

Final Report (Revised<sup>1</sup>) of the Project Titled:

**Legal Responses to Domestic Violence: A Study in Assam**

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**Table of Contents**

Sl.No:	Title of the chapter	Page No:
<b>Chapter I</b>	<b>Introduction</b> Introduction Review of Literature Methodology Chapterization	<b>3-35</b>
<b>Chapter II</b>	<b>Domestic Violence in Assam</b> Nature and Forms of Domestic Violence Wife Battering and Physical Violence Causes of Wife Battering Women's Response to Marital Disputes & Domestic Violence	<b>36-56</b>
<b>Chapter III</b>	<b>Legal Responses to Domestic Violence in Assam</b> Nature of Cases Reported Social Location of Complainants: Women's Experiences with Law Struggle for Maintenance Defining Domestic Violence Saving the marriage and family Blaming the Victim Accusation of Misuse of Law Demand for Evidence Use of character of a woman and past history Civil Society Organizations, Counseling & Other Forms of Support Are Female Legal Personnel More Sensitive to Women's Issues? Infrastructural Issues	<b>59-105</b>
<b>Chapter IV</b>	<b>Conclusion</b> Introduction and Major Arguments Suggestions Conclusion Limitations and Future Research Proposed	<b>106-116</b>
<b>References</b>		<b>117-121</b>

## CHAPTER I

### INTRODUCTION

#### Introduction:

Family studies have been long prevalent in social sciences as well as in legal studies. More important contribution to family studies comes from anthropology and sociology whose preoccupation for a long time was to understand family and kinship network. Functionalist theories gave it primacy of place and among other aspects, explained it as an inevitable social institution within which generations of citizens, future and present, are reproduced and socialized into the norms, rules, values, and roles required for a stable and developed society and nation. Gender role socialization they argued is one of the most important contributions of families and such socialization is accepted mutually and benefits the entire family as well as society. On the other hand presence of law was an inevitable aspect of the institution of family. Legal provisions on property rights, marriage and divorce, child custody, alimony, guardianship, adoption, widow remarriage and other such aspects were always present in some form or other. So it can be safely argued that law was never absent from families and its regulations. However, it is not until women's movements brought its focus on laws' role in determining women's lives within families that family studies gave importance to understanding the relationship between law and family especially with a focus on women's status and experiences within family. Campaigns taken up by women's movements made it essential for scholars, especially in social sciences as well as within state, bureaucracy, & legal studies to turn their gaze in to understanding law and family relationship vis-à-vis women. From such nascent efforts made largely in 20<sup>th</sup> century we have come a long way. Women's movements and other reform movements across the world and in India has led to several changes in legal approach to women within family and family as an institution by itself. In India, state has responded to such campaigns by reforming existing gender biased laws and bringing in new laws and policies for women. Today, in India beginning with laws against female foeticide to protection of elderly and widowed women, from divorce rights to property rights the state has made provisions in all aspects of women's lives. However, studies both academic, journalistic as well as other reports from various government and non-government organisations brings forth huge gap between legislations and its implementations. Complex factors are emphasized as responsible for such gap between

intent of law and outcomes of its implementation. This study is a part of such focus on understanding legal responses to domestic violence in Assam. Among other aspects it focusses on understanding the ways in which legal institutions through legal personnel understand and deal with women's issues/cases related to domestic-family matters. It looks at the various ways in which they interpret and implement existing legislations on family matters including divorce, child custody, maintenance, domestic violence & others. Given the fact that family courts are one of the most recent additions to the plethora of institutions present to deal with women's legal matters related to family and domestic sphere. This study focusses largely on the functioning of family courts and legal personnel within family courts in their everyday dealings with women approaching it for legal relief.

### **Review of Literature**

The review of literature is taken up on two major aspects: Domestic violence – definitions, debates, & evolution of legal provisions in India. The second part is a review of origins, legislations related to, procedures and functioning of family courts in India. Already existing works on family courts in India, the debates and issues that these studies have brought forth and the suggestions made by these studies are exhaustively looked at and documented.

### **Domestic Violence – A Review**

Domestic violence is the term used to address the violence that occurs in the domestic sphere. Among the various forms of violence, violence within the domestic sphere is also rampant contrary to the notion that domestic sphere is the most safe and secure place to be in. There are various definitions of domestic violence. For the purpose of this study domestic violence is defined as per the internationally accepted definition that defines *domestic violence as all forms of violence that occurs between individuals who are related through intimacy, blood or law.*

Domestic violence occurs in the domestic sphere, which includes the site of intimate personal relationships and the neighborhood. Domestic violence is mostly directed against women and children (especially the girl child) and is a universal phenomenon with variation in its nature, forms and extent. It exists due to the patriarchal attitude of the society, which sees a woman as man's property, men as superior to women, and women as controlled by men. It is perpetrated intentionally and is used as a means to achieve the perpetrators immediate ends, to dominate the family, to maintain the relations of male dominance and female subordination, which is central to patriarchal social order. Due to the patriarchal attitude of

the society and the sanctification of the family as a private institution domestic violence is seen as non-existing. Even if its existence is brought out to light it is considered legitimate and is brushed away as a private matter.

### **Forms of Domestic Violence**

Domestic violence can be perpetrated both in active and passive manner, it can be in an overt and covert manner, and can be physical, sexual and psychological in nature or all at a time.

**Physical violence** - The abuser's physical attacks or aggressive behavior can range from bruising to murder. It often begins with what is excused as trivial contacts, which escalate into more frequent and serious attacks. It is often accompanied by sexual and psychological violence.

**Sexual Abuse** - Physical attack by the abuser is often accompanied by, or culminates in, sexual violence wherein the woman is forced to have sexual intercourse with her abuser or take part in unwanted sexual violence.

**Psychological violence** - can include constant verbal abuse, harassment, excessive possessiveness, isolating the woman from friends and family, deprivation of physical and economic resources, and destruction of personal property (Karlekar 1998).

For a woman violence starts even before birth, in her natal home and continues in her matrimonial home till death. Domestic violence can have different manifestations throughout the life cycle of a woman (Ibid).

Some of the forms that it takes in India are discussed below:

**Female foeticide**: eliminating girl children even before birth is a pattern of violence largely perpetrated in Indian society. Even before the female baby is born she is killed inside her mother's womb by the process of abortion. The decline in female-male sex ratio from 945 in 1991 to 927 in 2001 confirmed the suspicion that female foeticide is taking place in the country (ANI, New Delhi, Dec 9 2002). With the spread of amniocentesis, a medical technique to discover birth defects which involves sex determination of the foetus, female foeticide has become a common form of violence against women. During the last ten years one crore girls have disappeared from our population. They have simply been killed in most cowardly manner, before they could even open their eyes in this world. (Rathee, 2001). The patriarchal system of dowry, the preference for a son due to economic and ritual reasons and

other lifelong expenditures that make the woman look like a burden makes the parents kill their girl child even before birth. The argument of the perpetrators of this form of violence is that they are saving the girls from dowry death and other forms of violence that they would have undergone throughout their lives if they were born.

Female infanticide: as defined by UNICEF female infanticide is the killing of an infant by a relative because it is female. This is done in various cruel ways by drowning the baby in water/milk, strangling her to death, and putting poison in the mother's breast while feeding milk to the baby. The reason for such acts of violence is same as that of the female foeticide. Though the mother plays a role in both the above forms of violence, she is merely the victim of patriarchal system and has little control on what transpires in her personal life and her desires. A woman who cannot protect herself, who is forced to subordinate and submit to all her desires to the patriarch, cannot protect her motherhood either. It is a hard reality that her place and position in the home and society is determined ensured and enhanced only if she produces a male child.

Unequal access to food, clothing, education, and medical facilities: These are other forms of violence against female children. Girl children in many areas are rarely sent for education, parents prefer to keep the money to be spent in a girl's education for her dowry. It is even thought that girl's education isn't important, as finally she has to maintain her family rather than go for a job outside. Less than one in three women in India have been able to attend school. With 196 million females who cannot read or write the female literacy rate is only 40 percent (compared to 64 percent for males), and in some rural areas, the rate for women drops to 12 percent. The school drop out rates for girls is 57 percent at the primary stage, 57 percent at the middle stage, and 74 percent at the high school stage (CARE Statistics, Report June 15<sup>th</sup> 2002). Even in matters of food too the male child is given preference over the female child. The male child gets the larger share in the food and if something is left only the girl child can take it. The health and diseases of the girl and women in general are considered trivial, much less is spent for their ailments in comparison to the male members of the family.

Child Sexual Abuse: Child sexual abuse occurs, when sexual activity such as exposure of genitalia, fondling, intercourse, oral sex, or pornography (exposure to or involvement in) is enacted with a minor; by a person who holds power over the event. The power difference eliminates consent. Children are vulnerable and do not play any role in decision making and

have no control over the situation. Infact they hardly know what is happening to them, and when they grow up many psychological problems creep up for them. The chance is great, that the victim knows the offender. A study was done by RAHI, a Delhi-based organization, this study focused on 1,000 English-speaking middle and upper class women living in Delhi, Bombay, Madras, Calcutta and Goa. They were graduate and under-graduate students. Findings from this study showed: 76% of respondents had been sexually abused as children; 31% of these by someone they knew and 40% by a family member. So 71% had been abused either by relatives or someone they knew and trusted. It is the girl child who is more vulnerable to sexual abuse especially in Indian context, while one cannot deny the prevalence of male child sexual abuse.

**Early marriage:** Early marriage is encouraged to control the sexuality of the girl. She is passed up safely from her natal home to the marital home. A girl's sexuality has to be controlled as it may bring disgrace upon the family prestige if she misuses her freedom. Early marriage results in early pregnancy, which is harmful, and life taking for the mother.

**Dowry:** is an age-old practice related with marriage prevalent in India. It is the exchange of wealth especially from the bride's home to the grooms. It can be in the form of cash, ornaments, lands, modern gadgets or other movable and immovable property. It started among the upper caste rich landlords and kings as giving of gift by the bride's family to the groom's family. It also acted as a form of compensation for the daughter who would not get a share in the paternal property. The whole motive behind this exchange of gifts was forgotten in the course of time and it took an ugly shape in the form of dowry. Dowry in legal terms is defined as "property given in connection of and as a condition of marriage taking place." Dowry has become inseparably interlinked with the general status of women in Indian society. Most of the violence in the domestic sphere against women is linked to the menace of dowry. The term dowry and "dowry deaths" has become synonymous with wife-battering and domestic violence. It has been given so much of importance as a form of abuse that has led to neglect of the regular abuse and killing of women. The result is that dowry-related wife murders and suicides are criticized more, but other forms of domestic violence may not be since it is thought that the wife could have been provoking the abuse. The law too doesn't consider any abuse that is not related to dowry, as abuse.

Dowry violence and dowry deaths are common in Indian homes. Wives are beaten, deserted, tortured, murdered, burnt for extracting more dowries. The evil of dowry is behind female

foeticide and infanticide. In the recent times one sees that the dowry system has percolated to those societies where dowry as a system never existed.

Wife battering: the most widely practiced and widely denied form of domestic violence is wife battering. Almost every six hours, somewhere in India, a young married woman is burnt alive, beaten to death or forced to commit suicide. Wife battering involves a long process of physical and mental humiliation inflicted upon the wife that may sometimes lead to the death of the wife. It is a complex social phenomenon of power relationships within the family. Wife battering involves kicking, beating with hand or stick, dragging the woman by hair, cutting her body, abusing her with foul language, keeping her hungry, having forced sex, shouting, scolding, threatening, desertion and many other means of torture.

It is socially acceptable to keep the wife in a subordinate position and isn't talked about and interfered in as it is regarded as a personal matter between the wife and the husband. Even many wives feel that their husbands have a right to beat them if they are wrong or if he is upset. This attitude is mostly due to their gender socialization.

Flavia Agnes (1992) in her article brings to the fore the myths related to wife beating and talks of the survey that proved the myths wrong. Some of these myths are described below:

- Middle class women do not get beaten.
- Victim of violence is a small fragile, helpless woman belonging to the working class.
- Man who beats his wife is the man from lower strata of the society, a man who is frustrated in his job, an alcoholic, or a paranoid person, aggressive in his relationship with the world at large and his wife is just one of the victims.
- Provocation by the women leads to battering.
- Long standing battering relationships can change for the better.
- Loving husband doesn't involve in wife beating.
- Since the women do not leave their husband's they do not find the beatings or that they actually like it.

The survey proved these myths wrong and showed that there could neither be a stereotyped portrait of battered woman or that of the perpetrator (Agnes, 1992).

Wife beating exists due to patriarchal attitudes. Notions such as woman is a man's property, men as superior to women, woman as controlled by man, aggression and violence as positive



male qualities, child care as the wife's responsibility, the social sanctions that allows the husband to tame and discipline the wife and other such patriarchal notions which makes the woman continue in a violent relationship. Emotional and economic dependence of wife on her husband, insufficient and ineffective legal system also adds to the problem of wife beating.

Theories have been put forward to explain the process of wife battering and also those that explains why women continue to stay in violent relationships. They are the "cycle theory of violence" and "theory of learned helplessness".

Cycle theory of violence (Walker, 1984): This theory explains the phases, which leads to physical battering, and what happens after it. According to this theory there are three phases of wife battering. They are:

Tension building period.

Acute battering stage.

Calm-loving respite.

In the first phase there are small fights over nothing. The husband gets irritated and angry at the slightest of reasons and shouts at the wife and children. There is an atmosphere of tension always, where the wife is always apprehensive of the eventual big battering. During this period there are also the occurrence of small beatings. The tension grows and the next stage is acute battering stage, where the wife gets beaten and sometimes even raped. This stage lasts for a comparatively less time than the first stage. This stage leaves the woman in a deeply wounded situation. This stage is followed by the calm loving stage where the husband has cooled down and sometimes feels guilty about his behaviour. He is extremely loving and affectionate towards his wife at this stage. He pleads guilty and promises never to batter her again. The situation calms down. After a few days again the husband gets irritated for little nothings and the tension builds up, which is the sign up the first stage. This cycle continues. It is during the second phase that the women sometimes moves out of the house and seeks help from her family members and relatives, and also meets counselors and social workers. By the time the relatives and social workers meet the husband, he has become calm and loving. They find him very friendly and good-natured, without a trace of anger and irritation. This is because they meet when the calm loving stage is going on. They find no fault of his and the whole blame falls upon the wife. This is the stage of blaming the victim. She is sent back to the violent husband, and is asked not to create problems and be patient and not

provoke the husband, which will lead to unwanted situations. Finally, the victim carries the blame back.

Most of the times the wife stays back with the violent husband. Though she feels like running away and cannot take it anymore, she continues to stay. The “theory of learned helplessness” explains why a wife stays with her battering husband.

Theory of Learned Helplessness (Seligman, 1975): when a middle class woman gets beaten for the first time her initial reaction is that of shock and humiliation, which leaves a permanent scar on her psyche. She starts questioning her own worth and tries to modify her behaviour to satisfy her husband and in-laws, but to no effect. Violence continues and survival for her becomes an issue and at this point she goes out and seeks help from her parents and relatives who in-turn cannot or do not provide help. This may be due to variety of reasons, like parents poor economic conditions; patriarchal attitude that whatever happens the wife has to stay with her husband, lack of interest on the part of the relatives’ etc. She is asked to return to her husband and she finally does so. The husband puts various terms and conditions for returning. Beatings again continue and the wife learns to live with it, as she knows that there is no one to help her in case she leaves her husband. Her economic dependence also complicates matter.

Wife battering is a common form of violence within the four walls of the home, which is thought to be the most safe and secure place.

Sati: Immolation of the wife in the funeral pyre of the husband is the act of sati. It is a kind of public killing of the wife and is a long-standing tradition among upper caste Hindus, which was mostly followed by the Rajputs. It is legitimized through myths. Traditionally, widows have low status in Hindu India and are often seen as bad omens. They are treated miserably. Some do commit suicide rather than be subject to daily torture and humiliation. Not always does the wife burn herself in her husband’s pyre willingly but is forced to do so. It is often used against women to take control of land and other economic resources that they might inherit as widows. It started as practice in Bengal, but was staunchly followed by the rajputs later. Widows seemed useless drags on resources-particularly among upper castes, in which women were economically dependent, as they contributed almost nothing to the family in terms of economic matters. It also helped manipulate the distribution of property in a society that had rigid property rules, where the widow had a right to succeed her dead husband’s property. Invasion by colonial rule on Hindu culture and rules was a big blow to Hindu

identity. Sati became a new means of establishing Hindu identity. As stated earlier widows were subjected to various restrictions, humiliation and were seen as bad omen and curse. Along with this the economic dependence on the family made their life miserable. This made the women sometimes accept sati on her own. All this factors contributed to the rise and spread of sati.

The British government banned this ritual, and this ban continued even after independence. The Roop Kanwar sati case again brought up a controversy regarding sati. Evidence collected by women's groups proved that she was forced to perform sati by her in-laws. Roop Kanwar's case showed that this *sati* was a complex mixture of misogyny, economics and fundamentalism. The women's groups opposed this revival of sati and there was a major campaign against it, which will be discussed in detail in the chapter on women's movement. This practice has not ceased altogether and one can find incidents of sati being reported in infrequent intervals in different parts of India.

**Sexual harassment:** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment.

Commonly known as 'eve-teasing' which is comparably a mild word and doesn't designate the whole pain involved in sexual harassment. It forms one of the basic tools of man to keep woman in their patriarchally defined space. Though sexual harassment takes place the broad daylight and mostly in crowded areas, it also is committed within the four walls of the house, by family members, relatives and acquaintances. This is when it becomes a form of domestic violence that can even lead to incest and rape in the home. It can be in the form of comments on the physical appearance of the female, lampooning and abuse with sexual overtones, fingering, jostling against women, manhandling, ogling etc. It creates an atmosphere of fear and hurts the dignity of the woman concerned. It is otherwise called "psychological rape" as it affects the mental balance of the victim.

**Sexual assault or Rape:** Rape is broadly defined as non-consensual intercourse through the use of physical force, threats or intimidation, including the rape by a man of his wife, which is called as marital rape. Rape may also occur between people who know each other and between people who have previously had consensual sexual relations. Rape involves both physical and mental trauma. Unlike common belief that rape is committed in dark streets by ugly and fearful looking strangers, most of the rapes happen within the four walls of the home, both at night and day time, by family members, acquaintances, neighbors, cousins and

other close relatives. That is specifically the reason why rape comes within the scope of domestic violence. Statistics proves that in 84 out of every 100 rapes in India the victim knew the offenders. Neighbors were accused of rape in three of every 10 cases (Menon, 2002). Along with getting sexual pleasure, committing rape is also used as a weapon to demoralize and control women. According to Flavia Agnes “rape has been one of the means through which the social hierarchy of power relationships is maintained and nurtured in a gendered society”. (Agnes, 2002, pp. 844) The social stigma attached to the incident of rape further victimizes the victim.

**Marital rape:** is commonly defined as any unwanted intercourse or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when the wife is unable to consent. Rape in marriage is a sexual violence, an abuse of power by which a husband attempts to establish dominance and control over his wife who he feels is his “property.”

Society still has to acknowledge that rape in marriage could even occur. Another reason why marital rape goes mostly unrecognized is that, it is seen as a wife’s duty to satisfy her husband’s sexual needs, whenever he wants it even if she doesn’t have consent for it. The majority of women who are raped by their partners are also battered. In "battering rapes," women experience both physical and sexual violence in the relationship. Women who are raped and battered by their partners experience the violence in various ways. Some are battered during the sexual violence, or the rape may follow a physically violent episode where the husband wants to "make up" and coerces his wife to have sex against her will. Other women experience what has been labeled "sadistic" or "obsessive" rape; these assaults involve torture and "perverse" sexual acts and are often physically violent. According to Finkelkor and Yllo, “marital rape is frightening and brutal event that usually occur in the context of an exploitative and destructive relationship. This sexual abuse is only peripherally about sex. More often it is about humiliation, degradation, anger, and resentment. Women are left if not physically disable, then psychologically traumatized for a long time”. (Finkelkor and Yllo, 1989, pp. 384).

**Violence against aged persons and widows:** widows and aged persons are most of the times economically dependent upon their relatives. Therefore they are more vulnerable to violence by their family members who include in-laws, sons, daughters-in-law, and other relatives. Their food, health, and other basic necessities are neglected and they are ill -treated through verbal and physical abuse. In patriarchal society, widows are considered as a curse and as evil omen and their movement is restricted in various ways. They are most vulnerable to

sexual abuse within the marital family and are sometimes forced into prostitution by their in laws.

These are the various forms of violence that takes place within the domestic sphere in India. Though domestic violence do occur against both men and women, it's the women who suffer the most. In this study I deal with domestic violence against women. Neither the society nor the legal system in India recognizes all of these forms of violence as violence. Society always has its own justification to provide for this kind of behaviour, it ranges from economic to religious, biological to social justifications.

A violated woman isn't always a mere victim but an active helpseeker who tries to survive, fight back and get justice. One of the institutions that she approaches is the judicial system, the law. Despite the evolution in legislations and the culmination of it in the Protection of Women against Domestic Violence Act 2005, law still does not take into account the whole power relationship that operates between the perpetrator and the victim, the pain that the victim undergoes, her poor economic and emotional condition and her socially vulnerable status. Numerous studies have brought forth the complex ways in which women experience domestic violence & laws inability to address such complexities thereby often leaving women vulnerable (Agnes 1992, Achuyta & Nagaraj 2010, Ray 2006, 2014).

Given the image of the legal system, the obstacles and humiliation one faces in approaching for legal redressal, women prefer to stay in violent situations and adjust rather than file a complaint. She tries to get help from all other sources like the family, friends, relatives, social workers, community panchayats etc and when everything fails she approaches the legal system. Often, going to the police is an extreme step taken by desperate woman for whom all other doors has been shut. Instead of bringing relief to the woman, it adds to her pain. The procedure to be followed while dealing with the police and the law courts continues to be long and harrowing, the investigative machinery lax and corrupt, cross examination of the women degrading and humiliating, with dismal rates of conviction and if convicted the punishment less severe than the prescribed laws. The patriarchal attitudes of the police, lawyers, judges and the lawmakers, the nexus between the court clerks, bailiffs, lawyers, police, and husband's creates obstacle for the women seeking justice. Sometimes, even the amended laws have less to offer. What is becoming increasingly apparent is that legal reforms aren't only slow, but when they do occur they may simply hide or relocate fundamental problems. (Agnes, 2002, pp.844).

### **Analysis of Laws against Domestic Violence**

Prior to 1983, any form of violence against women committed within the family, was not considered an offence. The doctrine of “space” was used to argue that “domestic” affairs should be confined to the “private” space of the family and outside the interference of law (Sandanshiv and Mathew: 2005). With women’s groups’ demand for laws against domestic violence, Government of India was content to amend provisions of criminal acts in 1983, and again in 1986. Special categories of offences were introduced under Sections 498A IPC and 304B IPC to deal with cruelty to wives, and dowry murders respectively. In 1986, Section 113B Indian Evidence Act (IEA) was also inserted to the existing IEA, 1872 to aid in the investigation of Section 304B. Violence that takes place between members within the domestic sphere who are not related directly through marriage (like siblings, neighbours, friends, acquaintances and distant relatives) was not included within the ambit of these Sections<sup>2</sup> (Agnes: 1992). The state thereby did not accept the concept of “domestic violence”, but limited it to marital violence, which further was largely limited to dowry. The First Information Report (FIR) for marital violence cases were filed under Section 498A IPC. The FIR for cases where death has occurred because of dowry was filed under Section 304B IPC along with Section 113B (IEA) which provided guidelines for presumption for dowry death. Section 306 IPC relating to abetment to suicide was also added to FIRs on dowry deaths on the insistence of women’s groups as most cases of dowry deaths were made to look trivial under the guise of suicides and were dismissed. Section 306, Abetment of suicide declares ‘If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.’ (IPC, Chapter XVI: Of Offences Affecting the Human Body, 76).

It was only after more than two decades, in 2005, that the next law on domestic violence was enacted with the passing of the PWDV Act, which is a civil law. Therefore the last amendment in criminal law on domestic violence stopped in 1986 with the enactment of Section 304B IPC.

### **Analysis of Criminal Laws on Domestic Violence**

#### **Section 498A:**

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<sup>2</sup> The PWDV Act, 2005 in its definition of domestic violence takes cruelty within any of these relationships into account as domestic violence.

‘Section 498A i.e. cruelty to wives instead of being put under the chapter on offences affecting the human body<sup>3</sup> – or under the Sections dealing with assault was put as an appendix to Section 498<sup>4</sup> an obnoxious and derogatory provision which treats women as the property of men’ (Agnes: 1998a: 109). Section 498A declares:

*‘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’. For the purposes of this Section “cruelty” means:*

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

*b) ‘harassment of the woman where such harassment is with a view of 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 a demand’. (IPC, Chapter XXA: Of Cruelty by Husband or Relatives of Husband, 131)*

Positively, this Section does not use the term “dowry” (it only makes an indirect reference to “unlawful demand for property”) to define cruelty, and also includes mental cruelty. Hence, logically it is broad enough to be used in situations of domestic violence where the cause of violence may or may not be dowry. Though Section 498A was brought to deal with cruelty towards women, the use of the words “unlawful demand for property” leave enough space for subjective (mis)interpretation. Taking Indian conditions into account, it can be said that the most recognised/visible “unlawful demand for property” made in marriage is in the form of dowry. Therefore, legal personnel may interpret “unlawful demand for property” as “dowry demands” and believe that without dowry, cases cannot be filed under this Section.

The words “whoever, being the husband or the relative of the husband of a woman” in the Section indicates at violence perpetrated only within marital relationships. Domestic violence perpetrated within a variety of other domestic relationships is not criminalized (Dutta: 1999; Mukhopadhyaya: 1989).

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<sup>3</sup> Chapter XVI of the IPC deals with offences affecting the human body. This is further divided into offences affecting life; those involving hurt which include grievous or simple hurt with or without weapons; wrongful restraint and wrongful confinement; assault, molestation, kidnapping, buying or selling of minor for the purpose of prostitution, unlawful labour, rape and unnatural sex etc.

<sup>4</sup> S498 IPC gives every husband right to prosecute any man for enticing or taking away or detaining with criminal intent his wife even though this has been done with the wife’s consent.

Further, use of the term “grave injury” also gives space for subjective interpretation of the gravity of violence. This leads to overlooking of a variety of intense and not so intense everyday violence suffered by women within the domestic sphere. It takes into cognizance only such conduct which is likely to drive a woman to commit suicide or to cause “grave” injury. A woman subjected to occasional beatings not causing “grave” injury is not entitled to any protection from the state (Kumari: 2007).

498A also does not recognize woman’s right to shared household, leaving them homeless. This makes them vulnerable to accept reconciliation on the terms of the accused in exchange of access to basic needs (Agnes: 1992). Despite the lacunae, this section takes into account, at least indirectly, violence without dowry and also mental cruelty; it is considered as a necessary legislation to fight domestic violence.

