pratha by an appropriate enactment is a sterling example. In broad terms, "change" is of two types: continuous or evolutionary and discontinuous or revolutionary. The most common form of change is continuous. This day-to-day incremental change is a subtle, but dynamic, factor in social analysis. The journey from enacting Dowry Prohibition Act, 1961 to Amendment in IPC by incorporating Section 498A and 304B to the passing of DV Act is aimed at bringing desirable and much needed social change in this particular sphere.’

Justice Sikri in Varsha Kapoor vs Uoi & Ors [WP (Crl.) No. 638 of 2010]

1. Introduction

Chapter One established the history and the evolution of the legal provisions and the landmark cases in the wider context of the DV framework and the constructions of WUR within this. The last chapter then placed WUR within the substantial theoretical framework and established the methodology for this thesis. This chapter builds on these

arguments by achieving two prime purposes. These purposes are to describe the legal framework for the DVA, and to analyse the construction of WUR within the legislation and subsequent case law. The main questions that this chapter answers are as to how the WUR are positioned within the DVA and if there is a link between their marginality to ways in which the higher judiciary interprets the provisions. The argument that this chapter also makes is that the construction of WUR within the legislation is marginal and there is a link between this marginality and the ways in which the judiciary interpret the provisions of the DVA. The worthiness of the victim subject is defined in a variety of ways in statutes, guidance and judgments of the higher judiciary. The chapter explores the different textual interpretations and the prerequisites that have evolved for such protection. It identifies the constructions of WUR that have been made as a result of such interpretations.

The fate of any legislation also depends on how the procedure is implemented and ultimately on how the courts interpret the provisions, the procedure and the various provisions. Sometimes legislative intent can be clouded over by the various different interpretations made by the judiciary. Alternately, an Act can grow as a powerful law if the interpretations by the judiciary are perceptive and progressive. The chapter argues that the higher judiciary interprets the various elements of the DVA which particularly contribute to the constructions of WUR. This argument will there by reinforce the overall proposition that WUR identities are transgressive and the DVA constructs them in one way and the courts add their interpretations. The following section begins with the

general legal frame work available for women facing violence and narrows the scope down to a discussion of the contents of the DVA, and subsequently the WUR within it.

2. Constructions of WUR in the VAW Framework Prior to DVA

Before the advent of the DVA, abused women had two choices: one was to file a criminal case against the perpetrator and face the system head on in the hope of getting some justice; the second was to file for divorce in a civil court and hope to get maintenance, child support, and an injunction against harassment (Agnes, 1999; Kishwar, 2000). The civil law provides that a person can file for divorce on the grounds of cruelty. Indian law recognises the act of cruelty as a ground for divorce under the personal laws and the Special Marriage Act. This however does not provide for immediate relief, and results in delay and costs. This is of limited application to WUR as this civil law pre-supposes the existence of a valid marriage.

On the criminal law front the Indian Penal Code (IPC) (Act 45 of 1860) lays down the substantive criminal law in India (Kadrish, 1987; Skuy, 1998; Banerjee, 1990). The procedural law that complements the IPC is contained in the Code of Criminal Procedure, 1973 (CrPC). There were many provisions under the criminal law for married women although there was no mention of the phrase ‘domestic violence’ anywhere in the Indian

legal system prior to the passing of the DVA. It was addressed as ‘physical and/or mental cruelty’ to the wife by the husband or by his relatives as per section 498A of the IPC (Agnes, 1993). This was recognised as a cognisable and non-bailable offence made punishable with imprisonment up to three years. An abusive husband will usually accede to divorce if the woman is willing to drop charges of violence against him. Also, if the divorce is granted before the criminal hearings, charges are automatically dropped. Thus, in many cases lawyers will advise the husband to file for divorce before the wife files a criminal case against him so it looks like a malafide retaliation case (Kishwar, 2000). Unfortunately, many lawyers and the police themselves push women who are registering a case of domestic violence to include dowry harassment to strengthen the case. This misuse of the law has led to it being discredited, and so when genuine cases do occur, they are not given the credibility they deserve. Section 498A deals with mental and physical torture, while Section 406 of the Indian Penal Code deals with illegal withholding of *streedhan* (women’s wealth, or dowry). WUR often do not have these remedies available and their major recourse to justice still remains the DVA.

2.1 WUR and 498 A

Section 498A is of very limited use to WUR as it pre-supposes the existence of a valid marriage. Thus in the first instance of the VAW framework the criminal remedy of 498A is virtually inapplicable to WUR especially to the category of WUR who are intimate partners living together as 498A specifically addresses cruelty in a marriage.

The government of India addressed the issue of domestic violence in the form of dowry harassment and dowry deaths. Section 498A was inserted in the IPC by Act 46 of 1983.

This Section is worded as follows:

498A Husband or relative of husband of a woman subjecting her to cruelty: – Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

In an explanation to this section the Act sets out the parameters of ‘cruelty’ as –

- (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 of life, limb or health(whether mental or physical) of the woman; or
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The punishment for the offence is imprisonment for 3 years and a fine. In *Shobha Rani vs Madukar* (AIR 1988 SC 121) and *Prakash Kaur vs Hari jinderpal Singh* (AIR 1999 Raj 46), it was reiterated that demand for dowry itself being unlawful, can amount to cruelty as per section 498A. In *Adarsh Prakash vs Saritha* (AIR 1987 Bel 230) the Delhi High Court held that demanding dowry after marriage and when the parents of the girl were unable to meet such demands subjecting the girl to ill treatment would be an offence within section 498A IPC.

Up until 2005 domestic violence was synonymous with the problem of demands for dowry in a marriage. 498A has been praised by several women's groups in the country for its strong deterrent value because of the immediate repercussions of criminal sanction (Viswanathan, 2001; Mitra, 2000; Rajesh, 2010). However the implementation of 498A has been strongly criticised by anti-feminist groups in India (Mohanti, 2001; Baxi, 2001). These groups claim that this section is draconian and can be misused by 'wilful and vengeful' women in order to harass their husbands and the relatives of their husbands (Agnes, 1995; Kishwar, 2003). It has also been criticised by these groups as being potentially home breaking (Lodhia, 2009). The police officials are often reluctant to file complaints because of its perceived threat to the sanctity of the family (Chikarmane, 1999; Maukhopadhyay, 1999; Greenberg, 2002).

A seeming short coming in 498A is the practical constraints in seeking justice using 498A. Once a criminal case has been made a woman cannot go back to her matrimonial home to gain access or to seek residence. When other options of residence and financial support are missing women cannot take recourse to this law. The husband's family can easily use the option to ask to withdraw the case in return for a divorce (Chand, 2003; Kishwar, 2003; Sen, 2010; Rege, Chatterjee, 2010). When a criminal case has been filed a women can feel ostracised and isolated by the neighbours and relatives. Thus the conviction rates have been very low under 498A (Vindhya, 2000; ICRW, 2001; Simister, 2008; Gangoli, 2011).

2.2 WUR and Anti-dowry Legislation

The sections of criminal law that deal with DV in the context of dowry death are Section 302 of the IPC dealing with murder read with 304B dealing with dowry death (Mohanty, Panigrahi and Mohanty, 2004; Gaur, 2009). This is again a dowry specific section of the law on VAW and has limited significance to WUR. According to Agnes, the campaign against dowry tried to ‘artificially link’ dowry which is ‘property related’ to death which is an ‘act of violence’ (Agnes, 1991: 133). She argues that this would benefit the girl’s father and her brother and would be of no use to her. Due to this progression of VAW laws in relation to dowry related crimes, WUR find themselves without criminal redressal in cases of violence against them as women.

Section 306 deals with the abetment of suicide, sections 323-328 deal with causing hurt and sections 341 to 348 sanctions wrongful confinement and restraint (Government of India, 1860; Mayne, 1901). These are often read with Section 304B and do not expressly deal with domestic violence outside of section 304 B. Independently, these sections are not gender specific and therefore do not constitute law that specially addresses domestic violence.

2.3 WUR and the Laws on Rape

As discussed in Chapter One, after the Mathura Rape Case, the sections of the IPC Sections 376, 376B, 376C and 376D on rape were amended in 1983 for the first time since 1890 (Agnes, 1990). However the amendments have been criticised for being merely a paper tiger as in the case *Premchand versus Haryana* ((1989) Supp.1 SCC (286)), the Supreme Court again relied on ‘rape myths concerning the alleged easy virtue of a young woman’ to reduce the ten year sentence down to five years (MacKinnon, 2006: 190). In such cases, language used in the judgments contribute to the constructions of good and bad women and therefore to the construction of WUR identities with descriptions like chastity, servility, supreme honour, provocative attire being used (*Krishnalal versus State of Haryana*, AIR 1980 SC 926, *Harpal Singh & Anr. versus Himachal Pradesh*, 1981 CrLJ 1, *Bijoy Kumar Mohapatra & Ors. versus State of Orissa*, 1982 CrLJ 2161).

Marital rape is not recognised in India, but the 1983 amendment recognised in Section 376 sexual intercourse with a separated woman by her husband as an offence (Malhotra, Vasulu and Dikshitulu, 1992; Murti, 2008; Mangoli, 2009). Here the amendment made this punishable with two years than the usual minimum of five years using the ‘logic’ that sexual intercourse may result in reconciliation (Agnes, 1990). Thus this category of WUR finds themselves compromised by the criminal law that is based on the illogic of forced intercourse possibly enabling reconciliation. Section 376A of the IPC

also defines the crime of sexual intercourse without consent between a judicially separated couple or between two married persons living separately according to some custom. It defines sexual intercourse as rape only if one of them is divorced and not merely judicially separated. The reluctance of the legislature to term sexual intercourse between a separated couple as rape shows the assumed right of violation that a man has over a woman he was once legally married to (Jaising, 2005; Mittal and Garg, 2007).

Section 354 sanctions assault with intent to outrage the modesty of a woman and section 509 of the IPC deals with words, gestures or act intended to insult the modesty of a woman (Trivedi, 1963; Kannabiran, 1996; Baxi, 2001). Section 494 sanctions bigamy whilst section 496 deals with fraudulent marriage ceremony, section 493 is about deceitfully causing a person to believe that she is lawfully married and section 497 defines the crime of adultery. Offences against property are included in the criminal breach of trust in section 406 IPC (Markey, Tripade and Mazumdar, 2009). The significance of these sections is discussed in Chapter 5 regarding the different categories of WUR.

On a positive note for the treatment of WUR and their protection, the courts have begun to give a border interpretation to the word husband for the purposes of sections 498A and 304B as evident in the cases *Heartwin Wessley Biju versus State* (CRL.O.P. (MD).No.9832 of 2007) and *Manoj Bhimrao Wankhede versus Unknown* (Criminal

Application No. 3833/2007). The scope of the word ‘husband’ was stretched in order to protect the WUR who did not have the benefits of a legal marriage because they had been deceived by their husbands into false marriages. This expansion of the definition of husband meant that some WUR were recognised as being worthy of inclusion within the peripheries of the law’s as protection. The ratio in these decisions was that if the WUR honestly believed that they were in legitimate marriages and the court felt that their ‘husbands’ were trying to evade responsibilities in the law, the men would be deemed to be husbands (*Heartwin Wessley Biju versus State* (CRL.O.P. (MD).No.9832 of 2007) and *Manoj Bhimrao Wankhede versus Unknown* (Criminal Application No. 3833/2007)). Thus *Reema Agarwal versus Anupam* (AIR 2004 SC 141) defined husband to include:

Persons who contract marriages ostensibly and cohabit with women in the purported exercise of their role and the status as ‘husband’ would come under the purview of sections 498A and 304 B of the IPC (AIR 2004 SC 141).

Even post the advent of the DVA, this position was further reiterated by Justice Sikri in *Smt. Narinder Pal Kaur Chawla versus Shri Manjeet Singh Chawla* (AIR 2008 Delhi 7).

‘We had also taken support from the provisions of Protection of Women from Domestic Violence Act. In a case like this, if the interpretation we are suggesting is not given, it would amount to giving premium to the respondent for defrauding the appellant. Therefore, we feel that in a case like this, the appellant, at least for claiming maintenance under Section 18 of the [DV] Act, be treated as legally wedded wife. Even when two interpretations are possible, one which would

advance the purpose for which the Act was enacted should be preferred than the other, which may frustrate the purpose.’ (AIR 2008 Delhi 7)

The National Commission of Women recognised the evasion of the law by men and their refusal to pay maintenance on the ground that there was no valid marriage. The body recommended in 2008 that a woman in a ‘live-in’ relationship should be entitled to maintenance if she is deserted by her partner (Vyas, 2008). The commission sought a change in the definition of “wife” as described in the Section 125 of Criminal Procedure Code (CrPC), which deals with maintenance and suggested that it should include women involved in live-in relationship. The move aimed at harmonising other sections of the criminal law with the DVA that treats a live-in couple’s relationship on par with a marriage. The state of Maharashtra approved this proposal in 2008 but the central government has not approved of this inclusion (Jaising, 2010). By this time there was a movement amongst women’s groups to legitimise live in relationship in order to protect WUR from violence and economic deprivation in the form of refusal to pay maintenance. If women are excluded from the maintenance provision, they would suffer financially despite the DVA treating them as being at par with women in ‘legitimate’ marriages. Denying maintenance is also a form of economic abuse and there does not seem to be *intelligible differentia* between wives and female live in partners especially in the light of the DVA.

Section 125 provides for maintenance of wife, children and parents, who cannot maintain themselves (Engineer, 1999; Agnes, 2001). Maintenance can only be claimed by a woman who is a wife, has either been divorced or has obtained a divorce, or is legally separated and is not remarried. Several authors have written about the unfairness of this provision (Pillai, 1999; Mukhopadhyay, 1999; Holden, 2004; Agnes, 2005). Jaising (2010) states that it is essential for the Supreme Court to protect the rights of women in such relationships until a more inclusive interpretation has been made by the legislature about who can claim maintenance. Not doing so would result in the miscarriage of justice in the lower courts for such women, and it would be important for the judiciary to fill in the gaps until section 125 is reformed (Jaising, 2010).

The DVA seeks to tackle the inadequacies in the existing civil and criminal provisions. It aims to provide a comprehensive framework for addressing issues of VAW. In order to understand the position of WUR within the DVA and assess the extent to which it provides access to WUR, the following section sets out the major provisions of the DVA.

3. WUR within the DVA

The DVA is a gender specific civil law designed to be accessible and friendly to female victims of violence within the home (Jaising, 2007; Basu, 2008; UN WOMEN, 2011). It has an innovative structure and has introduced various new institutions which aim to

provide easier access to justice (Shenoy, Kaladharan and Sahai, 2010). The DVA takes care of an aggrieved person's (AP, is the term used by the DVA to address a victim of domestic violence) need for protection, shelter and monetary relief (Lodhia, 2009; Rajesh, 2010; Sunitha, 2010). It recognises that the immediate aim of the law should be to provide a 'violence free' space for an aggrieved person in order to decide what legal recourse to take against the abuser (Jaising, 2007; Basu, 2008). Where the criminal law falls short and the existing civil remedies drag on for a long time in the courts, the DVA was to recognise the responsibility of the state towards victims of domestic violence (Jaising, 2006). The DVA expects the central and the state governments to allocate budgetary provisions and to help with the implementation and monitoring process of the DVA. The procedural aspects of the DVA are novel in that there is a new alliance between the state and civil society to address the problem of domestic violence. The responsibility of the implementation of objectives of the DVA is to be shared by the state and the civil society. DVA is therefore no longer a private matter.

One of the main aims of the DVA is to provide a multi-agency response system offering the necessary support to victims of domestic violence (Jaising, 2006). It requires the state and central governments to provide the infrastructure necessary to train authorities under the Act, provide medical facilities and other support services. It puts the onus on the state to be responsible to victims of domestic violence. Within section 11 of the DVA the government has the duty to take positive action to prevent violence and protect victims from violence. This can be done by publicising the DVA through the media, by providing

judicial services of gender sensitisation and awareness training and helping in coordinating the departments that deal with law health and human resources (HLNR, 2008; Suneetha, 2010).

The DVA was enacted with the objective of protecting women from all forms of domestic violence (Basu, 2008; Uma, 2010; Ghosh and Choudhury, 2011). In defining domestic violence, the DVA went beyond mere physical forms of violence, to include mental, sexual and economic violence (Lodhia, 2009; Rajesh, 2010; Sen, 2010; Mahajan, 2011). As mentioned to the introduction to this thesis, the definition is at par with the internationally recognised definitions of DV set out by CEDAW (Jaising, 2007; Basu, 2008; Lodhia, 2009; Uma, 2010, Sen, 2010). It is also the only piece of legislation which expressly includes in its scope, the protection of WUR (Rajesh, 2010; Sen, 2010; Uma, 2010).

Section 3 of the DVA defines domestic violence as

‘An act, omission or commission or any conduct of the respondent that harms, injures or endangers the health, safety, life, limb or well- being, whether mental or physical, of the aggrieved person or tends to do so and includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. If the respondent, by such acts harasses, harms, injures or endangers the aggrieved person with a

view to coerce her or any other person related to her to meet any unlawful demand for dowry or other property or valuable security; or threatens the aggrieved person or any person related to her by such conduct, such acts would constitute domestic violence. If such acts injury or causes harm, whether physical or mental, to an aggrieved person, it would constitute domestic violence' [The Protection of Women from Domestic Violence Act 2005, No. 43 of 2005, section 3].

The DVA is divided into five chapters, the first of which lays down the definitions. The second chapter discusses the scope of domestic violence whilst the third chapter deals with the duties of the authorities within the DVA. The fourth chapter discusses the nature of remedies available and the procedures for obtaining relief. The final chapter provides the penalties for the breach of its provisions and the statuses of the authorities in the DVA (HRLN, 2008). The next section discusses the chief authorities and the procedure that follows when a complaint is made under the DVA.

3.1 DVA Authorities and the Initiation of Procedure

The protection officer is an officer of the court and is often described as the most important authority in the DVA (Hornbeck, Johnson et al; 2006; Vatuk, 2006; Mohanty,

2009). She works in collaboration with the courts to give access to the victims of violence to legal aid and to remedies. She works with service providers, the medical facilities and the police to aid the aggrieved persons. Her duties include finding a safe place for sheltering victims, providing access to medical facilities and field visits (Mathur, 2007; 2008). It is the duty of the different state governments to appoint protection officers in every district in each state and to notify her area of duty. One of her several duties involve the preparation of a Domestic Incident Report upon the happening of a domestic incidence. In Chapter Four we will expand on the importance and the duties of the protection officer specifically with regard to WUR. As we will see later the protection officer plays a crucial role in the complaint made by a WUR reaching the court.

The service provider can be any voluntary organisation, nongovernmental organisation or company that has the objective of providing the rights of women through lawful means that include legal, medical and financial aid, and has been registered with the state government (The Protection of Women from Domestic Violence Act 2005, Act 43 of 2005, section 2(r) read with section 10(1)). They have to ensure medical assistance and the forwarding of the medical report to the nearest police station. Whenever necessary, arrange for accommodation of the aggrieved person in a shelter home and forward a report to the police station in order to initiate proceedings (Mathur, 2008; 2009; Mohanty, 2009; Suneetha, 2010). The service provider can also make a domestic incidence report and forward it to the magistrate.

The Domestic Incidence Report (DIR) is a report made on a 'receipt of a complaint of domestic violence from an aggrieved person and can be made by a protection officer or a service provider (The Protection of Women from Domestic Violence Act 2005, No. 43 of 2005 section 9 (1) (b) and section 10 (2) (b)). Once a DIR is filed, the Court takes over the complaint. The DV Rules 2006 made by the central government in accordance with section 37 of the DVA, prescribe that a DIR has to be filled in irrespective of whether a woman wants to proceed or not, and the copies of the same shall be forwarded to the magistrate within whose jurisdiction, the protection officer works . The reason for this requirement is the recognition for the need for records for monitoring processes. The service provider is the other authority empowered to make a DIR.

The procedure is thereby initiated by the filing of a domestic incidence report as specified by form A of the Domestic Violence Rules requires the details of the complainant, details of the respondent including the relationship with the aggrieved person. It also requires details of the children that they have and where they are staying at the moment. The place date and time of violence, the person responsible for the violence, the types of violence including the details are required. A list of documents should be attached including any medical report and list of material goods given as dowry. If the aggrieved person is illiterate the contents of the report should be read out to her. Copies of the report should

be given to the magistrate, to the local police the service provide and to the aggrieved person (HLNR, 2008).

The next authority within the DVA is the magistrate. The magistrate's duties are initiated in three different ways. An application can be made to the judicial magistrate of the first class by the aggrieved person by a protection officer or any other person on behalf of the aggrieved person. The magistrate will consider the domestic incidence report prepared by the protection officer or the service provider. An order of monetary relief can be passed which does not affect the aggrieved person's right to approach any other body for compensation for injury or damages. In order to ensure speedy trial it has been prescribed that the application has to be taken up within three days and disposed off within sixty days. If the magistrate feels that it is required, there are provisions for counselling and assistance by welfare experts. There is also a provision for in camera proceedings if the magistrate feels it is required (The Protection of Women from Domestic Violence Act 2005, no. 43 of 2005 sections 16-20).

3.2 Remedies Available to WUR under the DVA

Several remedies are available to the aggrieved person. These are protection orders, residence orders, and monetary relief and compensation orders. Protection orders

according to section 18 can prevent the committing of an act of domestic violence. The abuser can be restrained from entering a place of employment where the aggrieved person works. A restraining order protecting a child from the abuser can prevent the abuser from entering the school premises. The magistrate can also restrain the alienation of assets that are owned jointly or singly including the operation of bank accounts and banks lockers. A residence order is an order restraining the eviction or the dispossession of the aggrieved person from the shared household as per section 19 of the DVA. An abuser can be ordered to leave a shared household. The duties are then passed on to the police to implement such an order and on to the protection officer to ensure the service of notice to the respondent. The magistrate can impose an order to ensure the safety of the aggrieved person. The abuser can be required to execute a bond for the prevention of domestic violence. The other remedy available is a compensation order. Compensation orders can be given for medical expenses and damages to property as per section 22 DVA. This can also be given for mental torture and emotional distress. Custodial orders for children can also be given. Restoration of property orders can be given, and *exparte* and interim orders can be given under section 23 (HLNR, 2008).

Despite the fact that the role of the police is being minimised, in practice an aggrieved person also has the option of approaching the police for help. The police cannot refuse to register a first information report. If the aggrieved person does not desire to initiate criminal proceedings she can register a non-cognisable report with the police within

section 155 of the Cr PC for future use of the aggrieved person. Once the report is filed, the police can provide the required protection (Singh, 2009).

Although the DVA also prescribes strict penalties for the breach of protection orders (Rajesh, 2010; Mahajan, 2011), its implementation often depends on individual judges. Moreover, the role of the protection officer provides a primary link between the victim and the court and is meant to embolden women to initiate legal action against the perpetrators (Jaising, 2007; Basu, 2008). However, until September 2010 only the three states of Andhra Pradesh, Delhi and West Bengal had full time Protection Officers (Ghosh and Choudhuri, 2011).

4. Constructions by the Higher Judiciary

The constructions of the transgressive identities of the WUR added by the judgments of the higher judiciary are analysed in this section. The contribution that this textual analysis makes to my overall argument is that the constructions of WUR within the precedent forming case law triangulates the findings in the other chapters about the historical and social constructions of WUR identities. While undertaking the textual analysis, four different context of cases have been identified in a search of the cases of the High Courts and the Supreme Court of India since the inception of the DVA to the year 2011. However prior to this period the cases which have had a direct bearing on the WUR

constructions have also been analysed as the exclusion of these cases would mean that the analysis would be incomplete. These four areas in which constructions of WUR have been made within the text are the constructions prior to DVA, the DVA and 'live in relationships', maintenance, and shared household and Non-Resident Indians (NRI) within the DVA. This section has specifically selected for the feminist analysis only the cases that have contributed to the construction of WUR identities.

Before we proceed an analysis of the case *Khushboo versus Kanniammal & Another* ((2010) 5 SCC 600) shows the cultural and societal perceptions on premarital sexuality. Unconventional sexuality and the exploration and discovery of sexuality before marriage are still frowned upon in India. Even a public comment by a famous person from a particular community or region can offend and/ or influence the entire group of people. There is a sense of community honour and women are often the bearers of this honour. An act or a statement of dishonour can bring a sense of 'shame' upon an entire community. Complaints were made and cases were registered against film actress Khushboo about some comments made by her in an interview to a popular magazine. It was alleged in the complaints that the interview had brought shame and dishonour to the women of India, particularly of Tamil Nadu by implying that women of her stature had engaged in premarital sex. It was also alleged that her comments had caused mental harassment to a large section of women who were now looked at with contempt and disrespect. The Supreme Court of India decided in favour of Khushboo and her right to freedom of expression was upheld. However the Court said:

‘Thus, dissemination of news and views for popular consumption is permissible under our constitutional scheme. The different views are allowed to be expressed by the proponents and opponents. A culture of responsible reading is to be inculcated amongst the prudent readers. Morality and criminality are far from being co-extensive. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author.’ *S. Khushboo versus Kanniammal & Another* ((2010) 5 SCC 600).

Although the Court decided in favour of Khushboo, the wordings of the judgment prerequisites a ‘prudent and responsible’ reader who will not stray away from the conventional moral standards but will tolerate an unpopular view of morality. Sexual activity outside of a marriage is acknowledged as something that someone with a sense of responsibility will not indulge in. The social ostracism that a WUR may face can be inferred from such popular notions of moral conduct and the possibility of one person’s deed creating problems for an entire community. The media discussed this issue with great rigour and the incident is illustrative of the general moral code of conduct of the society. Women as the safe keepers of the honour of the family and the community must abide by the moral rules of conduct that act as the adhesive that binds the community and keeps it culturally exclusive with a distinctive caste and regional identity.

4.1 Constructions prior to DVA

A chief reason for the reluctance to acknowledge the status of WUR as being at par with a legitimate wife is the general feeling that the rights of the ‘first’ and legitimate wife will

be compromised if WUR are given the same amount of protection. Prior to the existence of the DVA, it was recognised as a legislative shortcoming. Even as some Judges sympathised with WUR, they felt that their hands were tied as long as no legislative action is taken for they felt that it was up to the legislature to make a law to provide for the protection of WUR rights in order for them to enjoy the rights available to women who are 'conventional' wives. Before the advent of the DVA, in the case *Savitaben Somabhat Bhatiya versus State of Gujarat and others* (AIR 2005 SC 1809), the Supreme Court held that however desirable it may be to take note of the plight of an unfortunate woman who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of 'wife'. The Court held that this inadequacy in law could be amended only by the Legislature. The facts of the case are as follows: Savitaben was married in 1994 according to the customs of her religion. Her husband treated her well for some time and they had a child during this period. Later on she was subjected to mental and physical torture and was neglected as he had another relationship. Savitaben filed a case before the magistrate for maintenance under section 125 of the Cr.PC.

It was pleaded on behalf of the husband that Savitaben was not his legally wedded wife and that he had been married to the other woman for 22 years and had two children with her. In evidence he produced records proving the validity of his marriage with the other woman. The decision of the magistrate was to grant maintenance to Savitaben and the child. The Gujarat High Court in its appellate jurisdiction decided that as Savitaben was

not a legally wedded wife she was not entitled to any maintenance. The submission on behalf of Savitaben was that section 125 of the Cr.PC should be interpreted to give the term 'wife' a broad interpretation as the section was intended to protect destitute women. On behalf of the husband it was argued that there was no scope for the definition of wife to be extended beyond its well established meaning. Finally the Supreme Court ruled that section 125 is only meant to provide maintenance to an illegitimate child and wife and not for a woman who is lawfully married. By way of obiter the court observed that this is an inadequacy of the law. In this case the empathy of the Supreme Court with the WUR was because she was duped into the marriage and the proof that customary rituals had accompanied the 'marriage'. Thus the woman's 'innocence' about the existence of a previous marriage was considered. The fact that the child from the union was considered to be eligible for maintenance but the same was not applied to the WUR shows firstly the laws reluctance equate WUR rights to the rights of legally married wives. Secondly it shows the inadequacy in the legislature in that period to provide for destitute WUR.

However, Section 144 of the Indian Evidence Act 1857 states that there will be a presumption of marriage in cases of continuous cohabitation where there was no evidence of a ceremony of marriage. In *Badri Prasad versus Deputy Director of Consolidation* (AIR 1978 SC 1557), the Supreme Court held that the law leans in favour of legitimacy. The burden of proof lies on the person who seeks to challenge the legality of the union to rebut the presumption of wedlock between two persons who have been living together as husband and wife. In *S.P.S Balasubramaniam versus V. Suruttayan* ((1994) 1 SCC 460)

the Supreme Court held that when a man and women live together for a long time, a presumption of marriage will be raised. The principle of presumption of legitimacy of marriage in cases of cohabitation was further reiterated by the Supreme Court in the cases *Rajagopal Pillai versus Paikkam Ammal* ((2004) 3 CTC 119), *Kalpana Biswas versus Sukamal Biswas* ((2004) 1 CHN 93), *Madhavan Balasundaram versus Madhavan Saeasamma* (AIR 2004 Ker 79).

