

LIST OF ACRONYMS AND ABBREVIATIONS

CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
Cr. C. FDRE	Criminal Code of Ethiopia, 2004
DV	Domestic Violence
DVA	Domestic Violence Act 116 of 1998 (South Africa)
EU	European Union
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Cultural and Political Rights
ICSECR	International Covenant on Social, Economic and Cultural Rights
NFHS	National Family Health Survey
NGO	Non-governmental organisations
PWDVA	Protection of Women from Domestic Violence Act
Rs	Indian Rupee
ST	Scheduled Tribes
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UN DEVAW	United Nations Declaration on the Elimination of Violence against Women
UNICEF	United Nations International Children's Emergency Fund
UNISA	University of South Africa
US /USA	United States of America
VAW	Violence Against Women
VAWA	Violence Against Women Act (USA)
WHO	World Health Organisation

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CHAPTER 1

RESEARCH ORIENTATION AND METHODOLOGY

1.1. INTRODUCTION

Violence against women became a matter of discussion only in the latter half of the twentieth century. Before this, it was considered a private matter that took place in the family (Fox, 2002: 19). Family matters were ordinarily private and not subject to state intervention (Clark, 2011:194). It has since been established that domestic violence is a global issue reaching across national boundaries and socio-economic, cultural, racial and class distinctions (Ricci, 2017:2). Domestic violence is widespread and deeply ingrained prima facie, making it an acceptable or typical form of behaviour in some instances (World Health Organization (WHO), 2009:4). Although men can be victims of domestic violence, most crimes of this form are committed against women for assorted reasons, including their vulnerability, and the influence of patriarchal systems (Rakovec-Felser, 2014: np). In addition, domestic violence has a serious impact on a woman's health and well-being (Wong, 2013: 22). In light of these factors surrounding domestic violence, and an apparent lack of care in many countries, advocacy groups around the world began agitating for the protection and advancement of women. Thus, the issue was brought to the foreground on an international stage, which caused many nations to evaluate both their stance and legislative response to domestic violence.

In the context of this study, the researcher refers specifically to domestic violence against women, although he acknowledges the same phenomenon against men.

Domestic violence eludes a single definition; however, it is often, however thought to include physical abuse, domestic abuse, spousal abuse, or intimate violence (Kaur & Garg, 2008:74). It is, however, trite that a high proportion of women are faced with violence in their communities, society, religion, place of work and in

their homes. Some religious and customary practices consider women inferior to men and as such, make them vulnerable to domestic violence (Jewkes, 2002: 1427). For example, Ethiopian customary laws discriminate against women who are prohibited from appearing before customary institutions,¹ which are generally constituted by older community members who are thought to understand and guard the customs of a particular ethnic group (Abdo & Abegaz, 2009:32).

In India, violence against women became a matter of discussion only towards the end of the fourth quarter of the twentieth century (Mitra, 1998:19). Before this point, the prevailing political leadership opined that domestic violence stemmed from dowry practices and thus banned dowry in 1961 under the Dowry Prohibition Act. To advance the prohibition, a penal provision was included in the Indian Penal Code, to criminalise dowry-related abuse (Indian Penal Code, section 498(a)). In 2005 the Indian Parliament passed the Protection of Women from Domestic Violence Act (PWDVA), to prevent and control domestic violence against women in India. By contrast, the Ethiopian law on the point is a matter of debate as will be discussed later in this study. Suffice to say at this point that Ethiopia has one of the highest recorded rates of domestic violence against women in the world (WHO, 2005:97).

From an international perspective, various treaties and optional protocols address violence against women. Both Ethiopia and India are a party to treaties in this regard as will be fully discussed later in this document. Fulfilling their obligation towards the international community in terms of their international commitments, Ethiopia incorporated provisions into the Criminal Code for the Federal Democratic Republic of Ethiopia, 2004 (hereinafter Ethiopian Criminal Code, 2004) and India enacted a separate statute; the PWDVA in 2005. The latter aims to protect women from domestic violence in their homes (section 2, PWDVA, 2005). The 2013 Indian Criminal Amendment Act further amended the Penal Code and strengthened protections for women by specifically criminalising

¹ There are different ethnic groups in Ethiopia, and each group has its own laws for dispute resolution. This is a system of customary law and much of the law is based on tradition and is thus uncodified. Elder members of the community knowledgeable about customary law are elected from the particular ethnic group at local, district and ethnic level to resolve disputes. Women are not permitted to appear before these forums.

stalking, voyeurism, and acid attacks (Yeasmeen, 2015:7). The latter listed crimes commonly occur against women in India (Ahmad, 2012: 111).

In light of the above synoptic overview, the researcher proposes to use this study as a vehicle to compare the laws governing domestic violence in Ethiopia and India and to then determine their efficacy judged against their practical implementation and the implications arising therefrom.

This study includes data collected from Ethiopia and India. Data methods include in-depth interviews with victims of domestic violence who approached the Ranni Court, Kerala in India in terms of the PWDVA; and those who approached Jimma Court in Ethiopia seeking a divorce.

1.2. STUDY BACKGROUND

Domestic violence is a global issue reaching across national boundaries (Renzetti, Edelson, & Bergen, 2001:13). A study conducted by the office of the United Nation Secretary-General (2006) shed light on the prevalence of violence against women.

The study reported that one-third of the world's female population experience some form of violence, including intimate-partner violence. It states further that violence against women is the manifestation of unequal power relations between men and women, which lead to discrimination and prevents women from advancing and developing in a chosen domain (UN Secretary-General, 2006: np).

Even though much research has been conducted in western countries on violence against women in general, and domestic violence in particular, similar studies were limited in India and Ethiopia, until the end of the twentieth century. The World Health Organisation (WHO, 2002:[sa]) reported that 49% of partnered/married women in Ethiopia experienced physical violence from a partner at some point in their lives. Furthermore, 59% of partnered/married women experienced sexual violence; 44% during the last 12 months of 2003. In addition, the study found that 35% of the partnered/married women in Ethiopia experienced at least one form of severe physical violence at the hands of a male.

The study further revealed that 71% of Ethiopian women experienced either physical or sexual violence; 54% during the last year of reporting, and one-third were resultantly gravely injured and required medical care (WHO, 2002: [sa]).