### **Section 304B**

#### Section 304B IPC and History of Dowry Prohibition Act (DPA)

The colonial state and social reformers did not consider the practice of dowry as much a social evil as that of sati, female infanticide, and prohibition of widow remarriage. Moreover, the colonial and post-colonial states assumed that changes in marriage and property rights would themselves curb the practice of dowry. It was only as late as 24<sup>th</sup> April 1959 that attempts to bring in a National Act to curb this practice was made through the introduction of the “Dowry Prohibition Bill” in the Lok Sabha (Sheel: 1999).

This Bill after much debate was enacted as the “Dowry Prohibition Act of 1961”. According to this Act, ‘any presents made at the time of a marriage to either party to the marriage in form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this Section, unless they are made as consideration for the marriage of the said parties’ (Sheel: 1999: 164). Thus, property transferred under the guise of gifts were not considered dowry leaving a major loophole in the Act.

Other loopholes in the enactment were: Section 3 of the Act penalized both the giver and the taker of dowry. If the giver was an offender along with the taker, s/he would be the last person to file a complaint as no one just to punish the taker would themselves like to get into trouble. The giver of dowry is in a particularly vulnerable position. Before marriage, it is a question of family honour, and after marriage, it’s the question of saving the daughter from being tortured and killed. Thus by indicting the giver, the law closes all doors to the victim and her family to approach for justice.



Section 7 of the Act made the offence non-cognizable, and a magistrate could not act *suo moto*. It meant that there must be a complaint to set the machinery of law in motion. But who would file the complaint with the giver also being considered as an offender? Under such circumstances unless a third party came in, a complaint could not be filed, but this Act did not allow such provisions (Basu: 2001).

Responding to demands from women's groups, a proposal for amending the Dowry Prohibition Act of 1961 was placed before the Lok Sabha on 9th May 1984. It was proposed to make the offence cognizable so that the police and recognized welfare institutions, in addition to parents and relatives of aggrieved persons, could report such offences to the court. The amending Bill also sought to make the punishment more stringent by extending the time period from existing six months imprisonment to two years. It also proposed to double the amount of fine from existing Rs 5000 to Rs 10, 000/-. The amendment Bill was passed and came to be known as the Dowry Prohibition (Amendment) Act 1984 (Act 63 of 1984). This amendment still did not take into consideration the presents given to the bride or to the groom during and after marriage as dowry. However, it removed the one-year limitation period to file the complaint and also allowed parents, relatives or social work institutes to file a complaint on behalf of the victim.

The next Bill was presented in the Parliament on 6 March 1985. On 22<sup>nd</sup> August 1986, the Dowry Prohibition Amendment Act (DPA) 1986 was passed. This Act augmented the punishment for dowry related crimes, it also increased the fine amount to Rs 15,000/- and made the offence non-bailable. The onus of proof was shifted to the accused; the unnatural death of wife would lead to devolving of her property upon her children and if she dies childless, the property would go to her parents. For the first time, this Act included the term "dowry death" making it an offence by inserting a new section of 304B IPC into the existing DPA (Basu: 2001). It was then that along with the insertion of Section 304B IPC into DPA that Section 113B IEA was inserted by Act 43 of 1986, section 7 into the Indian Evidence Act. This Act was meant to aid Section 304B IPC by providing guidelines for presumption as to dowry death.

Section 304B IPC defined "dowry death"<sup>5</sup> as:

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<sup>5</sup> The term "dowry death" and "dowry murder" was first used around 1977-78 when investigations revealed that deaths of married women, which for years had been camouflaged by the police as accidents or suicides, were actually murders or abetted suicides, preceded by prolonged physical and mental torture by the husband and in-laws in connection with dowry demands. Instead of describing them as "wife murders" or "abetted suicides", women's organizations termed them "dowry deaths" (Sandanshiv and Mathew: 2005; Gandhi and Shah: 1991).

a) *'Where the death of the woman is caused by any burns or bodily injury, or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death. For the purposes of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act 1961.'*<sup>6</sup>

b) *Whoever commits dowry deaths shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

*The presumption of guilt is on the accused and he would prove that he is innocent' (IPC, Chapter XVI: Of Offences Affecting the Human Body, 82).*

Section 113B of the Indian Evidence Act - Presumption as to Dowry Death states:

*'When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*

*Explanation.-For the purposes of this section "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code. (The Indian Evidence Act, 1872: Act, No.1 of 1872, 59)*

Section 304B IPC poses new interpretational challenges: When can a person be said to have died "otherwise than in normal circumstances"? Whether suicide or sudden heart failure because of shock and violence will be included as offence? What about a woman who dies in the absence of proper medical care? There is no clarity on what exactly constitutes "abnormal" circumstances. Majority of the dowry death cases are booked as accidents and suicides helping the murderer evade the law. There is also a presumption that women are harassed for dowry only within the first seven years of marriage. If she endured the ordeal and tolerated the harassment for seven long years but dies in "abnormal" circumstances after

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<sup>6</sup> Section 2 of DPA defines dowry as 'any property or valuable security given or agreed to be given either directly or indirectly (a) by one party to the marriage to the other party to the marriage, or (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person, at or before any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies' (Singh: 2002: 71).

that, her death is dealt at par with other deaths in similar circumstances. The assumption of the law is that ‘once the magic seven years of marriage are over, either the torture/ harassment ceases or it was non-existent in the household for the woman to have survived that long or it was not grave for the woman to have endured it’ (Kumari: 2007: 152).

Further, from the words “soon before her death” in S304B, one can infer that it does not take into account the violence committed earlier, or the violence committed on a routine basis from day one, as a valid cause that may lead someone to commit suicide. How much time is ‘soon before her death’? If a woman was being harassed for dowry for three years but was not so harassed for the last one, two or six months before her mysterious death, will earlier harassment constitute “soon before her death”? Research shows that this provision of ‘soon before her death’ is mostly used in a pro-accused manner (Devi et. al.: 2000).

This Section, unlike Section 498A, is specifically legislated to be used only for cases of death related to dowry. It assumes that a woman is harassed in marriage only for dowry or that harassment for dowry alone is worthy of legal protection (Agnes: 1992). A woman in India may be harassed because of her skin colour, because she is not educated enough, because some disaster befell the household with her entry into the household, because she is infertile or that she has failed to give birth to a son and so on. This Section does not take into account such multiple socio-cultural factors that lead to harassment and death (Mitra: 2005). Thus, a woman’s death in unnatural circumstances preceded by harassment for any reason other than dowry has not been taken cognizance of by the legislature.

Analysis of the provisions relating to Sections 498A and 304B show that the state has followed the policy of symbolic and limited intervention in the “private” domestic sphere. A married woman is required to lose her life for the state to swing into action. For it is only then that offences against women are made cognizable. Even in these cases, uncertainty looms over state protection. Hence, even though the state responded to the demand of the women’s movement, the provisions fell short of women’s expectations’ (Kumari: 2007).

Despite their loopholes, Sections 498A and 304B of the IPC, which were introduced to deal with dowry violence and dowry death, are widely extended to deal with violence against wives.

### **The Protection of Women from Domestic Violence Act, 2005 (PWDV Act)**

The latest developments in legislation against domestic violence is the passing of the Act, called Protection of Women from Domestic Violence Act, 2005 (PWDV Act, 2005). This is

the outcome of the efforts put in by numerous women's groups across India over the last two decades. In response to women's groups demand for a broad legislation on domestic violence the Government of India in 2001 introduced the PWDV Bill 2001 in the parliament to be passed. This Bill was widely criticized from different quarters for many of its anti-women clauses. Feminist lawyers and activists pointed out that the definition of domestic violence provided in the 2001 Bill was too narrow to encompass the varied ways women experience violence. They also rejected the Bill's clause which gave husband the power to beat his wife in self defence. There was also no recognition of women's right to shared household in the 2001 Bill, which was one of the most emphasized demands of women's groups in their demand for a new legislation. So for all these lacunas and more the women's groups rejected the Bill and demanded for a legislation which would be more inclusive of women's experiences of violence and sensitive to their disadvantaged situations. However, the Bill could not be passed as the Parliament session was abruptly closed. In 2004 the Bill was reintroduced after a discussion with prominent women's groups. Thus after much deliberation, the PWDV Act, was passed by the Parliament in August 2005 and assented to by the president on 13<sup>th</sup> September, 2005. On 26<sup>th</sup> October 2006 it came into effect. This Act is a civil Act and provides remedy against domestic violence within the ambit of civil law. It promises to address loopholes found in the existing legislations and their implementations. In the following section a discussion of the strengths and flaws of this Act is taken up.

### **Women/Victim Friendly Recommendations in PWDV Act, 2005**

#### **Wide Definition of Domestic Violence**

Unlike the earlier legislations of S498A IPC and S304B IPC of this Act gives a holistic definition of the term "domestic violence" and is wide enough to encompass every possibility of violence within the domestic sphere. It includes within its ambit actual abuse or the threat of such abuse whether physical, sexual, mental, verbal, emotional or economic<sup>7</sup>. This Act in its 'Chapter II, Explanation I, Bit (ii),' explains sexual abuse as that which *'includes any*

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<sup>7</sup> Chapter II of the PWDV Act lays down the Definition of Domestic violence, which says 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 (PWDV Act, 2005. No. 43 of 2005).

*conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman*' (PWDV Act, 2005. No. 43 of 2005). It is this explanation that feminists believe can help include marital rape as an offence within the scope of this Act with proper interpretation (Shivakami: 2006). Recognition of sexual abuse/marital rape though indirectly in this Act is a major achievement in terms of broadening the legal definition of domestic violence.

### **Wide Definition of who can be the “Aggrieved Person”**

The Act widens the scope of “aggrieved person” by including women other than the category of “wives”. As per this act women even in informal relationships with the accused like women who are not legally married wives, women living in live-in-relationships with the accused and others can file cases of domestic violence against him. ‘The invalidity of marriage can no longer be used as a defence by the man to dispossess or deny maintenance to this vulnerable section of women’ (Agnes: 2005: 4). This Act also extends the definition of “aggrieved persons” to include mothers, daughters, sisters and any women residing in the household who is related in some way to the accused. Thus under this Act aged women, unmarried girls and widowed/divorced sisters can also seek protection from their relatives (Agnes: 2005).

### **Anyone Can File Complaint on Behalf of the Aggrieved Party**

The information regarding act of domestic violence does not necessarily have to be lodged by the aggrieved party but by any person who has reason to believe that such an act has been or is being committed. This gives power to neighbours, social workers, relatives and others who can all take initiative on behalf of the victim-woman.

### **Right to Secure Housing**

Fear of being driven out of the house effectively silenced many women and made them silent sufferers. The Act provides for the woman’s right to reside in the matrimonial or shared household, whether or not she has any title on the household. This right is secured by a residence order, which is passed by a court. Shared household in this Act includes a house that may or may not be jointly owned by the aggrieved person and the respondent. It includes even a tenanted house. Even a house in the name of the joint family is considered a shared household. If the woman wants, for her security the accused can be evicted from the shared household. However he has to continue payment of rent if it’s a tenanted house, on behalf of

the wife. This residence order cannot be passed against an accused who is a woman (Shivakami: 2006).

### **Protection Officers and Protection Order**

The Act provides for appointment of Protection Officers (PO) to provide assistance to the woman. Protection officers have to be pro-active and are required to inform the aggrieved person her rights and help them in matters of medical assistance, shelter and other such things. Protection officers shall as far as possible be women. The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing further acts of domestic violence upon the woman, her relatives and others who provide her assistance from domestic violence. It prevents the accused from entering a workplace or any other place frequented by the woman, or from attempting to communicate with her without her consent. In the case of a child, the order could be passed from preventing the abuser from entering the school premises. It also prevents the accused from isolating any assets used by both the parties.

### **Maintenance Order**

The Act allows magistrates to impose monetary relief and monthly payments of maintenance. The respondent can also be made to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and can also cover loss of earnings, medical expenses, loss or damage to property and can also cover the maintenance of the victim and her children.

### **Non-Bailable Offence**

The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

### **Conviction under Sole testimony of the Aggrieved Person**

My study brings forth that one of the major obstacles in women's fight against domestic violence is the demand for independent and concrete evidence by legal personnel. A major strength of the PWDV Act is its acceptance of the sole testimony of the woman as concrete evidence to convict the accused. This Act under section 32 (2) says that 'under the sole

testimony of the aggrieved person, the court may conclude that an offence has been committed by the accused’.

### **Time Bound**

The Act also ensures speedy justice as the court has to start proceedings and have the first hearing within three days from the date of receipt of the application by court, and within 60 days of first hearing the order has to be passed.

Along with the above strengths of the Act, it also provides for special training of police officers to handle cases of domestic violence. It also provides to women right to free legal services, right to shelter homes and medical facilities. The Act also envisages the granting of temporary custody of any child/children.

### **Loopholes in the Act**

#### **Provision of In-camera Trial**

S. 16 of Chapter IV allows the magistrate to hold proceedings in-camera “if either party to the proceedings so desires”. Though at one point of time women’s groups demanded for in-camera trials yet today as even my study shows there is an increasing realization among feminists and women’s groups and others that in-camera trials can be intimidating for the woman. This is especially so when the aggrieved is the only woman in court facing a completely male phalanx of hostile, sneering magistrates, lawyers, officials, police, male respondent and others. It also prevents the court from being watched by rights based groups and the media giving a free hand to the court. The accused benefits from such an environment, and definitely will apply for in-camera trial. In such circumstances the solution is to change this section to allow for in-camera proceedings only when the aggrieved party so desires. Also the aggrieved party should be allowed to be accompanied by any relative/woman social worker and others of her choice for moral support.

#### **Mandatory Counseling**

Chapter IV Number 14 (1) gives magistrate the right at any stage of the proceedings to send both aggrieved and respondent to undergo counseling either singly or jointly. Given the nature of counseling where the aim is to save the family, and women are often pushed back into violent homes, counseling has been a contested issue. The idea of counseling the aggrieved without her consent is problematic. In this context mandatory counseling is unwarranted.

Further the status of child is hazy in the Act. While section 2(b) defines who a child is for the purposes of the enactment, it is not clear whether or not a child may be an aggrieved party. Section 18 (c) seems to suggest that a child may be an aggrieved party yet the rest of the Act does not lead to same conclusion. The Act also does not take into account violence perpetrated against people with whom the accused might have shared a relationship in the past, or against people who are employed to work in the household.

Despite the above mentioned loopholes this Act has been widely hailed by feminist activists and lawyers, and women's groups as a well framed Act. There major concern is that the Act should be implemented properly. In the words of Flavia Agnes (2005) '[t]he Act is significant...The most crucial test, however, lies in implementing the Act. Hopefully it will also serve to challenge the sexual puritanism that we experience in our courts today. The problem will arise when the right of residence of a legally married wife clashes with the right of a so-called "immoral and promiscuous" one. And this will be the moment when we will be forced to confront our own notions of sexual morality' (14).

This Act encompasses a wide range of violence committed on women within the domestic sphere as domestic violence. Thus the demand for proof of dowry to accept a woman's case can be addressed by this Act. It also addresses such loopholes found as demand for concrete evidence, non-acceptance of marital rape as violence, lack of gender training among legal personnel, long time taken to solve cases, prevents women from destitution and the need for more legal personnel. However, the inclusion of in-camera trials and mandatory counseling is problematic. The major issue is that of implementation.

The passing of the PWDV Act, 2005 was a huge step forward aimed to address the issue of domestic violence comprehensively.

### **Family Courts – A Review**

#### **Origin**

The need of family courts was first pointed out by noted social activist, Durgabai Deshmukh. She along with certain legal experts sent a proposal to the then Prime Minister Jawaharlal Nehru in 1953.<sup>8</sup> The need was to provide speedy disposal to cases wherein women had to suffer in their marriage or within the family. The hectic nature of workload within the regular courts made it near impossible for them to deal with sensitive family matters with special

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<sup>8</sup> <http://legalserviceindia.com/article/I356-Family-Courts-in-India.html>



consideration. It made many women bear the brunt of bitter family experience for a long time which made the formation of specialised court necessary. It was felt that the formal law which focused on evidence and civil procedure code and as well as the major role of lawyers in the traditional courts did not facilitate the possibilities of settlement between the parties (Diwan 1985).

The 59th report of the Law Commission (1974, p. 13) suggests the establishment of Family Courts in each state and the necessity of adoption of a *human* approach along with reasonable efforts to amicably settle matrimonial disputes before going for a trial. Although there had been demand for Family Courts since 1975 by the Committee on the Status of Women and the All India Family Court Conference in 1982, finally with the passage of the Family Courts Act in 1984, Rajasthan became the first state to establish the first Family Court in Jaipur in 1986.<sup>9</sup> A Family court is a court established under section 3 of the Family Courts Act. According to the Act, there shall be a family court established for in each area of a state whose population exceeds 10 lakhs or wherever it may seem necessary (Diwan 1985, 2018).

Data from the Ministry of Law and Justice informs that there are 535 functional family courts in India as on 31st December, 2018. In Assam there are six family courts<sup>10</sup> as of 2019 – Kamrup (two family courts), Barpeta, Cachar, Nalbari and Dhubri (one each).

### **Legislature and issues dealt with**

The Family Court mainly deals with all matters related to matrimonial issues, maintenance, alimony and custody of children in a marital dispute or a divorce.<sup>11</sup> In accordance with the Family Courts Act, 1984, it also deals with-

1. Suits or proceedings between parties to a marriage for a decree of restitution of conjugal rights, judicial separation, nullity of marriage or divorce.
2. For an order of injunction in certain circumstances arising in a matrimonial relationship.
3. For declaring legitimacy of any person.
4. Suits or proceedings between parties regarding dispute about the property.
5. Guardianship or custody of any minor or child.

<sup>9</sup> [https://shodhganga.inflibnet.ac.in/bitstream/10603/166330/1/10\\_chapter3.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/166330/1/10_chapter3.pdf)

<sup>10</sup> <https://doj.gov.in/sites/default/files/Family%20Courts%20pdf.pdf>

<sup>11</sup> [https://www.academia.edu/3354551/Family\\_Courts\\_-\\_Objectives\\_and\\_Functioning](https://www.academia.edu/3354551/Family_Courts_-_Objectives_and_Functioning)

Apart from that, the Family Courts are flexible in the proceedings compared to regular courts. For the ease of people, no party is mandatorily required to be represented by a legal practitioner, however, the court may advise the services of the same as *amicus curiae*.

The courts also receive support from other bodies like the District Legal Services Authority, which provides free legal aid to women in each district. Also, there may be other social services agencies collaborating with courts after due consultation between state governments and High Courts (Diwan 1985, 2018, Nagasaila 1992).

### **Functioning of Family Court**

The Family Courts Act, 1984 focuses primarily on the preservation of the family. As such, the role of the principal judge and the counsellor is very significant. The appointment of these officers require appropriate qualification and deep commitment to uphold the institution of marriage. Some legal scholars argue that experienced senior level district judges should be appointed as family court judges as they would have a good grasp over family law and the rules of evidence and would also have the confidence to depart from set pattern and experiments with newer forms of dispute resolution (Agnes 2011). Literature also suggest a visible preference for women judges in Family Courts as women are expected to have a better understanding of family values. The counsellor plays an important role as all parties resorting to the aid of Family Courts are first sent for rounds of counselling sessions. Duggal and Sriram (2015) highlight the different ways of appointment of counsellors in a number of states and the nature of their work. In Assam, a judicial officer of Grade II is appointed as counsellor on a permanent basis. Counsellors have experienced a rise in the number of cases and also the changing nature of cases.

### **Nature of Cases**

Most of the parties approaching the family courts were about marital discord, maintenance while there are also cases for property and restitution of conjugal rights. The courts aim to reconcile the couples. However, when cases involving harassment for dowry are there, it becomes difficult to go for reconciliation. These cases are sometimes also embroiled in domestic violence which then moves beyond the jurisdiction of the family courts.

With changing times, new issues like those of homosexuality, non-conformity to have children, extra-marital affairs are on the rise. It is also notable that litigants from the Muslim community are on a rise in approaching the legal method for divorce instead of going for the traditional religious method.

### **Critique of FC**

The main objective of the Family court has been the smooth handling of family disputes and reach a settlement between the parties. These courts were established as a result of women's movement, in order to safeguard the interests of women. However, according to the existing literature, the experiences of women in these family courts have been particularly unhappy (Nagasaila 1992). The Family court act stresses on the need to have one Family Court in all cities and towns whose population exceeds one million. This provision in itself is a limitation of the jurisdiction of the Family Courts given that their establishment are only confined to towns and cities. Nagasaila (1992) stresses on how in the Family courts, the nature of the proceedings are mostly dealt with in the private sphere, with all forces and influences outside of the two parties being tried to avoid, thereby, considering family matter as if they are not a part of larger issues within the society. Another criticism put forwarded by her is the unequal power relations between men and women which is overlooked in the family courts. The family courts assumes equality of both the parties in dispute, thereby, completely ignoring the superior position already held by men. Women, being in the weaker position are bound to accept compromises which are biased towards men against the woman's wishes.

The role of counselor in the family courts is also problematic, taking into consideration the infrastructure of the family courts. The courts do not have the proper infrastructural facilities. The counselor, first of all deals with as many as ten cases in a day and hence has limited time to offer to each couple. Secondly, the counselor is also not properly trained in counselling and is but a judicial officer. The main motive of the prescribed counselling sessions is to bring reconciliation between the parties. Even in the Family court act, there has been constant emphasis on settlement between the parties. Such emphasis often goes against the interests of women. Marriage is an institution in which women are most oppressed and are deemed powerless and in such a situation, the urgent need to preserve marriage Ultimately results in biasness against women's interests. It is also assumed that the interests of children are best safeguarded only within the marriage no matter how unhappy the marriage is.

According to Duggal and Sriram (2015), issues like insensitivity towards women's issues, infrastructural issues and interference by lawyers are challenges that needs to be dealt with. Agnes (2001) stresses that so called neutral stand by the counselors may get translated to an anti-women stance, thereby focusing on the need to evolve gender-sensitive counseling process. A prime challenge is the role of lawyers who, many times, misguide the parties and also interfere in the counseling process.

### **Suggestions for improvement:**

Although there are many loopholes in the functioning of the family courts, the establishment of family courts has been considered as a welcome move. Critiques have pointed out that although the initiative of family courts as specialised courts would be helpful in dealing with sensitive matters like that of family matters, the ways in which they function today might result in further disempowerment of women. In order to remedy such issues, the family courts should consider the unequal power relations between men and women and attempt to safeguard the interests of the weaker party, that is, the women with reference to Rights over matrimonial home, custody of children, etc. In case of maintenance too, the court Should order compulsory interim maintenance. Also, conciliation should be made voluntary for the parties and should be carried out by a professional. The employment of the judges should also be made by preferring those who are committed to gender justice (Agnes 2011, Diwan 1985, 2018, Nagasaila 1992).

### **METHODOLOGY**

#### **I. Objectives of the project**

- a. To document nature and forms of domestic violence prevalent in Assam and the socio-cultural context within which it is perpetrated.
- b. To understand implementation of legislations on domestic violence within police stations, counselling and legal aid centres, and law courts – criminal and family courts. Overall perceptions among legal personnel including family counsellors on family disputes and domestic violence, and the effects of such understanding on cases filed will be studied.
- c. To study the impact of and changes if any, brought in by PWDV Act 2005 on addressing the issue of domestic violence and other related family disputes in Assam.
- d. To understand challenges faced by legal institutions and legal personnel in addressing domestic violence and effective implementation of law.
- e. Given the revised time limit this study will attempt to bring forward the plethora of experiences that victims of domestic violence as well as other litigants involved, may have had in their tryst with law. Challenges they faced and support they received will be documented. The fact that building confidence with victims of violence takes more time and psychological energy so that they open up to the researchers, it might not be possible to actually draw in-depth data from this source in a short period of time. However,

attempts will definitely be made to bring forth experiences of victims of domestic violence and their families engaged with legal cases.

## II. Research Questions

- a. What are the nature and forms of domestic violence in Assam? How does the socio-cultural structure perpetuate domestic violence? Where do women turn for help and how aware are they of the existing laws and other state policies and support?
- b. How do legal personnel respond to cases of domestic violence? What is their overall attitude towards, women, family, and domestic violence and laws related to them?
- c. What backgrounds do legal personnel and litigants come from? How do their backgrounds affect litigants' experiences within law and legal personnel's response to them?
- d. What changes has the PWDV Act 2005 brought in dealing with cases of domestic violence? Has it broadened the understanding of domestic violence among general population, women and legal personnel? How is it used by women and how often is it used by legal personnel?
- e. At the police stations and family courts what kind of counselling is offered to litigants of domestic violence and other matrimonial dispute cases? How effective is the MPS?
- f. What are the infrastructural issues and socio-cultural hindrances faced by legal personnel in their dealing with cases of domestic violence and matrimonial disputes in general?

Field work was conducted at:

### **1. Kamrup (Metro) Family Court, Nalbari Family Court, & Barpeta Family court:**

From May 2019 to September 2019 observations were fairly regularly conducted at Kamrup (metro) family courts. From July 2019 to September 2019 observations were conducted in Nalbari family court for a total of 23 days. Barpeta court observations were conducted from December 2019 to mid February 2020. None of these areas are dominantly tribal areas in Assam. However, families/groups from different tribal communities of Assam do reside especially in Kamrup and Nalbari.

### **2. Mahila Police Station (MPS), Women's Legal Aid Cell – counseling centre, District Social Welfare Offices, District Legal Services Authority:**

Observations were conducted at the women's police station, and women's cell, Guwahati for 27 days. However, at women's police station permission was not granted to sit with the officer for a direct observation of handling of cases. Sitting outside the office of the officer in charge,

observation was conducted of the approach of the police in general towards the complainants, the daily functioning and the methods followed by women police personnel. Informal discussions with police personnel as well as women complainants were conducted related to the study. It provided data on the kinds of cases that are reported at WPS, the background of the women complainants, the approach of the police towards such complainants, the expectations of women from police, their struggles and on other such aspects. The overall milieu of the WPS and its effect on women litigants also was observed.

At the women's legal aid cell, first hand observations of the counselling sessions were made. Along with other aspects mentioned above, observation at counselling session provided information related to approach of counsellors, their attitude towards marital-domestic issues including domestic violence, their knowledge and exposure to the wider context of such issues, and their overall contribution to helping law deal with marital disputes and domestic violence cases.

3. In total five **NGOs** working on women's issues and legal aid were approached of which two gave permission to look at their reports and meet their staff. One also gave permission to speak to women in their shelter home who have faced domestic violence and other family issues such as abandonment by children, husband and in law. Government initiatives like **District Social Welfare Offices** of Kamrup Metro & Rural, & Nalbari, District legal aid offices and other government offices related to women's issues, such as state commission for women, were also visited. Sakhi and 181 were also approached.

Court sessions were attended on weekdays. Interviews and informal discussions were conducted with lawyers, family court counsellors & other staff, police personnel, litigants, activists, NGO personnel & researchers on gender issues. The table below shows an overview of the fieldwork done:

Place	No. of days attended
Family Court, Kamrup (Metro)	67

Family Court, Nalbari	23
Family Court Barpeta	35
Police Station (Women's Legal Aid Cell & WPS) Guwahati	27
District Legal Services Authority, Guwahati & Social Welfare Offices (Guwahati & Nalbari)	07
NGOs	21
Women Litigants – Informal Discussions/unstructured interviews	32 numbers
Lawyers Interviews	31 numbers
Police Interviews	06
Counsellors	05
Academicians & NGO staff working on Gender issues	07
Court Records	23

**Court records:**

Case records relating to family issues were collected through lawyers. As matrimonial issues fall under the category of sensitive issues, we were not allowed to have access to them by any court. We also collected case histories while having conversations with lawyers.