4.2 Constructions of WUR in Cases Relating to ‘Live in Relationships’

The definition of domestic relationship in the DVA as interpreted by the higher judiciary seems to privilege relationships that are marriage-like. This can result in the under protection of WUR because of the giving of benefits and protection based on how close the relationship ‘mimics’ a real marriage. This kind of construction resembles a ‘marriage mimicry model’ of domestic violence legislation which is an insufficient means of discerning whether people are in real need of protection (Colker’s, 2006:1847). She suggests using a more ‘functional approach’ to decide whom the recipients of benefit must be (Colker, 2006:1847). The presumption of wedlock, the presumption of legitimacy and the requirement of a relationship in the nature of marriage all require an imitation of marriage and this would result in many WUR being left out of the preview of the law’s functionality. The presumption is that if a relationship is ‘marriage-like’ in the various elements that constitute it, then the law leans in favour of legitimacy. The litmus

test is to compare the relationship with a legitimate marriage and observe if the similarities are enough to deem a de facto marriage (*Tulsa and Ors. versus Durghatiya & Ors.* (2008 (4) SCC 520) and *Chanmuniya versus Virendra Kumar Singh Kushwaha* (2011) 1SCC 14))

In *Aruna Pramod Shah versus Union of India* (Uoi) (WP.Cri. 425/2008Del), the petitioner challenged the DVA as being *ultra vires* the Constitution of India for only protecting women. It was argued that this was against Article 14 of the Constitution that promised equality of law and equal status of the law to all Indian citizens. The Court held that the legislation was meant to protect female victims of violence within their homes and this would constitute an *intelligible differentia* that is, classification of people that constitutes a 'reasonable nexus' for the objective of the legislation. The argument made on the behalf of the man that a ring ceremony does not constitute a valid marriage and that a 'mistress' would not have the same right as a wife within the DVA was buttressed by the judgment. The higher judiciary has interpreted the definition of a victim of violence and that of 'wife' in this decision. On the behalf of the man it was also argued that the definition of domestic relationship in DVA which puts married women and women in live in relationships on an equal footing is subject to challenge. In this case the tensions in the constructions of WUR are evident. The court responded to the argument that the similar status given to women in live in relationships does not take from the status of a married woman. By way of obiter the court acknowledged the vulnerability and the lack of bargaining powers of women in live in relationships. In this case the

construction of WUR identity is that of a victim in need of the laws protection and their transgressive identity is overshadowed by their helpless female victim subject identity.

4.3 Construction of WUR in Cases Relating to Maintenance

Another aspect of judicial construction of WUR is cases relating to financial support provisions in the form of maintenance. These constructions are made in regard to whether a WUR is entitled to maintenance and if so whether it is through an inclusion within marriage status. Thus in this section we explore the wider legal issue of maintenance and the constructions of WUR within it.

The first case is *Narinder Pal kaur Chawla versus M S Chawla*, 148 (2008), Delhi Law Times 522 (DB). The facts of the case are as follows. Narinder was married to Chawla in accordance with Sikh customs in 1977 in Punjab. They lived for 14 years in Delhi during which they had two daughters. In 1991, Narinder went back to Punjab to complete her graduate studies. When she returned in two months' time her mother-in-law refused her entry into the matrimonial home. She found out on her return that her husband had been married to someone else before they were married. Her husband had deserted her and she filed a criminal case of bigamy and also filed for maintenance under her personal law of

her Hindu Adoption and Maintenance Act, 1956. She also filed for interim maintenance during the trial. Before the high court of Delhi, it was submitted on behalf of Narinder that they had lived together for 14 years and had shared a household and looked after their children together. It was also submitted on her behalf that her husband had deceived into the marriage by hiding the fact of his first marriage. On behalf of Chawla, it was submitted that she was not entitled to maintenance as she was not legally wedded to him. He relied on Supreme Court's earlier judgment in Savitaben's case discussed in section 4.1 above. This judgment is essential for establishing judicial constructions of WUR because the court took specific use of three distinct expressions – 'wife', 'Hindu wife' and 'concubine'. Section 18 (2) of the Hindu Maintenance and Adoption Act, 1956. Section 18 (2) (f) entitles a Hindu wife to maintenance if the husband keeps a concubine. The court declared that this section accords a higher status to a Hindu wife in comparison to a concubine. The court held that women in the position of a second wife (as opposed to a concubine) can be treated as a legally wedded wife for the purposes of maintenance. The court based this judgment on the fact that the man had cheated the woman by concealment of his first marriage and for this reason she can be treated as a legally wedded 'Hindu wife' (*Narinder Palkaur Chawla versus M S Chawla*, 148 (2008), Delhi Law Times 522 (DB)).

In this aspect of maintenance a judgment that sparked a lot of controversy with many women's groups expressing outrage at the manner in which the judgment in the case was worded was that of *D.Velusamy versus D. Patchaiammal* (2010 STPL (Web) 856 SC)/

(AIR 2011 SC 479), the Court held that all live in relationships will not amount to relationships in the nature of marriage to benefit from the DVA. Justice Katju opined thus:

‘In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage’ (2010 STPL (Web) 856 SC)/ (AIR 2011 SC 479).

The court said that it was aware that such a view would exclude many women who had or have a live in relationship from benefitting from the DVA. However it declared that it could not amend or change the law as the parliament had used the expression ‘relationship in the nature of marriage’ and ‘not live in relationship’. The Supreme Court then proceeded to list out certain specifications for a ‘live in relationship’ to constitute a ‘relationship in the nature of marriage’. It was set out that the couple should have held themselves out to the society as having lived like spouses for a considerable amount of time. They must be of the legal age of marriage and qualified to be married, and they should be otherwise unmarried. They must prove that they have voluntarily cohabited (2010 STPL (Web) 856 SC). By setting out these requisites, women’s rights activists felt that the highest Court of the country has excluded many categories of WUR. By specifying that the couple must be unmarried otherwise, the Court is excluding second and third wives or single women in partnerships with married men and married women in partnerships with single men and otherwise married couples in intimate partnerships.

The most caustic criticism came from Indira Jaising (2010), the head of LCWRI. By 2009 she became India's sole woman additional solicitor general and attained an even more powerful voice to speak on behalf of domestic violence victims. She criticised the decision on several counts. She stated that the decision of the Supreme Court in this case was made on moral grounds and as one of the chief drafters of the DVA, she said that the definition of domestic relationship in the DVA is self-explanatory and the one used to explain intimate relationships throughout the world (Jaising, 2010). She then proceeded to argue that it covers by implication cohabitation and a relationship similar to marriage. The court argued that the parties should not be otherwise married but as Jaising (2010) argues this would mean that if a man were living with a woman who is not his wife and they have a relationship and even children together, the 'second' woman would not have rights. This is against the very spirit of the DVA. It would also mean that the DVA would deny the protection of law to 'such women' in relationships in the nature of marriage. In a country where second, third and even fourth 'marriages' for men are silently accepted, such an interpretation leaves women very vulnerable. Relief to women can be denied merely on the basis of who manages to obtain the first marriage.

One of the main concerns of the court in this decision was that the 'first' or the 'real' wife's rights might be undermined by providing the 'other' woman with equal rights under the DVA. However it ignores the fact that the man entered into a second relationship with another woman and instead makes a moral judgment on the second

woman. In effect, the person who suffers is the second woman while the man is without responsibility. The distinction between the two women and their rights speaks of bias and moral judgment (Jaising, 2010).

Aside from this, the judgment created controversy for its use of language - the use of the 'keep' to refer to women who do not fall within the now legitimate category of 'relationship in the nature of marriage'. Only women can be 'kept' according to this decision and is an extreme form of discrimination based on sex and marital status (Jaising, 2010). Jaising claimed that the decision was a violation of the fundamental rights of women and words like 'cohabitees' or partners should have been used instead. The Supreme Court's judgment on eligibility for maintenance in a broken live-in alliance differentiates between a 'keep' and a free will live-in partner. Only a married man can maintain a 'keep' a similar alliance in case of an unmarried, legally eligible person is a 'live-in' arrangement. Jaising argues that whether the relationship is for sex or for emotional help or other reasons are issues that could be decided after weighing the evidence brought up by the aggrieved partner, (2010).

Further, Justice Katju, included the following statement in his judgment:

'It seems to us that in the aforesaid Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe.' (2010 STPL (Web) 856 SC)

He would seem to be identifying a form of cultural exclusivity in the private (as discussed in Chapter One) and a desire to keep away from the strangleholds of western corruptive influences. The controversial judgement was further in the news when, in a judgment dated 16 March, 2011 reported in major Indian newspapers (Times of India; Deccan Herald; The Tribune; 16 March 2011), the Supreme Court bench constituted by Justice M. Katju and Justice TS Thakur quashed a petition by the women's group *Mahila Dakshat Samiti* that requested the withdrawal of the word 'keep' from the *Velusami* judgment. The court ruled that the organisation did not have the *locus standi* to challenge the decision as they were not party to the matrimonial dispute.

The frivolous nature sometimes attributed to unconventional partnerships by some members of the higher judiciary is evidence by the wordings of this judgment of the Supreme Court of India:

'Live-in relationship' is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time. Those, who do not want to enter into this kind of relationship of walk-in and walk-out, they enter into a relationship of marriage, where the bond between the parties has legal implications and obligations and cannot be broken by either party at will. Thus, people who chose to have 'live-in relationship' cannot complain of infidelity or immorality as live-in relationships are also known to have been between married man and unmarried woman or between a married woman and an unmarried man. – Justice Dhingra in *Alok Kumar versus State & Anr.* (CrI.M.C.No. 299/2009)

This case involved a woman in an intimate partnership who was beaten and bruised by her violent partner in an airport lounge. The man was married to another woman and was planning to leave for London when the aggrieved person tried to intercept his travel. The judgment of the court implied that his partner was trying to involve him in a malicious prosecution. The court took into consideration the fact that the aggrieved person had knowledge of the existing marriage of the respondent. The judgment also endowed fewer rights to intimate partners as they had by their own volition entered into a 'no strings attached' relationship (Crl.M.C.No. 299/2009). The danger is in turning a blind eye to violence in the process of identifying if the woman is a worthy legal subject. The most important issue is the fact that a woman was subject to severe violence. This seems to be lost in the rush to establish the worthiness of the legal subject.

The ambiguity about the interpretation of the phrase 'live in relationship' is further evidenced in the wording of the judgment dated 25 April 2011, of the Jharkhand High Court in *Vineetha Devi versus Unknown* (Cr. Rev. No. 444 of 2007).

'Having regard to the facts and circumstances of the case, I find that the counsel for the petitioner has argued consistently on the 'live-in' relationship between the petitioner and the opposite party, though the petitioner claimed in the proceeding for maintenance that she was legally married to the opposite party in temple after the death of her first husband, but the same which was the issue on facts could not be proved. No evidence could be adduced in support of valid marriage between the parties and that the concept of 'live-in' relationship in the background of Indian culture and society, sanction of such relationship is yet to interpret by the Larger Bench of the Apex Court. In view of that matter, the statutory provision, by which the "wife" has been defined in terms of Section 125 of the Code of Criminal Procedure, cannot be liberalised.' - Justice Sinha (Cr. Rev. No. 444 of 2007)

In the first chapter of the DVA, a ‘domestic relationship’ is defined as ‘the relationship between two persons who live or have, at any point of time, lived together in a shared household when they are related by blood, consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family’ (The Protection of Women from Domestic Violence Act 2005, No. 43 of 2005, section 2(f)). The definition makes for a clear inclusion of married women whereas the phrase ‘relationship in the nature of marriage’ has been interpreted as being a certain qualification of ‘live in relationships’. As seen in the development of case law, the interpretation of this phrase has been vague and unfavourable to WUR. A ‘relationship in the nature of marriage’ implies an ‘imitation’ or a mimicking of the requisites of marriage. This would include a ‘civil’ marriage of sorts, with proof that the couple have lived together like a husband and wife, with shared property, children and the society deeming them as though being in a marriage.

4.4 Shared Household and Non-Resident Indians (NRI) Marriages

Another element of the constructions of the WUR identity is through the interpretation of shared household in the DVA and specifically in regard to non-resident Indian marriages. The drafters of the law recognised that it was not merely enough to advocate criminal sanctions for the problem of domestic violence. They realised that an enabling

environment was necessary for an aggrieved person to assert her rights and seek legal recourse. It is in this context that the right to reside in a shared household becomes important. The DVA assures the aggrieved person that she would be allowed to continue residing in a shared household even if she seeks legal action against her partner. This has a direct bearing on the property and matrimonial rights of women which were previously dealt with separately within the personal laws. The right to a shared household by its very definition implies a matrimonial right. A WUR who has already ostracised her natal family by moving in with a man would be rendered homeless as Judges have already begun to narrow down the right to a shared household.

An issue that arises out of this right is the cases dealing with marriages of Non-Resident Indians (NRI). The right to shared household is powerful because of the proprietary rights that it entails. The issue of shared household in the context of NRI marriages arise when men employed outside India get married to women who reside in India. It is customary in India for women to live in their husband's natal homes even in the absence of the husband, although it is not a rule. In *S.R. Batra versus Taruna Batra* ((2007) (1) 4LRC SC), the Supreme Court concluded that the right to reside in a shared household only applies when the house belongs to the husband and does not extend to a house belonging to the husband's parents.

In *Varun Malik versus Payal Malik* (Crl. Rev. P. No.252/2010, 253/2010 & 338/2010)

Justice Dhingra stated in his judgment the following:

‘If the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. Thus, the domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there.’
Varun Malik versus Payal Mailk (Crl. Rev. P. No.252/2010, 253/2010 & 338/2010)

The court declared that the first and second respondents had not lived with the petitioner under the same roof in India for the last seven and a half years although it was acknowledged that she lived with the first respondent in the USA until August 2008. It was stated in the judgment that the second respondent had no moral or legal responsibility to the petitioner as he was not in a domestic relationship with her. The third respondent was the first respondent’s father. Quashing her right to shared household in her husband’s joint family house, the Judge stated:

‘The girl and the parents of the girl knew it very well that they had selected a person for marriage with whom the girl was going to live abroad and the matrimonial home and the shared household was going to be outside India. This act of marrying a person settled abroad is a voluntary act of the girl. If she had not intended to enjoy the fat salary which boys working abroad get and the material facilities available abroad, she could have refused to marry him and settled for a boy having moderate salary within India.’ - Justice Dhingra in *Varun Malik versus Payal Malik* (Crl. Rev. P. No.252/2010, 253/2010 & 338/2010)

The Court stated that the petitioner could not use the ‘safety of Indian culture’ to ask for the right to a shared household in the joint family home as it was also the joint responsibility of the petitioner’s family to house her. The court took a narrow interpretation of the phrase ‘shared household’ and said that the domestic relationship can said to subsist only if there has been a period of living under the same roof. It was also stated that the definition pre supposes that the woman is living with the person who committed violence and domestic relationship is not dead buried or severed. This does not speak of past violence which a woman suffered before grant of divorce (Crl. Rev. P. No.252/2010, 253/2010 & 338/2010).

The problems that this decision of the Delhi High Court has created are manifold. It requires that the domestic relationship must exist in the present and if it is no longer existent during the time that the complaint is made; the ‘domestic relationship’ would be void. Secondly it narrowed the definition of shared household to that of living under the same roof. Thirdly it is vindictive towards the petitioner in its wordings that implies that the petitioner’s situation is a result of her own greed. WUR would struggle to prove the existence of a domestic relationship. There are also certain categories of WUR that do not share a household with the petitioner. Hence the very concept of the remedy of ‘shared household’ would be a difficult one for WUR to claim.

In the order dated 13 August 2010 in *Vijay Verma versus State Nct Of Delhi &Anr.*(Crl. M.C. No.3878/2009), Justice Dhingra of the Delhi High Court used the same interpretation of the phrase ‘shared household’ and narrowed it further to living under the same roof for a continuous period of time. He also declared that domestic violence can occur only when the couple reside in a shared household and emotional torture and blackmail by messages or telephone do not constitute offences under the DVA.

‘Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household and sharing all the household goods with an opportunity to commit violence.’ - Justice Dhingra in *Vijay Verma versus State Nct Of Delhi &Anr.*(Crl. M.C. No.3878/2009)

Thus the definition has limited and narrowed down the possibility of terming certain acts as domestic violence and this is against the spirit of the Act which specifically intended to leave the definition broad to ensure justice to victims of violence.

The High Court of Bombay, in the case before Smt Roshan Dalvi, of *Ishpal Singh Kahai versus Ramanjeet Kahai* (Wr. P. No.576 of 2011) she declared that no proprietary rights arise from the DVA. It is completely a protectionist legislation not an empowering one. Although the law grants the aggrieved persons protection, it goes only as far to being a temporary remedy and is meant to ‘hold the fort’ whilst the couple work through their disputes and problems. Justice Dalvi, observed the following in her judgment:

‘The Act is an extension of the deeper and profounder principle of Women’s Rights as a part of Human Rights. The matrimonial home or the shared household of a person does not require it to be owned or co-owned by the person who has been violated. In fact, the lesser the entitlement to property rights, the more is the

entitlement to protection of human rights against violence. It may not be out of place to rethink the depth of the words of none other than Mahatma Gandhi reaching out to the most vulnerable of humankind in generic terms: I hold that the more helpless a creature, the more entitled it is to protection by men, from the cruelty of men.’ (Wr. P. No.576 of 2011)

Justice Dalvi thus reiterates that the DV Act does not redistribute property rights, but introduces a new right to ‘occupy’ which finds its justification in human rights. The judgment safely steers clear of endowing any proprietary rights which it seems to be comfortable doing only in existing property law frameworks.

In the case of Jane Antony, Wife of Antony versus V.M.Siyath, Velloparambil Justice Ramachandran Nair delivering the judgment on 25 September, 2008 declared:

‘At present in our society a large number of illegal relationships prevail and the number of illegitimate children are increasing in alarming proportions in all communities. Several men and women live together without marrying and the society is not attributing immorality to them. The modern enactment recognises and justifies to the limited extent the relationship in the nature of marriage is a cohabitation even without a lawful marriage. The only exception is prostitutes (unchaste women) and the children born to them.. Married woman or a woman having relationship in the nature of marriage live and share the household are entitled to the legal protection along with others as per provisions envisaged in the above Act’ (M.A.C.A.NO. 1324 OF 2004)

The use of phrases like ‘illegal relationship’, ‘unchaste women’, and the words ‘increasing at an alarming rate’ in the context ‘illegitimate’ children illustrates the judiciary’s discomfort with unconventional morality. The judgment continued to declare

that '*Pater est quem nuptiae demonstrant.*'- the father is whom the marriage points out. This confirms the legality of marriage and the legal status of the people confined within it. It others WUR and their children by defining a sphere of legality marked by the institution of marriage and ruling out everything outside this sphere as illegal and illegitimate. However in the case of *Mrs. Savita Bhanot versus Lt. Col. V.D.Bhanot* decided on 22 March 2010 (Crl.M.C. No.3959/2009 & Crl.M.A.13476/2009) it was decided that the DVA can be applied retrospectively for acts of violence that were done before the Act became the law. It was also declared in the judgment by Justice Jain that women did not have to be living with the abuser in order to file a complaint using the DVA as the Court failed to see the intelligible differentia between women living with the abuser at the time of complaint and women living separately.

5. Conclusion

This chapter had the objective of locating WUR within the procedural and substantive aspects of the DVA. The other objective was to locate the inclusion and exclusion of WUR within the case law. This chapter has argued that the marginally placed WUR are disadvantaged in so far as they are compared to women in legitimate marriages. The two specific ways in which they are able to find a favourable position within the judgments are when the relationship 'mimics' a marriage and when their helpless victimhood overshadows their transgressive WUR identities. The findings of this chapter thus build on the arguments in Chapters One and Two. In the next two chapters we will investigate the field work findings in the two different DV framework in Delhi and Mumbai.

CHAPTER Four

Accessing the DVA: WUR in Delhi

1. Introduction

In order to explore the way in which WUR are constructed as transgressors and to consider the extent to which differing institutional approaches to tackling VAW are in operation in India, field work was undertaken in two locations – Delhi and Mumbai. Delhi was chosen for considering the implications for WUR because of the central role played by the NGO, Lawyers Collective Women's Right Initiative (LCWRI) in the development and the implementation of the DVA and the prominent role played by women's legal activism in this DV framework. The other reason is that Delhi being the centre of legal establishment in India, the likelihood that an advocacy approach to VAW may be dominant. Mumbai was chosen because of the importance of the Tata Institute of Social Science's collaborative approach with the local police commission and because of the distance from the capital leading to the likelihood of a social work approach to VAW in order to test its implications for WUR. This chapter considers the first framework called the Victim Model. As Chapter Two established a feminist approach to research, in the context of Delhi Victim Model, it took the form of participatory research coupled with qualitative interviews. This chapter begins with placing the research within the

wider social and political context of Delhi before moving on to describe the positioning of LCWRI within the overall institutional context. My location within the organisation is then described before turning to a more detail description of the field work taken under their auspices. There after the chapter moves on to describe research undertaken with other institutional stakeholders. The main questions that this chapter seeks to answer are: What are the identities constructed for WUR within the Victim Model and what are the implications for the WUR accessing the DVA with such constructed identities in the Victim Model.

1.1 A Note of Caution

The two models- Survivor and Victim- are derived from the particular way of functioning of the selected organisations. This is not a comparative thesis and it does not exclude the possibility of other frameworks existing within both these cities. The two organisations have been chosen on the premise that due to the various characteristics and the geographical location of the two organisations, the Survivor Model (represented by the Special Cells for Women and Children, Mumbai) would follow the social work approach and the Victim Model (represented by the Lawyers Collective, New Delhi) would follow the legal advocacy approach. The other reason for the justification for the choice of these two representative organisations being the need to understand the DV law as a WUR survivor (in the Special Cell) and as a lawyer and a researcher (in the Lawyers Collective).

2. New Delhi: City Profile

New Delhi is the capital city of India and is the seat of the central government of India as well as the government for the National Capital Territory of Delhi (NCT). It is also the location of the President's residence, the Parliament of India and the Supreme Court of India. It has a total area of 42.7 kilometers. In the sixty ninth amendment of the Constitution of India, 1991 the Union Territory of Delhi came to be known as the National Capital Territory of Delhi. The main languages spoken are Hindi which is also the national language, Punjabi, Urdu and English (Delhi Government 2005). Other linguistic groups include Bihari, Bengali, Sindhi, Tamil, Telgu, Garhwali, Kannada, Malayalam, Marati, Oddiya and Gujarathi (Indian Government 2006). New Delhi is also one of the nine districts of Delhi. Geographically New Delhi is a landlocked city with the exception of the river Yamuna. In the census of 2001 New Delhi had a population of 179112 with 86.8% of this population being of the Hindu religion (India Government 2010). The other major religious communities are Muslims – 6.3%, Sikhs – 2.4%, Jains – 1.1%, and Christians – 0.9%. The literacy rate is 81.67% and the female to male ratio is 925 women to 1000 men (U.N 2006).

Although New Delhi is the political and legal capital of India, it is also the least safe city for women in India (U.N 2010). Despite this, New Delhi is the feminist hub of India, and the domestic violence legislation is the result of almost a decade of consistent work by the women's rights movement.

3. Institutional Context: LCWRI

The law is sometimes perceived as a tool or an instrument that can bring about social change (Murphy, 1992; Stoodard, 1997; Vago & Nelsen, 2000). Particularly in relation to human rights work, social transformation is often one of the long term goals of NGO (Rao, 1997). As we saw in the introduction to this thesis, the Lawyers Collective (LC) was the main drafter of the DV bill and is still working in tandem with the government and other women's groups to monitor and evaluate the working of the DVA throughout the country. In order to locate WUR in the access of the DVA and within the dominant discourses amongst the legislative authorities and the other main stakeholders, the research was designed to test the proposition by undertaking field work related to LC and its duties in relation to the DVA.

The Lawyers Collective Women's Right Initiative (LCWRI) in its manifesto declares its main objective as the empowerment of women through law (Jaising, 2006; Basu, 2008). This NGO acts on the premise that law is a tool that can bring about social change and consequently extol the constitutional and human rights of women. Since its inception in 1998 the LCWRI have worked in collation with the government in relation to women's rights issue in the law. This initiative is a part of Lawyers Collective which is an NGO that consist of a small group of lawyers lead by Indira Jaising. The NGO works broadly

on issues related to human rights but focuses on the use of law for the empowerment of marginalised groups. This is done by extensive human rights advocacy, legal training and litigation. Jaisingh is often celebrated as the chief drafter of the DVA. The LCWRI was largely responsible for the enactment of the DVA as they worked on the drafting of the bill and lobbied for the passing of the bill by the government.

The LCWRI receives its main funding from the UN trust fund VAW for the purposes of the implementation of the DVA. This funding is largely used for the training and sensitisation of the authorities, the preparation of training and bench manuals for the judges (LCWRI, 2010). The main aim of this project funded by the UN is to make the DV framework a victim friendly one so that the aggrieved persons can expect easy procedure to access protection from domestic violence. The LCWRI have also joined hands with the Ministry for the Welfare of Women and Children, the Tata Institute of Social Sciences and the National commission for Women.

Thus as the seat of the legal initiative which resulted in the implementation of the DVA, New Delhi was chosen as one of the two fields of this research. It is mainly in Delhi that the Lawyers Collective conducts police training sessions, workshops for Protection Officers and social workers in order to ensure that the procedural framework of the DVA is slowly perfected by the identification of the best practices and the elimination of the worst ones (LCWRI, 2009; 2010; 2011). Through training and sensitisation programmes

the Lawyers Collective seems to be opening up a civil societal space as a safety net for the users of the DVA. This will be discussed in a later section in this chapter and further analysed as a field work finding in Chapter Six.

The preliminary research was done in the New Delhi office of the LC in the form of an internship in the month of September in the year 2007. This period is a crucial time in the implementation of the Act as the first year all India conference of the monitoring and evaluation of the DVA was in October and the officers were busy compiling the first year monitoring and evaluation report. The next stage of field work in Delhi was undertaken in August 2008. The research design aimed to examine the legislation from the point of view of the main authorities towards WUR. It was deemed that as a researcher and a lawyer working with the drafters of the DVA I would be able to decipher the working of the authorities in the centre of the DV legal framework and their outlook towards WUR. As mentioned in chapter two the Delhi mode of working of the DV law is termed the victim model following the presumption that since the implementation is closely related to LC and the law as a tool method, this design is the virtual opposite of the Mumbai model where as a participant observer and a survivor of violence, I was able to access the point of view of the WUR towards the centre. Thus the research was designed to get a bifocal view of the experience of the DVA as a survivor and a researcher.

3.1 The LC: Shaping Debates, Constructions of Victims of DV and WUR

The LCWRI supported by UNIFEM has systematically monitored and evaluated the implementation of the DVA in various parts of the country. Every year as a part of the monitoring process the LC publish a report after collating data from different states in order to identify the best practices adopted and to address the problems regarding its implementation. The first such report presented in the first conference was called ‘Staying Alive: An Assessment of the Functioning of the Protection of Women from Domestic Violence Act’ (Basu, 2005). During the editorial work and from the various interviews conducted with the drafters it came to light that the legislation and the reports had to be cautiously drafted in order to avoid political controversy and maneuver around the anti-feminist sentiments of the people in power. So when I suggested that ‘Women’s Rights are Human Rights’ could be the title of the press report of the impending conference, newspaper review about one of the drafters replied:

‘You cannot imagine the controversy this would court. We had enough trouble getting this Act passed.’

The drafters had to negotiate and drive a hard bargain with the government to persuade them to accept a draft of the bill that later became the DVA. Any mention of the human rights of women according to the drafter would topple the fine balance that they had achieved in appeasing those in political power and negotiating the rights of the victims of DV.

Six interviews were conducted within the LCWRI with officers who held different positions, in order to establish constructions of WUR within this leading civil society institution. This was done to test the extent to which the LCWRI with the legal focus at the heart of the process, take the legal advocacy approach, construct WUR as victims and adopt a feminist inclusive approach.