Indian women experience domestic violence perpetrated by various persons, such as their husbands, former husbands, fathers-in-law, mothers-in-law, sisters-in-law and so on (Modi, 2014: 256). The National Family Health Survey-IV (NFHS-IV) revealed that married women further experience sexual abuse inflicted by their husbands. In addition, many women are forced into sexual relations by their husbands. In India, most of the domestic violence incidents are related to the practice of dowry ² wherein women are expected to pay a dowry to the groom's family as part of marriage negotiations (National Family Health Survey, 2005/2006: np). Dowry practices have, in extreme cases, led to the death of many married women (Dang, Kulkarni & Gaiha, 2018: 3). Although it may be convenient to link such practices with the uneducated masses, research indicates that educated women are not immune to dowry-related violence and domestic violence. For example, Kerala, which records the highest rate of literacy amongst all the Indian states, is not free from domestic violence against women (Deyessa, Berhane, Ellsberg, Emmelin, Kullgren & Hofberg, 2010: np).

Despite the above Sunny (2005: 160) found that domestic violence is significantly higher amongst so-called 'backward' communities and nuclear families. The NFHS-IV (2015-2016) reported that 23.6% of urban women, and 31.4% of rural women in India, have experienced spousal violence; and 3.3% of women have experienced violence during pregnancy (NFHS-IV, 2015-2016: np). Despite these high rates, the same survey reported that that 84% of women usually participate in household decisions, and 53% of women have bank accounts. In Kerala, 97.9% of women and 98.7% of men are literate. 7.6% of women aged 20-24 years married before the age of 18 years, and 3% of women aged 15-19 years were already mothers, or pregnant during the time of the survey (NFHS-IV, 2015-2016: np). In addition, 14.3% of married women experienced spousal violence, and 1.2% experienced violence during pregnancy. This survey reported that 0.8% of women use tobacco, and 1.6% use alcohol, while 25.7% of men use tobacco and

² Dowry is a practice of the bride's family giving money or property to bridegroom's family.

37% use alcohol (NFHS-IV, 2015-2016: np). This study indicates that women remain vulnerable to domestic violence and abuse economic or social background notwithstanding.

A study undertaken by Yee in 2013, on domestic violence in India revealed that although the incidents of violence were the lowest when compared to countries that recorded low incidents of domestic violence; given its population of 27.5 million, a high percentage of women in India are still affected by domestic violence.

The causes of domestic violence in India and Ethiopia range from trivial to bizarre. One such identified cause relates to a high rate of alcoholism amongst men, which has been linked to domestic violence. Extra-marital affairs and dowry demands are also major causes of domestic violence against women. Other reasons such as property disputes, sterility of either spouse, mental disorders, male job dissatisfaction, sexual maladjustment, child neglect, financial constraints, and female unemployment, are also cited as causes for domestic violence (Sunny, 2005: 122).

A study conducted by the Yugantar Education Society (2004) on domestic violence in central India, reported that from a total of 1 250 women who participated in the study, 15.36% were previously employed but had been forced by their spouse to quit their jobs. In addition, not doing housework properly, dressing fashionably, jealousy; infidelity, extra-marital affairs, laughing without reason, combing hair a number of times a day, raising one's voice during a conversation, having friends that are not approved by the husband or family, having a boyfriend, being disrespectful, and refusal to engage in abnormal sexual behaviour, were identified as causes of domestic violence (Yugantar Education Society, 2004: np). Solidarity (2009:np) also identified alcohol abuse, infidelity, or suspected infidelity by a husband or wife, as causes of domestic violence in North-India. Hierarchical gender relations and established traditions have also been identified as causes of violence. Some acts of violence against females are considered acts of discipline which are essential for maintaining male authority. Further, women in polygamous marriages are vulnerable to violence (Solidarity,

2009: np). In-law dissatisfaction regarding dowry may also result in the torture of the daughter-in-law. Trivial reasons, such as improper cooking or lack of discipline from the woman are also cited as causes for domestic violence in India (Solidarity, 2009: np).

Semahegn and Mengistie (2015) reported the causes of domestic violence in Ethiopia to include multiple relationships by the husband, parallel relationships with other women, alcohol abuse, financial challenges, violence initiated by other members of the family, and a belief in patriarchal superiority. The Demographic Health Survey conducted in Ethiopia (2016) reported that 33.4% of married women in the age group 15-19 years experienced physical/sexual/emotional violence, and 33% of married women in the age group 20-24 years experienced several types of domestic violence. 32.5% of women in the age group 25-29 years experienced domestic violence; and 36.6% in the age group 30-39 years, and 37.5% of women in the age group 40-49 years experienced domestic violence in Ethiopia (Central Statistical Agency, 2016: np).

The survey further found that 37.3% of uneducated women; 35.1% of women with primary education; 27.7% of women who have a secondary education; and, 17.5% who have more than secondary education; experienced domestic violence. It further reported that 36.5% of women in the lowest wealth-quintile, 35.6% of women in the second wealth-quintile, and 41.4% in the middle wealth- quintile experienced domestic violence. Moreover, 33.4% in the fourth wealth- quintile experienced domestic violence; and 29.3% of women in the highest wealth-quintile experience domestic violence (Central Statistical Agency, 2016: np). These statistics go some way towards demonstrating that domestic violence is not always linked to low socio-economic or educational standard, although these do appear to be catalyst factors for violence as will be discussed later in this document.

1.3. RESEARCH METHODOLOGY

Mills, van de Bunt and de Bruijn explain that research methodology determines how researchers think about a study, how they make decisions about a study, and how they position themselves to engage; firstly, with participants, and then

with the data collected (Mills et al., 2006: 628). The following research methodology was applied to this study.

1.3.1. Research Approach

Creswell (2014: 27) proffers that qualitative research begins with assumptions and the use of interpretive and theoretical frameworks which inform the study or research problems and, address the meaning that individuals or groups ascribe to a social or human problem/phenomenon. To study this problem, qualitative researchers use an emerging qualitative approach to the inquiry, collect data in a natural setting - sensitive to the people and place under study - and data analysis that is both inductive and deductive, and which establishes patterns or themes.

The final written report or presentation includes the voices of the participants, the researcher's reflection, a complex description and interpretation of the problem, and an explanation of its contribution to the existing literature or a call for change.

The researcher followed a qualitative approach since this study is aimed at gaining an understanding of how victims of domestic violence in India and Ethiopia experience the effectiveness – or ineffectiveness - of the laws governing domestic violence in their country. Detailed descriptions, by means of verbatim quotations, will illustrate how participants experience this phenomenon and the impact of the law on such experience.