### **Field Experiences**

Given the aims of the study to understand domestic violence in Assam and legal responses to it, the focus of field work was on legal institutions and legal personnel on the one hand and women involved in cases related to domestic disputes, on the other. As stated in the project proposal that was sanctioned, this study focused on family courts and its functioning vis-à-vis issues of marital disputes with or without parallel cases filed on domestic violence. Most studies related to domestic violence is largely done within the framework of the criminal courts as domestic violence comes under criminal law other than the PWDV Act. As family courts are a comparatively new initiative in relation to other courts, is hardly studied in Assam, and, is specially established to deal with issues of family and marriage, given the time limit for this project, it was decided to focus on family courts for this study. Further most of the matters dealt with in family court often intersects with issues of domestic violence too and therefore was considered an ideal sight for field work for the study.

Field work for this study thus began from family court at Guwahati (Kamrup district). Access to the court was easy and permission was granted to conduct observation and interviews and interact with staff and litigants in a smooth manner. Similarly at Nalbari and Barpeta courts observations were conducted of court proceedings. However, at Guwahati court observation of counselling session was strictly denied by one counsellor and the other counsellor was on long leave. Access to already solved cases in the record section were also denied on the grounds that all cases are related to family and marriage which are personal matters and thus should not be accessed by outsiders and litigants might have an issue with it. We did not want to engage in a reasoning that only already solved cases are sought to be looked at and that this is only for research purposes. The possibility of upsetting the officials and the judge if we pursued our request prevented us from doing so. We did not want to lose our access to the court premises neither to observation of court proceedings. The counsellor strictly did not entertain us and in one breath denied us permission to observe cases. She did not even let us finish our request and asked us to leave the room. Given that these are part of social science research and we knew we did not have much time to build rapport with most respondents we let go of certain sections of respondents or data sources when permission was not granted, lest we spend time in pursuing something and miss out on others. We had similar experience in pursuing a place of counselling for a month and after a month's running and writing letters and meeting officials we were denied access on flimsy grounds.



While conducting observations at family courts, parallel field work that included making contacts with lawyers, women respondents, court officials and others were made. Informal discussions with women and lawyers were initiated and even with the police staff at the courts. From them a separate timing was requested for conducting interviews. Some of them granted permission for the same and it was followed up at a later time. Others urged to ask them whatever we wanted tight there and then when they were waiting for their turn to come and given the time that was available accordingly discussions were taken up on key aspects of the study. Sitting with women and sometimes their families waiting for their turn at the family court gave us immense information regarding nature, forms, causes, effects of domestic violence and women's experiences with law. Similarly at WPS too a lot of data was gathered related to the above aspects just by sitting with women complainants and having informal conversations. All women's police station is also a legal institution which is established to deal with issues related to women especially those of gender based violence. Therefore, this police station became another primary focus of this study. In similar manner women's cell was referred to us by the WPS and permission was granted to conduct observation at the cell. Observation of counselling provided more indepth data related to various aspects of the study. Access to WPS and women's cell was granted after a lot of running from pillar to post and meeting higher officials at the Deputy commissioner level. The Special cell for women which is an initiative of TISS consumed many of the field work days by constantly demanding some or the other letter and asking researchers to come time and again to get access to their cell. Ultimately despite writing mails, letters and constantly approaching them directly permission to access their cell is still pending. Even lawyers and counsellors needed persuasion to give time with many rejecting our request and some giving us time and never showing up. In some instances, they were not much cooperative and would only answer in - yes, no and I do not know - phrases. While counsellors showed the ethical issues of confidentiality to deny a conversation, the lawyers showed their busy schedules and never responded to many phone calls and mails. These are all part of field work. However, one understand that proper training, sensitization and importance of research to bettering legal systems and its functioning might help in making access to legal institutions and personnel smoother, helping garner more and better data. In places such as southern India, Delhi and other places where awareness regarding women's issues as well as research is more, conducting such studies becomes much easier task than that in places such as Assam.

One of the human rights organisations also dealing with legal aid was approached. However, the head of this organization denied to share any records or help in any way. She also reprimanded the researcher asking the researcher if she will be willing to share her bank account if someone asks her to share such sensitive information. The head then continued to compare our request to share records of past cases that they dealt with to be similar to asking to share her bank account with us, which she will never allow.

The counselor of some government initiatives as well as NGOs were also approached and were interviewed. In all of the NGOs too, the counseling sessions focused on reconciliation. Apart from these, the women's legal aid cell granted permission to sit through the counseling sessions. The sessions are held twice a week. Although it is the women's legal aid cell, it has been noticed that men also come in with their own marital issues. District social welfare offices as well as other state and non-state offices were visited and discussions were taken up depending on the permission granted, availability of personnel, and their openness to speak to the researchers.

At the shelter home of the NGO researchers were introduced to the inmates and their profile was made known to them. A few days researchers just made observations, informal conversations with staff and inmates, looked at annual records and project reports of the organisations, participated as observers in their discussions, and when some acquaintance was made with women depending on their consent and willingness to speak informal conversations related to their case history was made. Similarly some staff gave special time to conduct interview and with others data was gathered through everyday conversations.

Libraries and offices of various NGOs were visited to collect any comprehensive researched material related to divorce, maintenance and other familial issues as well as on domestic violence on Assam. Books, project reports, annual reports, case studies were either photocopied or read in the office/libraries itself and notes were made based on it.

### **Chapterization**

Chapter II, documents the various forms of domestic violence, within marriage, found in Assam and the socio-cultural factors that harbours such violence. It also outlines the effects of domestic violence and strategies women employ to deal with such violence and the various forums that they approach.

Chapter III, deals with legal responses to marital issues including domestic violence in Assam. It elaborates on nature of cases filed, the background of litigants, effects of their

backgrounds on their cases, women's experiences within law, the ways in which legal personnel define marital issues especially domestic violence, their approach towards women filing such cases and their responses to it, the various belief system within the legal personnel including counsellors vis-à-vis domestic violence and divorce, the solutions that they propose and the ways in which they negotiate with the law and their personal belief systems. This chapter also outlines the infrastructural issues that mars the functioning of the legal system in delivering justice to women and the suggestions put forth by respondents to address such barriers.

Chapter IV, is the conclusion to the report and outlines the major findings and arguments of the study. It also puts forward certain suggestions that may be useful to improve women's access to law.

## **CHAPTER –II**

### **DOMESTIC VIOLENCE IN ASSAM**

#### **Introduction**

This chapter discusses the various forms of domestic violence, within marriage, found in Assam and the socio-cultural factors that harbours such violence. It is based on the data collected for the study. Domestic violence takes numerous forms in Assam as in other parts of India. Contrary to the popular claim that gender based violence is almost non-existent in Assam, this chapter shows the acute presence of such violence, taking varied forms across communities. It highlights that given the prevalence of gendered social norms and hierarchies in all communities of Assam, gender violence is normalised in everyday discourse, making women's struggles to escape and rebuild their lives an ardent task. The familial, community and legal institutions, given their patriarchal nature, often act as barriers to women's attempts to escape violence, rather than providing support, as believed. However, the efforts of women's and other rights-based groups including legal aid groups, have brought in awareness and sensitisation regarding most forms of gender violence, providing much-needed space and support structures for women. Researchers of this study also encountered individuals in their personnel capacities as administrators, lawyers, police, judges, activists, and in other such positions who have worked with a gender sensitive lens and made women's access to law and justice a less difficult affair.

In the following sections elaboration on the forms and nature of domestic violence within marriage; socio-cultural factors within which such violence is perpetrated and sustained; various vulnerabilities which women face both leading to and due to domestic violence; strategies which women apply to survive and resist such violence; the support structures available for them; and the ideologies and functioning of such support structures are taken up in detail.

#### **Nature and Forms of Domestic Violence**

The study brings forth that domestic violence is rampant and takes various forms. Physical, psychological, economic and sexual forms of violence are found both on its own and in combination. Beginning with female foeticide to torture of widows and elderly persons the study shows that at different stages of life, women face various forms of violence either independently or simultaneously. The different forms of violence stated by respondent

women who have experienced domestic violence themselves are forced abortion including forced female foeticide, discrimination towards their girl child, child sexual abuse and incest, all forms of wife battering from dowry, verbal abuse, to marital rape, and moral policing accompanied with physical and sexual assault, abuse by their spouses, & extended families. Information regarding such forms of violence was also supported by all other types of respondents such as lawyers, police, academicians, activists, NGO representatives, and from focus group discussions (FGD) conducted with women. Case studies collected from police stations, counselling centres, legal aid centres, court cases, NGO records, newspaper and other online publications also brought forth all these forms of domestic violence being prevalent in Assam.

### **Wife Battering and Physical Violence**

The most reported form of domestic violence that came up in our study is that of **wife battering**. Some also reported elderly abuse and child sexual abuse. Respondents of this study stated that **they have experienced violence at different points of time in their lives. This violence varied in its forms, nature and period of perpetration from respondent to respondent**. The longest lasting domestic violence faced by a woman was for thirty two years (32). Respondents accounts of violence brings forth the various ways in which women face violence throughout their life cycle.

Wife battering victims reported that they **faced physical, psychological, sexual and economic violence**. Even case studies, court records and NGO reports also confirmed such information. Data brings forth high prevalence of physical violence in all forms beginning with slapping to burning for dowry, from tying with chains, burning with cigarettes to acute violence with rods, chains etc. Some of the recurring forms of physical violence that respondents mentioned are acute beatings, knifing, hitting with iron rod, fire wood and motorcycle and cycle chain, kicking and slapping, punching in the eye and strangling, burning with cigarettes, deprivation of food and water, and setting on fire. Along with these forms attempt at drowning, forcing to drink alcohol, kicking in the stomach during pregnancy, chaining to the leg of bed or chair for hours, shutting the wife in a small room, strict control of physical movements outside the house, inserting objects into private parts, and others. Respondents often mentioned that most of these forms of physical violence were **perpetrated in combination by husband alone or along with other members of the matrimonial family**. Restricting a woman from visiting her natal family is a common form of domestic violence reported by many women. Use of dangerous weapons and other objects/instruments such as daggers, knives, garden instruments, scissors, sticks, brooms,

firewood, iron rods, belts and even gun were reported as tools for violence by many women respondents. Data from the study shows that **physical violence in all cases accompanied other forms of violence which may be psychological, sexual and economic violence or all of it together.**

#### Consequences of physical violence

Apart from minor injuries and severe psychological impact, physical violence also results in serious injuries, necessitating intense medical care. Death due to severe physical violence and deliberate murder by setting on fire etc is not uncommon.

One of the survivor respondent *stated that her husband pushed her down the stairs and she was badly injured in the head and had a fractured hip which is yet to recover fully. She suffered pain and was bed ridden for almost a year.*

*Another respondent said she lost vision partially in one of her eye when he hit her head with a bottle. And yet another respondent informed how her husband would often ask her to sleep naked on the floor in severe winter without any mat or blanket and she would fall sick for days after every such night.*

Such incidents of physical violence lingers in the form of memories of fear in women's minds long after it is over and also many a times the physical pain sustains itself in mild to intense forms.

Physical violence during pregnancy has led to severe health hazards both for the mother and the child and at times to miscarriage of the foetus. Women who reported abuse often said that such abuse increased during pregnancy taking advantage of their vulnerable situation. Other women said that physical abuse began with pregnancy and often when it was found that she was carrying a female foetus. Families found it easy to put pressure on women to fulfil their demands of dowry as pregnancy limits a woman's physical movement and also adds additional responsibility of the unborn child. Women were denied food, medical care and rest during pregnancy and in severe cases pushed, kicked and beaten during pregnancy. Some reported being subjected to forced sex and abuse if they denied to co-operate during pregnancy. Two of the survivor respondents narrated how they lost their child due to marital rape during pregnancy. Women's delicate physical condition and immobility during pregnancy compel them to tolerate abuse. The question of paternity and future expenses also makes it difficult for women to leave abusive husbands. Patriarchal norms creates and justifies such hierarchy among husband and wife whereby use of power is made legitimate and necessary to keep the hierarchy and its absolute acceptance intact (Tracy: 2007).

Data from the study shows that physical violence in all cases accompanied other forms of violence which may be psychological, sexual and economic violence or all of it together. Existing literature shows that verbal and emotional abuse precedes physical abuse and at times ends with sexual violence such as marital rape and other such sexual violence (Hyden: 1995, Karakurt and Silver: 2013, Stets: 1990). Further, research worldwide shows that in many instances psychological abuse is likely to be much more prevalent, and it has the potential to pervasively affect women (Marshall: 1996).

### **Psychological violence**

Data brings forth that all survivor respondents have experienced psychological violence whether or not they faced physical-sexual violence. Psychological violence was a universal experience among them and a few of them have only experienced psychological violence and no bodily physical violence.

Some of the forms that such violence took among survivor respondents are scolding and screaming, using foul language and slangs, humiliating in front of others, deliberately ignoring her; alienating her within family, suspicion and accusation of pre-marital and extra-marital relations, preventing her from entering the prayer room and the kitchen as she belongs to other religious and/or indigenous community, isolating her and not including her in daily conversations, branding her as of being of immoral character, of being a bad mother, careless person and useless burden, a liar, mocking her physical features, family and educational status, belittling her and her family, of being barren, denying access to her children, threatening to abandon her, give her a divorce, or bring another wife, threatening to beat her, throw acid on her, kill her, or harm her family members and children, brandishing weapons at her to threaten to kill, bringing other women home, comparing her with ex-girlfriends, lovers, other women acquaintances and neighbours; abusing her for being sexually frigid, and others. Some of the cases mentioned below will bring forward various forms of psychological violence survivor respondents faced.

*A woman of 47 years said, for years my husband would for nothing shout and scream at me, using very bad language and throwing things at me. He did not actually beat me but would say things that were unforgivable. When I was pregnant for the first time and he heard the news he came to me and said 'your frigid body could get pregnant is surprising. That means whatever juice it had will now be completely sucked out'. I was shocked at this. After this he would never touch me and would make it a point to watch pornography in front of me and bring other women home and spend late nights with them alone. He would comment on my body and they would laugh together.*

*In one case the respondent's husband and in-law tortured her for dowry and scolded her for bringing low-quality things as dowry. Such verbal abuse would go on for days and at times they would force her to go back to her parents and get new things. They would not let her return unless something new is bought or some money is handed to them.*

*Another woman reported that her husband would be suspicious of her all the time and ask thousand questions regarding what she did during his absence, who came to visit, etc and when she would stop responding or would say that no one came to visit her he will first verbally abuse her and then start telling her about his exploits with other women with elaborate descriptions of what he did with them and how their body parts were etc. Then he would ask her to stand naked in front of him and describe how ugly her body is. This was a regular feature in their married life.*

*Another woman said in the two years she stayed with her in law every time someone visited them her in law would start speaking ill of her in her presence, make the visitors ask her unwarranted personal and abusive questions, and then go at length to tell them how their son/brother is very unhappy with her because she is not good looking and sophisticated as well as does not have any intelligence.*

There were many women who reported that they were constantly abused because they were unable to reproduce or did not have a male child. Women reported being abandoned because they could not reproduce or they would not have male children.

*In one case the respondent explained how for years she suffered psychological trauma and humiliation at the hands of her marital family because she was unable to conceive. They would force her to meet all kinds of fraud God-men and make her follow weird rituals which would last for days and eat strange things in the name of sacred medicines. She was strictly forbidden from coming out of her room before everyone in the house woke up and finished their daily rituals as it was considered bad omen to see a barren woman's face first thing in the morning. This meant that she had to wait till almost late morning to perform her rituals and have food etc. Further, she was not allowed to participate in any sacred celebrations such as weddings and pujas. Above all these there was constant restrictions in the food she could eat, places she could visit, and constant taunting for being barren.*

Survivor respondents reported that more than physical violence, it is the psychological violence that left long term impact on them. According to them, physical wounds get healed quickly, but psychological pain hurts for a longer time. Psychological violence harms the victims emotionally and affects their mental well-being and self-worth. Like other studies this study also brings forth that psychological abuse is amongst the most painful violence



leaving a long term scar that is experienced by women within domestic violence (Walker: 1984).

As one survivor respondent said, *In so many years I have never regained the confidence that someone will want to be with me. I was told in so many words that I am ugly and undesirable, and that I was frigid and just did not have the necessary qualities to make a man perform. Many times I was told that my breasts were not good enough and that my vagina was loose and did not know how to hold it together for a man etc. It was so explicitly described to me, my undesirable-ugly body that I would want to kill myself. Now even after years of divorce I still cannot believe that anyone would want me and if anyone is attracted to me I am scared that once he comes close he will know my ugliness and frigidity and the same cycle will start. I cannot bring myself to start over again and I think I would prefer to remain single then go through that hell anymore.*

Constant verbal abuse forces the victim to question her self-worth and existence, signifying decreased self-confidence, mental instability, post-traumatic stress disorder (PTSD), etc (Pico-Alfonso: 2005). Women's low self-esteem makes it easier for men to have control over them. Women facing constant verbal attacks develop a kind of "worthlessness", and that weakens their ability to deal with or resist abuse. Effects of psychological abuse entrap woman in the cycle of violence and increases chances of more violence with less resistance (Hyden: 1995).

Psychological violence confuse women and increases insecurity in their minds making it easy to dominate them. Given the overwhelming discourse on violence as only physical, women do not often realise or do not often know how to place the acts of abuse that is perpetrated on them. They remain in self-doubt about their feelings and sometimes blame themselves for misreading their circumstances and imagining their husband and marital family in bad light. Psychological violence destroys the will power of the victim, and full control over victim is gained (Stark: 2007).

### **Sexual Violence**

Sexual violence within marriage as well as outside it but within the domestic sphere was also brought forward by respondents especially women who were victims of domestic abuse.

Women reported a range of sexual violence which they have faced. Acts of sexual violence reported by wives include marital rape, forced sex or asking for sexual favours by males in marital homes or friends of husband, and insistence on performing painful sexual acts imitating pornography. Other than this sexual violence was reported within the domestic sphere such as child sexual abuse and incest. One of the lawyers informed of a case whereby

*a three year old girl was raped by her cousin. When brought to court she could hardly tell details of what happened and neither did have any perception except pain and fear about the whole incident. This gave the benefit of doubt to the accused and he was acquitted.*

*In another case, a woman was raped by her husband's elder brother and then set on fire. She died two days after the incident. In yet another one, a seven year old girl was sexually abused by her step brother and upon reporting to the family she, her sibling and her mother were thrown out of the house by the step father and his family. Sexual abuse within homes and by relatives, friends, family members along with husband is rampant and given the larger gendered order with concerns for shame and family honour it remains invisible to the larger public eye.*

Sexual violence is one of the hardest aspects of domestic violence for its victims to talk about (Felson and Pare: 2005). 'Sexual violence' is a wide term used to describe rape and the humiliating range of unwanted, pressured and coerced sex that may be experienced in domestic violence contexts (Harne and Radford: 2008). Evidence of the presence of sexual violence has been put forward by various studies conducted all over the world (Fahmida and Doneys: 2013; Finkelhor and Yllo: 1985). In this study respondents reported their experiences of facing various forms of sexual violence.

Marital rape by husband has been the most common form of sexual violence perpetrated on women. *One woman reported, that her husband never bothered if she is having menstrual cycle or not, if she is unwell or not, if she is tired or not, anytime and every time he wanted sex despite me not wanting he would have sex. Initial days, I used to give in thinking that he loves me so he wants me so much, later it was more out of concern for him and as a wife's duty I used to oblige despite feeling very nauseated about the whole thing. I would go into depression not understanding why I would feel so bad when my husband is wanting me. With time I realized that he just does not bother for me, if I am having pleasure or not, what it makes me feel, for him it was about his pleasure and my body should be available for him as I was his wife. Whenever, I wanted to discuss the same with him he would make me feel so guilty and would ask me if I would want him to go to some other women or prostitutes. He also used to ask me why I wanted to marry if I did not want to have sex. Sometimes he would blame me for not finding him attractive enough or accuse me of wanting some other men. As time passed I shared it with one of my family friend's wife who had become close to me. I was desperate for someone to tell me if I was the one who is wrong or something wrong is really going on with me. She not only joked about how she wished her husband wanted her like that, but also went and told her husband about it, who in turn made vulgar jokes on my*

*husband, which invariably resulted in me being assaulted and raped as a punishment for speaking ill of him, for making something so intimate public and more so for bringing embarrassment on my husband.*

Providing sex to a husband on demand is considered a key component of a woman's role as a wife. This inevitably forces a woman to submit to her husband's sexual demands. Women are compelled to have sex, even when they do not want to, as a result of marital obligations, throughout their lives (Finkelhor and Yllo: 1985). Thus, under the shadow of wifely duties, women face rape, which in India is still not legally recognised as violence. Rather, it is suppressed by being labelled as a woman's failure to perform her wifely duties. It is found that wives prefer to remain silent about sexual violence within the domestic sphere, especially when committed by their husband.

A woman who is raped by a stranger lives with a memory of a horrible attack; a woman who is raped by her husband lives with her rapist (Mahoney and Williams: 1998). As shown in above case studies, rape in marriage is not a onetime event; rather it occurs repeatedly. *Some of the respondents who spoke of sexual abuse informed how every time they were beaten by their husband there was forced sex too. Sometimes, husband would use it to patch up and show his love for her and ask her to forgive her, knowing very well at that point being battered she is not wanting to engage in sex. In the courtroom, a few women spoke of sexual abuse by husband as one of the reasons for which things in their marriage was difficult.* Despite all these narratives from women at various forums sexual abuse within marriage i.e. marital rape is made invisible both by law as well as legal personnel who hardly in their everyday dealings give importance to such issues brought forth by women. Sometimes the entire dealing is done as if the matter of marital rape was never mentioned by the complainant. There is a deliberate deafness to such matters. *An NGO staff said: Women face severe sexual violence. But they don't understand that sex against their will is a kind of violation. Society does not welcome an open discussion on issues related to sex. Women suffering from various forms of forced sex tell us how it is difficult to handle such behaviour but rarely make it a basis for complaint. They bring up this while narrating other marital issues or other forms of violence.*

Marital rape occurs at a much higher rate than reported. Women are found to remain silent because of the fear that if they do not perform their sexual duties, their husbands may marry another woman. Legal non-recognition, marital insecurity and a conservative societal view on sex and marriage make the situation tough for women to come forward and reveal marital rape and take steps against it. Moreover, the victim's ignorance to identify a violation of

wives' right to consent to sexual involvement and the considering of sex as a marital duty often normalise marital rape and hence force more and more women to suffer it.

### **Economic Violence**

Domestic violence is a barrier to women's economic empowerment. It prevents them from accessing jobs, affects their work productivity, marring their potentials of growth in the employment if any, and making them vulnerable to shacking, abuse within workspaces and their entire work environment. To live an empowered life financial independence and stability are most required. Importantly when women are dependent – unemployed, economic violence leads to further submissiveness because they have never known how to go out and earn for themselves and cannot imagine a situation where they have to do so.

In this study, many respondent women along with women litigants in the court constantly brought up issues related to economic discrimination, control and abuse, perpetrated by husband and families-in-law.

Respondents described the financial abuse they experienced in matters of maintenance of the household, job and workplace, child and health care, etc. The various forms of financial abuse reported by respondents are taking away wife's money without informing her, putting restrictions on her to not do her job, not giving her money for daily expenses, asking her to get money from her parents or brothers-sisters etc. One of the recurring forms of economic violence that women faced was of being deprived of handling their own money either earned by themselves, saved through meticulous home management or that which was given to them by their natal family and friends. Many working women reported that their entire salary was taken away by their husband or parents in law and they often had to beg money for their needs which was handed to them at times with a dose of abuse. *One woman said, I earned enough to have lived on my own in a comfortable condition, but my husband saw to it that I begged him for money even to buy a cup of tea and snacks. Another said, my father in law would control all my money and if I wanted some then I had to go via my mother in law who herself never handled money but always asked her husband to give some for her needs. It was such a tedious and often humiliating process because even when I needed to buy sanitary napkins I would have to explain it to my mother in law who would in turn explain it to my father in law and the process would go on and on. Many women reported that even for household expenses their husband would not give enough money but they instead would spend it on their friends, on drinking, eating outside, and buying fancy items for themselves etc. One women said her husband throughout his life hid money from her and would never tell her how much he has, how much he has saved, and every time she wanted money for*

*household expenses he will lock the door and take out money and give after much negotiations.*

*In another case the woman reported that her entire salary was in control of her husband. She had to beg him every penny and sometimes he would scream abuses at her for not knowing the skills of managing a house with right amount of spending. He never gave her any money to buy something for herself, or to have some snacks outside or any such small spending. All the salary would be kept with him and saved in his account.*

Some women reported that not only did their husband not give them money but would send them to their natal home to return only when they got money from her parents or siblings. *One woman reported that her two children were able to make it through primary school due to help from her brother because despite earning enough her husband refused to spend money on them including school fees and medical expenses. In another case, a woman reported that despite she being in a very good administrative position her husband controlled all her money. Her husband was a doctor. Even when her parents and family visited her he would not give her money to buy good food or cloths for them. He would also get very angry and create unpleasant situation if she requested him to take her family out as to visit tourist spots as they are visiting. She reported that she was so embarrassed that after a point she would discourage vehemently any visit by her family members. Her husband liked the fact that her family members visited for a day so that they get gifts and many other things for them but that was his only concern to i.e. to get gifts and food items and other nice things from her family members. In return he would not spend a penny for them and would grudge their stay beyond a day. Even with a good salary of her own she would live like a beggar. It was too much for her to take and the abuse that came with it, so after 4 years of marriage she filed for divorce.*

Another woman said, *her husband would shout at her if she asked him to even get a samosa from outside. He would grudge her buying fish or meat because it cost more money. He would throw utensils and heap abuses and pull her plate away from her while eating and take away pieces of meat and just leave potatoes for her. She suffered for every penny she spent even on the household.*

A few respondents also informed how *during pregnancy their husband would just leave them at their natal place and never send a penny for the pre and post natal care, because it was very expensive and their marital family thought of it as an economic burden on themselves. These respondents reported how it was very humiliating and depressing for them to be financially burdening their natal family.*

Restricting wives from doing job was also reported. Keeping the wife unemployed keeps them dependent on the husband and, ensures the husband's control over her. Some husband not only restricted their wife from doing jobs but also created trouble in their workplace. Being embarrassed, these women had to leave their jobs. *One woman respondent reported how her husband would regularly make a scene at her work space making her embarrassed so that she gave him whatever he wanted. This led to difficulties in her workplace and people started complaining about the disturbance. It took lot of persuasion for her to retain her job despite her husband's behavior but she always lived with the fear of being thrown out of job.* Women's economic independence and financial self-sufficiency increase their decision-making power and strength. Economic independence gives women confidence to decide and do whatever is best for them. Greater financial independence empowers them with better outside options, lowering the barriers to leaving the abusers and not tolerating abuse inside marriage (Aizer: 2010). Socio-cultural gender roles govern marital relationships in society. Due to the paid nature of men's work, men have more bargaining power in the home. This unquestioned authority and privileged position of men is challenged when women become economically independent (Chin: 2007). A wife's independence 'signifies a challenge to a culturally prescribed norm of male dominance and female dependence' (Macmillan and Gartner: 1999:949). To stop women from challenging the sanctioned gender role by being economically independent, and to reinstate men's authority, violence is used as an important means.