In her interview Asmita Basu said that the language of the DVA which specifically includes 'live in relationships' was a major victory for the women's movement (Basu, 17 October 2007). However she expressed her doubts about the judicial interpretation of the definition and speculated that the legislation might be running ahead of its time as far as such relationships are concerned. In the context of WUR and monetary compensation, Basu was of the opinion that it was unlikely that the Courts would interpret live in relationships liberally as most judges were reluctant to give same remedies to legally married women and WUR. In term of remedies that the DVA provided, Basu opined that the most important remedy that women need is monetary compensation as the importance of money to affect changes in a victim's life cannot be underestimated (Basu, 17 October 2007). Thus in the specific remedial context of monetary compensation WUR are greatly disadvantaged in comparison to their legally married counterparts. These finding have been triangulated by the subsequent judgments discussed in the previous chapter.

Tensing Cheosang the chief research officer for the LCWRI (Cheosang, 18 October 2007), said that one of the main factors that set the DVA apart from previous attempts to deal with DV is the inclusion of the phrase ‘live in relationship’ within the definition of domestic relationship in the DVA. Despite this inclusive definition the chances of WUR accessing this law are limited according to Cheosang. The reasons she gave for this were the societal and traditional limitations placed on WUR. Mehak Sethi the chief advocacy officer of the LCWRI (Sethi, 1 November 2007), seemed to be more optimistic, believing that as the DV law grows, it would be effective in aiding WUR as much as other women. He emphasized the possible role of the media in spreading awareness about the problem of DV and the remedies available in the form of the DVA. Research and advocacy officer Brototi Dutta (Dutta, 1 November 2007) shared this view and said that media campaigns and legal awareness camps would have a positive influence on the ability of WUR to access the law. Senior advocacy officer Afreen Siddiqui (Siddiqui, 22 October 2007) stated in her interview that the impetus for WUR in accessing the DVA has to come from external sources. Elaborating on this statement she said that the law has been laid down. However the access to justice is an issue that is often outside the control of the law. It is in this sense that the legal recognition of a category outside of married women does not go far in the case of WUR and their access to justice.

The interviews with Basu, Cheosang and Dutta, established that they emphasised that the DVA was a ‘satellite’ legislation around which all the other legal methods of accessing justice for victims of domestic violence still remained in place. One of the main aims of

the legislation was to provide a violence free space and time for victims to decide on what course to proceed on. For WUR, such choices of legal remedies are often limited as we saw in Chapter Three how the DVA is the only law that expressly recognises women who are not married but are in violent intimate relationships.

The interviews with Dutta, Cheosang, Basu and Sethi revealed that only the DVA expressly includes within its definition of domestic violence victim, women in 'live in' relationships facing violence. The opinion on whether WUR would access the legislation was divided, with the drafters saying that it would take time but, once the DV Act becomes better known to the public, the marital status of victim would be irrelevant. The other opinion was that unless the judiciary and the police were sensitised, certain categories of WUR would be excluded due to prejudices against 'illegitimate' relationships. According to Basu, the mechanism provided for in the law is slowly taking shape. Courts have been granting reliefs to women facing violence at home. There are, however, wide regional variations in the manner of implementation and interpretation of the law. However the drafters agreed that whilst collecting empirical data for the two annual reports, throughout the country, the largest percentage (more than ninety five) of users of the DV Act were married women. All of them agreed that gender inequality has a direct bearing on the incidence of domestic violence specifically among WUR because of the added societal prejudices.

3.2 WUR- The Conference, the Reports

In this section, we move on from the data from the qualitative interviews in the LCWRI to the data collected by being a participant observer of the DVA review conference and the secondary analysis of the reports of the three subsequent conferences. The preparatory work and the report writing were completed and on the 27th and 28th of October 2007 the first year review conference of the DVA was conducted at the Indian Habitat Centre in New Delhi. The conference brought together representatives of state agencies from around the country. This included Protection Officers, police, representatives from government department, legal services authorities and civil society activist working on woman's rights issues.

The conference provided a forum for those who have involved in the implementation of the DVA to share their experiences and to acknowledge the best practices that had been adopted. Thereafter the state agencies – the judiciary, the central government, the police and the legal service authorities responded to the problems raised and provided suggestions for the effective implementation of the law. The national report 'Staying Alive: First Monitoring and Evaluation Report; 2007 on the Protection of Women from Domestic Violence Act, 2005' was presented at the conference. There have been conferences adopting a similar format accompanied by an annual report ever since. This

process is unique in the legislative implementation processes and has shaped the debates regarding DV and WUR. No other piece of legislation in India has been thus supported in its implementation.

Jaising in her foreword to the fourth report calls the breakdown of marriage and its attendant discrimination a 'civil death' for a woman. This shows what a marriage means to a woman's status in society. In this context, WUR are perceived as a category that is discriminated against. Without a legal marriage, the discrimination in society is rampant (Rasthogi & Therly, 2006). In Maharashtra, in fact, women have also moved against the members of their natal family. In two states, mothers have also filed cases against their sons.

This research undertaken for the purposes of the report brought to light that the primary users of the DVA are married women. A trend confirmed by each monitoring report in the following three years (LCWRI, 2008; 2009; 2010). WUR thus do not use the DVA as much as married women according to the data compiled by the LC.

In terms of remedies for the victims, the most common relief asked for and given was maintenance (LCWRI, 2007). This triangulates the data from the interview with Basu about the importance of providing monetary relief to victims. The second most commonly granted relief were residence orders and protection orders. As per the data collected from the reports and at the conference, mostly married women and not WUR

have been making use of such remedies under the DVA. An urgent need was recognised for adequate budgetary allocations at the central and state levels in order to provide for the remedies and the facilities in the implementation of the DVA (LCWRI, 2007).

The LCWRI supplement their legal advocacy strategy by being mindful of wider feminist approach involving survivors is evident from the existence of the ‘Survivors Groups’ that consisted of women who had been in violent relationships and who had successfully managed to escape and rebuild their lives. The Lawyers Collective has initiated the formation of these ‘Survivors Group’ in Bombay and Delhi in order for victims of domestic violence to have a forum for sharing their experiences and to support each other. It was one of the members of this group in Delhi, who designed the beautiful front cover of the first report. The members of these groups met to help and listen to each other and also to provide feedback about the needs of the law and how it can be improved. Such local support networks were not exclusive to married women and such social groups could constitute nonjudgmental forums for WUR to form supportive friendships.

3.3 The DVA: The Government and Civil Society

Monitoring the functioning of the law was perceived by the drafters as an integral part of ensuring implementation, specifically monitoring in conjunction with the government. The reports, by collating the data from all these states and by evolving a useful set of indicators and identifying best practices, have significantly shaped the debates. LCWRI therefore undertook to collect data in collaboration with the Ministry of Women and Child Development, the National Commission for Women, Solutions Exchange Programme of the UNDP, lawyers and women's rights groups in the states. The Office of the Chief Justice of India facilitated data collection on cases filed and proceedings adopted under this law from all High Courts. The methods involved circulating questionnaires, interviews and consultations with state functionaries, collection of orders and judgments from different courts and functioning authorities and field visits to 10 states by members of the LCWRI (Jaising, 2006).

At the start of the Lawyers Collective campaign, it was decided that the law should be primarily civil in nature, with important crossover elements of criminal law. However, the foundation of this effort was the recognition of the agency of the woman (LCWRI, 2010). The Lawyers Collective website notes that the first copy of the report was given to the Speaker of the parliament to indicate government endorsement and to show the credibility of the efforts. Over the four years, the monitoring and evaluation efforts by the

Lawyers Collective have been very fruitful and best practices have been identified for improving the implementation of the DV law and the data has been useful for the formulation of the DVR which is released and published by the government. This kind of joint endeavor between the civil society and the government strengthens the DV framework because of the financial aid that the government can provide in conjuncture with the civil societal activism.

From filling of Domestic Incident Reports (DIRs) to assisting in the enforcement of court orders, POs have been performing various functions. Under the DVA, the DIR containing the formal complaint can be recorded with the PO (Protection Officer), the Service Provider (SP), and the head of the Medical Facility (MF). In the first year, based on the ways in which the Aggrieved Person (AP) was approaching the courts, three models were identified by the LCWRI, namely, the Public, Private and Mixed which have been discussed in Chapter Three (LC, 2007).

The new ‘civil space’ that the DVA seems to be carving out is ideal for the sensitive nature of the complaints of DV. It forms a safety net, so to speak, to protect victims from the perpetrators of abuse and to prevent harsh and challenging means of accessing DV law. The net has been meticulously woven by the drafters and the carefully designed system of constant monitoring and identifying the best means has reinforced the safety

net. Advocates, drafters, NGO activists, and the designated authorities within the DVA seem to be assuming agency on the behalf of the victims.

4. WUR through the Eyes of the Police

In the second phase of my research, still adopting the participatory research method, I attended and observed a police training session in the month of August 2008. By this second phase of the field work in Delhi, my research revealed a major difference in attitudes towards the institutional role of the police because it was now an activist aim to marginalise the police from the working of the DVA and to minimise their role in dealing with DV complaints. Various reasons have been given by various stakeholders as to why police involvement seems to have been checked by the drafters and reviewers of the DVA. In the view of the research officer of the LCWRI Tensing Cheosang this is a result of the failure of section 498 A:

‘The police are often the first port of call for a victim of violence. The debacle of section 498A was considered whilst the Bill was drafted.’ (Cheosang, 18 October 2007)

Elaborating on this, Tensing Cheosang explained that the bad press that 498A that turned family members into ‘criminals’ made the think-tanks at the LCWRI decide that the need of the hour is a civil law that would provide such a ‘violence-free space’ (Cheosang, 2007). The sense of excitement was evident in the interviews with the members of

LCWRI was this gradual movement of the law on DV from the control of state authorities towards a more woman-centered and victim friendly civil society. Similar sentiments were expressed by a Protection Officer who wished to remain anonymous:

‘The police are insensitive to the needs of a domestic violence victim. They often make rude sexist comments and sexual innuendos especially if a young unmarried woman is involved and goes unaccompanied to the police station’

Thus the role of the police office is limited to that part of the DVA contained in section 31 of the DVA when the civil law becomes a criminal one.

The drafters of the DVA conduct police training sessions in Delhi to educate and sensitise the police about the DV Act and to help them understand their role in facilitating justice in cases of domestic violence. Permission was obtained to observe a police training session in Delhi. The observation sought to establish police attitudes to WUR within this wider institutional context. The ‘question answer session’ during the session was particularly useful to establish how the police perceived different categories of women under the DVA.

Forty four officers of various ranks attended, including five police women. The session was led by Tensing Cheosang, Chief Research Officer, LCWRI. Two of the other speakers were Supreme Court advocates and the fourth speaker was a member of the

Human Rights Association in Delhi. The role of the police was explained by Tensing Cheosang to the police at the training session:

‘The role of the police officer starts only after section 31 is evoked. Thus section 31 is the turning point of the Act from civil to criminal sanction.’ She also read out the relevant section and elaborated its function to the police officers.

Section 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) The offence under sub-section 1 shall as far as practicable be tried by the magistrate who had passed the order, 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 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act of 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

Several questions were raised by the police officer about the functioning of the DVA. One of them explained that there were no Protection Officers in the vicinity of his police station. The answer to this was that this was because the DVA was still a fairly new piece of legislation. The police officer was directed to send the aggrieved person to the nearest possible Protection Officer. Upon asked whether this would result in the miscarriage of justice if the aggrieved person was in urgent need of protection, the speaker replied:

‘The Act is suffering from teething problems. But this is a natural consequence of a new and radical legislation.’

However she went on to explain that the immediate aim of the legislation and consequently, all the designated authorities under the DVA, is the immediate end to the violence. The legislation has been designed as a ‘stop gap arrangement’ to give the woman some time to decide the best path in the law for her. The police officers were informed that it was their legal responsibility to inform women of the procedures and of the existence of such an Act. According to Cheosang, up to ninety five percent of the women who approached the police because of violence did not know about the new legislation.

During the question and answer session, a police officer enquired:

Jo aurath shaadi shuda nahi hai, jab hamare paas aathe hain, to hame kya karna hai?

‘When women who are not married approach us what should be do?’

The advocates replied that the DVA is applicable to all victims of domestic violence irrespective of their marital status and proceeded to explain the definition of domestic violence. Several objections were raised by the police officers about the misuse of 498A and the unfairness of giving the same rights to wives and ‘other women’. The police officers protested vehemently and declared that they were tired of the ‘false’ cases of 498A which they were forced to register by victims’ families against men and their

mothers. They opined that this results in unnecessary harassment for men and they feared that DVA would add to this 'suffering'. They also seemed to think that if the WUR had made their moral choices, they should be prepared to face the consequences for it. Objections were also raised because the police officers found it problematic to treat wives and 'other' women in the same way. There were also concerns about the potential home-breaking nature of the legislation. An officer described how the temperament and the education of the woman might result in her 'talking back' at her husband and in such cases husbands might be justified in disciplining their wives. The speakers clarified that the character or temperament of the woman was not their concern, neither was the preservation of the family unit. The legislation had for its main aim the protection of a woman complaining of the domestic violence. The woman's word was final as far as the existence of violence in her life is concerned.

The training session also revealed that the right to residence is a very important right. The Batra judgment ensures that women can access and live in the 'shared household' even after a complaint has been filed (2006 (13) SCALE 652). When this was being discussed, a police officer asked the speaker about a second or third wife's right to shared residence. The speaker explained that the marital status of the woman was not a decisive factor within the Act. If the woman happened to have 'lived in' with the respondent at any stage, she is entitled to continue living in the house. The decision in Batra was further reiterated in *Shalu Bansal versus Nitin Bansal* (CC 1250/1 (Delhi, Unreported Judgment January 3, 2007).

During the police training session, she referred to Indira Jaising's opening address at the First year review conference in which she said:

‘Our main aim was to create a violence free space for a victim of violence to decide what action should be taken against the abusive partner.’ (Jaising, 27 October 2007)

There are no shelter homes in Delhi but the drafting lawyers felt that this was a teething problem. The duty of the police officer, in the case of a woman seeking shelter from an abusive partner was to make sure that she is taken to the nearest ‘safe place’ that the woman knows about. This should ideally be a friend's or a relative's house. If a woman fears that she might be subject to violence at this shelter, the police officer's duty was to pacify her and assign a police woman to protect her and send her to the nearest safe place that the officer can think of.

There is a sense of ‘displacement’ when one thinks of the women. It is left to the discretion of the police officer to ‘place’ her in ‘safe hands’. There seems to be a sense of alienation when the women are considered. The law was tailor made to fit in with the needs of domestic violence victims. And yet, despite its victim-centeredness, it does not look victim friendly.

The new DV legislation, according to a speaker was confusing even for lawyers. However one of the specific intents of the Act was to minimise the role of the police in the handling of domestic violence complaints. However some women continue to approach the police officer and this still remains the first port of call for some victims of violence, in spite of the restrictions on the powers of the police by the DVA. It was the duty of the police officer to direct them to the nearest Protection Officer. The police were specifically instructed that the right authority to handle a case of domestic violence is the Protection Officer.

During the recess, a conversation with one police officer revealed that he thought that the family is more worthy of protection than the women as Indian women were socially and culturally trained to 'adjust' (Officer x, 23 August 2008). The views expressed by the police officers are supported by other researchers who report a widespread opinion amongst the police officers that domestic violence is a matter of the family and must be dealt with privately; hence they are unwilling to interfere (Pardee, 1996; Hornbeck, Johnson, LaGrotta, Sellman, 2005). The failure by police officers to properly report and investigate domestic violence and dowry-related deaths has been widely reported (Spatz, 1991; Greenberg, 2003; Kaushik, 2003; Hornbeck, Johnson, LaGrotta, Sellman, 2005).

4.1 The Deputy Commissioner of Police

‘No unmarried girl has approached me under the Act.’ (Virk, 28 August 2008)

In addition to the police training session, I also observed a session with the Deputy Commissioner of police, HPS Virk in his office and interviewed him after the session. I had been informed by Tensing Cheosang that DCP Virk was very interested and concerned about protecting women and women’s rights. During the observation of a session with the DCP taking a complaint from a victim of domestic violence, he consoled her thus:

‘Beta, aurat ko sab sehna padtha hai. Jab wo kuch kahe, aap bas chup baitiye. Use zyada ghussa math dilana’

‘Child, women have to bear everything. When he talks, you should keep quiet. Do not provoke him more when he is angry’

Whilst he heard the complaints, I felt that he was concerned but uncomfortable that the woman was crying. He consoled her by saying that they should ‘accept fate’ and try not to be too defiant with her husband. He said ‘answering back’ was a main cause of the aggravation of the situation in cases of domestic violence. DCP Virk explained to me that there were no appointed Protection Officers in Nanakpura and hence, his officers dealt with cases relating to domestic violence. He talked about the need for Protection Officers in the premises. He tries to direct women to the Protection Officers in the nearby districts,

but he admits that it is probably a tiring and expensive process for the victims to have to go through.

5. Protection Officers and Related Authorities (Services Providers and District Welfare Officer)

The main aims for this aspect of the research were to understand if the marital status of the victim made a difference to the Protection Officers, to understand how much agency these ‘middle women’ had in regard to WUR and DV and to understand any possible short-comings and set backs of this institutional aspect of the Victim Model

5.1 Protection Officers

Seventeen Protection Officers were assigned for the whole of Delhi of whom only eight were working. When they were contacted, four of them agreed to give me interviews. Out of the remaining four, three calls went unanswered and in the fourth call, one person informed that the Protection Officer had retired due to violence against her whilst on field duty. When the unanswered calls were followed up on, it came to light that two of the Protection Officers never actually held office and the third was on pregnancy leave.

Four Protection Officers were interviewed in Delhi- P (27 years old, Masters in Sociology), B (34, Masters in Sociology), K (26, Masters in Sociology) S (26, Masters in Social Work). Complaints being received from victims of violence at the Protection Officers' workplaces were observed. The officers warned in advance that they did not receive professional training to deal with victims in distress. They admitted that the only respite was the occasional training workshop conducted by the LCWRI.

All the Protection Officers were very strict about conforming to the procedural aspects of the DVA. They specifically advised the women to proceed under the DVA. There was evidence of the 'classical notion of DV victim' present in their discourse. There was a general good faith that if the DVA is implemented and the institutions are firmly and efficiently in place the victims would be helped and violence against women could be curbed. The most common means by which the victims reached the Protection Officers were by the police officers redirecting them towards the Protection Officers.

When the victims approach the Protection Officers, the procedure is set in motion as the Protection Officers guide the victims through a domestic violence questionnaire. This questionnaire has descriptions of various kinds of anticipated violence, the time of violence, the place, provisions for medical evidence and asks for specific details of the domestic event. This is standard procedure after which the officer prepares a domestic

incidence report for the court's perusal. During this process the Protection Officer as the 'middle women' decides on which cases actually make it to the court based on personal discretion.

5.2 Marital status of Victims

'A married woman would have the support of her family to take action against violence. But an unmarried woman would not have this support.' (B, 27 August 2008)

All the four Protection Officers agreed that women who were in violent marriages came to their offices accompanied by members of her natal family whereas the very few WUR who actually came to the offices, came alone. A victim of violence often returns to her natal family and related support systems like relatives, trusted friends of the family and neighbours. When such support systems and safety nets are no longer available because of a woman's decision to be in an unconventional relationship, it then becomes difficult for her to reclaim her rights under the law.

'In a hundred cases I have seen may be one person admits to a violent live in relationship. And this person is usually from a very reputed family.' (S, 3 September 2008)

‘Personally, I would not show any bias towards women who are not married but are in violent relationships but such cases are so rare in our country, I have hardly had to deal with such cases’ (K, 2 September 2008)

This may be also because such women belong often to the ‘elite classes’ and they may opt to directly hire a lawyer to fight their case. When asked if it would make any difference if the victim is married or unmarried, all the Protection Officers said that they would not be affected by the marital status of the victim. Their priority was to keep the women safe. The extent of violence was the main parameter to decide on the urgency of the case. The other parameters were the availability of medical records, presence of children in the relationship and the absence of a place.

A different category of WUR that approached the Protection Officers consists of women who had no proof to show for their marriage. Others were abandoned by the husbands. A Protection Officer said that it was ‘heart-breaking’ when women from ‘good families’ were abandoned by men and/ or were subjected to physical and emotional abuse due to no fault of theirs. She said that these women had genuinely believed that they were legally married and were not ‘promiscuous’ or ‘immoral’ women. This does show that the Protection Officer had a perception of WUR possibly being ‘immoral’ or ‘promiscuous’.

The other categories of WUR include divorcees and second and third wives who complain of harassment by partners and previous partners. A reason that the Protection Officer S gave for live in partners not approaching her was that the victims who are living in were unaware of their entitlement under the DVA and if they were aware of the rights, they were reluctant to take them on due to fear of societal embarrassment. At the same time all the officers concurred that the Magistrates should be sensitised to the needs of unmarried women. They said that the judiciary was prejudiced and biased against women who were unmarried who they perceived as 'home wreckers' and women of 'loose' character.

5.3 Protection officers and DVA

'The Act is very powerful but the police and the NGO sometimes wash their hands of the cases and I feel stressed and over worked, my colleague resigned because she was beaten up during a field visit.' (B, 29 August 2008)

The Protection Officers felt that the work load was too much to take on. They felt that they got little or no help from the NGO Service Providers and the police. They felt that the Office of the Protection Officer held too much responsibility. One of the Protection Officers said that she had hand written about 390 complaints in a few weeks and still there were several hundreds of files gathering dust in the offices.

Protection Officer K opined that it was preferable for the post of Protection Officer to be taken up by a woman as the women from the villages were not comfortable talking about their domestic events with male officers, specifically if the events were of a sexual nature. However they were of the opinion that male peons should be continuously present in the offices and especially on their field trips to ensure their safety.

‘Out of a hundred cases received 25% are genuine and 75% are false. I find that a lot of ladies misuse the legislation.’ (B, 29 August 2008)

The Protection Officers felt that several women bring false complains against their husbands to ‘trouble’ the husband’s natal family. They said that they had to use discretion to understand if the complaints were genuine or fake. They said that this was often tough and one of the reasons why they sometimes insisted on medical records was to ensure that the complaints were not malicious or fake.

5.4 WUR and Reconciliation of the Family

‘We have to do reconciliatory and counselling duties. Although this is not prescribed as a part of my job description in the end the Protection Officer decides which of the cases should make it to the court.’ (S, 3 September 2008)

‘Some people asked for counselling. We give them a list of counsellors. Most of us are not trained to be professional counsellors. My first question to a victim is

about her back ground. Then I ask her what burden she faced. Finally I ask her about what remedy she expects.’ (K, 2 September 2008)

Although the DV Act is a legislation that has for its aim the protection of female victims of domestic violence, three of the Protection Officers felt that they had reconciliatory and counselling roles to play in order to avoid breaking up families. All the women they encountered were seriously disturbed mentally and emotionally because of the violence. The officers had not been given any special training for counselling. Hence they were uneasy fulfilling the role of a Counsellor, but did it nevertheless. Although the primary objective of the DVA was the welfare of the victims, the Protection Officers sometimes felt obliged to preserve the family unit. For instances when in doubt, P consults the District Welfare Officer regarding such matters because they have their offices in the same building.

5.5 General Findings from PO Interviews

All four Protection Officers were unanimous in their opinion that the DV Act is very powerful piece of legislation and if implemented in its true spirit, it would make great inroads into the attainment of gender justice. However the police and the NGOs have started washing their hands off domestic violence cases, which means that Protection

Officers are overworked and burdened with the management of the hundreds of cases that come their way. The police consider themselves no longer responsible for domestic violence cases and as a result the Protection Officers have too much work to do. They were hired on a contractual basis and were given a consolidated salary till January 2009. They believed that since the legislation was needs and emergency based, the practical rules need to be worked out for its effective implementation.

Most cases do not make it to court and the officers opined that although a great deal of responsibility was given to them by the new legislation, very little power was bestowed upon them. One of the officers told me that since she took charge a year and a half ago, almost three hundred complaints had been filed with her and only about a quarter of them had made it to court.

The Protection Officers were assigned to work in pairs but all the four officers that I talked to informed me that their co-officers had resigned due to various reasons. One of the main observations was that the officers should have their offices in the police stations or at least close to a police station, as the police were still the first port of call for domestic violence victims. The Protection Officers should be at a place where there is easy access to contact the NGOs and the police. Instead the DV Act requires the NGOs and the police to introduce the concept of the agency of the Protection Officer to the victim.

All the officers concurred that the job was a very demanding and tough one. They were in urgent need of clerical help. They also wanted the government to ensure their safety in the field.

Women who came to them were between the ages of late twenties to early forties. The middle economic classes were conspicuous by their absence as the complainants tended to be from either very low or very high economic strata of the society. One of the main reliefs asked for by the women was economic support. Thus maintenance seems to be the most sought after remedy prescribed by the DV Act.

Most women were aware of the law although section 498 A of the IPC which prohibits harassment for dowry was their preferred option. At that stage into the research, there was one designated shelter home based in Nizammudin for the whole of Delhi as opposed to when the research was in its initial stages when there were none. The Protection Officers said that many of the victims were reluctant to make use of this remedy as they did not want to leave their households for various reasons like children, financial complications and fear of alienation by their relatives. The Officers seem to think that the 'shared household remedy' is the most promising and effective remedy prescribed by the Act for victims of domestic violence.

Many women were reluctant to talk about the sexual violence that they faced and for this reason the Protection Officers were of the opinion that the DV Act was right in preferring women in the post of protection officers. Many of them go to the National Commission. Many cases are directed to the officers from the Commission. The cases were also brought to the Protection Officers by non-governmental organizations, lawyers, the police Action India. The people who directly approach the Protection Officer are about 10 percentage of the total victims seeking justice. These people are aware of the existence of the new legislation.

A personal experience of violence cannot be reduced to fit the confines of little boxes in the violence questionnaire. During one of sessions of observations in the Protection Officer's work place, the complainant was a bit unsure about answering the officer's questions and fumbled a little. The Officer lost her patience with the complainant and told her off for being unsure about what she was reporting. The woman was obviously nervous and in awe of the articulate Protection Officer and was struggling to get the facts right.

6. Stakeholders and WUR

In order to establish attitudes of the key institutional stakeholders toward WUR and the DVA framework, qualitative semi-structured interviews were conducted with two service provider representatives and with the District Social Welfare Officers.

Joe Athally

According to Joe Athally of Amnesty International:

‘I have dealt with individual cases of violence brought by women who were suffering from repeated physical violence and the subsequent denial of share in the property. Many times the women reported the cases to the police and received no help. Such women were educated, fluent in English and belonged to the nouveau socio economic class.’ (Athally, 26 August 2008)

Joe Athally has been working with Amnesty for three years and has worked on gender and youth as a category. He has worked on the Stop Violence Against Women campaign, presently working on ‘Make Schools Safe for Girls’ an internationally recognised campaign. Domestic violence per se has been a concern. According to him, the DVA is a very progressive piece of legislation but he wanted to ‘wait and watch’ regarding its proper implementation. When asked about the marital status of women and the unconventionality of intimate relationships making a difference to the course of justice, he replied:

‘Although legally speaking the marital status of a victim of violence is irrelevant, you can imagine the questions and comments that they will be subjected to especially in police stations.’ (Athally, 26 August, 2008)

‘It is not socially acceptable for women to be in such relationships. So anyone to complain about violence must muster up a tremendous amount of courage.’ (Athally, 26 August, 2008)

‘Women are made to feel bad about their sexual choices and practically speaking it is a challenge for the judiciary to accept such relationships.’ (Athally, 26 August, 2008)

‘I do not know about the instrumentalities of the Act but in order to make it victim friendly I think police and magistrates should be avoided by women. There is a need for some procedure where she does not have to go and be subjected to more humiliation. Instead they should take cognizance of what she says. She should not feel humiliated for her courage.’ (Athally, 26 August, 2008)

A woman approaching the law to complain against her legitimate husband takes a great social risk. This is evidenced by the bad press and criticism that section 498A got. It is understood that a woman’s role in her new family is to be submissive and accept that suffering in silence is an ideal trait for a ‘good’ Indian woman.

The Declaration on the Elimination of Violence Against Women provides a definition of violence against women has a detailed view of violence, encompassing any act of gender based violence which results in or is likely to result in physical, sexual or psychological harm or suffering by women, including threats or such acts of coercion or arbitrary deprivation of liberty, whether occurring in public or private life (Brautigham, 2002: 13). The reason for such a broad definition is to allow the international community, governments at the national level and women’s groups an effective tool in addressing

violence against women with regard to both its causes and consequences. Athally said he was pleased that the DVA was in keeping with the international agreements and he said that this was the first time that India had stayed so 'faithful' to the prescribed international standards.