1.3.2. Research Design

The researcher followed a collective case study research design to address the identified research problem. Creswell (2014: 34) describes case study research as a qualitative approach during which the researcher explores a real-life, contemporary bounded system (a case), or multiple bounded systems (cases) over time, through detailed, in-depth data collection, involving multiple sources of information (interviews, observation, documents, and reports). This study is bound to Jimma Court in Ethiopia, and Ranni Court in India. In terms of time, the study is bound to the period 1 January 2014 to 1 January 2016.

Creswell (2014: 37) further explains that the unit of analysis might be multiple cases (a multi-site study) or a particular case within a site study. The researcher selected multiple case studies (selected domestic violence cases heard by Ranni Court in India and selected divorce cases arising from domestic violence filed at Jimma Court in Ethiopia), to illustrate the issue under investigation (i.e. domestic violence legislation and legislative efficacy in Ethiopia and India).

1.3.3. Study Population and Sampling Procedures

A research sample is a section of the population selected for the purpose of a research project. Population refers to all the people or inhabitants of a specific area. Welman, Kruger, and Mitchell (2005:53), further describe the population as the full set of cases from which a sample is drawn. According to Trochim (2006:1) sampling is a process of selecting units from a population of interest, in a way that the sample may fairly generalise the results back to the population from which they were chosen. Trochim believes that sampling is essential to save limited resources, reduce workload, and produce accurate results.

Kumar describes the study population as the people who the researcher wants to find out about; such as a group of people living in an area, employees of an organisation, a community, or a group of people with specific issues (Kumar, 2011: 78).

Creswell (2014:148) and Silverman (2011:70) state that a number of individuals are selected from the population, depending on the size of the research population. Silverman indicates that in qualitative research, sampling is done to obtain rich and in-depth data from informed participants, who can make knowledgeable contributions to the research.

The study population in this study was domestic violence victims in the jurisdictions of Jimma (the largest city in south-western Ethiopia) High Court in Ethiopia, and the Ranni Court in India (Ranni is a village located in the Pathanamthitta district of Kerala State, South India).

The researcher applied purposive sampling to select the sample from Ranni in India. The purposive sampling method entailed selecting a sample based on

knowledge of the population, its elements, and the nature of the research aims or purpose of the study (Maxfield & Babbie, 2012:153). Maxfield and Babbie believe that in studying a sample of a specific target group within the environment, we may get an overview of the whole community. Silverman (2011: 71) explains that purposive sampling allows the researcher to choose a case because it illustrates some feature, or process in which the researcher is interested. Purposive sampling demands that the researcher think critically about the parameters of the population of interest, and then choose a sample case on this basis. The researcher purposively selected domestic violence cases in the authority of Ranni Court in India for a detailed study of the causes, forms, and incidences of domestic violence. Therein court judgements are also interrogated. After perusing these selected cases from Ranni Court, the researcher purposively selected cases to interview victims of domestic violence and study whether domestic violence is repeated after court interference.

Since the enactment of the Criminal Code of Ethiopia (2004), which established a penal provision against domestic violence, no case of domestic violence has been reported at Jimma Court in Ethiopia, during the time of this study. Preliminary inquiries with lawyers at Jimma Court confirmed that victims of domestic violence do not approach the police to report incidences of domestic violence, but rather approach the court for a divorce. This appears to be as a result of a defect in legislation which will be discussed later in this study to explain the lack of court-reported domestic violence cases in Ethiopia. Furthermore, preliminary inquiries revealed that there were 70 divorce cases pending during the time of this study. As a result, victims of domestic violence, who filed divorce cases at Jimma Court, were randomly selected for inclusion in this study. The researcher wished to explore their experiences of the law governing domestic violence in Ethiopia by means of in-depth interviews.

The interview schedule was prepared in English. For conducting interviews with participants in Jimma, the questions were translated to the local dialect, namely Afan- Oromo. In Ranni, India, interview questions were translated to Malayalam, the local language of the researcher. These interviews were translated back into English by the researcher for the purpose of analysis. 12 interviews were

conducted in Jimma Province with victims of domestic violence who approached the court seeking a divorce, and 16 with randomly selected victims of domestic violence filed cases under the PWDVA (2005) in India.

1.3.4. Data Collection Methods

Kumar (2011: 81) highlights that the use of multiple methods to collect data is an essential feature of a case-study since case studies provide an overview and in-depth understanding of a case(s), process, and interactional dynamics within a unit of study. The researcher relied on in-depth interviews and document analysis to collect data for this research.

Lewis and McNaughton-Nicholls (2013: np) explain that in-depth interviews generate in-depth personal accounts, which assist in understanding the personal context and exploring issues in detail. These authors further assert that in-depth interviews assist the researcher in understanding complex processes and issues and in exploring private subjects, or those involving social norms and sensitive issues. According to Punch (2013: 44) documents; both historical and contemporary, are a rich source of data. Punch further asserts that documentary data may be collected in conjunction with interviews for case studies.

Documentary data within this research includes judgements from four cases (as per the register kept for the purpose of registering and disposing of matters at Ranni Court) decided during the study period. Data from interviews with victims of domestic violence cases decided by Ranni Court between 1 January 2014 and 1 January 2016, and with victims of domestic violence who filed for divorce in Jimma court, are included. In addition, data was obtained from statutes, proclamations, and notifications in Ethiopia and India, and from the University of South Africa (UNISA) Library, Ethiopian and Indian law journals, and research reports and publications. In-depth interviews were conducted with victims of domestic violence in Jimma, Ethiopia, and Ranni, India. 12 in-depth interviews were conducted in Jimma, with victims of domestic violence who approached the court seeking a divorce, and 16 were conducted in Ranni, from randomly selected victims of domestic violence who filed cases under the PWDVA (2005).

1.3.5. Data analysis

Data analysis is a process of inspecting, transforming, and modelling data with the intention of highlighting useful information, suggesting conclusions, and using data to support decision-making. It is a process which involves making sense out of text and image data, by digging deeper to understand the data and abstract sensible meaning (Welman, 2011:183).

Welman et al. (2005: 55) indicate that in qualitative data analysis, in-depth, unstructured individual interviews, group interviews (focus groups), as well as content analysis of historical and personal documents, mass-media, open-ended questions, and unstructured interviews, are used to analyse research data.

Silverman (2011: 211) explains that the ultimate purpose of data analysis is to make assertions about the larger population from the sample selected. In this research collected data was transformed and coded into themes, for analysis and the number of times they occurred in the text data. The researcher used tables and figures to better present analysed data.