### **Causes of Wife Battering**

The data shows that domestic violence in Assam is perpetrated due to various factors. The most important of all the factors that the study brought forth was the gendered patriarchal nature of family and social structure because of which domestic violence was perpetrated. In many cases of domestic violence that women spoke of or observation and discussions brought forth there was no clear cause of violence other than the patriarchal gendered norms which sees violence on wife as natural and normal. For example in the case below where the victim narrates,

*My husband, usually comes home in a bad mood and beats me up for every small issue or rather for no reason at all. If the food is not up to his liking he will beat me with his belt. If he thinks that I came home late from work though I would not be late still he will slap me. My family constantly remind me that I am married to him and so I have to fulfil my marriage vows and try to reform him with tolerance, love and care. They say with time things will be*

*alright and even if it is not still one needs to take it as fate and go on. My husband knows I have no support from anyone, thus takes advantage.*

The above case reflects the gendered nature of wife battering. Marriage and family norms entail that the wife should tolerate violence and further take it upon herself to reform a “wayward” husband with tolerance and love, and under any situation not leave him. Such patriarchal expectations/norms along with financial and social constraints that are again a result of gendered social norms makes wife battering possible and is the root cause of domestic violence. Violence is seen as a natural way of masculine behaviour especially by the husband or that of in law within a marital home and was used whenever it pleased the perpetrators. Such behaviour was justified with finding some or other flaw with the wife/daughter in law not performing her duties well. Such accusations included that the woman did not make good food like in the above case, never did the house work well, she is lazy and short tempered, she is not smart and sophisticated, she was not paying enough attention to his parents, or to children, or she did not know how to maintain calm in the house when the husband returned from work, or that she does not know how to dress or is too unsophisticated, or asked for money, or wants to go to her natal home frequently, or that her family members visit them too much, or she keeps in touch with her old friends and many more such factors that are used to justify violence. Reasons forwarded for domestic violence is clearly an attempt to justify the violent behaviour of the perpetrator and hides the patriarchal set up that fosters such violence. However, numerous research as well as data from this study shows how it is largely not for any particular factor that domestic violence is perpetrated. Instead such causes are forwarded to hide the sense of entitlement that patriarchal family systems grant on husband and matrimonial family over daughters in law/wives within which violence is seen and accepted as normal and natural.

However, some of the concrete factors that was brought forth by various respondents as the basis of domestic violence are discussed below:

### **Dowry**

From the cases observed at family court, women’s cell, women police stations, as well as from lawyers, NGOs, women victims themselves and court records, dowry is found to be one of the important factors leading to domestic violence. Often case studies bring forth that dowry demand can begin at any stage of marriage and need not be only in the initial years. Data also brings forward that dowry demands are not always one time but can be at intervals or a regular matter in many matrimonial homes. With increase in dowry demands violence against the woman increases and sometimes leads to critical forms including death. As

reported by one lawyer, *a 75 year old woman along with her son, set the daughter in law on fire for dowry. The plan was to remarry the son to a distant relative's daughter who could bring more dowry.* In another case reported by the police, *husband set fire to his wife with the help of his cousin so that he can marry another woman who was quite rich compared to his current wife. Upon investigation the cousin confessed to the police as he was angry on the husband for not meeting his demands of money in exchange of the help provided.*

According to the NEN (2004), till a couple of decades back, the concept of dowry was practically unknown to the majority of the population in Assam but, over the past few years there have been increased reports of dowry related cases in the state. Respondents especially NGO staff and activists, as well as academicians and some lawyers informed that dowry is not an age old tradition in Assam. Instead it is a new phenomenon and still not found everywhere in Assam. They blamed the media, the acculturation with other communities outside northeast and the consumerist culture to have brought in dowry to Assam. One of the activist said, *in Assam we did not know what it is to take anything from the woman's side, instead the man's side would take jewelry, saree, and other things and go to the woman's house for marriage. We think contact with other cultures is a good thing but if you look at dowry and the violence that comes with it, then you wonder if that is always true. We got it from people from outside northeast.*

Another respondent said, *whatever people see in media they want to possess it and therefore dowry demands are made. In our times in Assam it will be a matter of shame for the man's family to ask for any financial help from wife's family even during times of need. Culturally we were very proud but now with consumerism, commodity fetish, & media we have lost our culture, belief and with it our pride.*

Dowry has been found to be the reason leading to physical and mental violence upon women. It also causes mental and financial pressure as well as exploitation of women's natal families. Various forms of violence and women being sent away to natal homes, and abandoned by husband is not uncommon. The presence of such acts reflects the devalued status of women in society who are victims of consumerist dissatisfaction (Teays: 1991: 29). Such violence inflicted for acquiring dowry results in various physical and psychological harms including death. *In one case reported by a lawyer, a woman was sent back regularly to her natal home to bring money time and again. This woman was tortured by her marital families regularly for dowry. Often her father would bring her back to the marital home and persuade parents in law to take her back and would give some amount of money too. However, this went on for years. One evening the woman who attempted suicide because she was once again abused*



*by her husband and in law and was being threatened that this time if she does not get the amount they are demanding they will marry the son elsewhere. She was so depressed, scared and could not take it anymore and decided to take her life by taking a large quantity of medicine. However, this left her paralysed and in a state of coma for years and is bedridden forever and is fed through tube.*

Many such cases are reported regularly where women in Assam are harassed for dowry and that of dowry deaths and other mishaps in relations to dowry. NCRB data shows a steady rise in dowry related crimes in Assam. The menace has taken such proportions that dowry demands and deaths have also become part of those indigenous, and, religious communities whose customary or personal laws would prescribe bride price rather than dowry. Court observations and interviews of respondents brought forth that women coming from all communities including tribes and Muslims reported of dowry demands and violence. For example in the case below:

*Runu Begum was married to Samadul Ali. On 15 October 2002 at about 7.30 A.M. at Maroi, under the Sipajhar police station. Bhebua Sheikh, Halima Begum, Tahed Ali and Mazizul Haque set Runu on fire for dowry by pouring kerosene on her. She got severe burn injuries and succumbed to her injuries on the same day (Cr appeal no 141 of 2008 decided on 2.12.2009).*

*In another case, a man from an indigenous community drowned his wife in the river while taking bath in the river due to dowry related dispute. This couple started arguing about getting dowry from her father and in rage the husband kept pushing her inside the water, not letting her come out to breathe. In the process she suffocated and died.*

Respondent activists, lawyers, police and others reported that dowry demand often leads to taking loans by parents and brothers from various private and state sources to fulfill dowry demands. Dowry has become almost an integral part of marriage systems in Assam. Legal personnel have constantly informed throughout the study that dowry related cases are the most common complaints that are filed in Assam. However, they caution that not always it is true that dowry is demanded but to make their cases strong women add dowry to their story or are advised by lawyers to do so. This will be discussed in detail in the next chapter.

**Son preference** is among one of the often mentioned factors brought forth by respondents and in case studies that is at the roots of domestic violence. In a gendered patriarchal society, producing a male progeny is so important that women get their status often through reproducing a male heir. This is tied to the idea of lineage and mukti to parent's soul (Rydstrom: 2002: 362). Such belief system creates space for the perpetration of domestic

violence on wives who have not produced a male child. Some women respondents pointed out that they were abandoned by their husband because of their inability to give the family a son. Such abandonment of wives and girl children is also discrimination and violence against girl child which is included in the broader definition of domestic violence. Thus, son preference not only affects women but also adversely affects girls, leading to unequal treatment and negligent behaviour in matters of food, education, medical facilities, etc., towards girls. At the individual and family levels, the primary consequence of son preference is direct pressure placed on women to produce male children. In this process one option is to simply allow a family to grow until a son is born, no matter what the woman has to face both in terms of health or in other aspects (Barot: 2012). One of the lawyer narrated *a case where his client had filed a case against her husband for maintenance. Here the complainant was the second wife of the man, who had his first wife and three daughters. This man had permanently left his wife at her natal place and did not even provide maintenance. When the case came to light his first wife also narrated the ways in which she was harassed and violated by her husband and his parents for giving birth to three daughters. She also reported how her three daughters were constantly abused and neglected in all matters in the family. He did not grant the first wife divorce as he then might be asked to pay maintenance. In the meanwhile he trapped this second woman into marriage by portraying that he is unmarried. When she got pregnant he tricked her into having an ultra sound to find the sex of the foetus. When he found that it is a female child he started pressurizing her to abort. When she refused to do so he would beat her and not give her food for days. Once he pushed her down the staircase so that she loses her child. Fortunately she survived and the child also was safe. She then decided to go back to her natal family where she gave birth to a daughter. The husband refused to take her back and even come see the child. It is then that she decided to file a case of divorce, maintenance and child care. As the inquiry went on the husband claimed that he was never married to the second wife as he already was married.*

In another case,

*Woman of 24 years, teacher was battered by her husband who was an engineer in an institute of importance. Their married life was normal until the birth of their daughter. Husband started pressurizing the wife to have one more child and would often taunt her for having a daughter. She was not prepared for immediate pregnancy and would resist such demands upon which he would sometimes force himself on her just to make her pregnant. She had unwanted pregnancy and matters got worse after the birth of their second daughter. He started inflicting both physical and verbal violence against her and also the elder daughter.*

*He threatened to remarry if she does not have a third child and give him a son. His parents too supported him whenever they were around and pressurized her to have a third child. Things came to such a situation that she could not take it anymore especially the constant fear of being abused both physically and psychologically. One day he threatened to throw her out along with the daughters and then she decided to file a complaint.*

**Extra-marital affair** is another factor that led to marital discord and domestic violence. Women reported of their husband having relationship outside marriage and comparing them to their girlfriends/lovers inflicting psychological violence. Some women also informed of physical violence due to their questioning of the husband's relationship with other women. Further, women also reported of the negligence and denial of sexual intimacy by husband when he had relationship with other women. During pregnancy some men took it as a plea to have sexual relationship outside marriage and would brag about it to their wives poking fun at the way they look in their pregnant state.

Suspicion of wife having extra marital relation also leads to violence. Husbands with a suspicious nature inflict violence upon their wives. Often suspicion leads to use of harsh methods of control thereby not just limiting wives autonomy but also inflicting injurious violence on them (Peters et al., 2002). This study also brings forth how suspicion led to frequent domestic violence on wives as in the cases below:

*One respondent informed that she could not continue her marriage with her husband because of his suspicious nature. He did not allow her to talk to anybody or keep any contact or communication with anybody. She was forced to withdraw all kinds of social connections. When she returned from her office he used to search her clothes to look for any clues or signs of her being in relationships with other men. He would sometime come to office and ask ridiculous questions in front on everyone and shout if he was not satisfied with my explanations. At times he will throttle me and scream that he will kill me if I had any relation with other men. Marital rape and other forms of physical and verbal abuse was common.*

*In another case the respondent said my husband would often lock me in a small room without windows and go for work. He would be so suspicious of me that he will not let me speak even to the milkman or to any other male vegetable vendors too. He hardly took me to social gatherings but if we attended any then I was strictly forbidden from speaking to men. If he found any men speaking to me even acknowledging me then he would beat me severely when we returned home all the while shouting slangs at me and saying that I should get into prostitution if I was so interested in having sex with men.*

Similar to Leela Visaria (2008), this study, too, finds that husbands being angry with their wives for talking to other men results in the accusation of the wives of being unfaithful and having illicit relations with other men. Due to this suspicion, husbands restrict their wives from going out of the house or talking to their male friends or relatives. Insecure nature as well as the larger notion of wives as property both as sexual and otherwise creates the space for men to believe that they have a right to restrict women from having any kind of contact with other men (Peters et al.: 2002). Wife's infidelity is seen not only as an infringement of husband's rights but also as a demonstration of his failure to control her at all cost thereby bringing shame on himself and his family. So to keep the honour of the family intact, men surely need their wives' fidelity, and to ensure fidelity violence serves as a tool (Vandello and Cohen: 2003).

On the other hand lawyers and police reported that women too had extra marital relationships for which they brought false complaints of domestic violence so that they can trap the husband into divorcing and paying alimony. This will be taken up in the next chapter.

**Alcoholism** is another commonly mentioned factor that respondents said leads to domestic violence. Alcohol often acts as a facilitator and contributing factor of domestic violence (Carlson: 1984). It also plays a role in the escalation of aggressive behaviour from verbal threats to physical violence. The following responses illustrate the same:

*A woman who worked as a maid would skip her work many days in a month because she would be beaten black and blue by her husband when he was drunk which was fairly regularly.*

*Another woman respondent whose husband is a business man with very high income reported that every night he would spend half his earning in a bar with his friends and sometimes entertain those drunkard friends at their home. If she questions such spending then he would scream and shout abusive words at her and then for months refuse to give her any household expense claiming that now she will learn a lesson on questioning him when he is the sole earner and has the capability to entertain himself and his friends while taking care of the family.*

*In another case the husband regularly came home drunk and bet his wife and children and forced sex on his wife.*

*In one the most tragic cases reported by a widow, she mentioned how her husband all his life spend all his money in drinking and never cared for the family. When he was sober in the day he will go to work, earn his money, take care of children and speak to everyone*

*nicely, but in the evenings he would get dead drunk and shout slangs at everyone. In such times if she interfered then he would beat her badly and throw her out of the house. So it was better to remain silent for the sake of herself and her children. This continued for almost two decades and as he grew weak and earned less and no one gave him money to drink when he begged, he grew more frustrated and started fighting with wife and son for money sometimes beating them. One morning they found him dead in his room. He has committed suicide not able to take the frustration of begging for drinking etc.*

*In an awareness meeting a discussion was held focusing on alcohol and domestic violence. Women shared their experiences of sexual harassment, polygamy, extra-marital affairs, divorce, etc., resulting from their husbands' alcoholic habit. Some of them also shared how their husbands remain drunk all the time, and they have to be the sole earner for the family. They also shared that they had to repay the loans or debts of their husbands.*

*In this study all legal respondents as well as NGO staff, too argued that alcohol is the main cause of domestic violence. Some of them mentioned that it is found more in lower classes.*

Research shows that domestic violence is about power and socialization and not really a product of alcoholism. It is found that when men are violent they use alcoholism as an excuse for their behavior. Men in their drunken state rarely cause violence or disruption at their workspaces, or beat of their friends and colleagues. They use violence and abuse especially and more particularly at home within the domestic sphere and more so on their wives and children. This goes a long way to bring forth the power politics involved in alcoholism and domestic violence. The same man who comes home drunk hardly misbehaves with father or brothers but with wives and children. Thus research urges us to probe the power relationship in domestic violence – wife battering rather than placing it within alcoholism (Agnes: 2002, Friedman 2006, Galvani: 2006, Martin 1976). Blaming alcohol keeps the problem outside the power structure, which makes such violence possible. It absolves the man of his violent behaviour.

#### **Inter-caste/religion/tribes marriages:**

There is a constant denial of the presence of caste related discrimination and presence of caste by itself in Assam. However, this study shows that cases of domestic violence is perpetrated on women due to the caste she belongs to. Inter caste marriages especially between Brahmins and other castes, or that between castes regarded as dominant castes in Assam with relatively lower caste groups or that of caste Assamese individuals with partner from any tribe leads to domestic violence and non-acceptance of the woman. Often when the

woman belongs to lower caste or tribe or Muslim community domestic violence is perpetrated by marital families in different ways, beginning with stigmatization to physical abuse and death. In a case reported by a lawyer, *a Sarma boy married a backward caste woman, and his parents did not accept the girl. They constantly abused her, made her feel lowly, used slangs against her parents and made her do all household work and discriminated her against the other daughters in law. She tolerated all the abuse for the sake of her husband who liked her. One day when the husband had gone for a long tour he was informed that his wife is dead. She had injury marks all over her body and was found dead in her bedroom.*

In another case, *similarly a sarma boy had married another caste girl to which his parents disapproved. The newly wed took a house and stayed separately for a year. Boy's parents would always visit them and make a scene and leave. They will coax their son to leave his wife so that they can marry her in a good Brahmin family. They would allow him to visit home without her and try to change his mind. Slowly the girl could see changes in her husband's behavior and confronted him when he would not come home for certain nights and stay back at his parents without informing her. This led to differences between them. One night the husband strangulated his wife with a pillow and with the help of his friend. He then asked his friend to tie his own hands to show that their house was burgled and it's the burglars who killed his wife. The friend within two days confessed about their criminal act.*

Inter caste-community marriages are seen as lowering of status and honour of the family and therefore different forms of violence are perpetrated on women. Sometimes the violence is from both sides i.e. both natal and marital families shun, stigmatize, discriminate, ban, and violate women for getting involved in inter caste-community relations and marriages. Domestic violence is thus also a product of ethnocentric caste, religious and community conservatism.

To conclude, domestic violence against women in Assam follows similar trends as found worldwide. In this study, given the sources of available data, prevalence of wife battering comes forth significantly. Other forms of violence did not come forth very emphatically also because the awareness regarding such violence is very low and for people to discuss some of these forms of violence to researchers, needs long term field work through ethnographic method within families. Women's movements as well as civil societies exclusive focus for a long time on the issue of wife-battering within domestic violence has also created awareness more related to wife-battering rather than other forms of gender violence. This

has led to wife-battering cases coming more to light than other family violence cases (Kumar: 1993; Khullar: 2005).

Women's experience of physical violence ranged from minor slaps to life-threatening acts, as well as financial, sexual and psychological violence in domestic relationships. Among all forms, sexual violence has been found to be less reported. Along with other forms of violence, dowry-related violence is common in Assam and shows rapid growth in the last two decades. Dowry, which hardly existed in Assam, has become a common occurrence and appears frequently in electronic media and newspapers as well as in court cases. Victims are found from all sections of society, irrespective of economic, caste, ethnic, religious, regional or educational background. Perpetrators of wife battering are not limited to husbands; rather different members of marital family including cousins are involved in wife battering and other forms of abuse such as sexual abuse. In some cases co-wives are found to be involved. The consequences of domestic violence ranged from minor to severe damages, both physical and psychological, as well as economic. Health of women and children exposed to such violence suffered in multiple ways. Economic vulnerabilities were a natural consequence in terms of battering, abandonment, separation and divorce which affected not just the wife but children if any. The reasons for domestic violence that this study brings forth are many. Among these, dowry, extra-marital affairs, alcoholism, inter-community marriages takes significance.

### **Women's Response to Marital Disputes & Domestic Violence**

Domestic violence is considered a private issue and often remains hidden. Due to its private nature, domestic violence is often referred to as an 'invisible' crime. Only a small number of domestic violence cases are ever reported – most of the cases are unreported and thus remain invisible in society (Gracia: 2004). Toleration of domestic violence by victims silently adds to its invisibility and increased victimisation. Also over-emphasis on family sanctity and privacy produces unwillingness among authorities to intervene as well as among victims to ask for help for violence which occurs within the family (Myers: 1995). This also shields abusers from being punished (Bailey: 2012).

In this study, women were found to react to domestic violence mainly in two ways: either they tolerate violence, or they seek intervention or help to end the abuse. During the victimisation period women employ various strategies to make the situation less severe. However, when toleration and the use of coping strategies do not solve their problem, women seek outside intervention. Women approach various agencies to seek help. Women's

selection of agencies for help-seeking is based on their specific situations. The differences in women's situations and conditions add diversity to their experiences of help-seeking. Help-seeking is an important step, and it shows that women are not mere victims but survivors too.

Various factors influence women's responses to abuse and decisions of help-seeking. Silent toleration of domestic violence is the most important coping strategy that women employed. This period varied from a year to all through their married life sometimes for ten years and sometimes for lifetime. Such silence as well as help seeking is based not just on a woman's strength to tolerate violence, but her socialization, belief systems of her family, community, & religion, family support, financial condition of herself and her natal family, responsibility & idea of wellbeing of her children, responsibility towards unmarried female siblings, idea of family honour and status, her own social networks, legal awareness, and overall awareness of that society towards marital issues and domestic violence, as well as the availability of and awareness regarding support systems such as counselling centers, shelter homes etc., among many other aspects. Gender role socialisation normalizes many forms of domestic violence, thereby women fail to realise the subtle forms of violence they experience in effect constantly tolerating them (Frias and Angel: 2007).

During observations at the courts and police station many women complained being thrown out of homes by husband & in law and being destitute time and again. Homelessness adds to vulnerabilities and therefore women prefer to remain silent as compared to speaking out against violence or trying to prevent it. Many said they wanted to keep the home environment peaceful and preferred to not speak of violence or engage in arguments with husband and in law. They said that many times they would just pretend they have not heard the abuse or that it does not matter to them, so that an argument does not take shape or the taunting did not lead to more serious abuse.

Some of the respondents of this study expressed that silent toleration is not a solution to violence, but they had no other option as they were burdened down with so many concerns beginning from their parents to their children and from family honour, stigma and segregation by larger society to financial incapacities. One respondent said *'growing up I have faced sexual violence both outside and inside my own family. It was as if being born a woman it is natural that you will be violated by uncles, classmates, strangers etc. With such experiences in my life and knowing that many women had faced similar violence I tolerated abuse from my husband because I knew that it will be no different outside marriage. Especially when a woman has left her husband it is she who is blamed and thought as*



*available. Even today not much has changed in most places. So for me the choice was to tolerate abuse from husband and to be stigmatized, and make myself vulnerable to abuse and harassment in various spaces. For a long time I thought tolerating the abuse at home is better so I tried to stay on but it became impossible to tolerate after 13 years of tolerating it. I decided to take the risk. I grew courageous and matured in these thirteen years and knew that there is no absolute relief from violence in our society. So I thought let me atleast take care and confront one form of violence at a time and decided to file for divorce.*

Women are not silent sufferers always, and they do try to escape violence. For that they often seek outside help to end abuse in their lives. Violence at times acts as a precipitating factor and motivates women to seek help. Help-seeking has been found to be one of the ways women respond to domestic violence. Victims use different sources for help at different times and in different situations. Both formal and informal sources are used for help-seeking to escape, resist and fight domestic violence. Women have approached the police, legal services, natal families, relatives, village courts and women's organisations, seeking help to survive in violent situations. The outcome and experience of help-seeking also varies from woman to woman.

The data collected in the study brings forth the existence of various informal sources of help-seeking and dispute resolution mechanisms which are often used by victims of domestic violence in Assam, especially in rural areas. Informal sources of help-seeking include natal families, friends, relatives, village courts and women's groups. As found in the data, natal families, friends and relatives are approached mostly for the purpose of a safe shelter. Friends have been a source of information about available options to seek help, contacts of legal or NGO professionals. Friends are also found to provide emotional support to victims by sharing their pain. Village courts and women's groups are approached for solving the issue of violence and seeking justice. Women from rural areas informed that they have used nari adalats for help resolving their cases.

### **Conclusion**

This chapter thus brings forward various forms of domestic violence perpetrated on women in Assam. Among the various forms wife battering was most reported for this study. It is also because this study largely concentrated on marital-familial issues rather than all forms of domestic violence. The field work for the study at family court, all women police stations, women's cell etc also led to finding more wife battering related cases rather than other forms of domestic violence. Further, given the larger narrative most of the reported cases of domestic violence are related to only wife battering. Other cases such as female foeticide,

child sexual abuse, were engulfed within wife battering rather than coming out on its own. Child sexual abuse is mentioned at times within cases of wife battering but on its own only three respondents informed us about cases filed of that nature. Given the larger silence and non-acknowledgement related to child sexual abuse and other forms of sexual abuse within families, such cases do not largely come out of the private sphere of the domestic. To understand and trace such cases a study for longer time period and of ethnographic nature is necessary.

Domestic violence is present in all communities in Assam in varying degrees and therefore litigants comes from all spheres of life. The larger gendered patriarchal family and social structures lies at the root cause of domestic violence and condoning of it. Continuance of gendered norms and belief systems leading to gender based socialization of both men and women, as well as the continuance of gender division of labour, property and other aspects of everyday life, makes women vulnerable to domestic violence. Despite the claim that women in Assam enjoy an egalitarian status, statistics on sexual assault, dowry, wife battering, kidnapping etc shows a different story. Visit to shelter homes, as well as police stations and courts also brings forth the ways in which women in Assam face discrimination, vulnerabilities and violence. Despite changes in access to education, jobs and other opportunities the larger gendered order remains quite strong continuing to mar women's lives in myriad ways especially within marriage. Different forms of violence is not just perpetrated due to the larger gendered order but also is used to control women and continue dominance over them. Domestic violence is thus both a cause and consequence of women's unequal status in society triggered by gender norms and rules. Therefore this chapter brings forward the ways in which various forms of violence is used to tame women into subordination, and is perpetrated given women's subordinate status. Through experiences narrated by victims of violence it can be established that a culture of silence is built around such violence. This culture of silence expects women to tolerate violence both within the homes and outside and mend their own ways in the pursuit to avoid such violence rather than question the violence and the culture which propagates it. Women in fact do so in most cases learning through experiences and due to their own circumstances to remain silent and tolerate rather than speak out and invite more violence and segregation. Women do however look up to formal and informal agencies for help seeking in certain circumstances. They largely look up to the family first for help and then go out to the public institutions including law. The next chapter will deal with the ways in which the formal legal institutions like police stations and law courts respond to and deal with women's cases of violence against them.

### **CHAPTER -III**

#### **LEGAL RESPONSES TO VIOLENCE AGAINST WOMEN: A STUDY IN ASSAM**

##### **Introduction**

This chapter brings forth the responses of legal system to women's quest for justice in Assam. It is based on analysis of data collected through interviews of women who have approached legal systems at any stage of marital discord or domestic violence, interviews of legal personnel – lawyers, police and counsellors at family courts, NGO personnel working for legal aid and on gender violence, as well as observations at family courts, police stations and counselling centres. Data is also based on content analysis of case studies collected from court cases published in law journals, case records from lawyers, and women police station. This chapter, argues that legal personnel actively reinforce gender biases by coalescing patriarchal social ideology with legal ideology. Subjective interpretations of legislations, conservative and vague definitions of violence, discriminatory treatment of women reporting violence and especially belonging to marginalized groups, blaming of “victims” are some examples. The study also brings forth that family courts are a much needed and appreciated initiative related to women's access to law, yet given the highly disproportionate ratio between marital cases brought to court and the number of family courts present much remains to be addressed for providing better access to women. The lack of enough family courts, along with infrastructural lacuna, lack of legal awareness, as well as the gendered approach of legal personnel and counsellors towards marital and family issues, makes women's access to legal relief difficult, confusing and complex experience.