Shabnam Hashmi

Shabnam Hashmi is the director of the NGO Anhad, human rights NGO based in Jammu and Kashmir, with an office in Delhi. In her telephonic interview she blamed the unequal gender relationships in India for the problem of domestic violence. Although she has aided individual complainants of domestic violence by providing legal assistance and advice and by responding to letters written to her by women in distress, her NGO at that period in time had not formally worked as a Service Provider. She said that it would take a while for people to get familiarised with the DVA and after the initial problems, as with any new law, people would find the different means of accessing the DVA in the Victim Model very useful and choice-endowing.

Talking in the context of WUR, she said that there were several second and third wives and divorcees who were coming forward with reports of domestic events and violence. As far as women in live in relationships were concerned, she opined thus:

‘Living in is a city phenomenon. The societal and moral values within the close-knit communities of the Indian villages will not allow such relationships.’
(Hashmi, 4 September 2008)

In terms of the DVA, she was of the opinion that one of the major short coming was the lack of awareness amongst the people. Her NGO does a lot of service in the villages and she was sure that not many people would know even of its existence. She said wide spread public awareness campaigns using the media and by conducting awareness camps in the villages would greatly aid towards the control of domestic violence. Another method suggested by her was to introduce the problem in the high school curriculum so that the awareness would exist from a young age about the problem of domestic violence and the need for curbing it.

District Social Welfare Officer

Pushpa Pathak, the District Social Welfare Officer for New Delhi, finds herself handling cases of domestic violence after the advent of the DVA. This happened over and above the duties she has as a Welfare officer. The reason is that the Protection Officer P has her office in the same premises as her. As a woman of more experience she often takes on some of the duties especially those regarding counselling, at the request of P. Primarily she aims for the welfare of the woman in this aspect, but as a Welfare Officer she finds that she has to think about reconciliation of the family. She talks about the possibility of

working towards a violence free marriage by using the means of conciliation and counselling. She was of the opinion that the ‘new women’ were less patient in their marriages whereas the women in her generation were more tolerant of their husbands and family. She felt that it was a matter of ‘adjusting’ to the new home and the new family and with patience, problems could be solved. However when extreme cases of violence are brought to her, she would never encourage the woman to continue with the family. She opined that the misuse of the criminal laws regarding domestic violence makes her wary of cases of domestic violence brought under the DVA.

Regarding WUR, she was of the opinion that women who are cheated into false marriages were worthy of protection as they had the genuine belief that they were legally married. Regarding divorcees and their rights, she was of the opinion that those cases were best handled by the family courts and under personal laws. She said that ‘live in relationships’ existed in New Delhi, especially amongst the immigrant (from other states in India) student populations. She said that so far, she had not dealt with women in live in relationships and were facing violence.

7. Conclusion

The field research was undertaken in Delhi to establish how WUR are understood within a particular DV framework. The structures, procedures and the working of the DVA

within the Victim Model were investigated in the light of WUR. Participant research with the drafters allowed an understanding of the politics that are involved in drafting a new and radical legislation. The drafters had to manoeuvre around political sensitivities and societal traditional strongholds. The drafters, as evident from the interviews, intended for the DVA to be useful for and used by WUR in the definition of domestic relationship they have had to eke out a fine balance between allowing inclusiveness and not offending detractors of the DVA.

Police attitudes have been established by the training session observation and the protection officers and related authorities interviews have aided to understand the institutional attitudes towards the WUR regarding the DVA. We have seen the different recourses that the WUR have in the law in the Victim Model of the DV framework. We have seen how they are perceived and their identities are constructed in the discourses and how much agency they take on as far as the DVA is concerned.

The Victim Model of the DV framework set in place in Delhi is formal and less agency endowing for the victims. The treatment of the victim is not as an equal subject of the law. In the zest for implementing the provisions of the DVA in its strictest sense, the agency of the victim to acquire rights in the law is compromised. WUR seem to fare less favourably in this structure. From the various interviews and the participant observation

explained in this chapter, we have three major findings that will be explored and further analysed in Chapter Six.

The first of these is the connection between formality of procedure and the treatment of legal agency. The second finding is the alienation of police from the various stages of the implementation of the DVA and the creation of the so called civil society safety space. The third finding is the connection between WUR and the ideal legal female subject. Before an extensive analysis of these three key findings set within the wider discussions in this thesis, the following chapter will give an account of the field work in Mumbai.

CHAPTER FIVE

Surviving DV: WUR in Mumbai

1. Introduction

‘Feminist theory - of all kinds - is to be based on, or anyway touch base with, the variety of real life stories women provide about themselves’ (Lugones and Spelman, 1990:21)

We saw in the previous chapter how a Victim Model of the DV framework works, and how the authorities perceive and thus construct WUR within one institutional context. This chapter understands the law from the point of view of the WUR who have managed to access the remedies available to them through an alternative institutional context. Chapter Two established that a feminist perspective which recognises the importance of survivors’ narratives offers the most appropriate framework through which to understand the DV law from their perspective. This chapter consists of the voices of WUR who are

or have been victims of violence. These stories documenting women's experiences with the DV law form the heart of this thesis. These survivor narratives also reveal the extent of women's agency. Such research finds its precedents since the 1970s in regard to domestic violence, as understandings of men's violence towards women have been 'derived directly from women's actual experiences and have informed the development of feminist theory and practice' (Scheter, 1982; Kelly, 1988; Dobash and Dobash, 1992; Hague and Mullender, 1998; Hague and Mullender, 2005:149). It would aid current policy and women's empowerment in India to 'take on the perspectives of abused women about domestic violence' as has been done in the U.K (Hague and Mullender, 2005: 147). Research on violence against women 'began with talking to women about their experiences' (Griffiths and Hanmer, 2005:23). The research undertaken here reveals a model of DV law framework which is called the Survivor Model. This chapter seeks to answer the question- how do WUR fare in a survivor model of the DV framework?

All the women who participated in this research project had survived after having transgressed certain societal norms and had broken away from emotional barriers. These women had reached the law after having survived serious personal battles. In their survival, they had acquired legal agency on their own behalf and on the behalf of other women. Advertently or inadvertently they had passed this agency on to other women who were or are in similar need.

There were different categories identified within WUR in Bombay. Women who were deceived by their partners under the false pretext of marriage form one category. Another category consists of women who were promised marriage by their partners only to later face the consequences of the breach of their trust and broken relationships. Second and third wives sometimes even fourth form another category. Women in 'live in' relationships form another category. This includes women in relationships with men who are otherwise married, married women in relationships outside of marriage and women in unmarried intimate relationships. There are thus shades of grey that constitute the category WUR, women whose relationships are unconventional in one way or the other.

2. Mumbai – The City Profile

Mumbai has a population of 20.4 million and is the largest city in India. This city sometimes described as the commercial capital of India generates 6.16% of the total GDP. It has the reputation for being the safest city in India for women. It is also the richest city in India (Government of India, 2008). It is the seat of the Bombay High Court, the jurisdiction of which extends to the states of Maharashtra and Goa and the Union Territories of the Daman and Diu and Dadra and Nagar Haveli. With the population density of 20,482 persons per square kilometre and a sex ratio of 848 females per thousand males, Bombay has a large immigrant population that come into the city from other parts of India to work (World Gazetteer, 2008). Amongst the 16 major languages, the main languages spoken are Hindi, English, Marathi and Gujarathi. The

religious groups include Hindus – 67.39%, Muslims – 18.56%, Buddhist – 5.22%, Jains – 3.99%, Christians – 4.2% and the rest of the population consisting of Sikhs, Parsis and Jews (Government of India, 2008). It is also the city where the Special cells for Women and Children which has a system of taking justice, quite literally, to the backyards of survivors of violence because of the collaboration with the Tata Institute of Social Sciences (TISS) and the Maharashtra Police.

3. Institutional Context: Special Cells for Women and Children

In contrast to LCWRI and its focus on legal advocacy and the construction of a Victim Model, Mumbai is associated with an alternative nationally recognised VAW model which will be called Survivor Model for the purpose of this research. This involves the special cells for women and children and is related to academic social work rather than social activist location. While Delhi activists designed the DVA to minimise the role of the police here we will see that Mumbai activists prior to the advent of the DVA designed interventions in association with the police. The two prominent protagonists Indira Jaising, the lawyer in Delhi, and Anjali Dave, a social worker and academic in Mumbai, are both feminists and have been actively involved in evolving the two DV models. The influences of these two leaders can be observed in the different approaches to dealing with DV in Delhi and Mumbai which will be further discussed in Chapter Six.

Feminist legal theory reaches beyond a conception of law as a system of norms or rules- statutes, constitutions and cases- and beyond standard legal officials such as judges to encompass other practices which are legally relevant or quasi legal. The power and social meaning of law are determined not only at its legislative, doctrinal and judicial levels but also by non-legal or partially legal decisions about its interpretation and enforcement (Lacey 1998:9). The TATA Institute of Social Sciences (TISS) is one such organisation that acts as a resource and a guiding agency for the Special Cells. Mutual cooperation and planned collaboration between legal enforcement agencies and NGOS result in an effective means to facilitate legal access and enforcement agencies that are more attuned to the needs of women. The Special Cells provide various services to women and their families such as emotional and mental support, counselling services and crisis intervention. In the process of working with the police, prior to the advent of the DVA enabled the influencing of the interpretation of the available legal provisions to include domestic violence (Dave and Solanki, 2000). The Special Cells by being attached to the police stations in Mumbai are accessible to all the people that the Mumbai Police Commission caters to (TISS, 1999). Founded in 1936 to meet the pressing need for scientific training in social work, TISS trains professionals in social work, social services, administration, and allied professional fields. TISS also conducts social research that can contribute to the formulation of social policies, produces publications, and undertakes innovative action projects in social work, development, and welfare. The Special Cells for Women and Children were revamped in 1984 as collaboration between the Department for Women and Child Development, the Maharashtra State police and TISS. However the project was so successful that the Maharashtra police took over the project.

The Special Cell is situated behind the police station and opens out into a neighbouring courtyard surrounded by tall buildings which served as living quarters to many families. Divya Taneja, one of the two social workers at the cell, in her interview, (Taneja, 18. September. 2008) was of the opinion that this was an advantageous location as news about the Special Cell and its services spread by word of mouth. According to Taneja, most of her clients were from the lowest economic strata of the society. A vast majority of them worked as domestic help in this neighbourhood and once they received the help, other women in the neighbouring slums came to the Special Cell. Since film is a very strong medium in India, some famous film stars had helped by advertising anti-domestic violence videos and anti-violence help lines. In the year 2008, two years after the inception of the Act, none of the interviewed women knew about the existence of the new domestic violence legislation. However, they were definitive users of the law in terms of accessing justice in the best possible way known to them. Many cases were filed within section 498A of the Indian Penal Code and 405 breach of trust with regards promise of marriage. Divya Taneja had filed cases for some of the victims according to the DV Act. The women often approached the Special Cell as though they would approach a police station, that is, to file a criminal complaint.

Anjali Dave is an associate professor in the Tata Institute of Social Sciences (TISS) and in affiliation with the Centre for Women's Studies, Children and Families in TISS. She

has been actively involved in the working of the Special Cells for Women and Children. In her interview identified WUR as various categories of 'single' women with her comment, 'there are singles and singles and singles' (Dave, 15. September. 2008).

While doing participatory research it came to light that many cases that were filed in the Special Cell were regarding breach of trust, that is there was a promise of marriage and a breach of the woman's trust and resulting economic abuse. The most spectacular thing about the women's cell was the fact that women define 'violence'. Unlike Delhi, the Bombay model seems more victim- friendly. However the difference is that the Special Cell is not specifically designed to deal with cases of domestic violence, they just happen to get these cases as well along with others.

The police although are most often the first port of call, they are rarely trained to give that specialised kind of support that women need. The Special Cells try to ameliorate this by appointing specialised social workers. At present there are seventeen branches attached to police stations in Maharashtra. Each Cell has two qualified social workers, working full time, housed in the police station. The primary goal of the Cell is immediate crisis intervention and its pre-litigation role is pivotal, it helps the women survivors to decide what remedies they would like to pursue in the law. TISS supports the Action project. It concentrates on women centred social work. The attitude of the organisation towards

WUR is evidenced in the following interview excerpts with the social worker Divya Taneja.

3.1 Voice of the Social Worker

‘We are a feminist organisation and our priority is our women. It is easy to say that the family should stay together but why should it be at the cost of the women’s happiness. We offer counseling services but we will not encourage women to suffer in silence’ (Taneja, 18. September. 2008)

Divya Taneja lived quite far from the Cell and had to get two buses to get there. She explained to me that the work was strenuous and often emotionally draining but extremely rewarding. She helped the women who approached her because it was her life’s goal and she did not treat her duties merely as a part of her job.

‘We get approached by women in very different relationships. Whether a woman is married or in an adulterous relationship is not for me to judge. My duty is to counsel, listen and help them choose the way in which they want to proceed legally’ (Taneja, 18. September. 2008)

Unlike other agencies of the government, she said they did not see why the family should be protected at the expense of women and their wellbeing. She also made several field visits in the course of the week in order to help her clients. She often went to the

survivors' homes which according to her was a way of ensuring that the violence was under control. It was also a way of signalling to the abuser that the survivor was not without support. Taneja empathised with WUR because she felt that they were the most disadvantaged as they did not have familial support most of the time and often came alone to the Special Cell. She lauded the bravery of the survivors who have had to suffer a great deal of violence and had managed to come seeking help and justice despite all odds being against their favour.

4. Survivors- The Interview Context

The threat of the single woman arises sharply in the context that she has possibilities of independence and upsets the traditions by asserting the rights over her own body and sometimes even asserting the right to own property. In the context of the Shah Bano right to maintenance case, many authors have written that the 'destitute' woman 'widow, divorcee or abandoned wife is envisaged as a potential threat to public peace (Pathak and Rajam, 1989; Qadeer, 1988; Chachchi, 2005).

The interviews were conducted in the Special Cells for Women and Children attached to the Dadar police station in Mumbai for a week starting on 15 September 2008. One interview was conducted, unsolicited outside the Assistant Commissioner's office in

Nanakpura, Delhi. Permission was granted by TISS and the Special Cell to allow interviews with five women in intimate relationships that were violent, and a mother and a sister of one woman who had been murdered by her partner and his family. Two women gave unsolicited interviews as I was waiting for the social worker outside the Special Cell.

All the survivors and the family of the victim interviewed knew that they had been wrongly treated. They approached the Special Cell to obtain legal recourse to justice. Their stories and their views on what happened to them and how the law has helped and should help them have been recorded with minimal inputs from me. I refer to the respondents as survivors because they had survived to tell their stories and to affect and influence others' lives with their strength and courage. The woman who lost her life was represented by her family who are survivors on her behalf, seeking justice for her and ensuring that other women do not meet with her fate.

The interviews took place in the one room that is allocated to the Special Cell. One of the two social workers who were based there, Rahul was away on a training workshop conducted by the Lawyers Collective. I was allocated the use of Rahul's desk for the interviews. The social worker Divya Taneja, explained to the women the purpose of my visit and requested them to take part if they are interested. Seven women volunteered.

Names have been changed to protect confidentiality and where ever requested, some quotes have been used without names due to requests for anonymity.

In the first instance it was planned that semi structured interviews would be conducted and permission was obtained to use a tape recorder. When the first interview with Sarla started, we realised that conversing with each other without the help of external aids helped the narrative to flow better. Minimum amount of prodding was required as a strong voice described the suffering of a WUR, as a survivor of DV and Sarla spoke out against the cruelty she had been subjected to.

There was a constant awareness of the possibility of re-victimisation. Hague and Mullender (2005: 156) warn the researcher about the effects of poverty, social class, and the impact of abuse on self-esteem, stigma; and the silencing effects of DV and the harms of revisiting painful memories. The survivors were informed that they did not have to talk about anything that they were uncomfortable discussing and that I was mostly interested in what they thought the law should do for them. The interviews were interactive, I shared my experiences with the other survivors and they shared their experiences with me. Sharing of personal and social experiences of both the respondent and the interviewer can be rewarding (Ellis, Kiesinger and Tillmann-Healy 1997: 121).

‘Giving voice’ to what I heard in the field and transcribing it into my own work was one of the main challenges I faced doing this research. I had to justify the use of the voices, the pain that I felt in them, and the tears that I saw. For a while, I distanced myself from my work, almost paralysed by my inability to proceed. Working with the ‘Battered Women’s Advocacy Centre’ a counselling Centre for battered women, Wylie and Greaves came to the conclusion ‘that any instrument that acts as a research method, for instance must embody women’s experiences, must be women-centric and non-coercive and most of all should not become a mere tool of defining the project of the researcher’ (Wylie & Greaves, 1995: 321). When I discussed my fears with the social worker Smt. Divya Taneja in the Centre for Women and Children where the interviews were done, she informed me that some of the women had gone back to her and told her that they were happy that somebody wanted to listen to them and write about their situation. This was my most rewarding moment in the field.

The interviews with the women were done in Hindi and some dialects were a bit difficult to understand. There was very little that was formal about the setting except that Smt Taneja explained my cause in advance to them. One lady, Tanuja (name has been changed) spoke only Marathi (the vernacular language). Speaking with her proved a little more difficult as I can understand but not speak Marathi and she can understand but not speak Hindi. So she spoke in Marathi and I responded in Hindi.

5. Voices of Survivors

*Sarla*³

Emotions are always present in personal interactions in ethnographic work. Here the feminist perspective is useful in reminding us that emotion can form an important basis for understanding and analysis (Ellis 1991: Klienman and Copp 1993: Naples 1997: 88)

Sarla was the first WUR who volunteered to give me an interview. She was emotional during the interview and she seemed to be constantly struggling with the guilt of being a WUR at the same time she was very aware of the injustices that had been done to her. She was determined about wanting legal redressal and she wanted her former partner to pay for the cruelty he had subjected her to.

In India, living with a man who is not one's husband is a transgression, a break from the norm. It is in many ways, a break from many ties, and a final goodbye in the sense of the security that a family seemingly provides. In this there is a discursive violence, a denial because of the break in trust. This was very evident in Sarla's story.

³ Names have been changed as requested.

Sarla is 42 years old and a survivor of intimate partner violence. She filed an application under the DV Act and her application was quashed by the Magistrate. She had been unaware of the existence of the legislation until the social worker informed her about it. She addressed me as ‘beta’ which translates from Hindi as child and I addressed her as ‘didi’ meaning ‘older sister’. She told me that she was glad to know from Divya-ji (‘ji’ is often suffixed to names in Northern India as a sign of respect whilst addressing someone older or someone who deserved respect in some way) that I was studying about women in distress. She shared her story with me. We were both emotional during the interview, I could relate to her and I felt that she was relating to me. At the end of the hour that I spent with her she gave me the phone number of a shop next to her house and told me to look for her when I had finished my research. There was an acknowledgement that as WUR we understood each other’s plight.

‘Beta mera bahut acha ghar sansaar tha. Maine sab kuch bigad diya’

‘Child, I had a very good family world. I spoilt everything’

Sarla blamed herself constantly for getting involved with her partner. She referred to her former home as ‘ghar-sansar’. Ghar translates as the familial home and sansaar translates as world. In this phrase is perhaps evidence of the notion of the home being a woman’s

world. On hindsight, she regretted being a WUR and felt that she was being punished for her sins. At the same time she felt that since she did not have any more 'Izzat' (honour) to lose, she should fight for justice. As a WUR, Sarla felt that she had a lesser moral foothold in society and therefore before the law.

Sarla was married to a man and had a child from him. According to her, her husband was kind and 'only' subjected her to economic abuse. She fell in love with a friend of the family, a man considerably younger than her. They started an intimate relationship and within a few months, he invited her to live with him in his house. He promised her marriage. They lived together for six years. For four of these years, she supported him economically. The relationship was violent and his beatings left her completely blind in one eye and her other eye had a blurred vision. Her partner returned to his village and got married to a young girl that his parents approved of. She tried to call him, but he ignored her calls and abused and denied their relationship when he did finally answer her call.

As advised by the social worker, she had asked for compensation in the DV petition as she had had to have four eye surgeries to try and correct her vision. The Magistrate interpreted the provisions of the DV Act in such a way that she was asked to file an application against her husband. She did not know very specifically about the provisions of the DV Act, but she knew that her petition was quashed by the Magistrate. She was

talking to the social worker on how to proceed during that period. She asked me why if a woman complains about the slightest harassment on the streets by a stranger, the law and the police instantly come to her aid but a woman who has been suffering for six years has her needs and safety ignored by the law. She constantly feels helpless, depressed and suicidal and takes out her anger on her daughter. She also fears for her daughter's life as the people in the life call her names and are dangerous and judgmental about her 'adulterous' relationship

Sarla said that she does not trust the law. She says that she went to the law with no thought of her Izzat (honour). She asked me how many women in her place would fight for justice. I said I would probably not have the courage to do so. At this point I told her that I had been in a similar situation in my life and never mustered the courage to take such a step. She said that she constantly fights with God because she feels disheartened by the injustice. She believes that God is a man. Had he been a woman, he would not have let her suffer like this. Feeling disillusioned with everything, she tried to kill herself several times.

Sarla discovered the law because she washes dishes in the houses in the neighbourhood where the Special Cell is situated. She approached the Special Cell for advice and help. She said that the social worker was helpful and kind and had become a friend. She told me that she was informed by the social worker in the Special Cell for Women and

Children that she could file a petition for breach of trust. This is often used by women in India for the non-fulfilment of a promise of marriage.

After hearing about Sarla's story and her experience at the Special Cell, her friend in the slum approached the Special Cell with a complaint against her abusive husband. Sarla felt that if she gets *insaaf* (justice) it would be not just for herself, but for many other women in similar situations of abuse. Even as she cries, she tells me that she will fight for justice and that she knows that it will be hers in heaven and on earth. Sarla had thus become an agent in her survival. She had also passed on the agency to her friend who then found the courage to approach the law. As a WUR survivor, Sarla had set the law in motion not merely for herself but for other women who had and will encounter in the future. And yet, Sarla constantly struggled with moral guilt and justification:

'Main koi buri aurat nahi hun. Meri shaadi bhagwan ke samne hua hain'

'I am not a bad woman. I was married in front of God'

She told me that she was wrecked with guilt by the way people in her neighbourhood treat her and often felt like a '*buri*' (bad) woman. She is a Hindu and they exchanged garlands in a temple. This is a Hindu marital ceremony ritual. She says that they are married in the eyes of God. She told me that this thought is the only one that gives her a

good night's sleep sometimes. She said that the fact that she does not have a legal marriage made her vulnerable in society and the law. She felt that the law is partial to men and to people with money. She said that had she had the necessary finances, she would not be abused in such ways.

Upon being asked about what the law could do for her, she said that she had become fatalistic about the law and about God in general. She appears to associate legal justice with God's justice in many ways. She intermitted between telling me about her faith in the law and in God and about her arguments with God and her disillusionment with the law that promises great justice.

She told me that she was lucky that she had chanced upon the Special Cell. She felt that very few women knew about the existence of laws to protect them especially when they did not have legitimate marriages. She felt that if women were educated and the government did something to protect poor women from violence, it can be stopped. She firmly believed now that any man who raises his hand to a woman should be punished by the law. She said that sometimes she feels fed up of being a woman. To be a woman in this world means suffering. We were both emotional and I felt connected to her. I could see how we had both survived violence but how she had managed all by herself and how her survival was much bolder than mine. The social worker told me about the insensitivity of the judiciary in expecting her to ask for compensation for the eye

surgeries from her husband solely because in the eyes of the law, she remains married to him and is therefore responsible for her.

‘Only when there is a rupture in the ‘normal’ life of a woman, ie, a crisis such as a divorce or the end of a relationship, is there a chance for her to be aware of her true condition’ (Mies 1983: 125).

In Sarla’s case as with the others, this rupture, transgression was the disregard for Izzat. It was this point that the private became the public. Can suffering puncture the otherwise unsurpassable boundary between the private and the public? And can this then result in the victim being her own agent in accessing and using the law? This is further evident in Sandra’s case

Sandra

The day I first saw Sandra (the only woman who wanted me to use her real name in my work) she was an emotional wreck. She was crying and verbally abusing a very tall man in Marati. Divya Taneja told me that I could talk to her outside whilst she counselled this man about the situation. The man was accompanied by a very fashionably dressed young lady and three children. I was to learn the story soon from Sandra.

Sandra is a 33 year old Christian woman of Goan origin. She had been living with a partner for the last ten years. He is a criminal and a thug and has several cases filed against him. He pursued her relentlessly till she agreed to have a relationship with him. They have three children from the relationship. Soon afterwards, the man told her that he had fallen in love with another woman and asked her permission to take another 'wife'. Sandra told me that she loved him deeply and was afraid of losing him, so she consented to the second relationship. Her partner started a relationship with the other woman and together they threw her out on the streets.

Sandra was emotionally very disturbed and repeatedly told me that she does not want to harm her 'husband' in any way. She just wanted to be able to see her children. She told me that she had agreed to her husband's second 'marriage'. She said that she loved him so much that she was willing to give him anything he wanted. She did not anticipate that she would have to stop living in their house and that she would be denied access to her children. He constantly threatened her with violence if she did not keep away from his 'family'.

The social worker Divya Taneja had sent a notice to her partner to come to the Special Cell with the children so that Sandra could see the children. The man arrived with his new partner and Sandra's children. Sandra was continuously crying and was in a very

depressed state especially because the children refused to talk to her. Sandra and the man started shouting at each other. The social worker told them to calm down. The man called Sandra insane and told the social worker that she was a bad influence on the children and that was why he did not want her to be around the children. Later Divya Taneja told me that she informed the man that Sandra was entitled to see her children whenever she wanted according to the law. She said that if they did not settle the matter and arrange for visitation rights, Sandra would be forced to move the court. The man stormed out of the room at several points of the discussion.

Sandra told me that their nine month old baby does not recognise her anymore and this makes her very sad. She told me that the older children had been told malicious things about their mother and had taken to ignoring her and being rude to her. Violence as she defined it was the denial of the right to see and spend time with her children. Sandra told me that she has great faith in the law. She came to the Special Cell on a regular basis. She said she did not care about her safety or her health anymore. She wanted to be with her children. She was aware of her legal entitlement as the mother to her children. However she told me that not a single person in the world supported her in her struggle. She came to the Special Cell after having heard about it from a friend. She was glad that she had approached the authorities. She told me she was without any fear of consequences as she is prepared to fight for her rights as a mother.

Considering her emotional state, I did not want to ask her much. So I sat beside her and listened to everything she had to say. When I went back to where I was staying, I wrote in my field diary that hers was the most powerful voice I had heard so far. Here was a woman who refused to be a victim and who was prepared to fight for her rights even when she knew that she was unsupported and deserted by friends and family.

‘Mujhe unse koi shikayath nahi, par mujhe job hi ho, bachon ko dekhna hai’

‘I have no complaints against him, but I have to see my kids no matter what happens’

The rupture point for Sandra for approaching the law was the need to see her children. She felt entitled as a mother to the rights of visitation and of spending time with her children. She acquired the agentive rights for herself when she felt this sense of entitlement. She also acquired the agency from the friend who had benefited legally from the Cell before her. Thus there is evidence her of the legal agency being passed on from WUR to WUR even as the sense of entitlement to legal redressal is passed on. As long as Sandra could have access to her children, nothing else was of importance to her. The greatest violence in her life as she defined it was the denial of the enjoyment of spending time with her children.

Tanuja

For Tanuja, amongst all the violence and the injustice that her partner had subjected her to, the most hurtful was the deception. The fact that she had lost her '*Izzat*' due to no fault of hers was painful and hard to get over. I addressed her as '*didi*' and she spoke to me without addressing me. I introduced myself and told her that I study women in violent relationship because I was a survivor myself. She nodded and answered that she would share her experiences with me. This is her story:

She is a Hindu woman who runs a '*daba*' (a small road-side canteen for late night truck drivers and other travellers). She got married to a man who had promised her marriage. After the wedding, she discovered that the man was married to another woman and that her marriage is not 'legitimate'. She lived like a domestic help in his house and was subjected to a lot of physical and mental violence. She had a daughter from this relationship. Unable to bear the violence any longer, she asked if she could take up separate residence. Her partner agreed with the condition that she would pay him a huge sum of money.

She moved out with her asthmatic daughter and started earning a living by running the *daba*. Her ex-partner does not provide for their child who needs constant medical care.

He also continued to be violent towards her by constantly intimidating her with threats of violence and severely attacking her with a belt in her new place of residence. She went to the police but found that they were sarcastic and unhelpful. She encountered a social worker who visited her slum and directed her to the Special Cell. She told me that she was very grateful to this person and believed that it was a divine intervention. She said that she has hope in God and hope in justice now.

At the Special Cell, she was advised to get a divorce. Instead she said that she only wanted to make sure that he would not harass her again and that her daughter would have legitimate rights. She fears for her daughter's future as her health has been severely weakened by her asthma attacks. She showed me her wrists on which she wore green glass bangles. It is a custom amongst Marati (Maharashtrian) women to wear green bangles because the belief was that this would ensure that their husbands had long lives and prosperity. She told me that she wished him no harm. She had approached the law most importantly for the sake of her sick daughter.