1.4 KEY RESEARCH TERMS/THEMES

1.4.1. Culture

Some cultural norms, such as early marriage and child marriage, and related social practices, enable violence against women. Culture is not homogenous, and societies uphold diverse cultural practices, and, in some instances, these practices perpetuate violence against women. For example, early marriages and child marriages are still practised in India and have left women vulnerable to domestic and intimate partner violence. In 2006, the NFHS, conducted by the Government of India showed that 20.7% of women between the age group of 15- 19 years, faced domestic violence. Women in early marriages were proven more prone to domestic violence (NFHS-3, 2006). Women married during their teens might not have been fully aware or have knowledge of dealing with household challenges and lack the requisite emotional and mental maturing to engage in marital relations (NFHS – 3, 2006: 3).

In Ethiopia, cultural practices, such as early marriage and bride abduction, seem to encourage domestic violence. Tayechelam reported that 30% of Ethiopian women between 15-19 years of age were married, divorced, or widowed; and that bride abduction is a common cultural practice wherein young girls are married without their consent (Tayechelam, 2009: np). The Central Statistical Agency of Ethiopia reported that 17.8% of the girls are married between the ages of 15-19 years, and 3% of girls reside with their partners without entering into a legal marriage, which makes them more vulnerable to domestic violence (Central Statistical Agency, 2014: np).

1.4.2. Socio-economic factors

There is an assumption, in some societies, that women are not equal to men and in most instances, their status is considered lower than that of men. They have less chance of education and career development and less involvement in the decision-making process in both their private and public spaces.

This imbalance of power in the family life and within society causes violence against women (Begum, Donta, Nair & Prakasam, 2015:783). Economic dependency on a male partner perpetuates a woman's vulnerability and reinforces the vulnerable status. Economic inequality manifests itself on all economic and social levels, and its impact is felt at local, national, and international levels. Economic inequalities marginalise women in the field of employment, and a lack of access to economic resources limits their capacity in decision-making processes which in turn increases their vulnerability to violence (Central Statistical Agency, 2014: np). The NFHS- 3 reported that women in the lowest wealth-quintile are more vulnerable to domestic violence. Lack of education is another factor relating to the incidence of domestic violence. In the family set-up, parents often prefer to send their male children to school, thus effectively side-lining their female children. In India, 12% of women, who lack education, are subjected to extreme forms of domestic violence, and 10.5% of women with less than 5 years of education, experience domestic violence.

The NFHS-3 reported that 2.3% of educated women experience domestic violence (NFHS-3, 2006). In 2014 the Central Statistical Agency of Ethiopia

it is reported that only 42% of women have primary education. The report also shows that 4% of females and 6% of males have attended secondary school (Central Statistical Agency, 2014).

1.4.3. Political factors

Political factors contribute to vulnerability to domestic violence. Previously, states in both India and Ethiopia considered family matters to fall within the realm of private affairs and abstained from interfering with the practice of patriarchy, and other forms of subjugation of women. However, by the end of the twentieth and twenty-first centuries, legislation began to emerge that addressed issues relating to domestic violence in Ethiopia and India.

To address domestic violence, India enacted the PWDVA in 2005, and in 2004, Ethiopia modified its criminal code to include penal provisions relating to domestic violence.

It would, however, appear that the legislative responses have not always yielded results. For example, Solidarity (2009: np) reports that 72.32 % of women in Uttar Pradesh, Bihar, Rajasthan, and Madhya Pradesh (north-India) approached authorities for help as per the PWDVA, while it appears that women in other provinces display a lower reporting rate and therefore may be suffering silently despite legislative protection (Solidarity, 2009).

1.4.4. Economic Dependence

In all societies, domestic violence exists, and women are the most vulnerable to domestic violence. Gender inequality and discrimination against women is experienced by most women in all societies. The nature and extent of domestic violence vary according to socio-economic set-up and other factors. As already stated, there are different forms of domestic violence, such as physical violence, emotional violence, psychological violence, sexual violence, and economic violence.

Domestic violence against women is a challenge in most Ethiopian and Indian communities irrespective of religion, caste, education, or culture. Further,

socioeconomic factors such as poverty, lack of education, cultural practices and patriarchy perpetuate the dependency and subjugation of women.

Women are not free to use their money without the consent of their husbands. In some instances, employed women are not allowed to use their salaries, thereby perpetuating their subservient status. The majority of women are unemployed and rely on their husband for their economic needs. It has been found that women at low-income levels (52.08%) experience more violence than women (3%) who earn higher salaries (Solidarity, 2009: np).

Economic inequalities marginalise women in the field of employment, and a lack of access to economic resources limits their capacity in decision-making processes and increases their vulnerability to violence (Central Statistical Agency, 2014: np). The UN Secretary-General's in-depth study reported that violence, including domestic violence, is a widespread problem that perpetuates inequalities between men and women, and interferes with peace and development in the world (UN Secretary-General, 2006: np).

Domestic violence endangers lives and poses hurdles to the exercise of rights. It is a violation of human rights rooted in unequal power relations between men and women, which discriminates against women in both their private and public lives (UN Secretary-General, 2006: np).

Domestic violence against women in various forms is deep-rooted in India. This is complicated by their unequal status in a patriarchal society. Many Indian politicians thought dowry to be the core cause for abuse of married women in the family and, as a remedial measure, the dowry was abolished by law. However, despite political and legislative measures, domestic violence in India occurs for numerous reasons unrelated to the dowry system. Studies on domestic violence were undertaken in the last quarter of the twentieth century. Before this point, there wasn't much written on the subject. It was only in 1970 that social scientists in the West began to realise the gravity of domestic violence and initiated studies to find the nature, cause, and extent of violence against women. Visaria, for example, found that 66.66% of Indian women in her study, were subjected to physical, emotional, or sexual abuse/violence (Visaria, 1999: 44).

Visaria conducted a study on 346 respondents. 42% were facing either physical or sexual abuse, and 23% experienced verbal abuse and/or threats, or felt insignificant. Domestic violence is prevalent among all castes and creeds, but its rate of incidence is higher in lower and scheduled castes (62%) compared to high castes (35 %) (Visaria, 1999: 44).

Mitra reported that 29.7% of the cases registered in Madhya Pradesh and Maharashtra in India related to domestic violence (Mitra, 1998: 22). Mitra studied how NGOs and the State responded to domestic violence incidents. Mitra collected data from 20 NGOs from Madhya Pradesh, and 74 NGOs from Maharashtra. Jaiswal (2000: np), conducted a study on domestic violence by perusing the health records of Corporation Hospital, Thane, urban outreach health centres, and health posts in low-income urban communities.