##### **Nature of Cases Reported**

As discussed in the last chapter, despite the presence of various forms of domestic violence, yet it is wife battering, dowry violence, wife murder, divorce, separation, maintenance, restitution of conjugal rights, and child custody cases that are largely brought to the courts. In the family court, women in their deposition, as well as in counselling sessions often speak of wife battering. They narrate experiences of physical, psychological, economic, and sexual battering to make their cases of divorce, separation, and maintenance stronger. However, most of these women when asked reported that they did not file any criminal case of domestic violence against their husband or in laws. Even the lawyers, and counsellors also informed that generally they try to resolve the cases amicably and not really advise their clients to file

cases of domestic violence. Thus most cases of domestic violence are only discussed and brought forth as and when necessary in family courts. Only a fraction of such cases of domestic violence that is discussed in family courts and counselling centers actually are taken for criminal proceedings.

Most of the domestic violence cases reported are related to violence within marital relationships which may or may not be related to dowry. Women complain of all kinds of violence like beating, scolding, starving, humiliation, desertion, indifference, restriction on movement, negligence, no financial support, not being given proper food, clothing, and money to run the household, appropriating wife's salary, no visitation rights, and adultery of husband, sexual torture, attempt to murder, and marital rape among others. There were a few couples who had filed case for divorce on the basis of incompatibility among them. In such cases often there was no reporting of any form of violence. The nature of violence mentioned in the court records were similar to that of observed at the family courts and women's police stations. One interesting factor noticed in court records is that in majority of the cases of domestic violence on wife, dowry has often been mentioned as one of the causes of violence. This is contrary to the observation at the police station as well as our data collection, where in many cases women conveyed that there was no demand of dowry but there was violence with or without reasons.

Further, it needs to be mentioned that in the many days that the family court has been visited, it has been found that **most women have filed a maintenance case** against their husbands. **Most of the women visiting family courts belong to lower & lower middle class families** who don't have any source of income and they have the burden of raising their children. These women, **mostly, are victims of domestic violence** and have experienced at least some form of violence in the conjugal home. However, although they are victims, **they seek to have separation rather than divorce** from their husbands. When asked, they would reply, 'I can't think of divorce. I have little children. I have to think about their future also. If I get divorced then he will not give me any money and he will be free to marry another woman'. These women have been coming to the court for years now. Some of them complain that the court has been giving them dates after dates and yet there has been no results so far. We spoke to women whose cases have been ongoing in the court for over 2-3 years. They are expecting that the court helps them in receiving justice in the form of proper maintenance. In some cases women were first thrown out of their marital homes and then they filed cases to either be taken back by the husband or to get maintenance. In one case a lawyer explained

to us how *one of his clients was thrown out her home by husband because he brought in a new woman. This man in the court did commit to give an amount of rupees 500/- but in last two years he has not paid a single installment of maintenance. Thus this woman runs from pillar to post just to get Rs. 500/- and neither does the legal system has any provision to put her back in the marital home.* Thus, cases of maintenance are the most commonly filed cases in family courts especially given the fact that cases largely come from poor and lower middle class women, mostly to Nalbari & Barpeta family courts.

Cases of divorce, child custody, abandonment, separation, and establishing validity of marriage was also observed at family courts.

### **Social Location of Complainants:**

Interviews of legal personnel especially lawyers and police reveal that women who approach police stations, legal aid cells, directly to lawyers themselves, are largely from **lower class poor backgrounds** as compared to middle and upper class backgrounds. They inform that it is the poor, less educated or uneducated women who take legal recourse more often because poverty plays a major role in marital discord. Even our observations at the court and police station premises brought forth this fact that middle and upper class women were rarely seen in the court premises. It might so happen that when they approach the court they do so largely with the help of their skilled lawyers and also know how to manoeuvre through the court and counselling as compared to that of poor uneducated unemployed women who are dealt with differently by the same court. Thus on observations conducted and also from legal personnel's interviews it is found that mostly women from lower middle and lower class as well as less educated women frequent courts and police stations more often than that of middle and upper-middle classes. According to them only when things get really out of hand that educated middle and upper class women come for legal help. Also, most of the time middle and upper class clients explore all other informal avenues i.e. family, community and friends and sometime directly go for marriage counseling and therapy before arriving at the decision to take legal divorce. It is only after series of negotiations have been reached that they take the help of lawyers and file cases of divorce. Often after a series of negotiations and settling matters related to financial and other assets, they file cases of mutual consent divorce. This is largely among couples who are both highly educated and employed and without any children involved in the marriage. For example two of the women respondents who were both highly educated and had secure highly paid jobs informed that (to quote one) *'Me and my partner were in a relationship for six years before we got married. However,*

*within two years of marriage we realized that we are different people. Earlier he used to encourage and appreciate me being so dedicated to my work and being ambitious. However, once we were married he started getting irritated about me getting involved in different projects, giving time to work more and then it led to bickering between us. With time sometimes he would shout at me for being not a good wife and make me feel guilty. We realized that it's not working. We went for counselling, spoke to friends together, but I realised he will not accept that he has changed. Our families pressurized us to stay together and give it time. So I stayed for another year like that. Ultimately I decided that it is not about others but us, so I forced him to discuss things between us and solve if we can accept each other the ways we are or go our own ways. After six to seven months of denial to discuss, he finally understood that this will not work. We spoke at length and he accepted that he wants a wife who will be around, and be less ambitious and take care of house and home, & I was not that person. I wanted children and a family but I also would put the same effort for my job and ambitions. So we filed case of mutual consent divorce. At court we told the counselor that any amount of persuasion will not change our minds and it is better we serve the time period and get a divorce rather than go through the counselling sessions etc as we have already tried all these. The other respondent's narration was on similar lines but in this case the issue was that the husband started having a relationship with his ex-girlfriend after her husband passed away. When the respondent of our study found out the same she confronted her husband and he eventually consented that he is wanting to go back to his ex-girlfriend and wanted a divorce from her. Despite series of negotiations and family pressure he did not give in so she decided to be strong and accept his decision for divorce. However, she negotiated for the custody of their three year old son and also child care from husband as she earned much lesser than her husband. She said I did not lose my child after all these and neither did I wanted my child to have a less comfortable life than what he deserved because none of this was his fault. So through family we discussed matters of child custody, visiting rights, and child support and then filed a case of divorce.*

However, not all cases of highly educated middle class families gets resolved through mutual consent and in an easy manner. There are also cases of divorce, alimony etc of middle classes which goes on for long and is highly contested. *Like in the case of an IT employee who lived in Australia and would deny giving child custody to his wife. At the family court this case was one of the most discussed cases. The husband earned a lot of money but the wife was unemployed despite being highly educated. There was domestic violence perpetrated on her*

*so one time when they were visiting Assam she decided not to go back with her husband and informed both her family about his violent ways. Initially he vehemently denied this allegations but eventually accepted that at times he would get angry and lose control. The girl's parents were supportive and agreed to her decision of divorce. However, the husband denied to give divorce and so a case was filed. At the court he clearly said he does not want a divorce but if she insists on it then under any circumstances he will not give child custody to her. They had a five year old son. The case was still going on when we were visiting court and it was already more than a year. The day we observed the case the husband had come to the court directly from airport and had so many toys in his hands and other things including chocolates etc for the child. One of the lawyers at the court informed us that he brings these things and lures the child very deliberately. He refuses to give custody and this case has taken very bitter turn many times to which the entire court is privy to. It becomes a specter sometimes, especially because not often you find such suave looking people with money fight like this in open court.*

Thus the ways in which cases are presented, dealt with, handled and maneuvered have a class context to it. Often middle class presents their cases even difficult controversial ones in mild sophisticated and restrained manners letting their lawyers do the work, poor people do not have these comforts of sophistication/pretensions. Poor women and men on the other hand are vulnerable in multiple ways, their lack of information too leads to manipulation and negligence of them by their lawyers and other officials thus leading to them roaming around the corridors of the police station and courts more often than their counter parts from other classes. Further, given their poverty often husbands do not want to give the minimum maintenance to wives, thereby making the wife struggle more than other women for minimum maintenance.

The other thing that was observed was that women from **relatively younger age group** such as between the age of 21 to 25 or from 26 to 30 approached the family court in more numbers for divorce and alimony. These women largely had lower educational degrees with bachelors or they have had some skill trainings etc and belonging often to lower or lower middle class backgrounds. These women have chosen their partners at a very young age with the man often not having a stable job or no job at all. Whatever the circumstances they have married quite early and within a few years and sometime months of their marriage they fall apart and want divorce. It is a frequent sight in court to see young women and men waiting around for their turn to enter the court room. Inside the court room observation gives a clear picture of

the immature ways in which marriage was entered into and lack of financial stability adding to their difficulties has led to them approaching the court for either divorce or maintenance. Sometimes in such cases the interaction of the judge with the litigants becomes very complex especially when the man is very young, arrogant and behaves and speaks irresponsibly in the court room. In such cases the man has nothing to pay in terms of alimony or maintenance and coming mostly from lower middle class backgrounds with no proper education and jobs the woman finds it impossible to go back to her natal home without any maintenance or any financial support. One observes a lot of desperation, crying, and anger in such cases but to no avail.

Many lawyers and also the few police personnel spoken to also informed that it was because of **Muslim** parties that family court is full of cases, others felt that it was **Hindus from lower castes and communities** who flooded the family courts. With our observations we cannot make out which religion or caste women litigants belonged to unless they were very obviously marked through symbols such as burqa, veil, sindoor etc. However, when we approached women in the family court of Guwahati and spoke to them at length we found that most of them belonged to caste Assamese Hindu groups, few belonged to other groups such as Muslims, Christians and also indigenous groups. The same was the case at Nalbari. However, at Barpeta many women were found to belong to Muslim community. It might be also because a large proportions of Muslims reside in Barpeta.

Despite the presence of women from all groups there is a clear prejudice present among legal personnel towards Muslims, lower classes, and other marginalized groups. Except a few legal respondents most of them very clearly stated that (to quote one lawyer) *'Muslims marry so many times, and produce so many children. Therefore marital discord and violence are part of their everyday life. They do not have a good culture and their family and personal law allows them to treat women badly. No doubt that most women who come with complains are from Muslim community'*.

Another legal personnel said, *'Without education, money and proper upbringing and home environment what else can we expect from Muslims, and backward classes and tribes'*.

One counselor informed, *'it is very difficult to manage cases of uneducated people like Muslims, backward classes, lower classes, and other tribal communities. They are always poverty stricken and without education they understand nothing but money. For them marriage has no sanctity.'*



It is not very surprising that given such prejudices and lack of empathy for the poor and uneducated, legal personnel respond to them in biased, insensitive and rude ways. One lawyer informed us, *'isn't it natural that given the fact that poor will not have money to pay the lawyers or other officials that their cases will not be taken seriously, and their dates will be postponed, and that legal personnel will give least interest to their cases. The more a client pays the more attention their cases get. It is in the nature of legal institution. If you are poor the lawyer will tell you some things here and there and ask you come another day because he has no time to spend going deep into the case or formulating arguments for the case. That is why also women suffer, because often women don't have their own income and cannot pay the lawyer and court officials as and when needed but on the other hand the husband manages to pay more than that his wife can, so you know whose case will be fought with more commitment.'*

When asked about free legal aid and the provisions of family courts which does not require the involvement of a lawyer most legal personnel and even NGO respondents said that in reality such provisions do not get implemented correctly. In family court women do not know the procedures etc and given the lack of legal and procedural awareness women have to take help of lawyers, especially when the husband's side has a lawyer who knows how to defend his/her case for the client, it becomes necessary for women to take a lawyer to advise and prepare her for the court proceedings. Free legal aid on the other hand is far and few and women hardly know about these options unless they approach NGOs or other local women's and other rights groups who advise them and put them in touch with the right organizations or people. So more or less for majority of women it is a struggle if they do not have money and proper family backing.

### **Women's Experiences with Law**

As discussed in the last chapter taking help of formal law is not the first choice for most women. In domestic violence cases women almost always first approach family, friends, community and sometimes village panchayats, community groups, nari adalats and others to address their issues and only when things do not get resolved or is growing out of control that women approach the state law. So in such conditions when women put self-restrictions on themselves it is to be understood that most cases of violence go unreported. Thus only a few come out to the public and lesser so to the law after rigorous deliberations. Under these circumstances when women decide to come to the law they are placing at stake most aspects of their life and safety, both economic, social and physical. Therefore, responses of the state

law becomes vital to not just their lives but to the larger cause of gender violence and law. In the section below a detailed discussion is taken up on women's experiences of law when they decided to approach it and whether such experiences empowered them or made them more vulnerable within family and society.

Police stations are the first place of approach in terms of formal legal institutions when women decide to take help from state law. The police are like the face of legal system and form the interface between women and courts. The treatment meted out to women and the seriousness conferred on their case will determine not just the willingness of the woman to fight the case but also the fate of the case to a large extent. Often lawyers of this study reiterated this fact that the fate of case largely depends on the quality of investigations made and the report prepared by police. They informed that a thorough investigation would make sure available evidences are brought forward and the adding of appropriate sections would take the case in the right direction. This study also shows that women respondents' experiences within police stations has to a large extent determined their willingness to go ahead with the case or to withdraw from the initial complaint. Most women respondents reported that police were non-cooperative, insensitive and also corrupt.

To begin with women respondents' first experience with police stations were of long waiting and indifference. Most of them said they had to wait for days for their case to be heard or a chance to meet the officer in charge. One woman said, *leaving all my work I had to wait for more than a week every day at the police station to meet the officer in charge. Every time I visit the police station, the constable sitting outside will say that the officer is busy with other important cases. The constable will ask several questions about my complaint but no one will note down anything or allow to speak to the officer. They will say they cannot do anything unless the officer asks them to but the officer never had time. Almost after a week I got a chance to meet him and narrated my case. After listening to me the officer asked me to bring my husband to the police station and come. I informed him that he will not come if I ask, to which the officer said that he will send a summon. For the next one week it never happened and again I ran to the police station and waited for days. At the end of it all I just gave up for my own work was getting neglected. I am poor I cannot afford to lose work but still I thought the police might help so I spent so many days just waiting but nothing happened.*

Another woman said, *every time I went to the nearest police station they would send me to the women police station which is very far from my house. I cannot pay so much bus and*

*auto fare and go there. All I needed is that my husband should be called and given a good warning by the police not to abuse me. I know he would listen to the police and it will be peaceful at home for some weeks. The police never helped, and told me go to woman's police station at Panbazaar. I must have gone to Panbazaar some five years back. We do not have the money to go roaming around.'*

Another woman sarcastically remarked, *'if I had ran to temple the number of times I went to police stations and told my story, even God would have heard my pleas.'*

As discussed earlier women approach police stations largely when they are in dire need of it. Further, it is largely the lower and lower middle class followed by the middle class women that approach the police stations. **Time becomes money for these women.** They are mostly employed in unskilled unorganised low paying jobs for their livelihood. They do not have domestic helps to take care of their children and other household works when they approach the police and wait for them to be heard. In such circumstances long waiting and travel to police stations adds to their economic as well as physical-psychological burden. **Not being able to lose days of work or spend more money in just reaching the police station and waiting many of them** reported giving up on taking police help. Some accepted their fate, some went on to take other sources of help. Further, most **police stations have poor infrastructures**, due to which women reported waiting outside the gates of the police station by the roadside without any shelter, which by itself invited several unwarranted looks and acts, or within the compound of the station bereft of minimum facilities. Only a few police station was reported having proper and adequate sitting arrangements, drinking water and toilet facilities which these women could avail.

They narrated **experiences of humiliation** and some said they were pushed back by the police and **asked to adjust** rather than complaint. **Asking for bribes** was reported by some women. *One woman narrated how her husband would give bribe to the police and every time she would approach the police station she would be shooed away.* Another one said, *at police station from the constable to the officer in charge everyone asked me money. While waiting outside to meet the officer in charge, the constable will every time ask to buy tea and snacks for the staff.* One lawyer, narrated a case how *a rich trader would pay money to the police person who brings the summon to him and not accept the letter sent by court/police to be present at court on a certain date. This continued for a year where the police would just take money and not submit the letter to him or arrest him. The wife in between was losing health and running around court. Finally the court ordered the police to arrest the man.*

Many women reported that the police personnel do not have any patience and interest to listen to their problem. When asked by the researchers about such complaints from women police respondents informed that every day they deal with so many women and **they are so short staffed**, so it is not possible to give everyone time the moment they arrive and women have to wait. Further, the police personnel did not agree that they were rude or did not listen to complainant's stories. Instead they said (to quote one) *some women think that there is so much to their case and want hours of our time but if you listen to them then you will also understand that it is just small family bickering that they run to the police station for and not real violence.*

Another police staff said, *when we tell women frankly that she is lying and there is no violence in her case they get angry and go around spreading lies about us that we do not give them time, we are insensitive to them and misbehaved with them and also of corruption. There is no such corruption. Most women who come here are beggars themselves what money will the police take from them?*

It is **only two police persons who agreed that women may not always have a good experience within the police stations.** However, they put it this way:

*The police are overburdened with various crimes and they are always under staffed. When everyday women come in large numbers to file complaint about their family violence the already pressurized police do not know how to handle this additional burden. Police personnel including women police station staff have to do other duties too like security in rallies and public meetings etc. In this situation women may come and not get the right attention and are bound to complain against the police but everyone has to understand the pressures under which the police force is working.*

*Police have lots of burden on them and are always under staffed. Further, most of the staff at constable level are largely not highly educated and think like ordinary men and women. For them most of the stories that the women say are everyday affairs of a family. So what may be happening is when the woman are sitting outside and waiting these constables may be wondering what is wrong with the woman for complaining for such silly things and taking it upon themselves to send them back or discouraging them to file cases. I agree there needs to be sensitization of all staff to handle women's cases better but you see in the larger world of policing there is so much more complex matters to deal with that there is no time for anyone to actually go for any sensitization camps etc. However, we do have such camps and things are improving.*

From the above discussion it is clear that women do face hurdles in approaching the police and not necessarily they are given time and attention. However, police personnel as well as lawyers, and counselors, given their gendered attitude largely do not see their behaviour as the problem instead reject most experiences of violence as family bickering, if it does not look serious to them. As will be discussed in detail in a later section, often women respondent's experiences was that if their story did not have elements of dowry or of aggravated physical violence then legal personnel including counselors did not take them seriously and at times just rejected their complaints. However, the last two responses from the police shows that it is not just gendered attitude of the police and lack of gender sensitization but also the overall infrastructural issues that mars police functioning that also leads to women facing un-accommodative and at times abusive behaviour from police. Corruption too affects women's approach to police thereby constraining many women from actually filing a case or taking police help.

Further, women also complained that often police, lawyers, counselors, judges, would **advise them to adjust** and declare the case closed. At times they would also give lengthy lectures on how **family is important** and as Indians/Assamese people we need to take care of our traditional institutions and not run to police station for small things. *One woman reported that the counselor told her to choose between becoming a woman of loose character or that of a respected married Assamese daughter in law. Another woman narrated how the police lectured her on the qualities of a good woman and learn to adjust and sacrifice for the family so that the society can function smoothly and children can grow up in a good world.* Most women respondents informed that they were lectured on the virtues of a good woman by some or the other legal personnel or atleast by the counsellor. This was accompanied by advises to them to first save the family and then think of themselves as according to these legal personnel without family women will have nowhere to go, (to quote) *as women's lives are ultimately rooted within family.* Some legal personnel also went on to explain women how the outside world is a dangerous place and it is only by staying within the network and bonding of family that women can be safe.

One woman respondent said, *while the counselor was largely counselling me to keep family first yet they did ask my in laws too to be more supportive to my work schedule and help in child care. They never thought the psychological violence that I was inflicted for not having a son, not being up to their standards of sophistication etc was a real problem. However, in all these there was a constant line of advising me not to go for divorce as the world outside is too unsafe and my status as a divorce woman is going to make my life vulnerable and*

*unsafe. They also repeated that children of divorced parents grow up insecure and especially with two daughters I am not only putting myself but my daughters to unknown dangers.*

Given the fact that legal institutions and legal personnel spring from the same society which is largely gendered and patriarchal, **women's cases of violence is constantly pitted against larger public violence thereby making violence within home seem unimportant and insignificant compared to the outside violence on women. Further, more than safety within home as the central concept in dealing with domestic violence legal personnel made public violence as the standards against which family violence is measured and found not dangerous enough.** Therefore their advice to women to adjust and be safer. From the above narratives of women respondents it also comes forth that often for legal personnel, family, children, women's dignity and others comes first in dealing with wife battering cases rather than the violence against the wife itself. Thus saving the family was more a motto in terms of legal handling of cases rather than women's right to a violence and discrimination free life.

In terms of lawyers, women respondents informed that in the entire process they were lost with the rules and regulations of the court and were entirely dependent on their lawyer for dealing with issues related to case dates, answering in the court room, paper works and other such procedures. They also informed that the money involved in terms of paying the lawyer, the court officials for each small thing was too taxing on them. Except a few women respondents who took help of NGOs to file cases others did not know about presence of protection officers, free legal aid and service providers through the PWDV Act 2005. On top of that women respondents also informed that their **husbands and in laws would pay money to their lawyer to neglect their case and a compromise is reached** between their lawyer and their husband's lawyer. This leads **to their lawyer not only neglecting the case but also pressurizing the woman to withdraw the case or reach a compromise.** Often at family court observation we found that **the woman is present for the date but her lawyer is not** thus leading to postponing of the date again. This adds immense psychological and economic burden on the concerned woman, to get another date, to come to court again and to ensure that the lawyer is present in the next date, all the while being bereft of the legal relief of maintenance, or alimony that she is looking for. *One day while seating in the court a similar situation arose where one woman's lawyer was absent for second consecutive dates. In this situation the husband's lawyer started making allegations on her and cross questioned her in front of the judge leading to her saying something that put her in trouble. Suddenly the husband's lawyer based on what the woman said, made it a point that it is*

*proved that the woman was lying about his client. Listening to this the woman was lost and started arguing that she is not lying and she feels that the opposition lawyer is tricking her to say things that she does not understand and is harmful for her case. She started crying too and complained that her lawyer does not come because her husband and his lawyer have given her lawyer money to be absent. To this the judge said 'do not make accusations without proof and don't bring up things that are not relevant to the case. Family court has provision where you can argue your case by yourself and don't need a lawyer or pay him money. However, if you do not want to speak without your lawyer then lets postpone the date but this cannot go on.'* The woman kept crying and pleading that she does not understand the procedures and what to say and what not to say, so she needs a lawyer because or else the husband's lawyer makes her tell things that are not true. She also pleaded that the judge should make her husband pay her some money for her sustenance. In the meanwhile the husband and his lawyer left the court room. The clerk sitting at the desk commented to the woman that 'there is no point crying because you have to pay your lawyer his fee to come to the court or else just accept your fate and take a divorce and finish the case'. Such cases brings forth the myriad ways in which women feel lost, harassed, manipulated in legal spaces by legal personnel. Some of them informed that there lawyers would force them to sit for discussion sessions which they called counseling sessions whereby actually what they did is to make their women clients sit with their abusive husband and pressurize them to withdraw cases or go for an out of court settlement.

From the experiences of women's interaction with lawyers and law courts it is brought forth from this study that it is not easy for women to sustain their case in the court if it finally reaches there after the struggle at the police station. Only a few women reported that there lawyers were very helpful. These women invariably belonged to economically secure families and also included women who took help of free legal aid organisations or that of NGO lawyers who worked for free. For most women coming from economically difficult backgrounds, or being illiterate it was a second struggle to follow their case in the court. Even when their lawyers were understanding some women reported that it was the behaviour meted out to them by court officials, the long waiting periods, the cost of travelling and paying bribe for each and everything and especially not being able to comprehend the actual situation of their case made them lose faith on the system and they just dropped out without any notice or expectations. Some of them reported how after the case was resolved and their husband was asked to pay alimony they never received any of it. They reported that they had no more money or patience to follow another case and just gave up. A study conducted by a

group of National Schools of Law including that of Guwahati brings forth that even the fast track courts are just for name. Either the fast track courts do not exist in reality or if they do, they do not stand up to the purpose they were established for.

To summarize it can be said that despite decades of struggle by women's groups as well as other rights based groups to make legal institutions women friendly, this study shows that there is a long way to go in this regard. Despite the changes in legislations, as well as bringing in of different policies and system to deal with gender violence cases, women still experience insensitive behaviour, patriarchal resistance and alienation within the legal system. Their quest for a legal resolution to their issue is marred with several ideological, attitudinal as well as infrastructural hurdles. Beginning with trivialisation and rejection of their experiences of violence, to asking them to compromise and go back to violent homes, they face several challenges just to establish their stories as real. Further, corruption, high fees, complex procedures, time taken for cases to be solved and other factors together often result in breaking their resolution to fight and they give up on law altogether or look for alternate resolutions such as nari adalats or village panchayats for some relief. Those who decide to fight till the end do not necessarily get the legally prescribed relief. Often they have to make do with piecemeal solutions.

However when **asked about the availability of family courts** all women respondents opined that they find **the idea of family court a better thing than the general court**. According to one woman, *'it is very assuring to know that only people with family issues are visiting this court and that you are not sitting among hardened criminals and other hooligans'*. Another woman said *'here one sits mostly among women and their lawyers. There are some men around but you know that they are family members, or husband of someone or the other here. I assure my parents that court is a safe space as no thieves, criminals come here to deal with cases'*. Another respondent said *'my lawyer explained me that in this court I can speak for myself if I want, and also that the judge will be a woman, and that the procedures and approach are family friendly and that there is a counsellor who is also a woman and I can go to her if necessary. That is how I was convinced that I am going to get help. Though the facilities are very bad yet I feel comfortable to speak to women judge and lawyer and counselor.'* Most women thus appreciated the fact that there is a family court available for them to approach and they are not forced to go to the general court (to quote a respondent) *'which seems bigger, complex and full of strange people'*. **Similar responses were also made regarding the women's police station** at Guwahati. Despite the



fact that women had to face hurdles, sometimes humiliation and infrastructural inconveniences yet they all observed that **with all women staff, it was much easier for them to approach the women police station**, speak to police and even to wait around without any shame, and apprehensions. One woman said, *‘it is so easy to sit around here and wait for the officer to speak to me because I am sitting beside a woman constable. In a general police station the men including the police speak to you and look at you differently and it is difficult with all kinds of criminals and other men coming in and out.’* Another woman informed *‘if there was no women police station and family court in Guwahati I do not know where I would have gone to speak about the ways in which my husband abused me especially the way he demanded weird sexual acts and raped me watching pornography. I just wanted a divorce but I needed to speak to someone who can make me understand what I am going through, because for a long time I was so confused with what he is and I thought he is a mental person and will kill me with his weird demands. One of my friend suggested me to meet a counselor from whom I learnt about family courts and women police stations etc. It was so reassuring to know that there are legal spaces just for women. It helped me immensely.’*

Thus it can be said that despite their complex experiences and their frustration with the insensitivity of legal personnel, procedures, delay, corruption and other barriers yet most women appreciated and acknowledged that both family court and women police stations have made it easier for them to come out and seek the help of law, to inhabit the spaces of legal institutions without fear, and also have derived confidence from the fact that there are exclusive all women legal spaces present for them to deal with their issues without apprehension. **Most women respondents expressed that it would be nice if more number of family courts and all women police stations were established in each districts** so that more and more women can have better access to law. The legal personnel and NGO respondents of this study too also emphasized on the benefits of family courts and women police stations as well as women’s cell within all general police stations. They also argued that more such courts and police stations needs to be established along with improving the infrastructure and personnel of the present ones. Some of them also went on to add that even the general courts should also have all women spaces for women filing criminal cases not just of domestic violence but also of sexual and other forms of violence. they also suggested that a properly equipped counselling center to deal with women victims of all kinds of gender violence needs to be established in all courts.