She told me that the law should punish such a severe breach of trust. In spite of the four years that they have been living apart, she suffered severe physical and mental violence at the hands of her ex-partner. She felt that the best thing about the social workers at the Special Cell was that they were considerate and had a genuine interest in her life and that she could drop in at the Special Cell without an appointment even if she was in just

desperate need to talk to someone. She told me that she was more comfortable talking to Divyajji than Rahul-ji because she felt that Divya could relate more to her and empathise with her for the fact that they were both women.

She felt entitled to justice because she had been led to believe that she had a valid marriage. She did not feel guilty about anything except for her daughter's suffering. She believes that her daughter is asthmatic because she witnessed the beatings and the torture that her mother was subjected to by her father. She feels that fate had been very unfair to her daughter who was innocent and undeserving of any of this. She wanted the law to protect her daughter. She was worried about the hostility that her neighbours showed towards them. She said they often verbally abused her and accused her of prostitution because she lived alone with her daughter and did not have a man in the house.

Tanuja was caught in a continuum of violence despite having left her partner. The violence was not just by the partner but by the neighbours who judged her and subjected her to ridicule and humiliation. Her rupture points for 'going public' with her complaint were the fear and concern for her daughter and the breach of trust by her partner. This breach was violence as she saw it. She was a survivor WUR who had acquired agentive rights on her on behalf and for the sake of her daughter despite the barriers imposed on her by her community and neighbourhood.

Preetha

Preetha is a confident young woman. She was 28 years of age at the time of the interview. She came to the Special Cell accompanied by her natal family and her daughter. When I introduced myself, she said that she would like to talk to me outside the Special Cell whilst her parents talked to Divya. I complemented her about her blouse and told me that she liked sewing and often sewed for her neighbours for small amounts of money. She had a marriage that was arranged for her by her family. She was a graduate and liked to take tuitions for students in her neighbourhood. She was saving up in order to secure a good future for her daughter. She has a small son too but was more anxious for her daughter because she knew how the world treated women. She felt that her daughter had to be educated and had to have a profession so that she can always stand on her own two feet. She has great aspirations for her daughter whom she says has a keen interest in studies especially in science.

After a few weeks of her marriage she discovered that her partner was married to her only in name and had been married to other women before and had sexual relations with several other women. She was subjected to physical and mental violence. If and when she complained, the violence became unbearable. He was also a very jealous man and a main bone of contention between them was her giving private tuitions. He was also jealous of her qualification after having falsely representing to have a degree prior to the marriage.

The recurring theme in this interview was her concerns and aspirations for her daughter. She told me that she wanted her daughter to be strong, educated and independent. She told me that her parents support and are proud of the fact that she stood up against the violence. Initially they were reluctant to take legal recourse but Preetha convinced them about it. She had read about the Special Cell in a local paper. She feels lucky to have a supportive family and feels that they have stood by her in her time of great need.

She said that the law should be punitive and should punish any man who is abusive of a woman. She wishes for a system in which men would be afraid to ever raise his hand to a woman. She told me that her education gave her the necessary confidence to approach the Special Cell. She told me that all women need to be educated and confident in order to live independently without depending on men. She told me that the man who had taken her *Izzat* could not look after her. She said that if he could not provide for her and for their children, she had to ensure that they were provided for. She came to the Special Cell in order to get her dowry back from her partner and to ensure that the violence will stop.

When I asked her about the new DV Act, she said that she did not know about it. When I explained some of the provisions of the new law, she was very pleased. She was surprised that the law protected women in such situations of violence. However she told me that most women would consider their '*Izzat*' before approaching the authorities.

When I asked her if she would have come to seek help from the law if she had been ‘living in’ with a person, she was quiet for a bit. Then she said that if she had her children to think about, she would certainly come to the law because their welfare was her only priority. She was doubtful about her parents supporting her in that situation.

She said that once she had stopped all her ties with her ‘husband’, she would like to do something to help women in similar situations. She felt that women need to feel encouraged to complain about ‘*anyaay*’ (injustice) and that in this day and age, women should not be silent sufferers. Of everything she said, the following sentence made me realise the extent to which women are enabling their own empowerment just by the mere realisation and acknowledgement of their own worth.

‘Hum log kam karthe hain, bache palthe hain. Hum sab kuch kar sakthe hain jo admi log karthe hain. Fir pyar main hum ethane dabaye huye aur majboor kyon rahte hai?’

‘We are earning members of the society, we look after our families, and we can do everything that men can do. So why do we have to feel trapped and helpless when we love?’

Preetha was different from the other WUR because she was more educated and had the support of her natal family. The support was most likely because she was an ‘innocent’ WUR who had been ‘tricked’ into a marriage. But the difference in the survivor WUR who came to the Cell supported by family and education is remarkable. She was more confident and less fatalistic; she had a sense of entitlement to justice which was almost inherent. She had the awareness that her situation should not be allowed to repeat as far as her daughter is concerned. Her agency is thus being carried forward to her daughter and so is her entitlement of being a worthy legal subject. She was displaying aspirations of social activism to help other women similarly placed. This bolder attitude to the acquisition of agency and worthiness before the law makes the legal system ‘wake up’ and take notice of its otherwise ‘less’ worthy recipients of its protection.

Veena

Veena is a 47 year old Hindu woman. Her partner is a plumber and they have four adult kids. He has never provided for her. He started a relationship with another woman. They live in a single room in the slums and she has to share the room with her ex- partner and his present partner. She felt humiliated and was subjected to severe mental and emotional abuse. She heard of the woman’s cell when she came to the police station where the cell was situated. She told me that the social worker had told her that she had the right to proceed in the law against her partner.

She wished for the violence to stop and get her house back. She feels entitled to the house because she took care of her children and provided for them. She approached the police after a particularly violent attack. When she spoke to the social worker, she felt at peace. For the first time, she felt that someone was interested in her well-being and concerned for her safety. When she spoke to the social worker, she was informed about all the remedies available to her and was told that she could choose what she wanted to do. The social worker told her that they were there to help her. She also promised a field visit to ensure her safety.

Veena told me that she felt that the law would come to her aid. She already felt good for having met the social worker. She felt that it was destiny that had come to her aid. Veena was informed of the DV Act when she visited the Special Cell. The police had directed her to the Special Cell. She told me that the law should protect women regardless of how good or how bad she is perceived as by her relatives and neighbours. She told me that in the slum where they reside, many men and women live as couples even if they are not married. She felt that when the violence is so bad and when a woman starts fearing for her own life, nothing else should have to be considered. Veena's point of accessing the law was thus life threatening violence.

Prateeksha and Manya

I met Prateeksha and Manya when I was with Divya Taneja at the Special Cell. They were visiting the cell for the first time. I was allowed to stay and observe while they shared their story. Prateeksha is a 70 year old woman from a very poor economic background. She had two daughters Manya and Mitra. Manya is 22 years old and Mitra had just turned 18 when a man from a wealthy family fell in love with her and asked for her hand in marriage. Mitra was a very beautiful girl. Prateeksha told us that at first they were very hesitant as there was a considerable difference in their economic backgrounds. But the man insisted that he could not possibly like another woman and did not want any dowry from the family.

Prateeksha gave her daughter an amount as dowry. After the marriage things changed as the man harassed her daughter and wanted to get her to leave him. One day, shortly after the wedding, Prateeksha was informed that her daughter had hanged herself. When they dressed Mitra's body for the funeral, they found signs of abuse including cigarette burns on her neck and face. They were afraid to file a complaint against the man as he was from a powerful family.

Prateeksha was constantly crying whilst Manya narrated the story. Divya Taneja was trying to pacify them but was moved and upset by the mother's tears. Prateeksha had been told about why I was there. She told me that I should write about the problems women face and study them. Women everywhere were suffering at the hands of men, she told me that those who could make a difference should do so however and whenever possible. She told me that she wanted to make sure that no other girl would meet with the fate of her daughter. She was talking in Marati (the local language) but her daughter Manya translated it to Hindi for me. Manya was angry about the injustice. She told us that there is never any justice for poor people and that the rich always seem to be fine.

Manya was very angry at the situation. She told me that they had travelled a very long distance to get to the Special Cell. They had travelled all the way from the outskirts of Bombay. She said that she had convinced her mother to fight for justice for her sister. She told me that they could barely afford a change of clothing but they had to ensure that the criminals who murdered their Mitra should not go unpunished. Prateeksha and Manya worked as labourers, often carrying heavy loads of cement and bricks at construction sites.

It was an emotional moment when they showed me pictures of Mitra as a happy bride standing alongside her husband. Prateeksha told me that she had had serious doubts about getting Mitra married to such a rich man and now she felt that she had sold her daughter

to death. At this point, she broke down and sobbed and Divya Taneja got her to drink some water to calm her down. She told them that this was a case for the police. Whilst we waited, she went in through the adjoining door to the police station and spoke to someone. After this, Manya went in to file an FIR (First Information Report, filed by the police upon receipt of a criminal complaint). One of the main observations I made during this session was how the Special Cell had eased away the discomfort of approaching the police station directly. A patient and understanding hearing was given before the remedies available to them were discussed. There were no confining timelines for the complainants. They were with the social worker all afternoon and this was real evidence of an enabling, feminist way of rendering legal aid.

Bharati and Reema

Parts of the interview may echo our own thought or own lives but in writing, rarely does the author let the audience know that her life may parallel the respondents' lives. The placement of the author's voice may validate the respondent's experience (Rubin 1996, Hertz 1997: xii). Knowledge produced in an interview does not emanate from a single person but is shaped out of the interaction between two communicating people (McKenna et al 1993 Mykhalovsky 1997:245)

Tuesdays were appointed field work days for the social workers in the Special Cell. I was waiting outside with two women who were talking to each other in Marati. They seemed to be old friends, and were laughing about various things. At one point, one of them asked me in Hindi, the following:

‘Kya hua hai aapko? Madam ko dekhni hain?’

‘What has happened to you? Have you come to see Madam?’

For a moment I was taken aback as I did not understand what she was referring to. Then I realised that they assumed that I was there to complain about violence. The concern for another woman, a gentle curiosity was evidenced in this question. It was this interaction amongst the survivors in the Special Cell which was possibly responsible for this spirit of community among the survivor WUR. I explained why I was there but I also told them about my experiences with violence. I asked them if they would be willing to talk to me as it would greatly help my research. Bharati told me that she was a frequent visitor at the Special Cell. She told me that her husband was an alcoholic and came home every night to subject her to violence. She told me that she had made friends at the Special Cell including Reem and Divyaji and came often to talk and discuss as she felt that she was with people who she could relate to and they could share their problems. She had not asked for any legal action to be taken against her husband. I sensed an easy friendship between the two women.

Reem is a Hijaben (a covered Muslim woman). She is over 65 years of age (she told me she was not quite sure how old she exactly was. She comes from a family of ten children and jokingly told me that her parents could not remember the exact date and year). She told me that she had a violent husband and she had not come for a while to the Special Cell because of Ramadan (The Muslim period of fasting leading to Eid). Her husband had two other wives and she told me that she was his first wife. She believed that she had special rights because she was the first wife. She told me that her husband did not provide for her economically and she was not allowed to go out to work. Like Bharati, she came to the Special Cell looking for someone who would listen to her and give her some advice. She told me that the Special Cell was a place of hope for women like her.

At this point, Bharati asked me if I wanted some special tea from the chai-wala (the man who made tea on the corner of the street). We got the tea and I asked them about the law and what they thought about the protection. They said that only the rich can afford the protection of the law and advocates. I asked them about the Special Cell. Bharati told me that the Special Cell did not feel like a formal place of law. She said that it was more a place of 'samuhik-seva' (social work). I realised that Bharati and Reem had accessed the law through the Special Cell almost without realising that they were accessing it. They had brought their complaints and their problems in their private lives out in the public. Soon Divyaji came back and asked them with a smile,

‘Reseachar bahut saare savaal puch rahi haikya?’

‘Researcher asking too many questions?’

After a couple of appointments with clients who wanted a private meeting, I went in and explained to DivyaTaneja that I had told the two women about my work and they had been happy to converse with me. I asked her if I could use the conversations and she told me that if I had consent from my respondents, she was okay with it.

Bindiya

I met Bindiya when I was waiting to see Assistant Commissioner Virk in Delhi, Nanakpura, for an interview. She was waiting to see him too. In India, when an important person gives a scheduled time for an interview, the interviewer might end up waiting for a long time to be seen. I asked Bindiya if she waiting to see Virk too. She told me that the officer was a distant relative and she had come to file a complaint against her husband. She asked me why I was there. I told her about my work and about my appointment with the officer. She asked me why I was studying about domestic violence. I told her that it was because of some violence in my past. She told me that at one point in

her life she had felt like she was the only sufferer but she had recently met many women who had faced violence. The reason why Bindiya's interview has been included in this chapter and not in the previous chapter is because she is a survivor WUR. She had a voice that wanted to be heard and a story that she wanted to share with whoever was willing to listen.

I asked her if it was okay to speak about the work while we waited. I told her that I may write about her. She told me that I could as long as I did not disclose her real name. She was 25 years old and had been married to a man for two years. She had a baby with him but realised that he had another wife. She said that she was not a fool and would not stay any longer with him. When she tried to leave him, he was severely physically violent towards her and even threatened to harm their child. She was a graduate and she told me that she could find a job and look after her child. She told me that she did not want the indignity of living with such a man.

I asked her about the law. She said that the reason why she had felt that she could come to the law was because she knew the Commissioner. She felt that he could help her in her struggle to get a divorce. She told me that she did not have her 'Izzat' anymore and felt that she had nothing to lose. I asked her at what point she decided to seek 'outside' help. She told me that for her, violence was the fact that she was required to stay as a 'wife' when he already had another woman. She said that as a young, educated woman she did

not feel like she had to stay in such a violent marriage. I asked her if she thinks she might have come to the law if she did not know anyone in power. She told me, she was not sure. She told me that the fact that she knew someone gave her the necessary confidence to access the law. I asked her if she would have done the same if she had been in a relationship with the man but was not actually married to him. She told me that she came from an Izzedar (honourable) family and she would never live in with a man outside of a marriage. I asked her if she thinks the law should act differently with such women, she told me that any woman who was being abused had a right to get protection. Soon, we were called into the office at the same time and we had to finish the conversation.

6. Conclusion

A study of the TISS reports and observational field work revealed that there are the specific ways that law is being built up in this small legal community. There is a culture of giving back to the legal system as survivors whose experiences help in understanding domestic violence and improving the laws that protect against it. Merely by accessing the law, women have played a part in the progress and development of the law. The process of defining violence is a major contribution. Another welcome change brought by survivor activism is that by defending what is due to them in terms of legal rights, they have forced the system to perceive them differently, to see the suffering without judgment and social ostracism. They appropriate the public space that was previously unavailable to them. To the women who approach the organisation, violence can vary

in nature, definition and intensity. Their experiences and encounters with violence have helped in refining and contributing to DV law. From the interview with Anjali Dave (Dave. 15. September. 2008) it was established that the drafters of the DV law took into consideration the reports of these experiences in the TISS archives. The survivor model of DV framework was agency- endowing, WUR friendly and empowering as observed in the field.

The voices in this Chapter belong to eleven women, including me.

‘It is in the realm of sexuality of experiencing themselves as sexual beings, that the women create, we believe a free space of their own... We are aware that the whole issue is problematic, as far as possible the authors try to let the women’s voices speak for themselves... Every time a woman recognises her body to be her own, she takes a step outside imprisoning ideological boundaries that restrict her’ (Franco, Macwan and Ramnathan 2007 :161).

The moment a woman decides to step outside or transgress the borders of honour set out for her by her community and the society, she seems to find the strength to be her own agent/saviour when faced with persistent violence from or because of the person she did

this for. This seems to be even more evident when women have children to look after. When women came to the Special Cell, they carried back with them the positive experience and shared it with their friends and neighbours. This resulted in more women coming to the law and the news of the accessibility of the law being spread by word of mouth.

The field work in Bombay was a revelation in many ways. The key findings will be subjected to further analysis in the second half of the next chapter. The first finding in this survivor model is about the three reasons that rupture the boundary between private violence and a public recourse to the law. The first amongst this as we have seen in this chapter is the transgression of the *Izzat* (honour) boundary. There was a recurrent mention of ‘Izzat’ and the fact that once this had been destroyed; there was an easier defiance of social norms as the women now felt that they had little to lose.

The second is the protective instinct of WUR to their children. A major factor that persuaded women to approach the law was when there were children involved. This seems to be one of the main rupture points of the defiance of norms.

There are different categories of single-womanhood. Some lived in with partners, some had entered unwisely into fake marriages, some of them were second and third wives. It

did not matter. The category 'single' was not the main issue. There was another rupture point when the violence got to an unbearable level. The third reason is a broken threshold of violence tolerance. Women of different faiths and economic backgrounds approached the law. Their problems differed in terms of the effect of the personal law, for instance, Reem was tolerant of the other wives whilst Bindiya was not willing to share her man with any woman.

The next major finding in this model is the reclamation of legal agency by the survivors and the subsequent carrying over of this agency to other victims who then become survivors. Women accessed the law in different ways. Some of them came to the police, others straight to the Cell. Once they had punctured certain social boundaries and reluctance, they were happy to have publicised their private problems. All of them felt that they had people interested in their lives and people ready to help. None of the respondents knew about the DV legislation until they approached the Special Cell. Some of them did not know about it even afterwards. However this did not prevent their access to legal aid and support.

The third and final finding is the contribution of the survivors' experiences to the legal system. This is explained in terms of the development of an inclusive and comprehensive definition of domestic violence. The other access point is the use of the survivors' legal agency and the reclamations of the rights due to them. The law is thus forced 'to sit up

and take notice' of the WUR as worthy legal subjects. Most of the respondents felt that the fact that they could choose their path in the law at the Special cell took the pressure of them to follow complicated and expensive legal procedure. The women defined 'violence' as something personal and unique to each of them. They had different perceptions of what constituted violence. For some, the breach of trust of a partner was the most violent of harms. Women shared their success stories with neighbours and relatives and the ability to access the law can spread by word of mouth. They formed friendships and support systems within the Special Cell and took courage from each other.

Voice is a struggle to figure out how to present the author's self while simultaneously writing the respondents accounts and representing their selves. Voice has multiple dimensions: First there is the voice of the author. Second there is the presentation of the voices of one's respondents within the text. A third dimension appears when the self is the subject of inquiry. Reflexivity encompasses voice but voice focuses more upon the process of representation and writing than upon the processes of problem formation and data gathering. However in the final product, voice typically is informed by the selection of the empirical problem, methodology and theoretical tradition (Hertz 1997: xii).

I have remained true to the narratives as they were shared with me. However, on some level, our voices have merged to tell a common story.

CHAPTER SIX

DV in the Light of WUR: Towards a More Feminist DV Framework

1. Introduction

This chapter builds on the fieldwork findings presented in chapter 4 and 5. The first part of the chapter focuses on the Victim Model and explores the implications of three key results. It argues first that the formality of procedure and a strict adherence to the procedural requirements of the DVA in the Victim Model limits the agency of the victim. Secondly it explores the relationship with the police, particularly the alienation of the police from various stages of implementation of the DVA and the subsequent creation of a civil society safety space. Finally, it considers the relationship between the treatment of legal agency and the location of the ‘ideal legal female subject’.

The second part concentrates on the major results of the Survivor Model. This section argues firstly that factors that puncture the boundaries between keeping violence a secret and making a public complaint are: the transgression of the *Izzat* boundary; the fear of harm to children and the financial need for the welfare of the children; and a severe life threatening extent of violence. Secondly in the survivor model the reclamation of legal agency by the survivors has been recorded as an outcome. I will argue that there is an impact of this agency on others which subsequently transform others from victims to survivors. The third outcome to be argued is that the survivors' experiences feed back into the legal system. This is argued using two access points. The first of these is that the WUR experiences have contributed towards the development of a comprehensive definition of domestic violence. The second access point is that the survivors use their legal agency to reclaim the rights due to them under the law regardless of prejudices and bias. In this way the law is 'convinced' into accepting WUR as worthy legal subjects.

The chapter also identifies some common links and best practices in order to open up the possibility of further research for an ideal DV law framework which is more feminist, less biased and agency endowing in nature. Although some of the results are applicable to all victims and survivors, the chief focus continues to be WUR.

2. The Victim Model

As we saw in Chapter Four the DV frame work in Delhi is closer to the legal advocacy approach backed by some feminist inclusive methods. The framework depends on the DVA to a great extent. One of the primary aims of the drafters is to see a robust implementation and use of the DVA in cases of domestic violence. The legal subject within this framework seems to be closer to the classic understanding of the helpless victim who is in need of the State's protection. In the following sections we will analyse the three major findings of the research carried out with regard to the Victim Model. The first of these is the formality of procedure.

2.1 Formality of Procedure

In Delhi, the participant research with the LCWRI, the police training session and the different interviews with the stakeholders and authorities established that the implementation of the DVA within the VAW framework is a priority within the Victim Model. The DVA is thus extensively supported in its implementation by monitoring and evaluation conferences, publication of annual reports, training and workshops for appointed authorities within the DVA and by media awareness. This would mean that the law has been laid down the victim subject accessing it and there is less scope for

flexibility of use for WUR especially in terms of defining their experiences of violence and for victim-empowerment and/ or victim activism.

This is also because, as we saw in Chapters Three and Four, the general outlook of the legal authorities in the Victim Model towards WUR is that they are victims with limited power and agency. Even as the authorities in Delhi go a good way towards ensuring that the DV framework is contained within the rigid structures of the DVA, the victims seem to be treated as sufferers who are not in the right state of mind to know what is good for them or what remedy they need because they are caught in a continuum of violence, as is evident from the police training sessions and from the drafters referring to the main objective of the DVA as that for providing a ‘violence-free space’ for the victims. The legal agency appears to be vested in the ‘middle women’ rather than in the victims themselves. The procedure starts when the woman approaches a Protection Officer, a service provider or a lawyer. These middle women who are also the designated authorities in the DVA seem to take on or acquire the legal agency from the victims on their behalf. It is also important to note at this point that the procedural requirements of filling out a domestic violence form involve the ticking of boxes against predetermined definitions of violence. In this sense the definitions of domestic violence have been already decided and the victims have to adhere to the various descriptions of what the law deems to have happened to them. Thus WUR have less opportunity to define violence on their own terms as victims accessing the DVA in the Victim Model. As observed in the offices of the Protection Officers many of the cases do not make it to the court. Once the

WUR has given a complaint the power of agency has left their hands. There are several variables that may or may not ensure justice for the victims. The lack of clerical help in the offices of the Protection Officer, the unavailability of a computerised data storage system, the Protection Officer's discernment about the seriousness and sincerity of the complaint, and the number of complaints made at any given time are these variables. Although the DVA aims to give justice in the shortest possible time, delays are inevitable in some cases due to such vagaries.

2.2 The Police and the Civil Society Safety Space

‘Familial ideology naturalises and universalises the construction of women as wives and mothers, as economically dependent, as passive, dutiful and self-sacrificing, across a broad range of personal laws (Kapur & Cossman, 1996: 101)

The legal system gives pre-eminence to the notion of homogeneous family thereby disregarding the subordinate status of women within the family, and of her experiences of violence that this entails (Ghosh, 2004). Due to social and cultural perceptions there is a wide divergence between the legal provision and the perception of those authorities associated with its implementation (Mitra, 2000:11). The failure of Section 498A of the Indian Penal Code which recognises physical and mental violence inflicted on a woman by her husband and in-laws as a cognizable and punishable offence is an example of such divergence (Chauhan, 1999). It prescribed cruelty is not just confined to causing grave

injury, bodily harm, or danger to life, limb, or physical health but also includes mental health, harassment, and emotional torture through verbal abuse (Ghosh, 1995). This was achieved after the IPC was amended twice first in 1983 and then in 1986 (Mittal, 2003). Consequently Section 498A was one of the few legal provisions that have recognised the fact that the male members of a family can perpetrate violence against women (Newman, 1992; Kriger, 1999). Despite the fact that it brought under the purview of the law what had been considered to be a private matter, it failed to withstand the test of cultural perceptions and socially legitimised hierarchies (Jethmalani, 1995). WUR within the DVA can find parallels in 'wives' under Section 498A and the lessons learned under Section 498A is that legal reform is only effective when accompanied by social and behavioural changes. In this sense, this is applicable to the DVA and the WUR as its users.

Unless the cultural and social perceptions about WUR change, the laws in themselves will not bring justice. WUR in order to negotiate their rights must be aided by legal agencies that promote and encourage such negotiations. Instead when confronted with the police, the WUR often find themselves in a hostile environment where their needs are not treated with the necessary seriousness. Within a legal system where there is an inherent tolerance of domestic violence and where social and legal mechanisms are in place that consider the preservation of the family as the top most priority, WUR would find themselves in an alien social and legal space. As long as there is tolerance of domestic violence towards women in cultural, legal, and political institutions, laws in themselves

will not change the situation (Mitra, 2000). Appropriate social and behavioural reform along with the efficient enforcement of the DV laws can only protect women within the system (Mitra, 2000). And as the system already supports culturally legitimised social hierarchies, sometimes the law merely reinforces these hierarchies (Mitra, 2000) .

The police training sessions and the interview with DCP Virk, confirm such dominant notions of familial ideology and attitudes towards women and suffering. In their interviews, the Protection Officers, research officers and other stakeholders confirmed the insensitivity often displayed by the police officers in handling cases of domestic violence. The police, upon the receipt of complaints from DV victims refuse to register their cases if they do not feel that the domestic event is not serious enough. In cases that require investigation the police failed to do so, seriously. This has resulted in the loss of faith of the victims and of authorities in the protective functions of the police. During the police training session and afterwards in the interviews, the research officers confirmed the conscious distancing of the police from various aspects of the DV framework by the drafters. With the exception of Section 31 of the DVA, the police play little other part in the procedural aspects of the DVA. However in contradiction, at the time of doing the research field work it was evident that the police were still the first port of call for victims of domestic violence in practice. When the victims approach the police station, the police are required to direct the women to the nearest Protection Officer. The police are also required to write a Domestic Incidence Report (D.I.R) in the case of a domestic event occurring. This is mostly for the purposes of maintaining records of cases of violence. It

is then up to the Protection Officer, the service providers, the medical facilities and the shelter homes to provide the necessary help to WUR.

Research undertaken in the context of domestic violence in the homes of police officers has found that because of working conditions that require domination and aggression police officers tend to have what is called an authoritarian personality (Sgambelluri, 2000). The very nature of both police training and police work promotes aggression, increasing the risk of excessive use of force on the job and sometimes off the job as well (D'Angelo, 2000; Neidig et al., 1992; Sgambelluri, 2000). For instance, police officers are trained for their jobs to dominate physically and psychologically, through posturing and verbal and physical forms of intimidation (Johnson, Todd, & Subramanian, 2005). These tactics can be used to gain control in all situations, including those within the home. Physical and psychological domination is reinforced throughout a police officer's career, making it difficult to leave the job at the work place (Johnson et al., 2005; Sgambelluri, 2000). Recognising that the police are not an ideal access point for victims of violence to approach the law because of the sensitive nature of the complaints, the drafters confirmed in the interviews that during the course of the monitoring process they have worked strategically to marginalise the police from the various stages of DVA implementation. Specifically in the context of WUR the police would be less of a useful legal resource even as it is evident from the questions in the police training session and the interviews of the Protection Officers and the stakeholders that there is a bias among the police officers against the worthiness of WUR to be legal subjects.

Thus as argued in Chapter One, despite certain bouts of cooperation and tolerance, the women's movement does not have a very sound relationship with the police (Agnihotri, 1995; Basu 2000; Kumar, 2011). More than as a state agency of law and order, women's groups have often seen the police as further oppressors of victim as is evident from the less than perfect record of the treatment received by women in police stations (Kelkar, 1987; Rose, 1992; Kishwar, 1998). Also the emphasis for police, lawyers, and counsellors whose services are sought for intervention is towards reconciliation and preservation of the ideal family (Prasad, 1999). Police and lawyers are part of the same patriarchy that tolerates domestic violence. Unless it is dowry related, these agencies do not necessarily consider physical, and especially mental abuse crimes (Fernandez, 1997). Instead such abuse is seen as attempts on the part of the husbands to 'discipline' their wives (Go, Johnson, Bentley et al., 2003). Abuse may also be seen as something that was caused by drunkenness or induced by stress. Under such circumstances, according to the police and lawyers, these issues are not serious enough to cause disruption of families, and certainly not valid grounds for conviction of husbands (Niaz, 2003). It therefore becomes very frustrating for women to try to win justice from such institutions (Niaz, 2003). Research done on police responses to domestic violence has shown that the general perception among the police was that these days young women have 'become too big for their boots' the 'tolerance level among young women had gone down' and, most notably, 'there are no laws to protect men' (Chikarmane 2000; Ahamed-Gosh, 2004:18).