Jaiswal reported that 53% of the women were experiencing domestic violence in Maharashtra (Jaiswal, 2000: np). Rao, Indu, Ashma, and Nagamani (1998: np) conducted research on intimate partner violence from 1996 to 1998 and subsequently disclosed a high prevalence of domestic violence in Karnataka (Rao et al., 1998: np).

Dave and Solanki conducted research on domestic violence by scrutinising the case records from the Special Cell for Women and Children and reported a high prevalence of domestic violence in Maharashtra State. They analysed approximately 3000 case records from 1990 to 1997 and found that women within the age group 18-34 years (65.4%) are more vulnerable to domestic violence and that a fairly substantial number from the age group 35 – 44 years were also at increased risk (Dave & Solanki, 2000: np).

Elizabeth (2000: np), from the Centre for Women and Law, National Law School India University, studied the pattern and trends of domestic violence in Karnataka by examining court records and judgements in Bangalore from 1987 to 1997. She found that violence against women was treated as an unimportant issue in the majority of cases charged. The police considered cruelty the main allegation in most of the cases.

This caused the acquittal of the accused persons due to the vague definition of cruelty in Indian law (Elizabeth, 2000: np). Kishore and Johnson (2000: np) conducted a multi-country study of domestic violence and its effect on the health of women and their children, in Cambodia (2000); Columbia (2000); Dominican Republic (2000); Egypt (1995); Haiti (2000); India (1998-1999); Nicaragua (1998); Peru (2000) and Zambia (2001-2002). These authors reported that 21% of Indian women were exposed to domestic violence. They collected data from 90 303 health-related problems (physical and sexual) connected to victims of domestic abuse and their children. The study pointed out that women not subjected to violence could concentrate on the health of their children. It is reported that vaccination rates against childhood diseases are 5-10% lower amongst mothers who are subjected to violence (Kishore & Johnson, 2000: np).

Anwasha (2012: 88) reported that dowry continues to be a determinant factor in Indian marriages. Even though the government enacted laws to banish the practice, they appear *prima facie* ineffective. Dowry has been practised in Indian society for more than 3000 years and seems ingrained in society (Anwasha, 2012: 80).

Bhatt (2008:13) studied the communicative aspects of domestic violence from a South Asian perspective and found that the power structure within a family centred on the patriarch and matriarch. When the patriarch makes the major family decisions, he is often unaware of what is happening within the house. The matriarch enjoys unlimited power within the inner circle (Bhatt, 2008: 23). Panda studied the role of micro-finance in relation to domestic violence against women. The survey established that 32% of the beneficiaries of micro-financing stated that domestic violence had completely decreased after receiving finance, and 48% reported a moderate reduction in domestic violence (Panda, 2014: 12). Naik (2013: np) studied domestic violence from a human rights perspective and reported that 45% of Indian women experience either physical or sexual violence and “...for many, the home is a regime of terror and violence” (Naik, 2013: np).

According to Purnima (2011: 11), there are women in India that could lead the nation, political parties, and corporate businesses, but they are neglected from

childhood onwards, often experience inadequate nutrition; are often denied or have limited access to education, health, and property rights; are used as child labour and are exposed to domestic violence.

Socio-cultural attributes in society are a hurdle to female empowerment and parents depend on their sons in their old age (Purnima, 2011: 13). Saha and Dutta (2004: np) gave an overview of domestic violence against women in India from a health perspective. They identified many forms of domestic violence such as abusive language, threats and intimidation, wife beating, dowry, bride burning, and violence against pregnant women. Health consequences sometimes become fatal, which in turn warrant significant economic consequences like non-productivity and increased expenses in the treatment of domestic violence victims. Social attitudes also contribute to domestic violence against women (Saha & Dutta, 2004: np).

The data collected by United Nations Women on Gender Equality and Empowerment of Women on Domestic Violence against Women showed that 70.9% of the women experienced either physical or sexual abuse in their lifetime. 48.7% of women experienced physical abuse by their intimate partner, and 29% experienced physical violence during the last 12 months of the survey. 58.6% of the women endured sexual abuse, and 44.4% underwent sexual violence during the past 12 months of the survey. 7.5% of women were abused during the period of pregnancy (Solidarity, 2009: np).

A UN in-depth study on violence against women also indicated that there is a high prevalence of intimate partner violence and female genital mutilation at a rate of 80% in Ethiopia (UN Secretary-General, 2006: np). Andualem, Tiruneh, Gizachew, and Jara studied physical violence against women by intimate partners in Gozaman Woreda by collecting data from 1035 married women. They found that 43.7% of the women experienced physical violence and court reported violence reflected as 19.5%, with a 4.4% conviction rate (Andualem, Tiruneh, Gizachew & Jara, 2014:8)

In a multi-country study on the ill-health and injury associated with intimate partner violence, Berhane reported that 76% of domestic violence victims were

illiterate and 64% were unemployed. He further reported that 49% of women reported physical violence, and 29% experienced domestic violence within the one-year period just before the commencement of the study. Abused women reported that their health was fair or poor when compared to non-abused women (Berhane, 2003: np). Yimer, Gobena, Egata, and Mellie (2014: np) studied the magnitude of domestic violence and factors associated therewith among pregnant women in Hult Ejjju, North- West Ethiopia, and reported that psychological, sexual, and physical violence against women was at 24.9%, 14.8%, and 11.3% respectively, and domestic violence during pregnancy stood at 32.2%. The prevalence of domestic violence during pregnancy is high which causes serious health problems to both mother and unborn child (Yimer et al., 2014: np)

In addition, Semahegn, Belachew, and Abdulahe (2013: np) studied the prevalence of domestic violence and its predictors among married women in Fagitalekema Woreda; Awi Zone Amhara Regional State, North-Western Ethiopia. This study found that domestic violence was high in the area under study. The prevalence of domestic violence was found to be 78%, of which 73.3% of married women experienced psychological abuse, 58.4% of married women experienced physical violence and 49.1% of married women experienced sexual abuse within the family. These authors identified the husband's alcohol consumption, low household income, pregnancy, and lack of power to make decisions in the household as predictors of violence (Semahen et al., 2013: np)

Shanko, Wolday, Assefa, and Aro (2013: 18) conducted research on domestic violence against women in Kersa, Oromiya Region and Eastern-Ethiopia. This study, however, found only 19.6% of domestic violence incidents in the study area, where the perpetrators were intimate partners. The violence is comparatively low to other areas of Ethiopia. The study however, furthermore revealed that a vast majority of women who are victims of domestic violence do not report such incidents to any authority (Shanko et al., 2013: 19).