### Struggle for Maintenance

Of all the women that we have spoken with, **none of them have received their maintenance regularly and even some of them have received no maintenance at all** even after coming to the court since last 2-3 years. One of the women that we had spoken to had filed a maintenance case against her husband and she had told me that the court tends to favour men in the case. In her case, her husband denied to give her any maintenance by saying that he didn't have any money for it and the judge, instead of helping her, was biased towards the husband. **The Court in at least seven cases we observed said that if the husband didn't have any money for maintenance then there is nothing that the court can do.** Many women respondent said in their cases court asked them to understand that their husband cannot pay the maintenance amount that they are demanding. Women respondent often repeated that they feel that law should not favor only men. **Men don't want to give maintenance and would appeal that they don't have enough source of income** to give to their wives. In one such instance, *the husband had appealed that his wife was 'harassing' him by filing a maintenance case against him. According to him, his wife is living in her natal home peacefully with her own parents, hence he has no obligation to give her more money.* In another instance, *another women who had filed a maintenance case had alleged that her husband is a rich man with many properties but neglects her daily needs. She is unable to prove that he has so much property as she does not have any proper documents/records or bank statements to show this in the court. The husband vehemently denies that he has any property and shows a bank statement which has hardly any money. The wife went on to say that if the court orders an investigation of his properties then it can be proved but the court is not going to take such actions. The judge instead one day reprimanded her and asked her to prove her claims or else accept the decision of the court. She had no other option but to accept the little amount of maintenance that has been ordered by the court.*

Although, in most cases the court would order an amount of maintenance to be paid by the husband, women respondents have said that the amount is very less for them. The court often orders maintenance amounts between Rs. 500 and Rs. 6000 depending on the earnings of the husband. The burden of raising the children are also often on the mother and such amount would be very less for them to sustain. Also, after the maintenance has been ordered, the maintenance is seldom paid regularly. Many women come to the court and go back empty handed because their husbands have not paid the maintenance. This is a regular phenomenon

in the family court whereby women come more in the hope of getting some maintenance amount from the husband through the intervention of the judge. In some cases the judge would either persuade or reprimand the husband for not paying and will ask him to pay some amount there itself which may be as less as Rs. 500/- and warn the husband to pay proper amount soon or regularly and let the husband go. In others judges would reprimand the wives for asking maintenance when the husband is unable to pay and to be patient given that the husband is financially in a difficult situation. *In one case the judge reprimanded the wife saying 'why don't you go stay with him if you want regular maintenance? That way you will have atleast food and shelter for you. If you don't want to stay with him then you have to be patient and not waste the time of the court every now and then claiming maintenance'.* Many women litigant told us during informal conversations that the court was unable to make their husbands to pay the maintenance.

Women we spoke to mostly consider the courts as the place that will be providing them justice. However, after a few visits, disappointment takes over their hopes. Be it the continuous efforts from the court's side to make them stick to the marriage or the stories of fellow disheartened women, most of the parties in court premises just come for the proceedings as it is the only option left. They also inform that once they approach a court, society sees them as fallen woman or controversial woman to be maintained distance from. Despite such pressures, if a woman does not possess financial self-sufficiency, they are forced to keep their hopes pinned on the courts and accept even the little relief that family courts provide. In cases of well-informed women, if reconciliation is not possible, even the judges and counsellors suggest to leave further argumentation regarding property reclamation and live a peaceful life. *As one judge reprimanding the woman litigant said, 'why are you behind material objects? When the relationship has fallen apart how the bed, sofa, dining table or a wardrobe can make your life better. You have asked for them, court also asked the husband to give it to you but if they are not giving it just leave it and live a peaceful life. You are working, so you better concentrate on that and grow in your job to make your life better rather than running to court to claim your material objects. How will material objects help when your husband is not with you?'* In this case the woman was persuading the court to make her husband return all the items that she had taken in dowry during wedding including gold ornaments. She was reasoning that now that she has to start a new life with her meagre salary as a private school teacher it will help her a lot if she can

*get her things and gold back so that she does not have to buy furniture anymore and also she can use the gold as financial security.*

### **Defining Domestic Violence**

A discussion of the ways in which legal personnel define and construct domestic violence is important because ‘they affect the assessment and incidence of violence’ (Radford: 1991: 136). It also affects the nature of treatment that a woman receives and the degree of inclusion of women’s experiences of violence within the legal system. Judicial outcomes also hinge on definitions of what is acceptable and what is unacceptable violence.

All legal personnel accepted that domestic violence can be physical, psychological and sexual. In the interview schedule we had provided a set of instances of domestic violence and asked which of them they believed amounts to domestic violence? All of them agreed to all the instances as forms of domestic violence. However, often on further discussions and in several parts of the interview it gets revealed that not all of those respondents actually believed in the wider definitions of domestic violence and often trivialized and dismissed many experiences of women as not really being domestic violence. In the everyday observations at family court, police stations- women’s cell as well as counseling sessions the same was observed. Many experiences of women that victims narrated was either trivialized as part of everyday family life, part of cultural belief systems, traditional attitude of the parents in law, and other such explanations were given. However, in the analysis of court records, along with data collected in the process of interviewing and observation, it is found that **there are many forms of psychological and sexual violence that were not considered as violence** by them. For example – legal personnel observed that violence can take physical, sexual and psychological forms, yet when a women complained of harassments such as taunting by in law, suspicion by husband, discrimination because she is poor or does not have a son, restrictions in going to her parents place or doing a job, and others, police, counselors and even sometimes lawyers and judges hardly accept such complaints as wife battering. They would categorize them as difficulties in a woman’s life when it becomes severe but not as violence. One lawyer told, *‘if we take every small incident as violence and every small act that looks like controlling then we actually dilute the bigger problem of domestic violence. In a family it is natural that there will be some rules and ways of doing, and an authority needs to take care that things run smoothly at home. If such things will be counted as abuse and violence then no one will take women seriously. We also need to be little more careful when we want to push everything as violence because that way we will*

*trivialize violence itself.* Another respondent said, *'I don't understand why wanting a girl child is not a crime but wanting a male child is a crime. I understand that one should not be forced to have this or that child but then if parents in law or husband want a male child also then what is the problem. They cannot force you to have a male child they can only ask. If women start looking at the expression of desires of her in law as violence then God save our families'*. Many legal personnel while accepting that different forms of abuse is perpetrated on women also emphasized that women also need to be careful that they in their anger or frustration should not take advantage of the legal definitions and put everything under the same bracket. One counselor said, *'there are crimes and there are crimes, not everything is violence, so we have to be careful while counseling not to fall into the trap of the emotions by the woman. We have to tell them that some things are natural part of family life. Even when they themselves grow old and become in laws and parents they would also expect and do the same things to their children and daughters in law. So we see to it that we show them what is what clearly and clarify their confusion. We tell them how people face violence and how what they are facing is not violence but some kind of authority which is natural to families.'* Throughout the study this contradiction between answering the question on what they consider domestic violence and how they dealt with actual cases of violence was recurring. **There is a gap between repeating the definition of domestic violence as provided by law and legal personnel's actual understanding of it.** Only a few legal personnel showed similarity in answering the question on defining domestic violence and the ways in which they practiced it and accepted domestic violence in both its obvious and subtle forms.

Not only did respondents trivialize many experiences of domestic violence faced by women some of them also went a step further, and **chastised women from making a mountain out of a mole.** One of the constantly brought in opinion was that there should not be any law on marital rape, and that the concept of marital rape is impossible to understand. They explained that when there is marriage there cannot be rape. It is all about mutual understanding and marital duties. Thus **all forms of sexual abuse was swept under the carpet in the name of marriage and marriage as consent to sex.** A few who agreed that marital rape exists did caution that bringing in a law on marital rape will only lead to more misuse of law, so there should not be a law on marital rape but **therapy and counseling should be used to deal with such cases.**

Based on the above discussion it can be argued that legal personnel in their practical dealings of cases, define domestic violence in narrow and parochial terms even when the legislations on such violence are more inclusive of different forms of violence.

### PWDV Act

Protection of women against domestic violence Act 2005 was enacted after a series of demands from women's groups over decades to acknowledge and delegitimize women's myriad experiences of violence and vulnerability within the domestic sphere which was otherwise seen as normal and trivial. As discussed in the previous chapter this Act not just broadened the definition of domestic violence, it also provided women safeguards which were earlier unavailable to battered women. From protection officers to right to residence in the familial home this Act came a long way to address the vulnerabilities that women faced when engaged in a dispute over domestic violence with her marital family. All respondents when asked about the PWDV Act regarded it as an important Act and also a very inclusive one. They supported the enactment of this Act and also informed that PWDV Act is used very regularly by women to file cases. Some of them also informed that **after this Act has been brought in the number of registered cases of domestic violence has increased**. A set of respondents argued that it is because this Act has empowered women in many ways and thus women can concentrate on the legal battle rather than worry about shelter, protection, financial condition and other such aspects, as this Act in many ways takes care of such vulnerabilities. They also informed that given that this Act has provisions of time bound resolution of cases, a protection officer to take care of things, as well as that this Act is a civil Act which does not necessitate the woman to go to criminal courts unless necessary, women find it easier to access law through this Act. Some also said that given that any form of abuse can be brought in within this Act whether they are related to dowry or not and there is no restriction of marital time period within which violence needs to be perpetrated makes this Act more women friendly and thus is used by more and more women.

However, **another set of respondents informed that given that PWDV Act has made filing cases easier and includes anything and everything under it as violence many women misuse this Act** to threaten their husband and his family for their own self-interest. Under this Act as women get all kinds of provisions and also has right to residence, women find it easy to misuse the Act and thus the increasing number of cases registered under PWDV Act. This set of respondents argue that the legislators had women's welfare in mind while bringing this Act, whereas women use it for their self-interest and the actual victims

hardly use it. Misuse of law as alleged by respondents will be discussed elaborately in a later section.

Upon being asked if they would suggest their clients to use the PWDV Act if there is violence present in marriage, **most lawyers informed that they do inform their clients about all the provisions and legislations available. However, they also try to persuade their clients to settle cases with mutual consent and not invoke laws which will lead to unnecessary complications among them and drag the case with no benefit for any party.**

*As one lawyer informed, ‘often when women file cases of violence and if the man or his family is arrested then they become very rigid and do not come for any resolution. In this case the woman suffers because at the end of it all what women generally need is maintenance, alimony, child custody etc. Once you use laws that can put the other party in trouble then why will they compromise and come for mutual conciliation. So, keeping the benefit of our women clients we do not encourage the use of PWDV Act’.*

In contrast to this some police and counselors informed that despite the fact that they try to bring mutual compromise, it is the lawyers who complicate cases and do not leave scope for any mutual resolution. One counselor said, *‘what the lawyers do is that to put pressure on the other party and win the case for their clients, they ask women to add dowry-domestic violence and thus a simple case of marital discord becomes a case of domestic violence. Once criminal charges are added things get complicated and the man’s side becomes angry, humiliated and rigid. Sometimes they let the case drag but not come for compromise as they want to take revenge for the false charges and arrest made based on those charges. However, at times to escape the criminal charges, the man’s side agrees to give maintenance in exchange of withdrawal of the criminal charges. In both situation the lawyers benefit because in the former they get paid for the longer period of the case and in the later they get percentage from the alimony or maintenance. This is what women do not understand that there is no point in invoking all kinds of law at all times.’*

#### Dowry and physical violence as more serious crimes

Further, **presence of grave bodily injuries increases the chances of acceptance** of the case by legal personnel as a valid one rather than in the absence of it. When a woman complains of violence, she is asked if she has any physical marks of violence in her body. Some of them were even asked to bring medical reports or photographs of physical violence. **Gravity of violence is generally determined in terms of the degree of physical harm inflicted by an**

**act of violence. The absence of which weakens the case.** A woman's definition of what she feels is violence against her is rarely accepted in the absence of physical violence and more so in the absence of actual physical injuries. Similarly, **violence committed due to dowry demands are seen as relatively heinous acts as compared to violence in the absence of dowry.** Legal personnel often search for dowry in women's narration of violence, which if found, becomes the legitimate axis around which the case revolves. One legal personnel said, *'in Assam, such domestic violence was never there as there was no dowry system. Today many people have adopted dowry and this has led to beatings of wife and very rarely killing them. Still that stage has not come where they will kill wives for dowry. It is only the other communities in Assam who may do so. So when women come and say there is violence on them but no dowry, it is very difficult for someone who is from Assam to believe it'*.

However, during our observation at court there were many cases dealt with where dowry demand was not the issue for marital discord and domestic violence. It was observed that despite increasing awareness still there is large scale apathy towards domestic violence and issues related to marital discord. As a routine thought legal personnel deal with or take up cases related to domestic disputes and violence yet they continue to see such issues as trivial and personal. **There is constant claim that domestic matters are personal family matters and best be resolved within the family.** Instead of acknowledging that women are breaking socio-cultural barriers and bringing out issues of domestic violence to the public without silent toleration at the cost of their lives and life chances, **most legal personnel including counsellors regret such reporting in large numbers.** As one lawyer said, *'it is not a matter of jubilation that we are not able to resolve our familial-marital issues among ourselves and washing our dirty laundry in the public. However, as a lawyer my duty is to help my client, and it is good business for us, but to be very frank it is saddening that our Assamese culture is deteriorating day by day, our families and communities are becoming irrelevant, and we are going to public to resolve our private matters'*. Similarly, one police personnel informed that *'we have lost our identities and cultural values. That is why more domestic violence is being reported. On the one hand we have lost respect for women who the family and especially male members should protect. On the other hand women have forgotten all the Assamese values of respecting elders, conducting themselves gracefully, taking care of the family first and other such values. That is why domestic violence occurs and more importantly instead of trying to resolve it within home or community now that the state is*



*supporting woman they do not think twice about larger family and community but make everything public coming to courts and police stations. We are here to help because that is our duty and we will follow law and implement it rightly. Still, think of it, aren't something in life sacred and private and should be dealt with more care and caution?'*

Based on above discussions it can be argued that legal personnel and counsellors function in two different ways. As professionals they define domestic violence and other marital issues through the legislations present and speak about it within the scope of these legislations and guidelines. They also as representatives of their clients in terms of lawyering, or as counselors and police personnel often try to implement legislations according to the scope of the legislations and legal official provisions. They largely follow the letter of the law. **However, on further probing the tussle between their professionalism and gendered socialization and prejudices comes clear.** Therefore, legal personnel speak the language of everyday general public in a gendered society. They see certain forms of violence as domestic violence and others as not really domestic violence but simple marital and family discord. They also hierarchize forms of domestic violence with physical violence in grave forms and dowry as more dangerous than other forms of violence. More importantly the idea that domestic violence is a private matter and needs to be dealt with and resolved through mutual compromise, in private sphere remains strong in their psyche.

### **Saving the marriage and family**

All the legal personnel and counselors opined that while dealing with cases of domestic violence the approach is that of saving the marriage and family. It is for this purpose that they advocated compromise as the best solution to such cases. According to them given the fact that cases related to family are between persons who are/were intimate with each other and often there are other members of the family involved, it is always better to resolve issues amicably. It is for this that most respondent legal personnel argued that in matters of the family which also involved domestic violence resolving issues in a non legal forum or outside actual legal action is better. With this they meant that there should not be any cases filed and the two parties can meet through their families, counsellors, police or lawyers who should facilitate extended and intensive dialogues between them and reach an amicable solution. Legal personnel of the study also explained that by such approach the animosity between the two parties can be brought down, there will be no ill feeling between them and also they will save a lot of energy, time and money that would have been spent if they went for a court case.

It is interesting to find that legal personnel acknowledge that court procedures are complicated, lengthy and financially taxing. However, more than this it is the attitude towards family and marriage as institutions that they suggest for compromise to the litigants. Saving the family approach of legal personnel springs from the understanding that family and marriage are sacred institutions, basic to any culture and society. Within this the relation and the hierarchy between husband and wife and between the man's family and his wife, are seen central to the functioning of family. Wife being the server-caretaker- upholder and normatively subordinate to the needs and demands of the husband's family. This is the core value that upholds the patriarchal heteronormative family system thus helping maintain the male power hierarchy in society in general. Any challenge to its norms and rules are seen not just as threats to the sustenance of family values and family as an institution, but also the power hierarchy of larger society. Violence against wives being normal and natural to maintenance of the hierarchical order any reporting of such violence is seen as a challenge to the family system and thereby the attempt to save the family. **Compromise as advised by the legal personnel in their attempt to save the family is largely one sided and is expected from the women/wife and is not a neutral-objective process** as is claimed by legal personnel. For this compromise is not advocated and implemented independent of the gendered norms of family and society. It is through their gendered views of what a woman/wife should be and what her "natural" duties are that such compromise is advocated and sometimes imposed on women. For example in the case narrated below the process of compromise between the two parties is brought forth:

*A woman of 49 years, employed as a senior government clerk, with two children studying in college has filed a case of violence against her by her husband. She was married at the age of 20 and from then on she has borne all forms of violence against her including forced abortion during second pregnancy as the family did not want a girl child. She had considered divorcing her husband once before her third pregnancy but she got no support from her own family members too and she had to consider her own siblings marriages and therefore gave in to family pressure. After so many years of marriage she still faces violence and her children have always been affected by it. Now she has filed a case for divorce and violence as she says that with age your sense of dignity too increases and I cannot take this violence and the humiliation of it anymore. According to her she bore the violence for so many years for variety of reasons. She was young and did not have the confidence to make it alone, she had a child early on, her family and her siblings' prestige, honour and marriage chances*

*were also weighed her down, and most of all there was hope that with time and with coming of children everything will be alright. Later years, with two children and no family support she could not take the step on her own but now that the children are grown up, and she too has matured, she thinks it is high time she should take her life in her own hands and not tolerate the violence and humiliation anymore. She also thinks that when children were small they would have not understood her position and would have been pulled apart in the controversy, but now that they are matured they can decide for themselves and there will be no pressure atleast from her side to be with her only or not to meet their father etc. The husband on the other hand during the counselling went on claiming that he had only beat her once or twice. Also he said that he scolds her because she thinks too much of herself, and does not do the house work properly. His complaint is that when they were married she did not know anything and did not show interest in any of the housework and that is why his parents would complain and he had to take her to task. He says, she still does not do most of the housework and starts arguing when he or his mother says anything to her. She gives more time to her job then to the house. If they scold her she says its violence and makes a ruckus about it. Further, he complaints that she always wants to stay away from my parents and when he disagrees to that she fights for which sometimes he gets angry and fights back. He says he will not give a divorce that is why she filed a false case of violence.*

*In this case the counsellor and the lawyers involved along with emphasizing that the woman should withdraw her case of violence as there is no proof of violence and also based on the description of the husband it does not seem that he still violates her. They advised the husband to have control on his anger mostly because his wife is not young anymore. However, their larger concentration was more on advising the woman not to take a divorce and see to it that she takes up some of the house work as it is her first duty in a family. One of them also advises her that now that her children are in college and the husband is well settled she can take a break from her work and give more time to the family. They tell her that in our society it is not nice to abandon the parents and stay separately from them so when she demands such things naturally the husband will get frustrated and angry. And that she should not make any such demands. They also ask her if she will like it that when she is old her own children will abandon her. When she replies that she has never made any such demands and he is lying about her not doing house work as she has always put double effort in doing housework as that was the only condition that if she takes care of all housework only she can go to her job. The counsellor scolds her and says it is not possible that she*

*could have done the housework and the office work with the same commitment and she should learn to be humbler and tell practical things which people will believe. One of the lawyer also tells her that as she is approaching fifty it will be difficult for her to live a lonely life in old age whereas the man will easily get someone else. They all emphasize that at this age and after so many years she should be more tolerant, and practical and should just go for compromise. Their best advice is that she should withdraw the violence case anyway and also not insist on divorce as family, children are very important to everyone and she will understand their importance as she grows old. However, if she is bent upon spoiling the chances to compromise atleast she should not waste time and energy on court and should withdraw the case of violence and they will counsel her husband to give a divorce with mutual consent in exchange. This way the lawyers say the children will also be spared of the ugly experience of their parents fighting court case and she will also save time and money and will have a dignified exit from marriage.*

Data collected from observations within court room, women's legal aid cell as well as from legal personnel and NGO representatives also bring forth such approach towards counseling the woman and advise to compromise as well as save the family approach while dealing with cases of wife battering. In some cases even in the presence of acute violence women are asked to compromise. In this process they are advised to either withdraw the cases or return to violent homes. In the following case despite the involvement of child sexual abuse the lawyers advised woman to compromise and grant divorce to the husband without any major demands:

*A widowed woman of 44 years with seven year old son and five year old daughter married her current husband a year back who has two sons doing their graduation, from his first marriage. In the one year of marriage she has faced several issues with her husband regarding his relatives who did not want him to marry a widowed woman with children. They would always taunt her age, and her previous marriage and also ill-treat her children. His sons also would participate in it and if she complained then he would get angry about it. He would accuse her of being step-motherly towards them. Things were not going very smooth in the marriage. One day when she returned home she found her daughter without pants and one of her step son trying to rub himself on her private part. She was furious and screamed and hit the son to which he pushed her back and ran out. She screamed and shouted at the son and informed her husband about it which he did not believe and slapped her for accusing his son. The son also argued that she is accusing him falsely. The daughter cried the whole*

*time and when asked she said that he did this quite often with her, gave her goodies and asked her to not tell about the game to anyone. In all these accusations and counter accusations the husband asked his wife to leave the house with her children and never to return. When she argued that she will have nowhere to go he bluntly said he does not care and abused her of being manipulative and lying her way to his life and home. Even after much persuasion the entire family ganged up, shouted abuses at her with some of them also hitting her, and threw her and her children out of the house. She decided to take the help of police and that is how she filed a case of violence and also of sexual abuse against the son. The son was immediately arrested. In the negotiation between the two parties with the involvement of lawyers both of the lawyers advised her to first withdraw the case of child sexual abuse as it will not stand in the court and everyone will understand that she is filing a false case to extract money and property out of her husband. They also asked her to take the divorce without contesting and get some alimony in return for withdrawing the case against the son. This they said is her only chance because if the matter goes to the court then she will not just lose the case but also the alimony that she is being offered now. Therefore, her own lawyer advised her to accept these conditions and be benefitted rather than fight a futile case and waste more money, time and peace of mind. They also asked her not to spoil the young man's life and take into consideration that his reputation is already spoiled and the mental trauma that he and his family is placed because of her filing of case. One of them also implied that it is her fault that her daughter was abused if it happened as knowing very well that there were two young men at home who she hardly knew and who were not good to her and her children she still left the daughter alone with them and went out. In the whole process no one made any attempt to understand how the sexual abuse affected the victim, the mental trauma of the mother and children, as well as their precarious condition of being left homeless and without any economic support. Compromise was propagated as the practical solution where everyone is benefitted. The violence was never the matter of discussion as it was already decided that it never happened and indications from everyone showed that they believed it as a manipulation of the wife for her own material benefit.*

The above case also brings forth the ways in which compromise is advocated as a practical solution and the cost of compromise is paid heavily by women where often it is they who are asked to adjust and compromise for the sake of family as in the first case and for the future of a young man in the second case. Thus domestic violence is hardly seen as a matter of concern, and when reported it is either disbelieved and women are accused of misuse of law

or blamed for their condition. Women's silence is preferred to keep the family intact. However if they do break the silence and speak out they are asked to think beyond their own self-interest for the sake of family and its members and for larger social good. Still if women do not agree then they are blamed of being manipulative, evil and selfish. Further, the cause of violence is largely placed on the shoulders of women as having provoked the violence or created conditions under which violence could take place un-resisted and therefore with the consent of the woman.

It can thus be said that attempts at counseling **is mainly about reconciliation of the relationship**; as quoted by one counsellor, "*The parties are made to understand that marriage is a sacrament and a caring institution which should not be spoiled for trifle situations.*"

### **Blaming the Victim**

The burden of maintaining a family and making a marriage successful is placed on women. Women are expected to sacrifice their conjugal attachment and their needs, for a life of freedom and equality for the larger benefit of the joint family and the society. Any sign of non-adherence to such expectations brings upon her the blame of breaking the family and marriage for selfish interest. As one family court counselor opined, '*women should be in their 'limits'. Being independent does not mean that women should forget their boundaries and throw all dignity and culture in the air and seek independence at any cost. If you do so then there will be repercussions from both society and family.*' Except for a few legal personnel who believed that saving a marriage and family is the responsibility of both the partners, majority of them believed that it is more of a woman's duty. Any problem that occurs within marriage and family is essentially thought to be a result of women's actions and behaviour. As opined by a counselor, '*domestic violence results because of problems with both parties. Both the husband and wife have contribution in a case of domestic violence and that the husband would not have battered the wife if the wife hasn't done any mistake*'. In the words of Cheryl Hanna (1996) "blaming the victim" is a common theme in criminal practice. Defence attorneys and accused batterers routinely argue that the woman knew what buttons to push to make the accused hit her. Perhaps she provoked him by starting the argument. Maybe she failed to do her duties around the home... The power of these arguments rests on the false assumption that the woman is ultimately able to control and stop violence' (1882). Analysis of data also reflects same attitude among legal respondents. Most often than not legal personnel invariably located the roots of violence in the concerned

woman's behaviour. Women are blamed because they are seen as provoking the violence and it is thought that 'they could avoid the violence by being more accommodative to their assailants (Stewart and Maddren: 1997).

Legal personnel in the study often while dealing with cases of "wife battering" find the accused to be caring, calm and patient and blame the woman of falsely accusing the man. They do not understand that when the man meets them, he not only brings forward his public persona which necessitates being well mannered but also that there are different stages in battering and they usually get to meet the accused in the stage where he has cooled down and is sometimes repentant. The cycle theory of violence explains this well where the man who is violent necessarily is not so at all points and might actually repent of his actions and apologise profusely to the wife claiming his love for her. However, again as time passes he goes into the violent phase and commits similar violence as before. Also such men know how to behave in public and show their desperation and repentance to the legal personnel making them believe that he can hardly be violent. This was observed in this study too.

Court records as well as other case studies from the study shows that many accused of marital violence defend themselves on the plea that their wives provoked them by not obeying them or by arguing with them despite their plea to stop irritating them. It is commonly believed that women deserve violence because they were nags. The irony is that based on "nagging" and "provocation" plea, cases of women are rejected, side lined or not convicted. This is how legal personnel often single out the behaviour of women as the cause of violence. They also argue that women are losing the traditional values of tolerance and sympathy, they are becoming more individualistic and forgetting their natural duties, which leads to violence on them. A wife, it is believed has to satisfy her man physically and mentally by keeping his house clean, cooking, taking care of him, his children and parents, and satisfying his sexual needs (Dietrich: 1992; Dube: 2001). Any violation of these duties is considered enough provocation for the man to use violence.