Thus, as established by the stakeholders in their interviews and from the secondary sources, the failure of Section 498A of the IPC to provide adequate redressal to women resulted in an essential shift in the thinking of the drafters and the other stakeholders involved with the implementation of the DVA about the need for a civil law of domestic violence. As repeatedly mentioned in the monitoring and evaluation reports compiled by the LCWRI, the DVA intends to provide a civil law with criminal overtures that come into operation when its provisions are breached. A gradual shift was noticed during the monitoring and evaluation process and during the field work research, in the powers of the police being transferred to a 'civil society safety space'. I call it the safety space because the civil society seems to be taking on a lot of responsibility from the state to create a legal framework which is more conducive to the safety, comfort and the welfare of victims of DV. Perhaps in the minds of the drafters, the history of the police atrocities on women and the insensitivity evidenced in the general attitude of the police whilst dealing with VAW, have played often and enough for the realisation that another space has to be freed up for the use by victims of DV. This 'violence-free' space could be envisaged in such a relatively non-threatening framework in which the victim feels more at ease in making a private complaint public in the absence of police interference and in the presence of alternate civil officers like Protection Officers and service providers.

Thus the drafters of the DVA realised the virtue in creating a safety space held together by the civil society in order for women to find the appropriate legal remedy and negotiate their legal rights within a more victim friendly and women-centric space. This is because

of the recognition of the dominant social hierarchies set in place by the society and the family and reinforced by authorities like the police. This safety space is held in place and protected by the civil society. The constant criticism of the criminal law and the reluctance of the police in registering complaints within this law can be noted as two of the reasons for their relative isolation from this safety space.

To further concretise the strength of this space, the authoritative role of the police has been used in the context of section 31 of the DVA as discussed in Chapter Four. It is at this point in the DVA that this otherwise civil legislation turns criminal. Upon the breach of any protection orders by the court the police can step in as a disciplining authority. In this sense the safety space is further reinforced around the periphery by the threat of the possibility of criminal sanctions on the abuser. The safety space is thus harmoniously balancing the requirement of a violence- free zone for women and the necessity of the possible use of force to distance the abusers from the victims. It appears as though the police act as a fence of sorts keeping the violence at bay and yet giving all the other functions to the civil society to provide necessary help and legal aid to women.

2.3 WUR within This Formality

WUR have less of a chance to enjoy familial and neighbourhood support system as is evidenced from the interviews with the Protection Officers when it was established that

WUR usually come unaccompanied to make a complaint. The decision to access the law in case of DV may be a tough and often lonely one for WUR. The making of private violence a public complaint appears to be made tougher by the formality of procedure. In theory the procedure laid down in the DVA entails that once a DIR is filed the proceeding is initiated. However due to the eagerness of the authorities to make use of the provision of Protection Officer, the police are directed to send the victim to the nearest Protection Officer. Once a victim makes a decision and gathers the courage to go to the police station to make a complaint, she finds herself being shuttled off to a different authority. As was evident from the interviews with the Protection Officers they are often in offices that are far away from the police station. A WUR may during this transit from the wrong authority to right one, abandon the process of accessing the law based on the evidence supported by the interviews with the Protection Officers. It may also result in more expenses for travel and sometimes even accommodation for women who come from the outskirts of Delhi.

Considering the socio-economic relationships of WUR with the other members of the household, their neighbours, employees and employers, no one who is aware of the abuse is willing to risk their various relationships and jobs to come to the rescue of the victims. Due to the fact that the WUR is translocated to another place and family and neighbourhood that are alien to her she may often lack the support system available to women in conventional marriages. The translocation may be reasonably presumed to be hostile when compared to a conventional marriage. A family and neighbourhood that a

woman is married into may be often more accepting of a legitimate relationship (Suneetha and Nagraj, 2006). The family members of the partner are also often hostile to these unconventional relationships and wash their hands of the couple. Most often the hostility may be directed towards the WUR and not towards their male partners. There is a tendency to blame the women for such relationships and consequently for the troubles faced in these relationships. This would explain why married women in most cases approach the law supported by members of the natal family whereas WUR come unaccompanied. Once a WUR chooses to go ahead with the unconventional relationship, in many ways she severs the ties with her natal family and her natal support systems merely by virtue of her choice.

2.4 WUR and Institutional Challenges

The path of domestic violence victim and her progression from being a victim to occupying a legal subject position has to be paved by energetic institutional responses. When she breaks free of her subjection in the private through a negotiation of her rights in the public she acquires the necessary legal agency to bring a change to her situation and to the situation of similarly placed victims. (Dave and Solanki, 2001; Devi et al., 2000; Elizabeth, 1999; Hengsara Hakkina Sangha, 1999; Jaswal, 1999; Mitra, 2000; Vindhya, 2000). As we saw in Chapter Three for WUR the DVA is the only provision of law which expressly includes in the definition of relationship includes live-in relationships and relationships in the nature of marriage. Thus the actual letter of the

DVA is of significance to WUR and therefore the institutional responses to domestic violence are even more crucial in deciding the success or the failure of the DVA as regards to them. Many studies of institutional responses concluded that such responses failed women (Mitchell, 1983; Dutton, 1992; Shepard, 1999; Coker, 2000). A major institutional challenge is insistence on corroborative evidence (Suneetha, 2006). Added to this is the problem of a patriarchal understanding of cruelty and women's reaction and tolerance (Dasgupta, 2002). Another hindrance to successful legal access is lengthy and expensive court and trial procedure (Nigam, 2005). During medical examination and treatment doctors are often indifferent to women's suffering and sometimes even aid the abusers family to conceive important evidence. Another institutional limitation is the counsellors' insensitivity to the needs and complaints of the victim. Over the recent years there has been a movement to encourage the active collaboration between the government and the civil society in dealing with the problem of domestic violence. Local networks like friends, families, colleagues at work have also been identified as having the potential for acting as controlling mechanisms against domestic violence.

2.5 Treatment of Legal Agency and the Worthy Legal Female Subject

Thus we saw that if the process of breaking free from her subjection is helped by institutional and societal support systems, the access to legal agency of WUR becomes easier and faster (Mills, 1998; Danis, 2003). In the Victim Model when WUR approach the institutions the agentive rights of the woman are limited as the institution seeks to

rewrite the women's experience with violence in order to fit within the confines of the domestic incidence form. Often it so happens that the WUR do not have the will or the resources to follow up on their complaints. The victims have to be perceived by the institutional authorities as fit agentive subjects of the law. This subjectivity is shaped through a historic continuity of the liberal idea of the ideal victim subject. When victims do not act consistently or autonomously, for instance when they change alter or withdraw the complaint, the perception of unfitness increases. An instance of this was observed in the Protection Officer P's office when she showed her annoyance at the inability of the victim to adhere to the facts of what had happened to her in the narration of the domestic event.

Thus these subjects of law are often not given the position of an equal citizen making a complaint. They are instead perceived as people who need to be told what to do and how to conduct themselves in order to fit the mould of an agentive subject and as would-be citizens (Suneetha and Nagraj). This is further illustrated by the different institutional responses in the forms of shelter homes and counselling sessions set in place in Delhi. They may be required by the law to attend counselling sessions or access a shelter home or in the absence of the existence of shelter homes, they may be sent to a 'nearest safe place'. The agency of this unfit subject is acquired by 'middle women' who are deemed to have the ability to make decisions and act on the behalf of the victim. Even the kind of violence that the unfit agentive subject faces is redefined by the institutional mechanisms

set in place. Thus the legal agency is acquired and assumed by the middle women with the immediate presumption of the victim as an unfit subject.

Another presumption is that of an unworthy legal subject. WUR are sometimes perceived by institutional authorities not just as unfit but also as unworthy because of the moral choices they have exercised. The chances of WUR dropping or abandoning complaints become higher when faced with hostile institutional responses. Although the police have been slowly isolated from the DV institutional framework they still remain the first port of call for DV victim. Hence WUR are still met with hostility even after they get over the initial hesitation to file a complaint. The victim has to attain certain moral credibility in order for her complaint to be treated as a genuine one. She has to do this within a stipulated time and it has to fit within the predetermined definition of violence. Several studies point out that it is not possible for women to fit their lives into such institutional formats (Nicolaidis, 2002; McPhail, Busch, Kulkarni & Rice, 2007; Kohn, 2010). Studies have also shown that absenteeism changing of the facts, missing information and medical reports have been used to discredit the victims of DV (Stephens, 2000; Hartmann, 2003). Institutions often fail to leave a margin to accommodate the fact that these women also have to negotiate with their families, friends and even the abuser whilst making the complaint.

Thus an important aspect of the interaction of a woman with a legal institution is whether the institution treats the woman in the subject position of a victim who does not have the necessary discerning powers or if they are treated as equal citizens. In the Victim Model the authorities were seeking to rewrite the women's experiences with violence in order to fit the mould of a legal institutional language. The evidence of this is from the requirement of the filling of the domestic violence form in which the violence has been described for them as observed during the session in the Protection Officers office. In this sense the victim's voice is stifled because she is not given enough freedom to express her experiences of violence without the pre-determined yard sticks of violence. They are forced to change or alter their complaints in order to meet institutional requirements. Often follow up meetings and other requisites like counselling, filling in the DIR form, following up on complaints, the two and fro from the police station to the office of the Protection Officer put a huge personal and financial burden on the victims and wreak havoc on their lives and interpersonal relationships. Even with sympathetic Protection Officers and service providers the victims need to provide their complaints within a certain time and provide all the necessary facts without ambiguity (Suneetha and Nagaraj, 2010).

The ideal legal subject has to have a certain degree of victimhood before their complaints are taken seriously. This is evident from interviews with the Protection Officers when they admitted that the cases that seemed most urgent were based on their idea of how much suffering the victim was undergoing. There is a dichotomy here between the ideal

legal subject and the victim subject. The ideal legal subject is the one who has moral responsibility and is factual and clear about the violence she has been subjected to. The victim subject however has to show that her suffering is about a pre-determined threshold before she can evoke the law.

The interview conducted by Deputy Commissioner of Police, Virk, a woman who shows anger or impatience in a relationship devalues herself from the position of a worthy legal subject. She does not seem ‘innocent enough’ as she is seen as having provoked the partner into being violent with her. Any woman who reacts in a domestic violence situation by calling the authorities, complaining to the neighbours or even walking out of the relationship is acquiring for herself a certain degree of agency. She is initiating the breaking away from her victimhood and her present subject position. In the case of WUR this breaking away is often differently located. It has been argued that when women are trying to be agentive subjects to claim and exercise their rights, they are compared to the ‘historically consolidated notion of the subject’ (Balibar, 1994:11). This subject has reason, will, moral sense of responsibility and as a result of all these constituent elements, has the legal subjectivity and their actions are protected by the law. Once they have this subjection to the law, they get their rights and the agency to demand such rights (Douzinas, 2000:231-236). What the institutions in the case of WUR are looking for is such an agency, in a particular way of narrating the domestic event, in the consistency of their complaint, in their persistence in pursuing the complaint, proof of their victimhood, the justification of moral choices and the closest adherence possible to the ideal ‘female

victim' before they are put on the recourse to justice. When these requisites remain unfulfilled, the agency is limited and their inadequate legal subjectivities mean that they do not get justice done to them as full-fledged citizens of the state.

Recently authors have argued that the women's rights discourse on violence within the family has entered particular institutional spaces (Koss, 2000; Vargas, 2003). These spaces can be understood as the sites of political interaction and interactions between citizen-authorities and would-be citizen. Women seeking justice encounter amongst others two kinds of power (Dobash & Dobash, 1999). The first of these is the legal authority which confers upon women rights and which gives solutions that depend on the woman's ability to be an ideal legal subject. The second is the governmental power which addresses these very subjects of welfare offering them realistic and reasonable solutions. The intent of the new domestic violence law is to institutionalise these two forms of power in conjunction with the criminal law. It also uses the resources of the civil society particularly in the form of service providers to enforce the law.

Women approaching the authorities for protection or redressal in the law find that they have to acquire a balance between appearing like the real victims who need protection and at the same time showing that they are not wallowing in self-pity (Stubbs, 2002). For instance a woman who aggressively pursues her case with the help of a lawyer is perceived as a 'hard' survivor. If she were a 'real' victim the belief is that she cannot be

this strong. Research has shown that women who had been beaten by their male partners but did not fit the symptoms of ‘the battered women’s syndrome’ faced troubled receiving help from the authorities designated as helpers (Rothenberg, 2003: 783). There is a social kind of ‘innocent’ and women who got angry at their partners was seen as causing provocation for the partner for the use of violence against them.

3 Survivor Model

In Mumbai, the Survivor Model the institutional framework is such that the survivors acquire more legal agency because of the institutional responses. What was seen in the field was a simultaneous reclamation of legal agency by the survivor and the passing back of legal agency to the survivor from the institutional support systems. This happens because the Survivor Model is agency endowing and enabling for the WUR to understand and decide the remedies available to them and in this process allow the social workers a certain degree of agency to Act on their behalf. The special cells are places where the social workers lend a non-judgmental ear to the survivors as was established from the interviews with the survivors and the social worker. In this space the survivor is given an extensive understanding of the remedies available to her. She is treated as an equal citizen who has the discernment to choose the remedy best suited for her and her situation. During the participant observational research and from the interviews it was evident that even if she changes her mind about making the complaint or following it up, her credibility as a legal agentive subject is not at stake. The special cells are based on a

feminist understanding of providing survivors with the means to find and use their own voice. Survivors assume fit agentive subject positions when they are confronted with the law at the special cells. This back and forth of legal agency between the survivor and the institution is empowering for the survivors and at the same time the activism of these rights bearing survivors helps improve the framework within this model. Survivors are able to negotiate their rights as equal citizens of the law. Thus the new subject position which they acquire is more powerful and less intimidating at the same time. It is more powerful because the survivors have had the chance to negotiate and make their own legal choices. It is less intimidating because of the friendly nature of the institution where they can talk to patient non-judgmental social workers and to other survivors in similar subject positions. The field work revealed that there are certain break-away points that rupture the boundary of secrecy when a WUR decides to make a public complaint of a private violence. The first of these is the transgression of the *Izzat* boundary.

3.1 *Izzat* Boundary and its Transgression

Izzat was a resonating theme in the interviews with the WUR. When a WUR breaks away from the norm of a conventional relationship of marriage she has in societal terms transgressed the traditional notions of *Izzat*. By stepping out of the *Izzat* line she is walking away from the safety of her natal family and their protection because she has compromised the familial honour. In this sense her unconventional relationship is already border-line in the public sphere. When such a woman is subjected to violence by her

partner she feels she has less to lose in the eyes of the society as she has already ‘sacrificed’ her *Izzat* as well as the *Izzat* of her natal family for the sake of this relationship. WUR transgress the *Izzat* boundary when they make the sexual choice that is not approved by their family and social group, thereby asserting their freedom of choice. Freedom for women spells ‘social disaster’ (Yuwal Davis, 1992: 285). Once a woman transgresses the *Izzat* boundary which is also a marked and preserved boundary between kin groups, she is now ostracised as ‘*Besharam*’ (Sharma, 1978). WUR have now abandoned *Sharam* which is also a metaphor for defining what is public and what is private. When a woman upsets normal sexual behaviour she endangers these boundaries and invites public and private censure (Thompson, 1981). By making a choice a sexual choice, she is also forced to break some social and familial ties. She risks losing the support of her natal family and the social group as she has chosen to sacrifice their *Izzat* for her own ‘selfish’ interest. WUR thus do not have a natal family to go back to in case her relationship of choice turns sour. In the interviews the WUR expressed the thought that since they had lost their *Izzat* for the abusive men, they had nothing more to lose by approaching the law. In a ‘normal marriage’ women often feel bound to safeguard the *Izzat* of her natal family and the family of the husband. Talking about private issues or troubles in the home and making it public by going to the authorities would bring a great sense of shame to the family circle. However in the case of WUR and the *Izzat* boundary it becomes a ‘double jeopardy’ of sorts as the *Izzat* has already been lost and now they have nothing more to lose by approaching the legal authorities or by publicising their troubled private lives. Thus the WUR who have been historically disadvantaged because of their transgressive identities and should have therefore received or felt they deserved

less protection, now find themselves empowered by the sudden absence of the sense of duty to preserve their *izzat*. This however happens because they are also supported by the institutional responses within the Survivor Model of DV framework.

3.2 Fear of harm to children and the need for financial security of children

WUR agency in case of domestic violence survival cannot be limited to the construction of women as ‘atomistic, mobile individuals’ rather they should be seen as highly interconnected to others, particularly to children (Mahoney, 1994: 74; Maguigan, 1991; Coker, 1999; Stubbs, 2002: 44). Several women who seek legal aid to deal with DV are mothers and often they come to the law when the children are targeted or when they fear the effects of violence (Harrell Smith, 1996; Davis et.al, 1998; Ptacek, 1999). Abusers often use children to intimidate their partners or former partners and one of the most common threats made is to separate the child from the mother (Davis et.al, 1998:33; Stubbs, 2002:45) as is evident from Sandra’s case. A WUR’s capacity to make a legal choice is also constrained when children are involved (Lewis et.al, 2000; Stubbs, 2002). Another point of rupture when the WUR go public with their complaint is when children are involved in the relationship. As the interviews revealed, most other considerations take a back seat when children are involved. In this sense WUR act as legal agents for their children when there is a threat of harm to their children. The safety of children and the need to isolate and protect them from the abuser becomes a top priority to WUR. The medical bills and the money for educating the children is a consideration of utmost

importance to WUR. When children are involved (particularly girl children), the WUR seem to be ready to take on the agentive rights of their children and approach the law armed with their fiercely protective maternal instincts.

3.3 Life Threatening Violence

When compared to other women victims of domestic violence, women who seek legal protection, would have experienced serious levels of violence; be injured; have a partner who is in trouble with the law or has been violent in other aspects (Coumarelos & Allen, 1998; 1999; Young, Byles & Dobson, 2000; Stubbs, 2002). This is evident from the interviews with the survivor WUR. Many women maintain silence for a long time till the violence becomes life threatening. The silence could be a coping mechanism (Stubbs, 2002).

When the violence becomes life threatening the boundary of secrecy is crossed. The ability to rationalise about the harm in staying with the abuser seems to proportionately increase with the extent of violence. When there is a threat to the life of the survivor, she decides to walk out of the relationship and approach the law. The fear of leaving is thus overcome when the fear of staying exceeds it. The extreme forms of violence include physical abuse like repeated punching, slapping, kicking and neglect of the health

problems of the survivor and public humiliation; extreme sexual violence like forcing the survivor to watch pornographic films and sexual humiliation.

4 Giving Back to the Law: Agentive Subjects and the Language of Rights

The women define violence and explain in their own terms about what has happened to them. As established by the interview with Anjaly Dave, these definitions have contributed during the several years of research on domestic violence by TISS. These definitions are archived over the years were considered by the drafters of the DVA in formulating a definition for DV. This is evidence of the victim's agency feeding back into the legal system. The experiences of the survivors have in this way influenced the engineering of the law. What follows is a to and fro agentive relationship between the survivor and the law.

WUR do not fit the classical model of victim – one who is restrained by societal norms and controls and need to be freed by the grant of freedom. Neither do they fit the new model of the empowered women who is supported by society. The WUR are exceptional

agentive subjects because they challenge their condition of subordination, these challenging activities are conducted in the previously forbidden public sphere; when provided with appropriate social, legal and ideological change like in the survivor model, WUR break free from violent relationships (Hirschmann, 1996). Such a Survivor Model in which the WUR feature in social networks outside of formal institutions can be described as moving towards the feminist ideal of a DV survivor framework (Suneetha & Nagaraj, 2010). In such a framework the subjects of law is a rights bearing agentive WUR who is working to challenge the violence in her intimate relationship and her rights are more important than the need of the law to protect against the disintegration of family.

Thus empowerment legally speaking refers both to WUR's power to act and the endowment of such agency by the institutional framework. As a conscious agentive subject the WUR thus have the capacity and the desire to move on in a single historical direction- that of increasing self empowerment and decreasing pain (Suneetha & Nagaraj, 2010). Hence this survivor model of DV framework is both enabling and empowering.

A liberal notion of WUR agency finds itself on shaky ground in Hirschmann's description of a woman in a domestic violence situation (Hirschmann, 1996). According to Berlin the quintessentially liberal notion of liberty can be understood as negative and

positive liberty. Negative liberty is the freedom from state or societal restrictions. Positive liberty consists of the sum total of enabling conditions that help to pursue one's life path. Hirschmann (1996) argues that neither of these models approximates the experience of women facing violence. Applied to domestic violence, negative liberty arguments do not mean much. In order to be able to act, instead of freedom from the state and society, women need more choices, resources, laws and supportive structures from the state and from society. Similarly, in terms of positive liberty, to realise their life paths, along with support from society, a woman needs to consciously work against internalising societal values that prevent her from breaking out of a violent family. In the case of the Survivor WUR of the Survivor Model in Mumbai, their ability to break free from the barriers is reinforced by adequate institutional support. She is able to break free from the internalizing societal familial barriers because in her mind, she has nothing to lose as she does not have her *izzat* anymore.

5 Towards a Feminist Model of DV framework: Best Practices

The discourse on domestic violence in India is illuminated by the language of rights and empowerment in which domestic violence is seen as the condition that needs to be overcome (Suneetha & Nagaraj, 2010). It imagines the WUR facing violence as prospective citizen-subjects, who can actualise their right against violence once the law and institutions are set in order (Suneetha & Nagaraj, 2010). The general understanding is that the violence can be adequately removed by legal and institutional responses and by

enabling the agency of the legal subjects. It has been argued that the law is the ultimate deliverer of justice in cases of domestic violence. The WUR imagined by this discourse is however a victim of familial obligation and although she is aware of her subjection and wants to take action she is faced with the barriers of poor public and institutional support as seen by the language of the Victim Model.

The new institutional spaces available to the survivor WUR of DV are civil society based and quasi-legal like the special cells for women and children. Since the advent of the DVA efforts have been made to improve institutional functioning using training and sensitisation work shops as we saw in the Victim and the Survivor Models. The Mumbai model provides for an ideal institutional framework as it defies the formal institutional setting for the treatment of DV cases. As we saw in Chapter Five, it is both enabling of survivor agency and empowering to WUR. Another institutionally enabled victim/survivor network which is progressive is seen in both the Models – the victim's survivors groups based on friendship, mutual support in the sharing of experiences.

The nature of domestic violence and its prevalence needs to be more fully understood in relation to the economic cultural and political factors (Gandhi & Shah, 1992; Kumar, 1993; Sunitha & Nagaraj, 2010). Support institutions such as shelter homes and medical facilities are still vastly lacking. Thus these solutions provided in the Act have to be made available and widely accessible to all WUR. The private, public and mixed models of

accessing the DVA must be re-examined bearing in mind that these have little values until women have economic options outside of their relationships. Familial support must be encouraged in order to help the victims to access the law. Finally the voices of the victims and survivors are crucial in enabling a feminist DV framework (Stephen, 2000; Smith, 2001; Hirschel, 2003; Goodman, 2008).

Survivors of DV are not the only beneficiaries of DV law. Survivor activism helps in the development of the DV law. The process of development and empowerment is thus cyclical. The survivors' voices can help improve the law for other victims and survivors. The surrogacy of agency by the middle women takes on and fosters what could have been self-empowering agency for the victims in Delhi. In order for women to take on their rights as right bearing citizens, institutional support systems must be non-judgmental and agency endowing. Acquiring too much agency on the behalf of the victims/ survivors takes from their confidence and their ability to be agents in their own empowerment and in the empowerment of other women in similar positions.

A survivor who breaks free from or even ruptures the boundary created by the societal and moral strongholds to approach the law in times of personal experiences of violence is already exercising agency and making choices for herself and for others who depend on her. In order for her to make such a difficult decision despite being caught in a trap of violence, she is a thinking, discerning and brave citizen-subject. Thus in that sense she is

evoking the law as a rights bearing citizen. An ideal DV framework should foster that agency and not take from or acquire agency unless and until the survivor herself expects or asks for the support she needs.

A feminist framework of DV law suits WUR. They are women who have already transgressed societal norms. They have survived violence or are survivors on the behalf of other women. A framework that understands them as individuals who have different needs, women who have had different experiences with violence and heeds their voices is an ideal one. This feminist framework does not work as a one-sided affair. Survivor participation and survivor activism helps to build up the framework based on real survivor voices and actual experiences from the women themselves. Also, the zeal to implement a new law should not take from the strength and the voices of survivors. The DVA implemented with more agency for the survivors would benefit the making of an ideal feminist legal framework.

6 Conclusion

In this chapter we have seen the field work findings of the Victim Model and the Survivor Model in relation to WUR tested and located within the wider discussions in the research. The major findings relating to the Victim Model have been discussed. These include a formality of procedure and the limited and surrogated agency of the victim.

This has consequently resulted in the classic understanding of the victim who is in need for the state protection against DV. In the Victim Model the police have been alienated in theory from the DV framework in the process of the movements of the DV law from criminal to civil. In its place a civil society safety space has sprouted which helps to protect the victim WUR in a well-rounded manner. Inherent in this Victim Model is the rudiments of the ideal, legal, female subject who is a would be citizen of the law upon whom lies the onus of making use of the state and NGO machinery available to her. This is a more liberal interpretation of victim rights as the individuation of the victim as a legal subject disregards the economic and social variables.

On the other hand in Mumbai the Survivor Model of DV is based on the notion that the WUR are full-fledged citizens of the state. They are perceived as worthy legal subjects and in order to access this perception they break free from societal barricades. The three different points of rupture were identified as the transgression of the *Izzat* boundary, fear of harm to the children and life threatening violence. The Survivor Model also envisions the reclamation of legal agency by the survivors and the subsequent endowment of such agency to other survivors. This model as we have seen has fed back into this system and has successfully aided the development of DV law. The best practices have been identified in order to work towards an ideal feminist DV framework. The WUR have come a long way beyond the transgressive identities constructed for them by the law and the society to a state of being where they are capable of working towards self-

empowerment and convincing the law of their worthiness as legal subjects and full-fledged citizens of the state.

CONCLUSION

1. Introduction

This thesis has identified a category of the users of DV law – Women in Unconventional Relationships. The original contribution that this thesis makes to the development of knowledge is that it captures constructions of women's identities and their legal subjectivity within the Indian DV law setting, in the light of WUR. In doing this research investigated two different models of DV framework in Delhi and Mumbai. It tested the two different human rights approaches to DV law identified by Sally Engle Merry (2003; 2006) in the Indian context. While the Delhi Victim Model is inclined to a legal advocacy approach with some inclusive feminist processes, the Survivor Model is an alternate DV framework closer to the feminist social work approach. The thesis builds on Merry's analysis of victim subjectivity using the category WUR, thus adding to the development feminist legal analysis. The contribution of the participant WUR and their strong articulations of the experiences with domestic violence and the law enriches the existing scholarship with definitive voices- voices of women who have transgressed societal norms. It challenges the existing idea within the DV scholarship in India that women who are socially disadvantaged because of the loss of *Izzat* will be reluctant to evoke the law. This research has found that supported by the feminist Survivor Model of DV framework, WUR will overcome societal barriers and act as right bearing citizens. They feel that

once they have lost their *Izzat* with their transgressive identities, they have nothing more to lose by making their private experiences of violence a public legal complaint.

In the first chapter I argued that the constructions of WUR identities began with the development of the binary divisions of women as good and bad. These divisions were selectively adopted from the ancient Hindu texts and politically manipulated to meet the ends of male superiority and the patriarchal protection of women. The constructions of WUR continued during the nationalist movement parallel to the mushrooming growth of the women's groups. The *ghar-bahir* argument which was used to answer the women question further reiterated the historical constructions of WUR identities. The chapter also explored the awkward relationship between the police and the women's movement, and the historical reasons for the civil society activism in the framing of DV law.

In the second chapter I argued that studying the WUR and a legal subjectivity and agency in their legal encounters can attain a deconstruction of the liberal legal subject and the exploration of their multi-layered subjectivities. I have located WUR within the VAW and post-colonial feminist discourses by a substantive analysis of the existing scholarships on the subject of WUR within VAW. Developing the themes from Chapter One, Chapter Two has traced the transgression and positioning of WUR in the private-public dichotomy and the result of the transgression resulting in a public identity. Chapter Two also identified the research methodology best suited for this thesis. The mixed

methods triangulated findings of this thesis. The heart of the thesis is the incorporation of women's experiences with violence and law in the survivor's own voices as a part of the feminist methodology. The contribution to knowledge is also from their powerful voices towards the development of a feminist, women centric DV framework.