1.4.5. Ethiopian Law on Domestic Violence

Ethiopia followed the penal law enacted in 1957, which was in force until 2004. In 2004 the said Penal Code was repealed and a new code, known as 'Criminal Code of the Federal Democratic Republic of Ethiopia' was enacted. The new Criminal Code incorporated penal provision against domestic violence. Article 564 states that when violence is used against a marriage partner, or a person cohabiting in an irregular union, the relevant provisions in articles 555 to 560 can be applied against such person (Cr.C. FDRE, 2004). The law says that domestic violence law can be invoked against any spouse who uses violence against the other partner, whether he/she is legally married or cohabitate.

The relevant provisions of the code (articles 555-560) shall apply to a person who commits an act of violence against his or her spouse, or a person he or she is married to, or a person cohabiting in an irregular union, if such a person causes grave or common injury to her or his physical or mental health.³ Article 555-560 prescribe punishments of imprisonment ranging from three months to life imprisonment according to the severity of the offence committed. Article 564 states that articles 555-560 can be invoked in the case of domestic violence when any person commits an act of violence against their spouse causing any injury, whether common or grave, to the body or mind of such person. The Ethiopian Criminal Code does not, however, provide a definition of domestic violence or narrate what constitutes domestic violence.

According to the law if any act of violence causes bodily or mental injury to the marriage partner, or person cohabiting in an irregular union, then the provisions of *domestic violence can apply. A case can be instituted against either spouse, and it is not limited to the protection of women alone. This law can be applied to both marriage partners as well as men and women living together without legally marrying* (article 564, Cr.C of FDRE, 2004). This law also protects parties living in an irregular-union, meaning "...a man and a woman living together as husband and wife although not married to each other, parties living together without having solemnized their marriage under custom or in terms of the law" (article 564, Cr.

³ "Irregular union" Man and women are cohabitating together without effecting legal marriage.

CE, 2004). The Ethiopian Constitution guarantees people the right to life (article 15).

Article 35 of the Ethiopian Constitution guarantees women equal rights. Article 16 gives protection from bodily harms. Domestic violence is a violation of these constitutional rights (articles 35,16 of FDRE Constitution, 1995). In addition, everybody has the right of protection against bodily harm (article 16), and further nobody shall be deprived of his//her liberty, except under the procedure established by law; and everybody has the right of protection against inhuman treatment (article 18). Domestic violence, however, violates these constitutional provisions which are further entrenched by the law contained in the Penal Code.

As per Ethiopian law, a woman complaining of domestic violence need not be married legally to the man causing domestic violence. If a man is injured by his wife or woman who cohabits with him, domestic violence provision can be invoked against her. The victim or complainant must prove the allegations of domestic violence before the court. Complaints of injury either to body or mind, is a condition for proceeding against a marriage partner, or person living in an irregular union, and punishment varies according to the gravity of the offence. Injury to the mind cannot be detected by any other person, and the person who wants to institute legal action based on this form of domestic violence bears the onus of proof.

There is no provision for compensation or another remedy for domestic violence. There is only one provision in the penal code against domestic violence (article 564, Cr. C E, 2004). Ethiopian criminal provisions do not include civil remedies such as protection orders, or provision for awarding compensation to victims which are included in the domestic violence laws of other countries.

The UN Women's Forum requested nations to include provisions for civil remedies in their domestic violence law. The Ethiopian Proclamation of Family Rights, 2000 contains provisions granting equal marital status to women in marriage. After marriage, wives are entitled to an equal right to the property earned by the family and, in case of divorce, she is entitled to a portion of the property deemed common property (Proclamation of Family Rights, 2000: np).

Ethiopia ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in 1981, but the Ethiopian Government has not ratified its optional protocol. The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol) was signed in 2004 but not ratified by Ethiopia (Ratification Status, Ethiopia). The Ethiopian legislative provisions and their challenges are discussed in detail later in this work.

1.4.6. Indian Laws on Domestic Violence

India enacted a special law, known as the PWDVA, in 2005, to eradicate all forms of domestic violence against women in India (PWDVA, 2005). This law provides both civil and criminal remedies for the victims of domestic violence.

It empowers the court to grant an order of injunction to restrain the respondent/s from committing acts of domestic violence and further makes provisions for compensation to the victims of domestic violence or maintenance of such victims.

In the following instances, Indian law defines domestic violence as “any act or omission or conduct of the respondent constitutes domestic violence in case it...

- a) harms or endangers or injures the health, safety, life, limb, or well-being whether physical or mental of the aggrieved person or tends to do so and includes 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 the person related to her to meet any unlawful demand for dowry or valuable security or property, or
- c) has the effect of threatening the aggrieved person or any person related to her by conduct mentioned above in clause(a) or clause(b) or
- d) Otherwise injures her or causes harm whether physical or mental to the aggrieved person (PWDVA, 2005, section 3)

From the same Act, the following definitions are important:

- ❖ Physical abuse' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health, or impair health or development of the aggrieved person and includes assault, criminal intimidation and criminal force (section 3, PWDVA, 2005).
- ❖ sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of women (section 3, PWDVA, 2005)
- ❖ verbal and emotional abuse includes insults, ridicule, humiliation, name-calling, and insults, or ridicule specifically with regard to not having a child or a male child, and repeated threats to cause physical pain to any person in whom the aggrieved person is interested (section 3, PWDVA, 2005)
- ❖ Economic abuse includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise, or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance (section 3 PWDVA, 2005)

The Act empowers the court to grant an order of injunction to restrain the respondent or respondents from committing acts of domestic violence if the commission of these acts by the respondent shall constitute domestic violence (section 18, PWDVA, 2005).

Economic abuse includes deprivation of all or any economic or financial resources, to which the victim is entitled under any law or custom or payable under order of any court, disposal or alienation of any assets movable or immovable or any shares, securities in which the victim has an interest or her Stridan ⁴ or any other property (section 18(e), PWDVA, 2005).

At the time of marriage or before, or after, customarily, the bride's family would give the bridegroom an amount of money or property. In ancient time the bride's

⁴ Stridan is similar to the dowry practice of giving money or immovable property to the bridegroom's family at the time of marriage or after it and includes the bride's share from her family.

family gave it to show their dignity and status, but later the bridegroom's parents began to demand it, and it became a condition for the marriage (PWDVA, 2005). This custom was abolished by the Prohibition of Dowry Act; 1961. Stridan is also included in the Act along with dowry (stridan is money or property given to the bride by her parents).