Legal personnel often use gendered caricatures to portray a battered woman as somehow deserving of the violence she endured. 'This strategy can be successful because many people have biases about the nagging, provocative wife who deserves to be slapped around. There is a comparable allegiance to gender roles. Women are held responsible for their own abuse if they fail to comply with gender roles' (Baker: 2001: 1487). Legal personnel further shift the responsibility of crime control from law to women themselves asking them not to provoke men.

Further, their approach is different when it comes to men and women. For example, although men and women both walk in for legal aid, the legal counselling has been different for both. For instance, if a woman walks in and shares her story of domestic violence and an act of extra marital affair committed by husband then the counselors would try their best to call the husband and try to bring a settlement between the two parties. However, if a man walks in and complains about his wife of extra marital affair or even cries while sharing his story then the counselors would say, 'You are a man. Men don't cry for women.' Gendered ways of thinking, ideas of masculinity and femininity, good and bad women, and other such notions determines legal personnel's response to various aspects of domestic issues.

### **Accusation of Misuse of Law:**

Legal personnel, similar to the larger society, actively participate in the propaganda that women misuse law for their personal benefit. They advise that as women misuse law for their benefit, everyone has to be very careful while taking up a case or punishing the accused. Based on this understanding, they also argue that law is too liberal with women and believes all that they accuse of. Some others argue that even men are violated so why should the law not be gender neutral. According to respondent legal personnel (to quote) '*law forms an important tool because it is not gender neutral, through which only women can harass men by filing false cases*'.

*'Women are manipulative by nature and when they have such laws in their hands, it becomes easy to use it for personal benefit. This is not use but misuse and we find everyday many misuse of law by women'*.

*'Don't women violate men, but then men don't have laws to use, thereby women can not only have liberty to violate men but also use the law provided to file false cases so that they can doubly violate men'*.

By arguing that men and women commit same amount of violence on each other legal personnel undermine the power relation that heavily tilts towards men in a patriarchal society. Completely removing gender hierarchies and the ways in which it impinges on women's lives, many of our respondents from all categories warned of misuse of law by women and their families. Legal personnel and counsellors reported that there are many women who refuse to get counselled and who vehemently oppose any mutual compromise. These respondents informed that women are so adamant that they do not mind losing everything in the process of putting the man behind bars. According to them such women



seem to be revengeful and cannot be trusted. Based on such beliefs of legal personnel it will not be wrong to infer that according to them women should readily agree for compromise because they are the ones at loss. Therefore, those women who are strong enough to traverse the complexities and demands of filing and fighting a case of domestic violence and show their willingness to go through the process even with hardships are not to be trusted because revenge drives them. **Thus in the legal personnel's construction – willingness to take a case to its logical end is an absolute sign of vengeance and revenge, which in turn necessarily indicates misuse of law.** Thus, women who insist on filing cases despite counseling were more readily dubbed as liars and manipulators with an agenda (see even Hanna: 1996). '[W]hen women shunned their victim positions and began to act; a series of charges of misuse of the sections was labelled against them. They were accused of bringing in complaints that are frivolous exaggerates, driven by material interest and vengeance. In sum, they were being branded as liars and misusers of law' (Achyuta and Nagaraj: 2006: 4357). Legal personnel at any cost do not want to acknowledge the existence of violence against women for doing so is simply too threatening to the existing gendered power structure (Schneider 2000).

While reiterating that women misuse law in large scales two things were emphasized by most legal personnel: one, (to quote) *'imagine how many men and lives of their family members have been destroyed by women misusing law. That is why the necessity for men's commission'*; second, (to quote) *'domestic violence law should be made gender neutral. Plus, when women file false cases, the law should have clause under which women should be punished for misusing law. Only then women will think several times before misusing law.'*

Upon being asked how did they decide that women are filing false cases and that how is a case proved to be false? Some respondents said that (to quote) *'when a crime is committed the criminal always leaves proof. This is a universal truth. Many women bring cases and then withdraw it because they cannot sustain the charges, and many cases are not proved because women cannot provide evidence. So where does the evidence go if crime is committed? From this it can be understood that one is lying and the case is false. In all such cases the women should be penalized for spoiling the life and honour of the man and his family. Also for wasting time and resources of police and court'*.

Despite blaming women for filing large number of false cases, most of the legal personnel confessed that as part of their profession they still are ready to accept, investigate and fight

cases for women even if they strongly believed that mostly women file false cases. A few legal personnel said that they will not take a case be it from a man or a woman if they know that the approaching client's case is false. They said that (to quote) '*in family matters it is a matter of not just one life but the entire family so one needs to think beyond earning money and be little honest in such cases and not protect the culprit*'.

It needs to be noted here that suggestions such as making laws gender neutral, establishing a men's commission, and amending the laws to punish women for filing false cases are very widespread among not just legal personnel and counsellors but also among the general public. In everyday discussions in and out of media and other forums one sees a constant reiteration of such demands. However, such lobbies hardly open up spaces to understand the larger gendered context within which, all the three demands without proper safeguards can be dangerous and can actually lead to gross misuse of law. The fact that women withdraw cases and cannot prove cases is not always because they are filing false cases but because sustaining a legal case without familial, financial and social support becomes an uphill task for women or that given the private nature of domestic violence as well as the patrilocal system of marriage, family and residence, gathering proof of violence is almost impossible for women. Along with this it is interesting to note that lobbyists for laws against violence against men themselves have least understanding of the ways in which gender operates. The fact that men are often violated by other men and not necessarily women or their wives is never debated. Even when women-wives violate men the complexities of such phenomena such as the violent conditions under which women use violence against their husbands or that the masculinizing culture which prevents men from coming out and discussing the same is never addressed. In such circumstances there is an immense **need for larger sensitization on the ways in which gender mars both men and women's lives becomes urgent** as it is only on proper understanding of the same that will lead to better enactment and amendment of laws as well as its interpretation and implementation. Otherwise it will continue to be oppositional in nature – men's rights against violence will continue to be forwarded in opposition to women rights against violence and their use of law, rather than demands on their own legitimate terms.

**Another instance when legal personnel allege misuse occurs by women is when they are not of the right 'character' or are having extra marital relationships.** In discussions related to false cases often lawyers brought in the argument that many women who are immoral and without virtue or are having extra marital relationships file false cases either

when caught or to extract money for themselves and their lovers, or to get a divorce so that they can have a good time with the other man or men. According to one lawyer, *'domestic violence allegations are falsely brought in by a woman when she wants to marry her lover and don't know how to get rid of her husband and still the blame should not come to her. What she does is allege violence and then file a case. This way the husband is put behind bars and one is free without blame to one's character. Everyone sympathizes with her and are happy to see her settled well again with another man'*.

### **Demand for Evidence**

Evidence is crucial to any legal process. Despite its private and domestic nature, legal procedures related to marriage and family matters also are heavily invested in the notion of proving beyond doubt. Though women's groups have long debated the aspect of demand for proof especially in cases of domestic violence, dowry, extra marital relationships, second marriage and other such aspects, and legislature and judiciary has been relatively sensitive to these concerns, yet much in the everyday functioning of law still revolves around the production of evidence by women to prove their cases.

Upon being asked about the logic of demand from law courts and police from women to produce evidence related to their cases, legal personnel and counsellors without fail argued that even in hardcore and heinous crimes the accused is seen as innocent until proved guilty. Then how is it that without evidence one can take the accusations made by women at face value especially in such intimate relationships as marriage and family. According to respondents, given the complexity and everyday difficulties of family life, what may be seen as abuse by woman may not be truly so, therefore proof is a necessity. For example, one lawyer said, *'my wife may have dreams of leaving a life like a queen and not cook and serve my children and parents. But I should have the financial capability to give her that luxury. Also, my parents and children will have expectations from their daughter in law and mother. Now if my wife will think that we are abusing her by making her cook and take care of us, then will it be domestic violence? Therefore, in such complex relationships it becomes all the more necessary that it should be proved beyond doubt that what has happened within the home is actually abuse and violence and not just everyday aspects of marriage and family life'*. One counsellor said, *'human psychology operates in many ways. We always want our comfort and luxury and accordingly perceive things. Our mind plays games with us because we want things in certain ways. Same is true in family matters. Women, especially in today's time, want a more independent and life free of household chores and want nuclear families.*

*However, often when her husband is the only son or eldest son the burden of taking care of his parents come to him. In such circumstances women often tend to see the demands of the family caregiving as oppression or unjustified labour. Anyway there is social media and other groups which gives women romantic ideas of family life or about how they should be independent and have rights. In such circumstances, at the smallest of demand from in law or husband, or with little authority operated by in law women start thinking they are scolded, restricted, or controlled, and, they start reacting badly or these leads to issues between husband and wife. In such circumstances when women file cases of domestic violence or accuse the husband or in law for their marital problems we need to ask them to prove such allegations. Otherwise it will become a free ride for women. They can believe anything and accuse others. As counsellors we need to explain to them how their mind is working and what is influencing it. Many times we are successful in explaining women that it is their problem and they need to take things lightly and as part of their duty. So evidence and proof and other supporting documents, people, witnesses' statements becomes crucial to marital issues to construct the reality. A situation can be perceived in many different ways by different people present at the same time. Therefore, the totality of an event is necessary to be seen and thus evidence becomes crucial'.*

Some women respondents informed us that at police stations they are asked to provide medical certificates of physical violence, proof of injuries either through medical certificates, photos or to show direct physical injuries to prove their case. Such demands become very taxing on the complainants as hardly in cases of domestic violence women approach doctors or keep records of doctor's consultation if they have taken medical help. Often women do not plan upon filing cases against domestic violence even in severe cases and when they do it is usually when they have failed to stop it through all other means. Therefore, gathering documents to prove physical violence is something beyond their planning. Even in matters of dowry, women's parents do not keep any record as dowry transactions are not always made in terms of formal contractions. Often it is done in terms of physical exchange of money and materials or given the name of gifts. Providing concrete records of dowry demands thus becomes impossible. Lack of awareness too leads to women neglecting gathering of proof when it is available. Added to this is the lack of concrete proof especially in cases of psychological and sexual violence.

Not only in domestic violence cases, it was observed in family courts that in cases of extra marital relationships of husband or that of second marriage the complainant is asked to

provide proof. Often women do not have much proof especially documentary proofs of such relationships of their husband but they are reprimanded for not being able to produce proof of the man's other relationship or marriage when accusing him of such wrong doings. Some women while speaking to us informed us that both at police station and at family court they are asked to bring documents of second marriage or photos of husband's extra marital relationships, or that of their property and income certificates in cases of maintenance claims. They explained that their inabilities to produce such documents often led to reprimanding by police and judges and also rejection of their claims. *One woman who works as a contractual cleaner in an institute told us how her lawyer had asked her to engage someone, either a relative or friend, to follow her husband and take photos for proof. She said 'we are a family of hand to mouth workers and we need to report to work every day, now where will I have someone to engage to follow my husband to take photos of his second wife and family. The fact that he does not come home for months and does not give one paise. Also, he compares me with the second wife and beats me up if I confront him about his second family, isn't enough for the law. My family and neighbours gave witness to this effect to the police but then now court is asking me to prove that he has another family through paper and I have none. Anyway, I gave up hope of any relief from court. So when now my husband comes home all my neighbours help me in throwing him out. We have warned him not to come to my home anymore. He is very smart when he fights with his second woman or when he needs money he comes here, sleeps with me, takes my money and then beats me when it's time for him to leave or when I question. He used to beat me and snatch my money and abuse me with filthy words. I could not take it and so went for a divorce and maintenance to court. He is a permanent cleaner and gets regular salary. I lost so much money running for help from police and court that I gave up. '*

It is understandable that evidence is necessary to prove a case. However, given the private nature of domestic violence and marital issues. As well as the lack of resources and information within which women approach the court they hardly have the means and circumstances to gather what law believes to be concrete evidences. Even circumstantial evidences is difficult to gather because family matters are seen as matters of honour, dignity and private. Thus relatives, friends, and neighbours either do not want to take sides and interfere in such matters or keep themselves away from such issues. Or they themselves do not have the means to get involved and run to police stations and courts to provide evidence and get into legal hassles.

Police respondents informed us that even when women did not have proof their side of the story was heard and husband was summoned to the police station to present his side of the story and to be questioned. Police personnel said (to quote) *'not always they insisted on proof but having proof makes the case stronger so we advise women to get whatever proof they have. We also conduct our own investigation but it is difficult to gather evidence in such cases. Problem is if evidence is not there why the court will believe the story and sometimes we are also reprimanded by court for sending cases without much basis. The court also looks for evidence upon which the case was filed and sent to court'*.

Some lawyers suggested that with cell phones, RTI, awareness raising, and other such tools women now should be aware that gathering evidence is easy. They should get medical certificate when they are injured in domestic violence, or record verbal abuse, or other kinds of torture by their in law. Whats app and phone messages and phone calls can also be recorded. This way from dowry demand, to psychological abuse one can gather witness easily and present before the court. Many others were not able to believe that when there has been violence no one in the entire family, relatives, and neighbours would come forward to support the woman. One lawyer said, *'how can it be that everyone around you is so selfish or scared that they will not come to give evidence for you?'*

### **Use of character of a woman and past history**

At the family court it was observed that in certain cases women's character and sexual history was invoked to counter allegations made by them on the husband. *In one case the husband's lawyer brought two male members of the husband's family to prove that the wife in question was an immoral woman and therefore the husband wants divorce from her. In this case the wife was not ready to give divorce and was pleading that her husband and his family want to marry him with another women who is ready to get more dowry therefore they are forcing her to give divorce. She explained that as she failed to get more money from her parents, her husband and in law and husband did not allow her to return from her natal home. Every time she would go back to them they would make her life difficult and sent her back. In the meanwhile they have found another woman with money to marry him so they are forcing her to divorce him. Countering such claims husband's lawyer argued that the wife tried to seduce an uncle of her husband and a cousin one after the other and this was found by the husband and therefore her husband through her out. He said 'she is a characterless woman and the man and his family are scared that she will bring disrepute to the family, therefore they are seeking divorce and she should not be granted any maintenance money because it is not the*

*fault of his client that this marriage is leading to divorce'. The sitting judge reacted sharply to such allegation and shouted at the allegations made at the woman and also for calling her characterless. She reprimanded the lawyer for bringing such baseless allegations and she pointed that her character has no bearing to the fact that upon divorce maintenance should be provided. The judge also reprimanded the two male relatives and told them that she is not interested in knowing what their allegations are because that has no bearings on the case. Then she said that to know more about the case and to see what is the issue she will send the parties to counsellor and see if any good solution could be reached upon.*

*In another case, a woman alleged that she had no idea that her husband was already married when they met. According to her, she met her current husband when she was still with her first husband who was very abusive towards her and their child. Current husband acted he is single and showed sympathy to her and her child and promised that if she leaves her husband he will marry and take care of them both. After a year of knowing him she walked out of her husband and got a divorce to remarry with her current husband. A year and half they lived without much problem but then her husband started disappearing for longer duration in the name of work. She grew suspicious because he also started neglecting them financially and would not come home for days and not take care of anything related to them or their household. Before marriage she never met his parents because he had convinced her that his parents are dead against this marriage as she was not only already married but also has a child. Therefore she never insisted on meeting his parents. However, when her suspicion grew she planned to visit his village. Upon reaching his village she was in for a shock because his parents shocked informed her that he was already married with two children and wife who was working in her natal village and stays there. After much fighting her husband completely abandoned her and despite pleading never returned or took care of her financially. Having no choice of going back to the first husband she decided to file a case against him for maintenance so that atleast she can take of her child through that money. Her husband's lawyer argued that not only was the husband not responsible for the child because the child was not his but also he is not liable to pay maintenance because his client never married this concerned woman. The lawyer also argued that the character of the woman is very clear here as she herself claims that she had a relationship with his client when she was still in marriage with her first husband. Such woman the lawyer claimed should not be trusted and it was his client who did not have any knowledge that she was still married when they started living together. He claimed that being a woman with questionable*

*character the court should be cautious in accepting the allegations she is making and lies she is telling that she did not know about the fact that he was already married. He added women of such kind can go down to lowest levels to get their way.*

Despite the fact that successive law commissions as well as in many important judgements the use of character and past sexual history of a woman has been stuck down as irrelevant to a case it still continues to be used by defense lawyers to make their point and to rescue their clients from paying maintenance, alimony or getting a divorce.

In discussions related to false cases too often lawyers brought in the argument that many women who are immoral and without virtue or are having extra marital relationships file false cases either when caught or to extract money for themselves and their lovers, or to get a divorce so that they can have a good time with the other man or men. Thus women's character, morality and chastity continues to be used and made relevant in marital issues to gain benefits for male clients. The same lawyers would not speak of extra marital relationships of men or their chastity or morality when discussing domestic violence or other marital issues.

### **Civil Society Organizations, Counseling & Other Forms of Support**

**In order to understand the functioning of civil society in matters relating to violence against women, NGOs working on women's issues and on legal aid were approached. Government initiatives like social welfare offices, Sakhi and 181 were also approached.** These initiatives informed that when women approach for help they direct them to the right resources and help them with legal knowledge. They also advise them in the form of counselling where required and give out ways depending on the situation of the concerned party. Here too the approach was largely to give legal advice keeping in mind that the first priority was to resolve the issue amicably through counselling. Respondent NGOs, lawyers, police as well as some women themselves informed about the presence of tele law centers and help lines. They informed that when in need women can use these help lines and centers and get legal advice and track their cases. In this study women respondents who knew of these helplines were not many and only a few used such help lines. Given their larger lack of exposure beyond their home and work many women did not know about such sources. Those who knew informed that they knew about it from local NGOs. Further, work on exploring the impact of tele law programs can be taken up in a future study to assess its impact and effectiveness among women of all classes.



In terms of counselling centers, one of the NGOs have their own counselling centers across Assam, out of which one is located in Kamrup (rural). Women from nearby areas come there for counselling both legal as well as extra-legal counselling related to marital and other family matters. This counseling room is made of bamboo walls & roof with just two plastic chairs and a few paintings on legislations and importance of family hanging on the wall. Counsellor of this office mentioned that they have been ordered by their higher authorities to keep the counseling room empty with only chairs to sit in order to facilitate counselling without any distraction. The center, at present, has two counselors, the head counselor and her assistant. While talking to the head counselor, it was found that the assistant counselor is not even 18 years old. Later, the assistant counselor was also approached. She shared her experience & expressed that it has been very empowering for her but on the other hand, women who come to the center for help do not want to share their problems with her. She went on to say that because of her age people don't tell her everything. Couples have all kinds of problems and sharing them with an 18 year old is just not comfortable for them. She joined as a counselor when she was only 16 years old and has been counselling women only & not couples. It was surprising for us to see a young girl conducting marital counselling. However, it was explained to us that in the absence of staff and availability of trained counsellors they had to make do with anyone with such talents and that the 18 year old is perceptive and sensitive as well as intelligent enough to handle such complex marital issues. At the age of 16 she showed signs of maturity beyond her age and when appointed on an experimental basis she could handle cases as well as any other elderly persons, therefore she was given the assistant counsellor post.

At courts, police stations, as well as the NGOs **it was found that counsellors were either equipped with law degree or with basic psychology or social work degree. In all cases these counsellors were unaware of the developments made in fields outside their specialization as related to counselling and handling of marital-family cases.** Further, none of them had any form of special training to update themselves on handling complex but sensitive marital issues. All of them had one point approach- to save the marriage – by preaching about gender roles – acting patronizingly towards the clients rather than providing a space to vent out animosities, anger, and hidden grudges and negotiating through them for the couples. However, it also needs to be acknowledged that **each counsellor deals with numerous cases in a month, and are burdened with resolving cases to show the success of their intervention,** & in this process do not have time and space to use more informal

and time consuming methods. On observing and talking to all the counselors mentioned above, it has been found that none of the counselors have any kind of training or any qualifications in counselling, except for the counselors of one well known women's organization. Here too the counsellors were trained for only for 15 days before their appointment. The others were only selected on the basis of their master's degree in Social Work or Psychology.

### **Are Female Legal Personnel More Sensitive to Women's Issues?**

Women's groups have advocated that recruitment of more women personnel in the legal system will go a long way in making the system women friendly. They argue that cases related to women if dealt by women legal personnel will be handled more sensitively which further will affect the outcome of the case. Even the Criminal Procedure Code (Amendment) Bill 2008 also includes sections under which as far as practicable cases of rape will be mandatorily dealt by women judges and women police. This aims to create a non-threatening and comfortable space for women to speak of issues related to sexuality. Also, there is an expectation that women legal personnel will be more sensitive to women's issues given a degree of similarity in experiences across various groups of women. The argument by some women's groups and the law makers is that with the entry of women into the system more and more women will feel freer to approach the system. Entry of women will prevent women and others from perceiving legal institutions as largely a male space, and will be seen as representative of women too.

When asked about their opinion on such arguments, majority of the legal personnel from all branches denied such connection. They felt that:

*'Not necessarily women just because they are women will be more sensitive to women's issues... It depends upon person to person. Who deals which cases and how, that is what matters. If you are sensitive you will be sensitive to everyone, if you are not then you will not be sensitive to anyone whatever you are a male or female.'*

This response was given by both male and female legal personnel. Respondents thus argued that sensitivity is an individual virtue and has nothing to do with one's gender and sex. One of the police personnel said, *'...understanding does not come to people with birth and their sex. Understanding comes from one's character and one's character is not given in her/his sex. So women legal personnel by birth are not necessarily more sensitive in handling cases related to women...'* Another group of legal personnel argued that women are not more

sensitive but contrarily men are more sensitive to women's cases. These respondents said: *'Women lawyers are not at all sympathetic to women victim... There are times when we cannot ask certain questions but a lady lawyer will do that and access the victim's character on the basis of that. They are more insensitive than males most of the times.'*

These legal personnel expressed a negative view towards women who were not sensitive to women litigants. The problem with this approach lies in the fact that these respondents did not apply same approach of condemnation to men who were insensitive to gender issues. So for them the problem does not lie in the fact that women are treated insensibly in the courts but that women as coming from the same gender/sex of the litigant should not do so. Further these legal personnel reasoned that due to biological and psychological reasons male personnel are more sensitive to women compared to female personnel. They also argued that females will be jealous of other females and therefore female legal personnel will be harsher to women litigants. They said (to quote) *'The male judges will have a natural soft corner for females. If a male judge sees a lady crying in his court then certainly he will be upset, rather than a lady judge. Ladies are enemies of ladies. Male judges are more sympathetic. There will be no effect on female defence lawyers whereas a male defence lawyer will feel bad for the woman he is fighting against. Once the cross-examination is over the male defence lawyer comes out and repents for the cross-examination but no female lawyers repent.'* Another legal personnel said, *'Males are better than females. Male judges are more sympathetic to women. It is an internal thing and has been proven biologically. A male will be attracted to a female and vice versa. If you are in trouble then emotion will come in me more than your female folks. Like that male judges and lawyers understand females more.'*

Therefore legal personnel who said that males are more sensitive believed that it is due to the biological and psychological factors that makes a male more sympathetic to women. Very few respondents said that though there is no difference between male and female legal personnel's approach to women's cases yet the presence of women personnel makes women litigants more comfortable to go through case procedures. They believed that women will feel free to speak about their problem to women personnel especially in cases of sexual violence. They would also not feel intimidated in the presence of female personnel in the largely male dominated system. One legal personnel said, *'there is no such favouritism. It is not necessary that a female police or lawyer will be biased for women and will hate males. There is a need for equal number of women to be employed either as presiding officer in the court, or in police stations and even clerks and other officials, so that women clients can feel*

*more secure and freer.* A counsellor opined that, *'the fact that women who are unemployed and battered come to law and see other women as officials, police, lawyers, judges, counsellors and others, will by itself give them confidence that they can also be something and they need to take charge of their lives and not tolerate violence, or depend on husband to earn their livelihood and maintenance.'* One legal personnel said, *'In 376 the women will be freer with a lady lawyer or judge. Even in maintenance case a lady will realize the difficulty of finance of a lady litigant and grant relief soon. Experiences of a woman can only help another woman. But sensitivity does not vary.'*

Therefore, there exists the understanding, though among very few of the legal personnel that it is not a question of the gender and sex of the female legal personnel that makes them more sensitive. **Women themselves may be the transmitters of patriarchal social practices. Hence they know that the entry of more women will not automatically make the system more sensitive to the woman clients. Still they argue that with presence of more women personnel, women clients may feel freer to talk about their problems and sufferings in front of them rather than their male counterparts. They also argue that the similarity in experiences between them may help them empathize with women litigants which ultimately help women's cases.** The central argument seems to affirm that as law manifests both male and female experiences, but the former dominate especially due to their larger numerical presence within the system, adding more women personnel is just a matter of correcting the balance. The hope is that with correcting the balance the law and its practice can become more just, equally concerned for all parties and more consensual (Anleu: 1992). Therefore, though true that given the socialization of women within the same structure it cannot be expected women to be absolutely sensitive to the problems of other women. However, but with more women entering definitely there would be variety of experiences entering into the legal arena thus challenging the homogeneous male constructions of women's issues (Rayaprol & Ray 2010; Ray 2014).

### **Infrastructural Issues**

The infrastructural lag of the courts are something which was pointed out by the legal personnel, litigants and staff; and quite visible for us as researchers. Kamrup, Barpeta and Nalbari **courts lack basic infrastructure** for everyday functioning of courts and accommodating the large number of litigants, lawyers, office staff, police and other members who visit the court regularly and work in the courts. **Adequate toilets** for the litigants especially for women and even staff are not available. In one court the women litigants and

persons who accompanied them used the same bathroom as one set of office staff used and to pass through the record room to access it. That amounted to not just no privacy for the staff and security of the records but also that around fifty to sixty people used that one toilet in a day which had no proper water and electricity.

Family courts had **open space made for the litigants to sit** before their names are called for court proceedings. These space provided us an option to interact with them and listen to their stories. Further, these open spaces were just a tin roof with a few benches placed which were hardly enough to accommodate the litigants, their accompanying persons, and their lawyers. At peak hours one could see many litigants standing scattered inside and outside the court premises and with the court veranda always crowded without much space to manoeuvre. In times of rain and storm these spaces get completely wet and does not provide real cover for waiting litigants. In summer it is very hot and humid. There is a dire need for a proper room with electricity, fans, lighting, chairs and toilets among other things. Given that it is a family court where women have to wait for long hours and most judges and staff are women too, the necessity of a proper crèche facility is clear. However, this seems a far dream in comparison to the need for improvement of basic facilities. Unavailability of crèche facilities or the basic need for a private space to take care of children within court premises adds to women's burden both economic and otherwise. Often with little children to take care sometimes as small as breastfeeding babies women have to either take favours from relatives, friends, neighbours and others to look after their children adding to their obligations, or they have to incur extra financial burdens to hire caretakers. Often women might let go of dates given by courts because they could not take their children to court premises or find alternatives. It is for this and many more reasons that a crèche facility or atleast that of a proper room facility for women litigants is a basic necessity for all court rooms and especially at family courts and women police stations.