In Chapter Three I located the constructions of WUR within the DV law prior to the advent of the DVA, within the DVA and the subsequent case law. I argued that the marginal position of the WUR within the DV frame work is linked to the ways in which the judiciary interprets the provisions and constructs WUR identities within the case law. We explored the implications of the encounter of the transgressive WUR identities with a legal system which seems to support very different values. I argued that the tensions in the constructions of WUR identities by the higher courts is due to the general recognition by the law of the ideal legal DV subject as the constructed vulnerable married women.

In Chapter Four working as a participant observer with the LCWRI I investigated the Victim Model illuminated by the WUR and argued that this model of DV framework is less agency endowing for the victims. From the data collected the major findings were the connection between formality of procedure and the treatment of legal agency, the alienation of the police from the various stages of the implementation of the DVA and the creation of the civil society safety space and the connection between the constructions of WUR and the ideal legal female subject.

In Chapter Five an alternative legal framework in the form of the Survivor Model in Mumbai was analysed in the light of WUR. The survivor's narratives revealed the extent of legal agency in this model. The major findings were the reasons for the rupture of the boundary between private violence and public recourse to law. This rupture was attributed to the transgression of the *Izzat* (honour) boundary, the protective attitude of WUR towards their children and a broken threshold of violence tolerance. The second finding was the claiming of legal agency by the WUR and the passing over of such agency to other survivors. The third major finding that we saw in Chapter Five was the contribution made by the survivors to the development of the DV law.

In Chapter Six I analysed the limitations of the victim model as regards WUR and located my findings within the wider discussions in my analytical framework. I argued that the Survivor vulnerable in the DV framework because of loss of *Izzat* and /or their civil death. However contradictorily the research in Mumbai revealed that with the aid of the woman-friendly strategy of the Survivor Model they exercised more agency because they have 'nothing to lose'.

2. The Evolving DV Law

The DVA as a civil law dealing with domestic violence is still evolving (Bhandyopadadhyay, 2008; Uma, 2010; Gosh, 2011). The transition from criminal to civil is not without hiccups (Lodhia, 2009; Rajesh, 2010). Even as the civil law is being used by survivors, the course of justice is being directed towards civil law for victims. Section 498A and 304B and the provisions for breach of trust continue to be availed of (Rayaprol, 2010). As envisaged by the drafters the DVA acts as a satellite legislation that does not take away or take the place of any other law (Jaising, 2006; Basu, 2008). The main remedy availed of under the DVA is maintenance (LC, 2007; 2008; 2009; 2010). The DVA has its critics especially on the side of implementation with authors arguing that the NGO have not fully embraced the function of being service providers (Choudhry, 2007; Rajesh, 2010; Suneetha, 2010). Apart from in Delhi, the appointment of protection officers has been criticised for its vagaries (Uma, 2010; Ghosh, 2011). However in spite of these short comings the DVA continues to be of great aid to victims and survivors of DV (Dube, 2010; Ghosh, 2011).

WUR have used the DVA as was imagined by the drafters when they crafted the definitions of domestic violence victim and domestic relationship. For the WUR, the DVA is more inclusive of them even as the definition of wife is being made more inclusive for the purposes of section 498A and maintenance (Rajesh, 2010; Sen; 2010;

Uma, 2010). The courts have tried to broaden the scope of these terms in order to avoid the mischief of men flouting responsibility by using the excuse of an invalid marriage under the law as discussed in chapter three. The different ways in which the DVA has been availed of by the victims and the survivors in the different parts of the country continue to vary (Jaising, 2007; Suneetha, 2010). The monitoring and evaluation reports and conferences continue to identify best practices and minimise harmful and ineffective ones. An example of this is the opening of special cell in the states of Haryana and Punjab after its success story in Maharashtra (Anand, 2009).

3. WUR as Agentive Legal Subjects

As seen in chapters 4, 5 and 6 the WUR as a category is not homogenous. There are different kinds of unconventional relationships that include women who have been cheated into false marriages and women who decided to live with persons of their own choices. Two different frameworks within which WUR encounter the DV law have been explained in the victim model and the survivor model. As seen in chapter four the victim model is relatively more formal and rigid framework of accessing the law. The unequal power relationships between the victims and the authorities are more pronounced. Once the victim steps out to the public the formal law is set in motion by the filing of the DIR. The victims have the access to this law in the public where the parameters have already been drawn out for them. The agency of the victims is limited and the middle women act

as surrogate agents for them to access the law. This surrogacy entails a limited subject position for the victims as women who have less discernment and a weakened ability to think for themselves and to understand what is good for them. This weakened subject position presupposes a weak helpless abused woman who lacks the powers of reason and the ability to discern (Moore, 1994; Das, 1999). Thus their legal agency is fostered by the middle women upon whom now lies the responsibility of accessing the law on the behalves of the victims. The formality of procedure also means that the definitions of the victim's experiences with violence have been predetermined for them. The victims have to 'stick to their stories' and show consistency in stating the facts about what happened to them (Durfee, 2009; Fernandez, 2010). The parameters of domestic violence have been predetermined for them. It is to the discretion of the middle women to decide which cases make it to the courts. Whilst some officers use the measure of urgency based on the extent of violence and the state of the victim, some others are served on a 'first come first served' basis. The victim has to appear more victimised and yet has to be consistent enough with the facts in order to acquire the right subject position (Randall, 2004). The judgment of the worthiness of this subject position is left to be determined by the middle women.

In the survivor model WUR are, simply stated, survivors. When they approach the Special Cells they acquire legal agency on their behalves and on the behalves of other women and their female children. The special cells act as a safety space which is violence free, agency endowing and enabling in nature for the survivors to decide on which path

they would like to take for recourse to justice. The questions here are ‘what do you want?’ and ‘how would you want to do it?’ instead of the mere statement ‘this is how you should do it’. This endowment of agency is a powerful empowering factor for the survivors to realise their rights and as importantly to have the realisation of the sense of entitlement to such rights (Stubbs, 2002). The definitions of violence vary with the realisation that experiences of violence differ from woman to woman and as citizens they are entitled to define violence as they see and experience it. The fact they carry forward such agency is evident from the interviews when the women were talking about educating their girl children in order to avoid what has happened to the survivors to repeat in the case of their children. A chain of agency continues as the availability of the recourse to justice through the special cells is made known to other women who are colleagues, neighbours, and friends and in some cases even strangers to the survivors. Thus legal agency is acquired, transformed and the chain of the agency is set in motion. Subject position is more favourable to the subjects of the law.

An important feature of the survivor model is the enabling of survivors to define violence instead of having to adhere to pre-prepared versions of the descriptions of sexual, emotional, mental and physical violence. Such contributions by the survivors have fed back into the system. However inclusive a domestic incident questionnaire may appear, the right to describe and complain about what violence has happened to them is diminished to the extent of the formalism demanded by the victim model.

WUR are not merely in unconventional relationships but they are also unconventionally asserting their rights to access the law in the survivor model. The keen sense of the entitlement to rights as female citizens has been enabled by the framework represented by the survivor model. Such a framework supports the feminist ethos of women's empowerment (Mohanty, 1991; Kabeer, 1999). The treatment as equal citizens and subjects of the law benefits greatly to build the survivor's confidence in themselves and in the legal system.

4. The Judicial Constructions of WUR

Whilst some of the judgments are progressive and empowering for women's rights, many other decisions fall short of the requirements of DV law that are meant to protect women in distress. Notions of the ideal female legal subject and the ideal Indian wife as aspects of the various constructions of Indian womanhood in its ideal forms have often crept into their decisions. Often in the weighing of the scales between preserving the sanctity of family life and its unquestionable male autonomy in the private on one side, and the rights of the victims/survivors of DV, the balance tilts heavily towards the preservation of the family. These notions of the pure and impure and the increased value and rights of a wife as opposed to the 'mistress' have been constructed and maintained in the social, political and legal dominant discourses throughout the nationalist movement and even into post colonial India (Sangri, 1990; Dasgupta, 1995). The national identity is

often linked to the pure nurturing Indian womanhood ideal (Roy, 1941; Thomas, 1989; Mankekar, 1999). Even after the victims/survivors have managed to access the system for legal redressal, these ideals of womanhood guide some judges and justice is thus miscarried. Gender sensitisation programmes for the judges have been conducted in order to improve the judicial outlook against gender bias (Stewart, 2001). Even as the laws to protect against domestic violence have improved and have tried to be rights endowing in nature, if its implementation is marred by unfair judicial decisions, the entire framework will lack legitimacy.

5. Best Practices

The best aspect of the victim model is the monitoring and evaluation programme set in motion by the LCWRI (Uma, 2010; Ghosh, 2011). This is an important way of nurturing a young law and also in maintaining a tight rein on inefficient or prejudicial practices. At the same time it helps in identifying best practices on a state to state basis. This has meant that the law is dynamic and fresh with the yearly review of the legislation. The DVA has many special features that makes it a good and efficient law (Bandhopadhyay, 2008, Sen, 2010, Ghosh, 2011). One of these is the constant check that the drafters keep upon the framework in the victim model. In the course of time the adolescence of the DVA may give way to a more mature and dependable legislation. In the meantime the strict

adherence to formality of procedure has its advantages and disadvantages as seen in chapter six.

Contrasting this with the survivor model the latter looks more favourable to the survivor. Perhaps the hidden quality of this framework is the possibility of survivor empowerment (Sokoloff, 2005). The framework is more conducive to the sense of worth of the citizen in the legal subject position. It appears in comparison, more survivor-centred the entry options available to the survivors in the form of special cells prepares the survivors for the possible legal battle or even if the survivors decide not to proceed legally, they are still provided with a space to think, discuss, understand and decide. Such a feminist framework ensures the survivor-centeredness of the implementation of the DV law (Margulies, 1995).

Further research into survivor contribution to the building of the law would be useful to understand the extent of empowerment possible within this framework. Research also in the context of the limited agency and the surrogacy of agency by the middle women in the victim model can aid in understanding why the drafters adhere to this model. Whilst both the models have their advantages and disadvantages, the WUR fare better in the survivor model. The WUR comfortably take on the legal agency and acquire a subject position in the law which may not be ideal but is of equal relevance in the law. Thus even

when they are faced with barriers of the constructions of the ideal, they make the best of the 'real' subject position.

The women's movement and the civil society continue in shaping the course of VAW and specifically DV. With the advent of the DVA the focus has shifted slightly from dowry related issues to domestic violence (Vyas, 2006). The civil society continues to implement and monitor the law specifically with regard to the civil society safety space. Although service providers and medical facilities have not yet been completely designated the civil society functions almost in a parallel state of being protecting victims and nurturing survivors. This role played by the civil society has improved the implementation of the DVA.

Even as the DVA gains momentum as a civil law dealing with DV, other provisions of the criminal procedure code and the Indian penal code dealing with DV continue to be used. The DVA thus functions as a sounding board from where the victims/survivors can decide on what remedies to pursue. The DVA fits in within the transitional phase from the criminal law to the civil law (Jaising, 2007; Basu, 2008; Kadam, 2011). The advantage of having a civil law protecting against domestic violence is that it would be easier for women to make a civil complaint as opposed to a criminal one as it would be less stigmatic in society. In the case of WUR the DVA continues to be the only piece of

legislation that expressly includes them in the definitions of domestic violence and domestic relationship (Sen, 2010; Uma, 2010).

6. Conclusion

The survivor model as previously discussed is powerfully enabling of legal agency for the survivors. This is in contrast to the surrogacy of agency in the victim model. The friendly feminist environment helps the survivors in different ways that include confidence building and sharing of their experiences with violence. This is less intimidating than the formality of a protection officer's office and the formal procedure associated with the filing of DIR in the victim model. An ideal legal framework for DV would include these best practices along with a system for monitoring and evaluation (Jaising, 2006; Basu, 2008). The framework would not give importance to the marital relationship between the victim/survivor and the abuser. A feminist framework would concentrate on the welfare of the women as opposed to protecting the family and expecting women to compromise on their welfare (Lewis, Dobash & Dobash, 2001). Such a framework would also provide a constant support to the survivor and follow up on the well-being. Within this system the WUR would not be expected to adhere to the notion of an ideal legal subject. The WUR of Bombay succeeded in overcoming the expectation of the ideal legal subject. The subject position has been shifted in their

favour. By their strengths and definitions of violence and their determination to access justice and what is rightfully theirs, they have stretched the notions of the ideal subject to include them. The WUR have come a long way in history. From being the impure woman who was an outcaste in the legal, political and the nationalist discourses, the WUR have acquired for themselves the right to be perceived as agentive legal subjects. Different DV models are differently enabling for WUR. As survivors they become agents in their own empowerment and for the sake of other similarly placed women. To this extent, the DVA has been progressive for being morally silent on the definition of who can access the remedies (Mahajan, 2011). The safety space and the violence free zone envisaged by the drafters have coincided in the case of the survivor model.

BIBLIOGRAPHY

Books and Articles

Abraham T (2002) *Women and the Politics of Violence*, books.google.com

Acharya (2006) *Commentary on Protection of Women from Domestic violence Act, 2005*
Hyderabad Gogia,

Ackerson. LK, and Subramanian SV (2008) Domestic violence and chronic malnutrition among women and children in India, *Am J Epidemiology* 167(10):1188-96. Epub

Agnes F (1992) '*Protecting Women against Violence: Review of a Decade of Legislation, 1980-89*', *Economic and Political Weekly*, 27(17): 19–33.

Agnes F (1994) *Redefining the agenda of the women's movement within a secular framework South Asia: Journal of South Asian Studies*, - Taylor & Francis

Agnes F (1999) *Law and Gender Inequality: The Politics of Women's Rights in India*.
Oxford University Press

Agnihotri (2001) *Rising Sons and Setting Daughters: Provisional Results of the 2001 Census*, Rainbow publishers, New Delhi

Agnihotri I and Mazumdar V (1995) *Changing Terms of Political Discourse: Women's Movement in India 1970s – 1990s*, *Economic and Political Weekly*, 30 (29): 1869 1879

Ali, S S *Gender and Human Rights in Islam and International Law* (The Hague: Kluwer, 2000)

Andhra Pradesh Civil Liberties Committee (1991) *Violence against Women in Andhra Pradesh*. Vijayawada: Swechcha.

Anveshi (2003) *Institutional Responses to Domestic Violence: A Study of Police Stations, Courts, Counselling Centres and Hospitals*, Hyderabad: Anveshi Research Centre for Women's Studies.

Asad T *Formations of the Secular, Christianity, Islam and Modernity* California: Stanford University Press.

Babbie and Earl (1989) *The Practice of Social Research*, 5th edition, Belmont CA: Wadsworth

Babu and Kar S.K (2009) *Domestic violence against women in eastern India: a population based study on prevalence and related issues*, BMC Public Health 9 (2009) 129

Babu BV and Kar S.K (2010) *Domestic violence in Eastern India: factors associated with victimization and perpetration*, Public Health 124 (2010) 136.

Bacchetta P (1994) Communal property/Sexual Property: on Representations of Muslim women in Hindu nationalist discourse in Zoya Hasan (ed) *Forging Identities: Gender, Communities and the state*, New Delhi: Kali for women

Bacchetta, P (1994) *Forging identities: gender, communities and the state*

Bacchetta, P (1994) *Symbolic Bodies: The RSS, Its Women's Wing and Their Differential Concepts of the Hindu Nation*, Centre for South Asian Studies. Berkeley

Balibar E (1994) Subjection and Subjectivation in Joan Copjec (ed.), *Supposing the Subject*, pp. 1–16. London: Verso.

Bandyopadhyay K (2008) Naxalbari Politics: A Feminist Narrative, in *Economic and Political Weekly*, XLIII (1), pp. 52-59.

- Bartky S L (1999) Femininity and Domination, in *Key Concepts in Critical Theory: Gender*. Carol C Gould (ed): 103-112. New York: Humanity Books
- Basu A (1995) *The Challenge of Local Feminisms: Women's Movements in Global Perspective*. Boulder Westview Press
- Basu A (2008) *Legislating on Domestic Violence Seminar*, 583, pp. 25-28.
- Basu M (2004) *Hindu Women and Marriage Law: From Sacrament to Contract*, Oxford New Delhi
- Basu S (2006) Playing off Courts: The Negotiation of Divorce and Violence in Plural Legal Settings in Calcutta in *Journal of Legal Pluralism*, 52: 41–75.
- Basu, A (2003) *Women's Struggle : A History of the All India Women's Conference, 1927-2002* New Delhi : Manohar
- Baxi U (2008) *The Future of Human Rights*, Oxford: Oxford University Press
- Baxi U (2009) *Human rights in a post-human world: critical essays*, Oxford: Oxford University Press
- Benhabib S and Drucilla C (1987) *Feminism as Critique: Essays on the Politics of Gender*, Minneapolis: University of Minnesota Press
- Bhasin K (2003) *Understanding Gender* New Delhi Women Unlimited
- Bhasin K and Khan S (1986) *Some Questions on Feminism and its Relevance in South Asia*, New Delhi: Kali for Women
- Bhattacharya R. (Ed.) (2004) *Behind Closed Doors—Domestic Violence in India*, New Delhi: Sage Publication
- Birch, M (2002) *Mauthner and Jessop, Ethics in qualitative research*, Delhi Sage Publications Ltd

- Bridgeman J & Millns S (1998) *Feminist Perspectives on Law*, Sweet & Maxwell London
- Chakravarti U (1998) *Rewriting history: the life and times of Pandita Ramabai*, Zubaan
- Chakravarti U (2004) Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class in *State Economics and Political weekly*
- Chakravarti U (2006) *Gendering Caste Through a Feminist Lens* Calcutta: Stree
- Chakrovarti, U and Gill, P (2001) *Shadow Lives: Writings on Widowhood* Delhi: Kali for Women
- Chandra S (2004) *Enslaved Daughters: Colonialism, Law and Women's Rights* New Delhi : Oxford
- Chatterjee P (1989) 'Colonialism, Nationalism and Colonised Women: The contest of India', *American Ethnologist*, 16 (4)
- Chatterjee P (ed.) (1997) *State and Politics in India* New Delhi: Oxford University Press
- Chatterjee P. (ed.) (1997), *State and Politics in India*. New Delhi: Oxford University Press
- Chaudhuri M (ed) (2004) *Feminism in India* New Delhi: Kali for Women
- Chaudhuri, M (1993) *Indian Women's Movement: Reform and Revival* London: Sangam Books
- Chavan N. and Kidwai QJ (2006) *Personal Law Reforms and Gender Empowerment A Debate on the Uniform Civil Code* India: Hope
- Chitnis S (2004) Feminism: Indian Ethos and Indian Convictions in *Maitrayee Chaudhuri, (ed). Feminism in India, Kali for Women and Women Unlimited*, New Delhi
- Chunn D and Lancombe D (eds) (2000) *Law as a Gendering Practice* Oxford: Oxford

- Coppock, Haydon, Richter (1995) *The Illusions of Post-Feminism: New Women, Old Myths* London: Taylor & Francis
- Cornell. D (1991) *Beyond Accommodation: Ethical Feminism, Deconstruction and The Law* London Routledge
- Coward R (1983) *Patriarchal Precedents: Sexuality and Social Relations* London: Routledge,
- Datar, C (1993) *The Struggle against Violence*, Stree Calcutta
- Dave, A and Solanki G (2001) *Journey from Violence to Crime: A Study of Domestic Violence in the City of Mumbai*, Mumbai: TISS.
- Devi, G, Raghunandan, Renuka and Shobhana of Vimochana (2000) *Getting Away with Murder: How Law Courts and Police Fail Victims of Domestic Violence* Manushi, 117: 31–42.
- Dietrich G (1992) *Reflections on the Women's Movement in India: Religion, Ecology, Development*, New Delhi: Horizon India Books
- Douzinis C (2000) Law's Subjects: Rights and Legal Humanism, in Coastas Douzinis (ed.), *The End of Human Rights Critical Legal Thought at the End of the Century*, pp. 229–63. Oregon: Hard Publishing.
- Dube, L. (1990) *Structures and strategies: women, work, and family*, Delhi Sage Publications Pvt. Ltd
- Duvvury, N and Varia, N (2000) *Justice, Change and Human Rights International Research and Response to Domestic Violence*, Washington, DC: International Centre for Research on Women and the Centre for Development and Population Activities.
- Edwards, R and Ribbens, J (1998) *Feminist dilemmas in qualitative research: public knowledge and private lives*, Sage Publications Ltd

- Eisenstein Z (1979) *Capitalist Patriarchy and the Case for Socialist Feminism*, Monthly Review Press
- Eisenstein Z (2000) The Radical Future of Liberal Feminism in Bonnie, G. smith (ed) *Global Feminisms Since 1945: Writing Histories*, Routledge, London
- Eisentein H (1983) *Contemporary Feminist Thought*, Boston: G.K. Hall
- Eisentein, Z (1981) *The Radical Future of Liberal Feminim*, New York: Longman
- Elizabeth, V (1999) *Patterns and Trends of Domestic Violence in India: An Examination of Court Records. Bangalore: Centre for Women and Law, Bangalore: National Law School of India University.*
- Engineer, A (1985) *The Shah Bano Controversy* Hyderabad: Orient Longman
- Everett JM (1981) *Women and Social Change in India*, New Delhi:
- Fineman & Thomadsen (eds) (1991) *At the Boundaries of Law: Feminism and Legal Theory*, London Routledge
- Fonnow M. and J. Cook (eds.) (1991) *Beyond Methodology: Feminist Scholarship as Lived Research*, Bloomington: Indiana University Press
- Forbes, G (1979) Votes for Women, Symbols of Power in *Studies on the Political Status of Women in India, ed. Vina Mazumdar: 3-23*, New Delhi: Allied Publishers
- Forbes, G (1982) *Caged Tigers: First Wave Feminists in India*. Delhi Women's Studies
- Forbes, G (1998) *Women in modern India* New Delhi: Cambridge University Press
- Forum Against Oppression of Women (1980) *Police Terror on Women*, Pamphlet
- Forum Against Oppression of Women (1984) *Survival of Womankind*, Pamphlet.

Friedman, E (1995) *Women's Human Rights: The Emergence of a Movement. on International Feminist Perspectives*, Julie Peters and Andrea Wolper, eds. Pp. 18–35. New York: Routledge.

Fruzzetti (1989) *Women in Hindu Society, in Gender and anthropology: Critical Reviews for Research and training*, Morgen, S. ed, American Anthropological Association Washington,

Gandhi, N and N Shah (1992) *Issues at Stake: Theory and Practice in the Contemporary Women's Movement*, New Delhi: Kali for women.

Ganesh I.M (2006) *The Special Cell for women and children: Documenting effective interventions and strategic alliances between Maharashtra police and Tata institute of social sciences* Mumbai: TISS

Gangoli G (2007) *Indian Feminisms: Law, Violence and Patriarchies*, London: Ashgate

Gangoli G Prostitution, Legalisation and Decriminalisation: Recent Debates- Economic and Political Weekly, 1998 - JSTOR

Geetha V (2002) *Gender-Theorising Feminism Stree*, Calcutta

Geetha, V (2009) *Mapping Gender Training in Tamilnadu. Report Submitted to the Higher Education Cell of Centre for the Study of Culture and Society*, Bangalore.

Gelles, R (2006) 'Violence in the family' in International Handbook of Violence Research volume 2 ed Heitmeyer and Hagan, Routledge London

Ghosh B (2009) NGOs, Civil society and social reconstruction in contemporary India. Journal of Developing Societies, 25(2), 229–252.

Ghosh B (ed.) (2007) *Trafficking in women and children, Child marriage and dowry: A study for action plan in West Bengal*. Kolkata: UNICEF and Government of West Bengal

Gilligan, C (1993) *In a Different Voice: Psychological Theory and Women's Development*, CMassachusetts: Harvard University Press

Government of India (2001–2008) *Crime in India*

Government of India (GoI) (1974) *Towards Equality: Report of the Committee on the Status of Women in India*, New Delhi: Government of India Printing Press

Government of India (GoI) (2002) *Towards Equality: The Unfinished Agenda – Status of Women in India 2001*, New Delhi: National Commission for Women

Haraway D (1989) *Primate Visions: Gender, Race, and Nature in the World of Modern Science*, New York

Harding S (2004) *The feminist standpoint theory reader: Intellectual and political controversies*, London Routledge

Harding S (2006) *Science and Social Inequality: Feminist and Postcolonial Issues*, Urbana and Chicago: University of Illinois Press.

Harding, S (1986) *The Science Question in Feminism*. Ithaca: Cornell University Press.

Harding, S (1987) *Feminism and Methodology*. Indianapolis/Milton Keynes:Indiana University Press/Open University Press.

Harding, S. (1991) *Whose Science? Whose Knowledge? Thinking from Women's Lives*. Milton Keynes: Open University Press.

Harding. S, (1998) *Is Science Multicultural? Postcolonialisms, Feminisms, and Epistemologies*, Bloomington and Indianapolis: Indiana University Press

Hengsara Hakkina Sangha (1999) *Patterns and Trends of Domestic Violence: A Study of Organizational Data in Bangalore*, India.

- Hesse-Biber S (ed) (1999) *Feminist Approaches to Theory and Methodology: An Interdisciplinary Reader*, Oxford Oxford
- Hesse-Biber S (ed) (2007) *Handbook of Feminist Research : Theory and Praxis* Sage Publications
- Hesse-Biber S and Yaiser M.L. (2004) *Feminist Perspectives on Social Research*, Oxford Oxford University Press
- Hirschmann, Nancy J (1997) The Theory and Practice of Freedom: The Case of Battered Women, in Mary Lyndon Shanley and Uma Narayan (eds), *Reconstructing Political Theory: Feminist Perspectives*, pp. 194–210. University Park, Pennsylvania: The Pennsylvania University Press.
- Hoyle, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice and Victims*, Oxford Oxford
- International Center for Research on Women (ICRW) (1999–2002) *Domestic Violence in India*, vols. 1–5. Washington, DC: USAID/ India *International Forum*, 5 (6): 525-536
- Irigaray L (1993) translated by Burke & Gill *An Ethics of Social Difference*, London Athlone press
- Irigaray, L. (1989) Is the Subject of Science Sexed? in *Feminism and Science*. N. Tuana (ed.). Bloomington: Indiana Univ. Press: 58–68
- Jackson S. & Scott S (eds) (2002) *Gender A Sociological Reader*, London Routledge
- Jaising I. (2006) *Law of Domestic Violence a user's manual for women* Delhi Sage
- Jaising I (2004) *Law Relating to Sexual Harassment in Workplaces* Delhi Universal Law Publications
- Jaising I. (1988) *Women and Law* in Neera Desai (ed), *A Decade of Women's Movement in India*, Bombay Himalaya Publishing House, pp 45-59

Jaswal, S. (1999) *Health Records and Domestic Violence in Thane District Delhi* GI

Jethmalani, R (1995) *Kali's yug: empowerment, law, and dowry deaths*, Har-Anand Publications

John, M. (1996) *Gender and Development in India, 1970s–1990s: Some Reflections on the Constitutive Role of Contexts*, *Economic and Political Weekly*, 31(47): 3077–3147.

John, M. and Nair, J. (1998) *A Question of Silence: The Sexual Economics of Modern India*, New Delhi Kali for Women

John, Mary E (2004) *Feminism in India and the West: Recasting a Relationship*, in Maitrayee Chaudhuri, (ed). *Feminism in India*, New Delhi Kali for Women and Women Unlimited

Johnson, P (1994) *Feminism as Radical Humanism* Westview Boulder

Kannabiran, K. (2000) *Relations in Adivasi Communities in The Violence of Normal Times* New Delhi Women's Unlimited

Kannabiran, K. ed (2005) *The Violence of Normal Times* New Delhi Women Unlimited

Kannabiran, V. and Kannabiran, K. (1997) *From Social Action to Political Action: Women and the 81st Amendment*, *Economic and Political Weekly*, February 1, 1997

Kapadia, K. (2002) *Translocal Modernities and the Transformations of Gender and Caste*. In *The Violence of Development: The Politics of Identity, Gender and Social Inequalities in India*, ed. Pp. 142–182. London: Zed Books

Kappeller, S. (1995) *The Will to Violence: The Politics of Personal Behaviour Polity*, Oxford Oxford

Kapur, R. (2005) *Subversive Sites—Feminist Engagement with Law in India*. In M. Khullar (Ed.), *Writing the women's movement—a reader* (pp. 153–174) New Delhi Zubaan

Kapur, R. (2005) *Erotic Justice: Law and the New Politics of Post-colonialism*, London Portland, Or Glass House Press

Kapur, R. (2005) *The Tragedy of Victimization Rhetoric: Resurrecting the "Native Subject" in International/ Post-colonial Feminist Legal Politics*, in Ratna Kapur (ed.) *Erotic Justice: Law and the New Politics of Post- Colonialism*, New Delhi Permanent Black.