Even though dowry is connected to customary practice and was abolished by law, it remains a cause of domestic violence in India. It is no longer considered as a social or cultural practice in India. Some studies found that there were instances of harassment of married women, and cases where married women suffered dowry-related abuse. All these are regarded as causes of domestic violence (Yugantar Education Society, 2004: np).

India signed the Convention on the Elimination of All Forms of Discrimination against Women and ratified the Convention on the 9 July 1993, but India has not signed the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (Ratification Status, India, 1993).

1.5. RESEARCH AIMS AND OBJECTIVES

Domestic violence is an international phenomenon, and the UN has identified it as a goal to eradicate all forms of violence against women. As a result, the researcher is examining how different countries, such as India and Ethiopia, have responded to the challenge of domestic violence. The aim of the study is to compare the laws governing domestic violence in Ethiopia and India and to explore whether these laws are implemented effectively and if they are effective in addressing domestic violence. In addition, the researcher further investigates whether laws alone are enough to address domestic violence in these two countries.

The main objectives of this study: is to compare the law governing domestic violence in Ethiopia and India; to explore any lacuna in these two legal systems and produce recommendations on how these laws can be strengthened.

The secondary objectives of the study are:

- ✓ To study the effectiveness of domestic violence law in Ethiopia and India.
- ✓ To identify international best practices regarding governing domestic violence in order to enhance Ethiopian and Indian law relating thereto.

1.6. RESEARCH QUESTIONS

The researcher intends exploring the following research questions:

1. Is the law governing domestic violence in Ethiopia and India effective in addressing domestic violence?
2. How do Ethiopian laws governing domestic violence, compare with similar laws in India?

1.7. JUSTIFICATION OF THE STUDY

Domestic violence became a subject of discussion around the world by the end of the 20th century, and it also caught the attention of the UN. The UN regards domestic violence as a violation of human rights as envisaged in 1948 (UDHR, 1948) and resolved to take measures to eradicate domestic violence globally. It reminded all nations to take effective steps to end all forms of violence against women; and all nations who are members of UN are required to take measures to eradicate violence against women, including domestic violence.

In-depth studies conducted with the aim of understanding the magnitude of the problem revealed that violence against women, including domestic violence, is deep-rooted and exists in all nations, irrespective of castes, religion, community, education, employment, and age, and is a common phenomenon. Hence violence against women, including domestic violence, must be addressed worldwide.

India and Ethiopia are parties to the UN resolution. India and Ethiopia are committed to protect the personal liberty of citizens and believe in equality of all people irrespective of religion, caste, and sex. Both countries constitutions provide for the advancement of women. The inhabitants of both countries consist of different religions, castes and/or ethnic groups and they have diverse cultures

and languages. They subscribe to different beliefs, and both these countries exist united in diversity.

After its democratization in 1991, Ethiopia committed herself to the advancement of human rights and democracy. The country moved forward to make laws to reflect the UN resolution to end domestic violence. India, after its independence in 1947, adopted the constitution, guaranteeing equality for all its citizens irrespective of castes, religions or regions or sex. She began to enact laws according to her constitutional obligations and in terms of her commitments under international laws. These developments inspired the researcher to conduct a comparative study of the laws governing domestic violence in these two countries. Moreover, access to data is also a paramount consideration in this study, which is possible in Ethiopia and India.

1.8. DEMARCATION OF THE STUDY

For this study, data on domestic violence cases were collected from Jimma Zone, Oromia Region in Ethiopia, and Ranni, Pathanamthitta District, Kerala in India. The case studies, in some instances, revealed narratives that tended to exaggerate the facts relating to incidents of domestic violence cases. It is the view of the researcher that this was intended to either gain sympathy from the court or to attract relevant provisions of laws. Since violence against women is a vast topic, this study is confined only to incidents of domestic violence against women 18 years and older, in Ethiopia and India that took place between 1 January 2014 and 1 January 2016.

1.9. VALUE OF THE STUDY

O'Leary (2010) is of the view that research can be instrumental in resolving a problem. O'Leary further states that research can be a key tool in informed decision-making. It can further be central to determining what should be done, what can be done, how it should be done, and how well it was executed. In other words, research can assist with:

- Understand more about issues and problems including all the complexities, intricacies, and implications thereof;
- Find workable solutions by exploring possibilities;
- Work towards a solution by implementing real change;
- Evaluate success by establishing if problem-solving strategies have been successful;
- Offer robust recommendations that can be used to influence practice, programme, and policy (O’Leary, 2010: [sa]).

The knowledge generated by this study will firstly benefit the victims of domestic violence in Ethiopia and India, as both are inundated with such incidents. The knowledge will contribute to an improved understanding of this phenomenon, and specific problems and complexities as experienced by victims will be explored and used to address the problem. As a result, workable solutions can be explored, and shortcomings in domestic violence law will be addressed.

Lawmakers in Ethiopia and India could also find the findings and recommendations of this study beneficial since they will receive direct information concerning the dynamics of domestic violence that could influence future laws and policy.

The Ethiopian and Indian society could benefit from the results and recommendations of this study since they could facilitate the strengthening and enhancement of current laws governing domestic violence which in turn could lead to a decrease in domestic violence incidents, and/or an increase in arrest and conviction rates.

1.10. PHILOSOPHICAL WORLDVIEW OF THE STUDY

Creswell asserts that the approach to research involves philosophical assumptions. Creswell is of the opinion that philosophical ideas influence the practice of research and must be identified (Creswell, 2014: 22).

Based on Creswell’s assertion, the researcher will follow a constructivist philosophical worldview. Mathews and Ross (1996: np) describe constructivism as an ontological position which asserts that social phenomena making up

the social world, is only real in the sense that they are constructed ideas, which are continually being reviewed and reworked by those involved in them, through social interaction and reflection. The meanings attributed to and the understandings of a social phenomenon (such as an organisation, a community, the law) are constructed by social actors. The researcher will thus explore participant understanding directed toward the law governing domestic violence in Ethiopia and India.

1.11. TRUSTWORTHINESS OF THE STUDY

Lincoln and Guba (1985: 11) present 'trustworthiness' as the term for judging the quality of qualitative research. Schwedt explains that Lincoln and Guba (1985:np) developed four criteria that serve as the qualitative researcher's equivalent to conventional criteria.