There was no space for lawyers, something like a court bar found in other general courts. Lawyers are either found in the canteen or are sitting with the litigants in the waiting area. Many of them were found to reach only before their case. So practically there is no space where lawyers could use as space to do their work or meet their clients or discuss with other lawyers in a conducive atmosphere. Near the district courts there are many small cafes and generally one finds lawyers filling up those spaces not just for tea and food but to do their work. However, there is no such cafes or canteens immediately near to family court at Guwahati, therefore lawyers are usually waiting in the narrow verandah right outside the

court rooms. The canteen here is a just a flimsy dark room with hardly anything sold other than tea and some biscuits. Clean drinking water facility was also not available.

Further, even within the **room where the judge conducted the proceedings**, the court head clerk sat through the whole day to do his/her work. This entailed that while a case was going on lawyers and other litigants came in and out of the room asking for dates to the clerk, or for other matters, thereby hardly providing any privacy to the litigants whose case dealings were taking place. It was also noisy and chaos with people inside the room speaking to the clerk all the time thus disturbing interaction of judge with the litigants and their lawyer. At times in very sensitive cases the judge would ask everyone to leave the room including us researchers. However, the clerk, the police personnel as well as the attendant of the judge would stay back in the room.

The interiors of the courtrooms in Kamrup (Metro) includes the judge's elevated seat along with a stenographer beside, one witness stand, a clerk and a desk on which the lawyers put their documents and represent the parties. The place becomes crowded at times when number of lawyers approach the clerk to take dates and for such work. In Nalbari family court, which has been operative since this year, 2019, the courtroom has a similar structure, except that chairs are kept in place of witness box and the clerk doesn't sit inside the same room. There are offices of counsellors and other staff members in both courts but all these places are tiny dingy rooms without proper ventilation and other amenities. At all times of the day people are crowding at the doors of all these rooms.

**Lack of adequate personnel** is one of the main problems that all legal institutions face including family courts and police stations. At the women's police station, they have the ACP, the Officer in charge and two sub-inspectors and four constables. It was mentioned again and again that it is difficult to run the police station with such few officers and just a few constables. It was also observed that the officer in charge is always too busy and the constables would often inform that as there is no one to help the officer in charge, she has to do a lot of work by herself. Since they are police officers, they are on duty 24/7 and one of the police staff expressed that it would have been nice if they also had shifts in their duties or at least if they got any leave during their monthly period. She went on to say that they were 'trained to be like men' during the course of their training but it becomes difficult sometimes, especially during their monthly period. Since they are women, they are also expected to look after their families and their children which becomes difficult for them to manage. In case of infrastructure of the police station too, they mentioned that they need

better security since all of them are women and they don't have any male guards. They informed that it will be much better if the police station had better boundaries so that it would be much safer for them as well as the female prisoners. They also did not have adequate staff when it comes to delivering messages to errant husbands or to immediately protect a woman in need. They often depend on the nearby general PS for help in such matters. However, male police stations are also overburdened with work and therefore sometimes they are unable to help and sometimes they won't help.

It goes without saying that the number courts, police stations and women police stations, along with number of personnel at courts including judges, office staff, and counsellors needs to be increased. This has been a long term issue in all courts across India and is not unique to Assam.

**The counsellors of Family Courts** play a pivotal role in dealing with family issues. **The judicial officers, appointed in the courts as counsellors**, under our study stressed on the infrastructural lack that the family courts have and their skill constraints when cases involving sensitive matters comes into purview. It was even mentioned by one of the counselors that since they are judicial officers and not a trained personnel in counseling, they face a lot of problems in dealing with the couples. It was also shared by her that it is only in case of family courts in Assam that such judicial officers are appointed as counselors. In family courts outside of Assam, she said, the counselors are trained professionals.

It needs to be noted here that in the family courts under study, **the present daily average of cases for counselling goes up to nine which makes it difficult for counsellors to take up sensitive matters** in each case with equal consideration. However, there is no ceiling on the number of sessions, as such, the court tries to reconcile couples through a number of counselling sessions, sometimes also including other family members of the parties in the sessions.

Lack of legal knowledge & appropriate training among legal personnel is another matter than needs to be addressed. Many lawyers, police and also counsellors did not have much idea about the details of legislations and the aims of those provisions. Even when they knew about the clauses of the legislations the overall discourses surrounding these legislations and an understanding of the spirit and inherent intentions of these legislations is hardly found among most legal personnel. For example, the PWDV Act was the result of a long term struggle by legal and women's groups to address domestic violence and its accompanying concerns.

Therefore, the Act when it finally came was seen as a wholesome legislation and an inclusive law that took care not of the legal aspect but also of financial, social, and other concerns that women have when faced with domestic violence. Often, legal personnel had the knowledge of the Act but the overall understanding and intention of the Act was found missing. Lawyers and police would often in their discussion with us mention the Act and its clauses in a mechanical manner. For a successful impact of any legislation it is important that the law is used and implemented with empathy. This becomes more so when a law is meant for the betterment of marginalized and the socially weak. Laws related to gender issues especially that of domestic violence is one such law which needs to be implemented with empathy for greater positive impact. It is only when legal personnel are aware of the larger history, debates, controversies, and struggles that led to the enactment of a legislation that they can form a more wholesome opinion regarding the issue and act accordingly. This is missing in the mechanical reproduction of legislations and thus there needs to be constant trainings, awareness camps, as well as an environment of debates and discourses within the legal fraternity itself. Legal institutions as well as law schools & police training colleges need to take up this task more rigorously.

**Time taken** for cases to be registered, sent to court, and to be resolved is long, arduous, and complex sometimes resulting in withdrawal of cases too. This has been discussed at different points earlier in this report. Such delay occurs due to various factors including that of lack of adequate number of legal personnel including counsellors. *As mentioned by one of the respondents, who is a victim of domestic violence, it has already been a year since she has filed the case in the police station and it has yet not been referred to the court. She also mentioned that although she is separated now, her husband keeps disturbing her. She keeps coming to the police station to complain and the police only calls her husband to talk but does not take any action against him. We have also spoken to some women who came to the police station to file a case. Many of them have said that their husbands are not afraid of the police or the law and the inaction of the police adds to their husband and in laws' confidence to violate them.* The police on the other hand will say that they do not have adequate personnel to deal with cases in a fast track manner and therefore women complaint about it, however, they themselves are helpless. It has been frequently emphasized by both police personnel as well as women litigants that there is an urgent need for more police personnel and more such police stations for women. It has also been mentioned that the scope and



jurisdiction of the women's police station is very large and to cover all those cases only one police station in the state is not enough.

## CHAPTER IV

### CONCLUSION

#### INTRODUCTION AND MAJOR ARGUMENTS

This study is an attempt to understand legal responses to domestic violence in Assam. It looks at the ways in which law constructs and deals with the issue of domestic violence with special focus on marital-familial issues. Interviews with women who have approached the law for marital issues; and of police, lawyers, counsellors, court and other administrative officials related to legal institutions, activists, and NGO staff; observations at family courts, women police station, counselling cells, legal aid centres; and, analysis of already solved court cases, and other case studies collected from lawyers, illustrate the ways in which legal personnel interpret and implement existing legislations and deal with cases of domestic disputes and violence. This study argues that law as an institution functions in intersections with other institutions of society and therefore is very much rooted within the gendered patriarchal ideologies of the larger society. It illustrates that in dealing with domestic violence and family issues, legal personnel bring law and social practices into congruence with each other. This in turn determines the ways in which law and its institutions define domestic violence and “appropriate” responses to it, which is more often than not, gendered. One also finds intersections of class, ethnic, religious and other identities of women that intersects with their gender identity in the manner in which legal personnel perceive women and respond to their cases. This study, therefore, brings to light institutionalized patriarchy within the legal system. It brings forward various forms of insensitive treatment meted out by legal personnel to “victims” of domestic violence, the patriarchal biases inherent in the legal system and its apathy towards gender justice. The constant alluding by legal personnel to women’s capability to lie, manipulate, and misuse law for their own benefit, the standardization of a “good” and “bad” women and measuring of all survivors against these patriarchal standards, the notion that “bad” women do not deserve justice, save the family approach, and placing the burden of domestic violence on women themselves, are a few examples among the various opinions put forth by legal personnel that illustrates laws’ patriarchy and the gendered nature of the legal institutions. Legal personnel largely construct issues such as divorce and maintenance as downgrading of culture as well as the result of women’s intolerant and manipulative behaviour. Thus feminization of violence as well as shifting the burden of disintegration of family to women is not uncommon within legal

personnel including that of counsellors. This study argues that despite decades of intense gender rights campaigns and various legal reforms, legal institutions remain far behind in terms of placing women's experiences of domestic violence at the centre of its everyday functioning. It excludes and rejects large part of women's experiences of domestic violence by reading such violence through gender normative lens. Law therefore, not only treats women unequally, but is intensely engaged in essentializing women and the boundaries of their rights and life chances. With constant reminder in legal personnel's responses that women should know their natural roles in society and that familial domestic sphere is the most inevitable and safe space for women, it is obvious that understanding of 'women as an individual human' in the liberal legal sense remains a farfetched dream even within law. However, it can be said that despite the gendered construction of domestic and marital issues by legal personnel, women in large numbers are approaching the law and maneuvering through law to deal with difficulties in their lives and increase their life chances. It is for this that the very presence of legislations, and legal institutions, gendered or otherwise, including that of family courts, counselling centres, women police stations, social welfare centres and others are a necessity. Thus establishing of more such courts, police stations, counseling centres, and more recruitment of trained legal personnel and others will go a long way in increasing women's access to law and justice.

This study also documents the nature and causes of domestic violence in Assam. Along with data collected from the previously mentioned sources, data is also collected through discussions with some family members of women litigants, and researchers working on gender issues in Assam. Case studies and other secondary sources such as newspaper reporting, TV and social media discussions/articles and books and dissertations found in libraries are also used. With all these the nature, extent, forms and causes of domestic violence in Assam is documented. Heteronormative gendered structures in various degrees and forms determines men and women's lives within all communities. Though the gender norms may be relaxed among certain indigenous communities as compared to caste communities and organised religion, yet, in no communities are women's lives free of patriarchy. This ensures that status of women and their life chances remain unequal if looked only through gender lens. This shoots up their vulnerability to gender based violence and therefore the concern for gender violence in Assam. Definitely caste, class, ethnicity, religion, regional, and sexual identities intersects with the gender identity to bring in double burdens on certain women and make men vulnerable in other conditions. However, as this

study is on domestic violence a thorough analysis of historical and contemporary literature, along with the data collected from the field brings forth that women's lives in Assam have always been marred by gender norms in various degrees and continues to do so till date. Gender norms including gender division of labour, norms of respectability, the private-public divide, notions of masculinity, femininity and over all sexuality determines women's vulnerability to domestic violence. These also simultaneously impose a culture of silence regarding the same. Contrary to common claims of relatively egalitarian status of women in Assam and absence of patriarchal norms, this study brings forth that discrimination and gender in various forms is endemic to all parts of Assam. Similar to other parts of India, women in Assam too live within different forms of patriarchal systems of family and society, whereby violence against them is used as a systemic tool of control, is seen as justified in various circumstances, and is condoned by both law and larger society. Wife battering including dowry and female foeticide, witch hunting, sexual violence in public and private spheres, moral policing, and sex trafficking are the major forms of violence reported along with other forms which is hardly brought to light and to the law, but does exist in Assam. Women are largely expected to tolerate violence especially when it is committed within the domestic-private sphere. Not only are doubts and aspersions cast on women victims of domestic violence when they break their silence but more violence awaits them in such scenario. Within the larger patriarchal structures and gendered ideologies women largely remain silent due to various personal and social reasons. When they decide to break their silence especially in cases of domestic violence, they largely look up towards informal institutions of immediate family, community, friends and village structures for resolution of their grievances. Often only when they fail to get the desired responses and in conditions of desperations they approach the law. Very few women approach the law in the initial stages of domestic violence. Many considerations weigh upon the minds of women preventing them to first speak of violence, and, second to approach formal systems like law. The first and foremost being concern for their family's status and prestige, as well as their own economic and social dependency, and, larger societal acceptance and stigmatization of their own selves. However, sometimes women do approach law on their own in the initial stages especially when the safety of their children is a stake.

Prevention of all forms of gender violence is an urgent necessity. In such attempts at prevention, law is an important institution, despite its failure to address the issue in its entirety. No one can afford to ignore law in their fight against gender violence, for law has

an immense influence on our everyday lives and it has the potential to bring social change. It is the ultimate legitimate authority which has the power to delegitimize an act and help eradicate violence.

### **Suggestions:**

Based on legal personnel's opinion and observations conducted for this study the following section is a discussion on the possible initiatives/changes that can be undertaken within the legal system. These changes it is believed can make women's quest for justice easier and also enhance the functioning of the system as a whole. Existing research on law in India do bring forward these concerns and the need for changes. Some of the suggestions here are reiteration of aspects that earlier studies have emphasized upon.

### **Better Infrastructural Support**

Given the enormous pressure on courts and police stations from increasing number of litigations, legal personnel are not able to give enough time, energy and patience to each case, even if many legal personnel would want to deal with cases in more in depth manner. The need for infrastructural changes thus can never be overemphasized. Establishing of more police stations, courts, women's cell, counselling centres, social welfare offices, and other related administrative offices is a necessity. Semi-urban and rural areas are the most neglected in terms of access to justice. Women just do not have direct access to a police station. Given the fact that women are hardly allowed to access the public sphere especially on their own it is important to create and establish mechanisms/institutions that gives them immediate and easy access to law.

**State-civil society collaboration** in addressing gender violence of all forms is suggested as one of the important measures. Some legal respondents believed that voluntary organizations should be given statutory power to deal with cases related to women in every small place. This they thought would solve problems of access that women in rural areas face. Nari adalats in Assam are one of the measures that already exists and is used by women in large numbers in rural areas to resolve their family-marital disputes including domestic violence. The state can institute means to strengthen such attempts while retaining the ultimate say in such matters.

State civil society collaboration to strengthen the legal institutions already exists in the form of counselling centres and other social welfare offices. Such initiatives can be made more robust with inclusion of such programs in all police stations and courts. Given the fact that gender violence is a multifaceted problem like that of any other issue, it is not just the legal

process but the social, cultural, psychological and economic aspects of the issue that needs special care for an overall inclusive addressing of the problem. Like in many developed country, social workers/gender experts, counsellors, psychologists/feminist psychologists, psychiatrists, juvenile experts, women's groups and progressive legal groups could be made integral part of the legal institutions. Given their varied exposure to different aspects of the same problem an institution with all these experts will bring in a mechanism that can help understand and address the issue from various angles and establish a more inclusive and effective mechanism. Given the fact that even battered women are not a homogeneous category and do not always want the same thing from law, or want more than financial and legal help from law, it becomes pertinent on law that it establishes mechanisms to handle the various expectations of a heterogeneous group of women litigants. Law can always designate work to or refer women to other institutions but having its own mechanisms within its own purview will go a long way to deliver legal relief to women most of whom are exhausted running from pillar to post.

In terms of strengthening the legal institution the need for appointment of more judges, police personnel, public prosecutors, counsellors, and official staff in courts has always been accepted. In Assam too the need is the same and all respondents emphasized on the same. Overburdening of all legal personnel and officials leading to poor handling of cases is brought forth constantly in the study. Sitting through the family court sessions as researchers we wondered how judges in a day could take so many cases of similar kinds with so much complexities. We wondered would not they get disillusioned with such cases and where did they get the mental space to ponder upon and think through each case. It must be psychologically stressful. Police personnel informed us that doing different kinds of duties along with dealing with family related cases which drags for quite some time given the complex nature makes them exhausted. They informed that given the acute shortage of staff in all branches of legal institutions it they are constantly overburdened leading to physical and psychological exhaustion. Additional women police personnel informed that their familial responsibilities often added to their burden. Thus the need to have more number of legal personnel from police to judges, from counsellors to clerks is a necessity that needs attention. More women legal personnel should be appointed in order to balance the gender divide within the system. This also encourages more women to access the system and helps them to feel freer to discuss their cases.

Infrastructural aspects should also include facilities for legal personnel themselves that will contribute to better physical and psychological state of affairs for police, lawyers, judges,

counsellors, office staff and others. Proper office space, court rooms, rest room facilities, canteens, club rooms, and others help build a conducive space for work too. More importantly facilities such as crèche, counselling rooms especially for staff will help legal personnel psychologically as well as in terms of familial and economic responsibilities. Women legal personnel especially could be free of tensions of child care and give their best to work. Availability of crèche might also prompt male legal personnel to take up child care responsibilities thus helping them understand their female colleagues' experiences as well as help a larger gender parity society.

In terms of infrastructure one of the aspects that is most neglected is the building of proper record rooms. Record keeping is an art and a necessity. Most robust civilizations have given great importance to record keeping, be it of personal records or that of public-state records. From personal diaries, letters to community and national records, the importance of records to a robust civilization and for future generations is immense. Legal records for that matter is not just about law but a record of the social, political, cultural, religious and economic, aspects of a given society. Thus the importance of legal records goes beyond the scope of law and spills over majorly to all aspects of society. However, record keeping has been one of the most neglected aspects found in our study. Office spaces are often cramped with no place for people. Therefore expecting that records will be maintained in organized and safe conditions is difficult. Building of organized spacious record rooms with the art of library science applied to it is a dire necessity for all legal institutions. Court record rooms does exist but often are in a much unorganized and poorly maintained state. Much thought needs to be given to the infrastructure of building record rooms and such rooms should be given access to not just legal personnel but also to researchers, students and others who would use these records for larger social purposes. Today however, digitalization of records has helped manage to address some of these problems of record keeping.

Infrastructural development should also include constructions of shelter homes, rest houses etc for non-local women complainants and other poor litigants coming to family courts. Many women who are already impoverished have to visit court time and again for various reasons especially for attending due court dates. Often they do not have anywhere to stay and that adds to their economic and physical difficulties of attending court and returning back to home and again coming for another date early in the morning to return before nightfall so that they are not forced to stay in the town/city to attend a date. Given the poor transportation condition and non-availability of frequent and easy transportations to all

corners of rural Assam, availability of shelter-rest homes for women litigants for the day or before that date would go a long way in contributing to the ease of access to court.

### **Efficient Use of technology**

Use of technologies can help simplify and speed up the procedures. Use of technology can help organize the system with computerized maintenance of records and electronic delivery of information related to cases. This relieves litigants and their lawyer's dependence on the mercy of the clerks for every bit of information. Technology can also bring transparency to the system and solve cases in less time. Audio and or video recording of statements of litigants and witnesses can prevent tampering of such statements that are vital to a case. Legal personnel agreed that the use of scientific technologies during investigation, counseling, recording statements, depositions and others would make it easier to solve cases. They also suggested that the use of technology will make things easier for women and other witnesses and their experiences less bitter, so that their interest in the case can last longer. According to them if technology could be used to interact with complainants and witnesses from the place they stay rather than asking them to come to the court on every date, things would be less tiring, humiliating and exploiting for them. Once video conferencing is used and women and witnesses are allowed to depose without actually coming to the courts then things will be more efficient. Women will be less intimidated and will feel freer to talk when they are not conscious of people around them. However, feasibility and reliability of such use of technology remains debatable. In the meanwhile like in many developed countries electronic notice boards displaying information related to available dates for case hearing and other such information can be placed in courts so that litigants need not be swindled by corrupt officials in the name of no dates available and for other such information.

### **Awareness Raising Campaigns:**

Awareness raising campaigns regarding women's issues and laws related to it is an important strategy. Such awareness should be conducted at many levels/forums and with all stakeholders beginning with general public, legal personnel, and other service providers. Awareness campaigns should be related to two aspects. First is to create awareness related to the issue of familial-marital issues including different forms, causes, nature, context, effects and history of resistance to domestic violence. It should also include the concept that any form of violence and discrimination are not personal matters and is strictly dealt with by the state/law. Second - awareness regarding legislations, procedures, rights, facilities provided by state and non-state agencies, shelter homes, help lines and other such aspects needs to be taken up rigorously. Awareness raising campaigns should not only target legal



personnel and sensitize them towards women's issues. It also should involve more and more legal personnel in spreading awareness regarding the availability of law, its benefits and other nuances. The idea is that through their involvement in campaigns legal personnel not only spread awareness regarding law but they also get sensitized in the process by coming in touch with the masses.

Forums within the system has to be started which takes the task of initiating debate on the validity of archaic legislations, legal procedures and legal ethics. Regular reviewing of existing legislations and important cases, can help start continuous debates among legal personnel, raise their consciousness and help in smooth amendment of laws. Providing interim monetary relief to women fighting cases should be a legal strategy. This will help women sustain their fight for longer period and reduce the number of compromises and withdrawal of cases.

**Gender Studies as integral part of Law School Curriculum & Continuous Gender Sensitization Short-term Courses & Trainings as part of Law Schools:**

Most legal personnel during their induction classes into the system receive no special training to handle women's cases. Sensitivity to women's life conditions is a necessity to understand the nuances of such cases upon which cases can be taken up and judgement can be based. Given the lack of gender training legal personnel do not know how to effectively handle women's cases. Therefore, legal personnel need to go through special trainings from time to time to get exposed to emerging ideas and debates on women, gender, and other related issues, to deal with cases of gender violence, which to a certain extent can help change their approach to handling of women's cases. These training programs should be part of their induction and other official courses. It also should be organized at intervals in collaboration with organizations dealing with women's issues.

**However, gender sensitization training should start early on and to make significant impact it should be made part of school and college curriculum in general rather than beginning at a later stage of entering into legal profession/colleges.** Given the fact that law functions in collaboration and intersection with larger social institutions unless the larger social attitude towards gender division of space, labour and sexuality changes just targeting legal institutions may not have long term and indepth impact. By the time the legal personnel reach law colleges they have already reached a certain level of socialization moulding which may prove a difficult task especially with the larger social milieu remaining same. **Therefore the long term solution to gender violence lies in addressing gender systems of all kinds beginning with family, religion, and education. For this a concrete step would mean**

**introducing critical understandings of these systems vis-à-vis gender norms through formal education at school level itself.** Heteronormativity has to be questioned and dismantled at all level of society for a true and effective solution to address any form of gender violence.

One of the important aspects that come out of this study is the need for gender sensitive, legally trained, matured counsellors who do not just have a psychology or social work degree but also should be well equipped with matters related to disciplines of sociology- gender studies, social work-gender studies as well as law. Legal officers appointed as counsellors should get appropriate training in matters related to society, psychology, and gender studies. **National Law Schools do include Sociology in their curriculum but a rigorous gender training through compulsory gender courses and making gender issues a part of all courses can go a long way in improving empathy towards women's lived realities, issues and cases. When National Law Schools and State Law Schools curriculum make gender a part of their curriculum, which many such schools may already be implementing, it may set an example for other law schools. Appointment of experts on gender and law as part of the academic divisions will ensure that such courses become integral to law schools.**

**Along with such courses and training law school faculties also should go through gender trainings at regular intervals.** Legal scholars may be well aware of laws related to women and how women use or do not use law in different spheres, however, that do not ensure seeing through a gender inclusive lens. Rigorous trainings in gender courses may help open up dialogues among legal scholars, lawyers, judges, police and other legal personnel as well as build empathy to gender issues as a whole which definitely then would spill over to legal institutions, court rooms, police stations and the larger legal spaces both inside and outside court rooms. This will go a long way in at the least making legal spaces women friendly and encourage women to access law and maneuver legal spaces with more hope and confidence.

**Strategies to address employment/economic independence of women especially poor women** has been suggested by legal personnel and counsellors as one of the most important ways to deal with marital issues and increase women's access to justice. According to various respondents often women are dependent on their families – natal or marital for their livelihood, shelter and basic requirements for life. Despite the fact that poor women often work yet many do not find work to sustain themselves and are also not trained to do anything beyond housework or labour work. Therefore, respondents suggest an aggressive approach

to skill development among women and especially the poor will lead to women's economic independence and thus make them confident both within and outside marriage. They will no more depend on husband for maintenance which will reduce family court's burden by half as according to legal personnel maintenance cases are the largest filed cases in family courts.

Building awareness regarding need for social research is also a necessity and the importance of such research to reflect upon and improving the functioning of the legal institutions needs to be created among legal personnel as well as other members related to legal institutions and administrative offices.

### **Media and Women's Issues:**

Media is one of the most influential tools to create public opinion and awareness. Substantial focus should be placed by state to use media to spread gender sensitization as a whole and not just about law. These efforts are definitely in place in last four-five decades through advertisements etc by state. However, what is necessary is support to contents that shows women's issues and their struggles in better light and places a check on gender insensitive and gender violent contents. Legal and gender training to staff of major media houses is an effective way to spread gender sensitization and legal awareness to overall society.

### **Further Research:**

In order to bring substantial and long term impact on women's access to family courts and law in general, there is a need to not only have state-civil society collaboration, but also strengthen state-civil society-academic collaborations. Rigorous long term research on women's legal consciousness, women's everyday understanding on law, women's everyday use of different legal forums (state and non state), gender in legal spaces beyond the law courts and police stations especially in law schools, etc needs to be taken up. There is no dearth of academic research on law's response to women's issues in certain states and in others there is hardly any. This is also true of studies related to gender in law schools in India both national and state law schools, as well as local, private and other regional law schools. Given the fact that most women who approach law come from rural and poor backgrounds they can often only afford either free legal services or that of lawyers who are not very high charging and successful. It is at this level that academic research on gender and law schools, gender sensitization training etc needs to be taken up. Literature on gender and law are

mostly on women approaching formal law or customary law but in India women's legal consciousness is hardly studied in an in-depth manner. This needs special attention.

### **Conclusion**

This study illustrates the existing gulf between women's experiences of marriage, family and domestic violence and legal personnel's comprehension of the issue. There is definitely a wide gap existing between women's experiences of gender based violence - the spirit behind women's rights campaigns, the new legislations brought in, and their actual implementation. Law and legal personnel have a long way to go to comprehend women's multitude experiences of domestic complexities and violence and to truly address their concerns in an inclusive manner through the scope of law. For the Constitutional promise of egalitarianism to be true the first step is to accept and treat women as humans in all spheres. This necessitates a great overhauling of our belief systems for which a minimum requirement is to end jingoistic glorification of traditions and cultures and think critically through them. It is with this beginning that real access to law can be provided for women and their concerns addressed. It is important to be noted that women's access to law and legal institutions have increased substantially through efforts from both law and civil society. It has also increased through establishment of women specific and family specific police stations, women's cell, family courts and other such measures. Changes in women's ability to come out of their homes and access courts, police stations and use of law is quite visible in the sheer number of women litigants present in police stations, family courts and counselling centres. However, fact remains that given the population of women who face difficulties and complexities within family and marriage the ratio approaching law is much lesser and more so those seeing it through the legal system till its logical end is negligible. Furthermore, this access is not by any definition easy, smooth, exploitation free, and empathetic experience for most women. It is for this that much needs to be done at various levels. For the time being a professional and committed implementation of the "women friendly" clauses of existing legislations and rules will continue to bring in much more relief to women.

**Limitation of the study and proposal for future research:** Given the reduced timeframe granted for this study compared to the proposed study, this study concentrated on family courts and women police stations. As per the discussions during presentation and the suggestions made it will be interesting to take up studies on effectiveness of legal aid services at national and state levels. Also, future research can be taken up on impact of tele law services in Assam & other parts of northeast India.

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