Kapur, R. and Cossman, B. (1995) *Communalising Gender, Engendering Community: Women, Legal Discourse and the Saffron Agenda* in Tanika Sarkar and Urvashi Butalia (eds), *Women and the Hindu Right*, , New Delhi Kali for Women, pp 82-120

Kapur, R. and Cossman, B. (1996) *Subversive Sites: Feminist Engagements with Law in India*, pp. 95–137. New Delhi SAGE

Karlekar, M (1991) *Voices from Within: Early Personal Narratives of Bengali Women* Delhi: Oxford University Press

Karlekar, M. (1999) *Speaking Out ... But Are the Voices Heard? Perceptions of Violence against Women in India*, MP-R New Delhi Centre for Women's Development Studies

Kasturi, M (2002) *Embattled Identities: Rajput Lineages and the Colonial State in Nineteenth-century North India* Delhi: Oxford University Press

Kasturi, M (2002) *Embattled Identities: Rajput Lineages and the Colonial State in Nineteenth-century North India* Delhi: Oxford University Press

Katzenstein MF (1989) *Organizing against violence: Strategies of the Indian women's movement*, Pacific Affairs, JSTOR

Katzenstein, Mary Fainsod (1987) *Comparing the Feminist Movements of the United States and Western Europe: An Overview*. In *The Women's Movements of the United States and Western Europe*, eds. Mary Fainsod Katzenstein and Carol McClurg Mueller: 3-20, Philadelphia Temple University Press

Kazmi F (2010) *Sex in Cinema*, New Delhi Rupa publications Pvt. Ltd

- Kelkar, G. (1992) *Violence against Women: Perspectives and Strategies in India*, Shimla: Indian Institute of Advanced Study, and New Delhi Manohar Publications.
- Kevin S. Douglas, Donald G. Dutton (2001) *Accessing the Link between Stalking and Domestic Violence, Aggression and Violent Behaviour*, Volume 6, pages 519 to 546
- Khory, KR. (1993) 'The Shah Bano Case: Some Political Implications' in R. Baird (ed), *Religion and Law in Independent India* Delhi: Manohar, 121–37.
- Kishwar, M. (1988) *Rethinking Dowry Boycott*, Manushi, 41: 4355–62.
- Kishwar, M. (1991) *Why I do not call myself a Feminist?* Manushi, 61: 2-8
- Kishwar, M. (1999) *Off the Beaten Track: Rethinking Gender Justice for Indian Women*. New Delhi Oxford University Press.
- Krishnaraj M and Thorner (2000) *Ideals, Images, and Real Lives: Women in Literature and History* Bombay: Orient Longman
- Kumar, R. (1993) *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminisms in India 1800–1990*. New Delhi Kali for Women
- Kumar, R. (2011) *From Chipko to Sati: The contemporary Indian women's movement*
- Lacey, N. (1998) *Unspeakable subjects: Feminist essays in legal and social theory*
Law in Development New Delhi
- Mackinnon, C (1981-1982) *Feminism Marxism Method and State: An Agenda for Theory* in Signs vol 7 515
- MacKinnon, C (1983) *Feminism, Marxism, Theory and State: Toward Feminist Jurisprudence* Signs Vol 8 No 4
- MacKinnon, C (1987) *Difference and Dominance: On Sex Determination* in Feminism Unmodified: Discourses on Life and Law, Harvard Harvard

MacKinnon, C (2005) *Women's Lives, Men's Laws* London Harvard University Press

MacKinnon, C (2005) *Are women human? And other international dialogues*, London Harvard University Press

Mary Magret Fonow, Judith A. Cook, (eds), (1991) *Beyond Methodology: Feminist scholarship as Lived research*, Publ. Bloomington : Indiana University Press

Maynard, M and Purvis, J (eds) *Researching Women's Lives from a Feminist Perspective*. London: Taylor and Francis

Mazumdar (1992) Mazumdar, V. 1976 *The Social Reform Movement in India: From Ranade to Nehru*. In Indian Women from Purdah to Modernity. ed. B.R. Nanda: 41-66, Vikas New Delhi

Mazumdar V (1999) *Political Ideology of the women's movement's engagement with the law* in Amita Dhanda and Archana Parashar (eds) *Engendering essays in honour of Lokita Sarkar* pp 339-374, lucknow: Eastern Book Company

Mazumdar V (1999) *The Women's Movement in India, Emergence of a New Perspective-From Independence towards Freedom*, New Delhi

Mazumdar, V (1985) *Emergence of Women's Question in India and the Role of Women's Studies*, Occasional Paper 7. New Delhi; Centre for Women's Development Studies.

Mazumdar, V (2000) *Political Ideology of the Women's Movement's Engagement with Law*, Occasional Paper 34. New Delhi: Centre for Women's Development Studies

Mazumdar, V and Sharma, K (1979) *Women's Studies: New Perceptions and Challenges*, Economic and Political Weekly, 14 (3): 113-120

Mazumdar, V. (ed.) (1979) *Symbols of Power: Studies on the Political Status of Women in India*, New Delhi: Allied Publishers.

Menon and Kannabiran (2007) *From Mathura to Manorama: resisting violence against women in India*, Women Unlimited

Menon, N (2000) *Embodying the Self: Feminism, Sexual Violence and the Law*. In P. Chatterjee & P. Jeganathan (Eds.), *Community, gender and violence – Subaltern studies XI* (pp. 66–105). New Delhi: Permanent Black and Ravi Dayal Publisher

Menon, N (1999) *Gender and Politics in India* Edited by, Delhi, Oxford University Press,

Menon, N. (2004) *Recovering Subversion: Feminist Politics beyond the Law* Chicago Illinois University

Menon, R. and Bhasin, R. (1998) *Borders and Boundaries: Women in India's Partition*, New Delhi: Kali for Women

Menski, W (1998) 'Legal Strategies for Curbing the Dowry Problem' in Werner Menski (ed.), *South Asians and the Dowry Problem*, pp. 97–150, New Delhi: Vistaar Publications

Merry. SE, (2001) *Rights, Religion, and Community.: Approaches to Violence against Women in the Context of Globalization*, Law and Society Review 35:39–88.

Merry. SE, (2003) *Rights Talk and the Experience of Law.: Implementing Women's Human Rights to Protection from Violence* Human Rights Quarterly 25(2):343–381.

Merry. SE, (2006) *Human Rights and Gender Violence. : Translating International Law into Local Justice* Chicago: University of Chicago Press.

Miles (1984) *Qualitative data analysis: A sourcebook of new methods*, New Delhi, Sage Publ. Inc

Mitra, N (2000) *Domestic Violence as a Public Issue: A Review of Responses*, Mumbai: Tata Institute of Social Sciences, Unit of Women's Studies

Mohanty C and Russo A *Third World Women and the Politic of Feminism*, US : Indiana University Press

Mohanty et.al. (ed). (1991) *Third world women and the Politics of Feminism*,
Bloomington: Indiana University Press

Mohanty, M (2004) “*Introduction: Dimensions of power and Social Transformation*” in
Manoranjan Mohanty, (ed). *Class, Caste, Gender*, Sage Publications, New Delhi

Mukhopadhyay D (1998) *In the name of justice: women and law in society*, Manohar
Publishers

Mukhopadhyay S (1998) *In the Name of Justice: Women and Law in Society*, P. 9-14.
New Delhi, Manohar Publishers and Distributors, 2/6 Ansari Road, Daryagunj, New
Delhi - 2,

Mukhopadhyay. M, (1999) *Brother There are Only Two Jatis—Men and Women: Section
125 Criminal Procedure Code and Trial of Wifehood Institutions, Relations and
Outcomes.*

Myneni, R (2002) “*Feminist Jurisprudence (Justifiable Law of Womanism) Part E*” in
Women and the Law, Gogia Hyderabad

Naffine, N (2003) *Who are Law's Persons? From Cheshire Cats to Responsible Subjects*
346-367, *The Modern Law Review Volume 66, Issue 3*, pages

Naffine, N. & Owens, R.J. eds., (1997) *Sexing the Subject of Law*, Sweet and Maxwell
London

Nair N (1996), *Women and Law in Colonial India: A Social History* New Delhi: Kali for
women

Nair, J Prohibited Marriage, State protection and the Child Wife, in P. Uberoi (ed)
(1996), *Social reform, sexuality, and the state* Delhi: Sage

Nair, J Prohibited Marriage, State protection and the Child Wife, in P. Uberoi (ed)
(1996), *Social reform, sexuality, and the state* Delhi: Sage

Narayan U (2005) *Keynote address at the international conference: The politics of forgetting, the politics of rescue and global institutional racism—shining some light on the dark side of contemporary feminism*

Narayan U (2007) *Towards a Feminist Vision of Citizenship*, citeulike.org

Narayan, (1997) *Reconstructing political theory: feminist perspectives*, Pennsylvania State Univ Press

Narayan, U (1997) *Dislocating Cultures: Identities, Tradition and Third world Feminism*, New York: Routledge

Narayan, U (1997) *Dislocating Cultures: Identities ... Feminisms* (New York and London: Routledge

Narayan, U (1999) *The Project of Feminist Epistemology: Perspectives from a Non-Western Feminist*. In *Key Concepts in Critical Theory: Gender*, ed. Carol C Gould: 172-179, New York: Humanity Books

Narayanan, R (2002) *Grassroots, Gender and Governance: Panchayati Raj Experiences from Mahila Samakhya Karnataka*. In *The Violence of Development: The Politics of Identity, Gender and Social Inequalities in India*, Karin Kapadia, ed. Pp. 295–351. London: Zed Books

Natarajan, S (1962) *A Century of Social Reform in Indi*, Bombay: Asia Publishing House

Nathan, D. and Kelkar, G (2005) *“Women as Witches and Keepers of Demons: Changing Gender* New Delhi, Manohar Publishers and Distributors, 2/6 Ansari Road, Daryagunj, New Delhi - 2,

National Conference on Women and Access to justice : A report Dec 10- 1 2006 Partners for

- Nigam, S (2005) *Understanding Justice Delivery System from the Perspective of Women Litigants as Victims of Domestic Violence in India*. Occasional Paper No. 39. New Delhi: Centre for Women's Development Studies
- Norrie A (ed) (1991) *Closure or Critique: New Directions in Legal theory*, Edinburgh: Edinburg UP.
- Oakley, A (1972) *Sex, Gender and Society*, London: Temple Smith
- Oakley, A (1974) *The Sociology of Housework*, New York: Pantheon
- Oakley, A (1981) 'Interviewing Women: A Contradiction in Terms' in H. Roberts (editor) *Doing feminist research*, London: Routledge and Kegan Paul.
- Okin, S (1980) *Women in Western Political Thought*, London: Virago
- Oldenburg, VT (2002) *Dowry Murder : The Imperial Origins of a Cultural Crime*, Oxford: Oxford University Press
- Oldenburg, VT (2002) *Dowry Murder: The Imperial Origins of a Cultural Crime*, Oxford: Oxford University Press
- Oloka-Onyango and Tamale. S, (1995) *The Personal is Political or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism* US : John Hopkind University Press
- Parshley. HM (ed) (1969) *The Second Sex by Simone de Beauvoir* New English Library London
- Pateman, C (1988) *The Sexual Contract*, Stanford, California University Press
- Patton, M. Q (2002) *Qualitative research and evaluation methods* (3rd ed.) Thousand Oaks, CA: SAGE
- Pellikaan-Engel, M. (ed) (1992) *Against Patriarchal Thinking: A Future without Discrimination?* Amsterdam University Press

- Petersen, H. (1996) *Home Knitted Law. Norms and Values in Gendered Rule-Making*, Hants Dartmouth
- Poonacha, V (1995) *Gender within the Human Rights Discourse*, Research Centre for Women Studies, SNDT. Women's University, Bombay
- Poonacha, V and Pandey, D (1999) *Responses to Domestic Violence in the States of Karnataka and Gujarat. Mumbai: Research Centre for Women's Studies*, SNDT Women's University
- Puri, J. (1999) *Women, Body and Desire in Post- Colonial India : Narratives of Gender and Sexuality*, Routledge London
- Revathi, R. (2004) *Law Relating to Domestic Violence*, Gogia Hyderabad
- Richardson, J. & Sandland, R. eds (2000) *Feminist Perspectives on Law and Theory*, Cavendish London
- Sally Engle, M. (1995) *Gender Violence and Legally Engendered Selves. Identities: Global Studies in Culture and Power* 2:49–73
- Sandra, S. (1987) *Is There a Feminist Method, Feminism and Methodology*, Bloomington and Indianapolis: Indiana University Press
- Sangari, K and Vaid, S (1989) *Recasting Women essays in Colonial History (edS)*, Kali for Women, New Delhi
- Sanyal (2004) “*Cases and Consequences of Domestic Violence*” in *Gender Justice Chakrabarti and Chakrabarty (eds)*, Hyderabad Gogia
- Sarkar, L. (2005) *Constitutional Guarantees*, In M. Khullar (Ed.), *Writing the women's movement—a reader* (pp. 102–112) New Delhi Zubaan

Sarkar, T (1995) *'Heroic Women, Mother Goddesses: Family and Organisation in Hindutva Politics'* in Tanika Sarkar and Urvashi Butalia (eds), *Women and the Hindu Right*, New Delhi Kali for Women, pp 181-215

Sarkar.T and Butalia. U (1995) (eds), *Women and the Hindu Right*, Kali for Women, New Delhi, pp 121-35

Schneider EM (2000) *Battered Women & Feminist Lawmaking*, Yale : Univ Press

Schneider EM (2002) *Synergy of Equality and Privacy in Women's Rights*, The. U. Chi. Legal F

Schneider EM (1982) *Perspective on Women's Subordination and the Role of Law in The Politics of Law a Progressive Critic* Taub and Schneider (ed), New York: Pantheon

Schneider EM (1986) *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U.L.Rev. 589

Schneider EM (1990-1991) *The Violence of Privacy*, 23 Conn.L.Rev. 973

Schneider EM (1992) *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse* NYUL Rev

Sen (1990) *A Space within the Struggle: Women's Participation in People's Movements*, New Delhi Kali for Women

Sen, R (2010) *Women's Subjectivities of Suffering and Legal Rhetoric on Domestic Violence Fissures in the Two Discourses*, Indian Journal of Gender Studies 2010 17: 375

Sen. S, Working Paper Series No. 9 'Toward a Feminist Politics? The Indian Women's Movement in Historical Perspective '

Sharma PL (1988) *Rural Women in Education, A Study in Underachievement* New Delhi: Sterling

Sharma PL (1988) *Rural Women in Education, A Study in Underachievement* New Delhi: Sterling

Sharma, T. (2006) *Domestic violence act bound to be misused, The saturday interview, The Statesman*, December 2 (p. 4). Kolkata Edition: Perspective Section

Shields, Patricia and Tajalli (2006) *Intermediate Theory: The Missing Link in Successful Student Scholarship. Journal of Public Affairs Education*. Vol. 12, No. 3. Pp. 313-334

Singh, Kirti (2004) '*Violence against Women and the Indian Law*', in Savitri Goonesekere (ed.), *Violence, Law and Women's Rights in South Asia*, pp. 77–148. New Delhi: Sage Publications.

Smart C (1992) The Woman of Legal Discourse in *Social and Legal Studies*, Vol 1; 29 Sage Publications

Smart, C. (1992) "*The Woman of legal Discourse*" 1 Social and Legal Studies 29

Stanley, Liz and Sue Wise (1983) *Breaking Out: Feminist Consciousness and Feminist Research*, London: Routledge and Kegan Paul

Stewart A (2007) 'Globalising Gender Justice?', *Law, Social Justice & Global Development Journal (LGD)*, 1 (1467-0437)

Stuart, A (1990) 'Feminism: Dead or Alive?' in P. Erens (ed.) *Identity, Community, Culture, Difference*, London: Lawrence and Wishart

Sunder Rajan, R (2003) *The scandal of the state: women, law, and citizenship in postcolonial India*, Duke university press Durham and London xii

Sunder Rajan, Rajeshwari (1993) '*The Subject of Sati*' in T Niranjana, P Sudhir and Vivek Dhareshwar (eds.) *Interrogating Modernity: Culture and Colonialism in India*, Seagull, Calcutta, p 291-318

Suneetha, A. (2006) *A Difficult Match: Women's Actions and Legal Institutions in the Face of Domestic Violence*, Economic and Political Weekly

Suneetha, A. and Vasudha Nagaraj (2006) '*A Difficult Match: Women's Actions and Legal Institutions in the Face of Domestic Violence*', Economic and Political Weekly, 41(41).

Swaminathan, Padmini and J. Jayaranjan, , (2008) '*Mainstreaming Gender, Engendering Development: Reflections on a Case Study*', Economic and Political Weekly, XLIII (1), pp. 77-86

Thapar S (1993) Women as activists; women as symbols: a study of the Indian nationalist movement *Feminist Review*, JSTOR

Tharu, Susie (1998) '*Citizenship and Its Discontents*', in Mary E. John and Janaki Nair (eds), *A Question of Silence*, pp. 216–243. New Delhi: Kali for Women.

Tharu, Susie and Tejaswini Niranjana (1998) '*Problems for a Contemporary Theory of Gender*', in Shahid Amin and Dipesh Chakrabarty (eds), *Subaltern Studies Vol. 9*, pp. 232–260. New Delhi: Oxford University Press.

Unlocking the Secret (2003) *Women Open the Door on Domestic Violence Findings from Consultations with Survivors National Women's Commission London*

Vaid, Sudesh and Kumkum Sangari (1991) '*Institutions, Beliefs, Ideologies: Widow Immolation in Contemporary Rajasthan*', EPW, April 27, WS2 18.

Vanita, R (1999) '*Thinking Beyond Gender in India*' in Nivedita Menon (ed), *Gender and Politics in India*, OUP, New Delhi, pp 529-39

Veena D (1995) *Critical Events: An Anthropological Perspective on Contemporary India*, New Delhi: Oxford University Press

Vindhya, U (2000) *Dowry Deaths and Domestic Harassment of Women* in Andhra Pradesh: An Analysis of Socio-cultural Dimensions and Judicial Outcome of Cases Visakhapatnam: Institute of Development and Planning Studies.

Vindhya, U (2005) "Battered Conjuality: The Psychology of Domestic Violence" in *The Violence of Normal Times* Kannabiran, K. (ed), Women's Unlimited New Delhi

Wylie,A (2007) "*The Feminism Question in Science: What Does It Mean to 'Do Social Science as a Feminist'?*" in Handbook of Feminist Research, S. Hesse-Biber, New York: Sage

Yuval-Davis and Anthias, (1989) *Woman, nation, state*, Delhi Macmillan

Yuval-Davis N (1993) Gender and nation in *Ethnic and Racial Studies* Taylor and Francis

Zuber-Skerritt (1996) *New directions in action research*, London Routledge

WEBSITES VISITED

<http://www.e-pao.net/GP.asp?src=12..130707.jul07>

<http://www.expressindia.com/news/fullstory.php?newsid=56501>

<http://www.un-instraw.org/revista/hypermail/alltickers/fr/0816.html>

Indian Journal of Gender Studies, - ijg.sagepub.com

ONLINE ARTICLES

Abraham (1999) Sexual abuse in South Asian immigrant marriages hofstra.edu

Abraham. M (1999) Violence Against Women, vaw.sagepub.com

Agnes F, (1995) Bombay: Research Center for Women's Studies, majlisbombay.org

Agnes. F, (1992, 1995) State, gender and the rhetoric of law reform majlisbombay.org

Case (2004). Oxford Journal of Legal Studies, Vol. 24, pp. 671-692, 2004. Available at SSRN: <http://ssrn.com/abstract=815103>

Farmer, A. and Tiefenthaler (1996) *Domestic violence: The value of services as signals from wfu.edu*, The American Economic Review, JSTOR

Fernandaz (1997) *Domestic violence by extended family members in India* Journal of Interpersonal Violence, jiv.sagepub.com

Forbes G Caged Tigers: First Wave Feminists in India in *Women's studies international forum*. 5, 1982, 525-536

Indian Journal of Gender Studies, 2010 - ijg.sagepub.com

Jaising, I. (2002) 'Reconsidered: Dangerous Bill' in India Together <http://www.indiatogether.org/women/violence/domvolbill.htm> 8 October 2007

Kapur, (2002) Tragedy of Victimization Rhetoric: Ressurecting the " Native" Subject International/Post-Colonial Feminist Legal Politics, The [HTML] from harvard.edu R Kapur – Harv. Hum. Rts. J., 2002 - HeinOnline

Leela Visaria, Nishi Mitra, Veena Poonacha and Divya Pandey (1999) Domestic Violence in India: A Summary Report of Three Studies, at: <http://www.icrw.org/files/publications/Domestic-Violence-in-India-1-Summary-Report-of-Three-Studies.pdf>

Lodhia. S, (2008) *Migrating bodies and shifting violence discourses: The formation of legal subjects in a transnational age*, gradworks.umi.com

Manjul, T (2007) “Domestic violence act makes a dent: special court allows second wife retains house” Lucknow Newslines
<http://cities.expressindia.com/fullstory.php?newsid=244490> October 12, 2007

MF Shepard (1999) *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond...* - No.: ISBN 0-7619-1124-3, 1999 - ncjrs.gov

N Yuval-Davis (1997) Women, citizenship and difference siyanda.org, Feminist review, - JSTOR

National Commission for Women (2005) Recommendations and Suggestions on Amendments to Dowry Prohibition Act, 1961. Available online at <http://ncw.nic.in/PDFFiles/Dowryactamendment.pdf> (last accessed on 11 January 2010)

Staying Alive: Second & Third Monitoring and Evaluation Report 2009, www.unifem.org.in/violenceagainstwomen.html accessed on 18-9-2010.

The Protection of Women from Domestic Violence Act: Solution or Mere Paper Tiger? Under Western eyes: Feminist scholarship and colonial discourses duke.edu

Statutes, Conventions and Reports

Constitution of India, 1951

Convention on The Elimination on All Forms of Discrimination Against Women, CEDAW (1979) And Optional Protocol to the Convention (1999)

Declaration on the Elimination of Violence against Women (1994) Proclaimed by General Assembly 48/104 of 23 February, 1994

Indian Penal Code, 1860

Law Commission of India (1983) 91st Report on Dowry Deaths and Law Reform: Amending the Hindu Marriage Act 1955, the Indian Penal Code 1860 and the Indian Evidence Act 1872 Law, New Delhi: Permanent Black.

Maharashtra: A Summary Report Department of Medical and Psychiatric Social work, Tata Institute of Social Sciences

Protection of Women from Domestic Violence Act, 2005

Staying Alive: Fifth Monitoring & Evaluation Report on The Protection of Women from Domestic Violence Act 2005, Lawyers Collective Women's Rights Initiative, 2011

Staying Alive: First Monitoring & Evaluation Report on The Protection of Women from Domestic Violence Act 2005, Lawyers Collective Women's Rights Initiative, 2007

Staying Alive: Fourth Monitoring & Evaluation Report on The Protection of Women from Domestic Violence Act 2005, Lawyers Collective Women's Rights Initiative, 2010

Staying Alive: Second Monitoring & Evaluation Report on The Protection of Women from Domestic Violence Act 2005, Lawyers Collective Women's Rights Initiative, 2008

Staying Alive: Third Monitoring & Evaluation Report on The Protection of Women from Domestic Violence Act 2005, Lawyers Collective Women's Rights Initiative, 2009

The Code of Criminal Procedure, 1973

The Dowry Prohibition Act, 1961

The Hindu Adoptions and Maintenance Act 1956

The Hindu Marriage Act, 1955

The Hindu Succession Act 1956

The Indian Christian Marriage Act, 1872

The Indian Evidence Act, 1872

The Indian Penal Code Amendment Act, 1983

The Indian Penal Code Amendment Act, 1986

The Indian Succession Act, 1925

The Report on the Protection from Domestic Violence Bill, 2002, issued by the Department-Related on Human Resource Development Parliamentary Standing Committee - New Delhi: Parliament of India, Rajya Sabha, 2002

Appendix A

Interviews

Delhi

Athally, J. (26 August 2008) Personal Interview

B (29 August 2008) Personal Interview

Basu, A. (17 October 2007) Personal Interview

Bindiya (28 August 2008) Unsolicited Interview

Cheosang, T. (18 October 2007) Personal Interview

Dutta, B. (1 November 2007) Personal Interview

Hashmi, S. (4 September 2008) Telephonic Interview

K (2 September 2008) Personal Interview

P (27 August 2008) Personal Interview

Pathak, P (27 August 2008) Personal Interview

S (3 September 2008) Personal Interview

Sethi, M. (1 November 2007) Personal Interview

Sidiqui, A. (22 October 2007) Personal Interview

Virk, H. (28 August 2008) Personal Interview

Mumbai

Bharati (22 September 2008) Unsolicited Interview

Dave, A. (15 September 2008) Personal Interview

Preetha (24 September 2008) Personal Interview

Reem (22 September 2008) Unsolicited Interview

Sandra (20 September 2008) Personal Interview

Sarla (20 September 2008) Personal Interview

Taneja, D. (18 September 2008) Personal Interview

Tanuja (24 September 2008) Personal Interview

Veena (24 September 2008) Personal Interview

Appendix B

Section 1 (Chapter 1) PRELIMINARY

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,
2005 NO. 43 OF 2005 [13th September, 2005.]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Fifty-sixth 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 Act, 2005.**

(2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.-In this Act, unless the context otherwise requires,-

- (a) "**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;
- (b) "**child**" means any person below the age of eighteen years and includes any adopted, step or foster child;
- (c) "**compensation order**" means an order granted in terms of section 22;
- (d) "**custody order**" means an order granted in terms of section 21;
- (e) "**domestic incident report**" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;
- (f) "**domestic relationship**" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
- (g) "**domestic violence**" has the same meaning as assigned to it in section 3;

- (h) "**dowry**" shall have the same meaning as assigned to it in section 2 of the **Dowry Prohibition Act, 1961** (28 of 1961);
- (i) "**Magistrate**" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the **Code of Criminal Procedure, 1973 (2 of 1974)** in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;
- (j) "**medical facility**" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;
- (k) "**monetary relief**" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;
- l) "**notification**" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;(m) "**prescribed**" means prescribed by rules made under this Act;
- (n) "**Protection Officer**" means an officer appointed by the State Government under sub-section (1) of section 8;
- (o) "**protection order**" means an order made in terms of section 18;
- (p) "**residence order**" means an order granted in terms of sub-section (1) of section 19;
- (q) "**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 a marriage may also file a complaint against a relative of the husband or the male partner;
- (r) "**service provider**" means an entity registered under sub-section (1) of section 10;
- (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;
- (t) "**shelter home**" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

3. Definition of domestic violence.-

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute **domestic violence** in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

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

(i) "**physical abuse**" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "**sexual abuse**" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "**verbal and emotional abuse**" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "**economic abuse**" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation

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

4. Information to Protection Officer and exclusion of liability of informant.-

(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).

5. Duties of police officers, service providers and Magistrate.-A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;(b) of the availability of services of service providers;(c) of the availability of services of the Protection Officers;(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant: Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.-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.

7. Duties of medical facilities.-If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officers.-

(1) The State Government shall, by notification, appoint such number of Protection Officers 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 Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of

Protection Officers.- (1) It shall be

the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974); (i) to perform such other duties as may be prescribed.

2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act..

10. Service providers.-

(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires 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 proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government.-The Central Government and every State Government, shall take all measures to ensure that-

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

12. Application to Magistrate.-

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

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

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

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

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

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

13. Service of notice.-

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

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

14. Counselling.-

(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed. (2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert.-In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held in camera.-If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

17. *Right to reside in a shared household.*-

(1) Notwithstanding anything contained in any other law for the time being in force, every woman 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.

18. *Protection orders.*-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.-

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order. (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.-

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under subsection (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

21. Custody orders.-Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. Compensation orders.-In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23. Power to grant interim and ex parte orders.-

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost.

The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders.-

(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings.-

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

27. Jurisdiction.-(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is

employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

28. Procedure.-(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974). (2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. Appeal.-There shall lie an appeal 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.

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 thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

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) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, 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 498A 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.

32. Cognizance and proof.-

(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 subsection (1) of section 31 has been committed by the accused.

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.

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.

35. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder..

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.

37. Power of Central Government to make rules.-

- (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;
 - (b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;
 - (c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;
 - (d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;
 - (e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;
 - (f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;
 - (g) the rules regulating registration of service providers under sub-section (1) of section 10;
 - (h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;
 - (i) the means of serving notices under sub-section (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;

(k) the qualifications and experience in counseling which a member of the service provider shall possess under sub-section (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.