Firstly, credibility (equivalent to internal validity) which addresses the researcher's ability to guarantee correlation between the respondents' views of their lifestyle and the researcher's reconstruction and representation thereof (Lincoln & Guba, 1985: 31). Creswell (2014: 62) suggests the following strategies to ensure the credibility of a study:

- **Prolonged time in the field:** The researcher spent extended periods of time in the field to acquire a complete understanding of the phenomenon under study which enabled him to transfer meticulous detail about the respondents that provided credibility to the narrative account of events.
- **Member checking:** The researcher used member checking to manage the accuracy of the findings by taking the findings and developing themes back to respondents to afford them the chance to confirm the findings for truthfulness.
- **Triangulation:** The researcher triangulated diverse sources of data and used it to build a rational explanation for evolving themes. The combining of various sources and viewpoints from respondents added value to the credibility of the study (Creswell, 2014: 66).

Secondly, *transferability* (equivalent to external validity), deals with the matter of generalisation in terms of case-to-case transfer. In other words, transferability concerns the researcher's responsibility for providing readers with sufficient information on the case studied, to such an extent that readers can establish the degree of similarity between the case studied, and the case to which the findings might be transferred. The researcher will exercise meticulous narrative to communicate the research findings by conveying participant replies in-depth by means of verbatim (unedited) quotations. Such a detailed description will transfer readers to the research setting that will consequently result in an element of shared experiences. These detailed descriptions will allow readers to judge the transferability of the findings.

Thirdly, *dependability* (equivalent to reliability) focuses on the research process and the researcher's responsibility for ensuring that the research process was logical, traceable, and documented. Respondent replies will be recorded and transcribed to ensure a thorough description of the research proceedings followed. These records appropriately reflect participant responses.

Finally, *confirmability* (equivalent to objectivity) is concerned with establishing the fact that the data and the interpretation of the data are not merely fabrications of the researcher's imagination. To ensure confirmability in this study, the researcher will keep a careful record of the research process followed to determine whether the interpretation of the findings, the recommendations, and conclusions made can be referred to their sources and if they are backed by the analysis. Data electronically collected from the interviews, as well as records of the transcribed interviews, will be preserved for evaluation by others to authenticate the results of the study.

1.12. ETHICAL CONSIDERATIONS

Gray describes the meaning of research ethics as conducting research in a way that goes further than simply adopting the most appropriate research methodology but rather conducting research in a responsible and morally defensible way while exploring how standards of conduct and values impact on both the researcher and research subjects (Gray, 2013:14). The researcher

followed the *University of South Africa's Policy on Research Ethics*, which stipulates that researchers should respect and protect the dignity, privacy, and confidentiality of participants. The researcher further abided by the following ethical principles as categorised by Gray.

1.12.1. Avoid harm to participants

The term 'harm' can embrace physical, mental, or emotional harm. The researcher, as far as possible, avoided causing anxiety or stress to participants, and/or producing negative emotional reactions.

Since domestic violence is a sensitive matter, the information gathered by means of documentary data, as well as in-depth interviews, has the potential to invade the privacy and dignity of participants. Women who are victims of domestic violence can be considered as a vulnerable group. Thus, the researcher took adequate protective measures to minimize and mitigate emotional harm to participants.

1.12.2. Informed Consent

Informed consent is the obtaining of voluntary participation in a research project based on a full understanding of the benefits and risks.

Gray further emphasises that informed consent is particularly important where groups are considered vulnerable since they may be more open to coercion, exploitation, or harm than others (for example victims of domestic violence). It is essential that participants are provided with information that is meaningful to them (avoiding complex, theoretical language, and jargon), succinct and timely (Gray, 2013: 16). The researcher took data from Jimma, Ethiopia, where the local language of the people is Afan-Oromifa. The researcher cannot speak the local language. The Legal Director of Jimma University, and the Free Legal Aid Centre Director, who is well versed in local Oromifa and English, attended the interviews and translated interview questions into Afan-Oromo and retranslated the answers back into English.

In India, the data was gathered from the State of Kerala, where the local language is Malayalam, in which the researcher is well versed. The interviewees were selected randomly.

The researcher sought the permission of the interviewees in their local language, in Ethiopia, through the translator, and in India, the researcher did so directly. Where consent was granted, the data was used for recording then reduced to writing.

When the researcher sought permission through translators, they did not permit recording by an electronic device, and hence, they were not recorded by means of a voice recorder. In Ethiopia, questions in English were translated to Oromifa by translators and the answers in Oromifa were translated to English for the researcher and the researcher recorded them manually.

The researcher provided participants with the following detailed information in order for them to make an independent decision whether to participate in the study or not:

1. The aim of the research
2. Who is undertaking the research?
3. Who is being asked to participate?
4. What kind of information is being sought?
5. How much of the participants' time is required?
6. That participation in the study is voluntary and does not promise participants any form of compensation
7. Who will have access to the data once it is collected?
8. How will the anonymity of respondents be assured?

1.12.3. Privacy of participants, anonymity, and confidentiality is respected

Researchers do not have any right to intrude into a respondent's personal affairs. The overreaching principle is that respondents must always give their informed consent.

Punch is of the view that participants have the right to control the disclosure of what they deem personal or non-public information about themselves (Punch, 2013: 46). The researcher informed participants timeously that they may withdraw from the study at any stage without the burden to explain or may refuse to answer any question they found intrusive.

To ensure anonymity and confidentiality, the researcher did not include any information from the data stored and analysed that may make individual respondents easily traceable and identifiable. As a result, no personal information is revealed, including names, dates, and place of crucial events, and other information the researcher deems relevant. Where necessary, the researcher made use of pseudonyms.

1.12.4. Anonymous identification

Due care is taken to keep the identity of the participants secret and will not be disclosed at any point in time. Identity cannot be revealed from any information given by the respondents in this study.

The data will be kept at the verification of the researcher and the promoters of the study. The researcher is an Indian citizen, presently working as a lecturer in School of Law, Jimma University Ethiopia. Research interactions, from example interviews, are based on respondents' choice to disclose information to the researcher, some of which may be sensitive. In most cases, this disclosure happens in confidence: it is based on the researcher's assurance that the connection between the individual respondent and the information disclosed will not be made known to third parties by the researcher, nor will it be inferred from the research report.

1.13. SUMMARY

Violence against women, including domestic violence, prevails around the world irrespective of the boundaries of nations, castes, religions, race, education, employment, and wealth quintile. Women often face violence in society, community and their family.

Female orientated organisations around the world agitated against violence against women and appealed to the UN to interfere in the matter. The UN adopted a resolution requiring all nations to enact appropriate legislation to eradicate violence against women, including domestic violence, and not to invoke any custom or practice or religion to evade their duty to eradicate violence against women.

Ethiopia and India are parties to the said resolution, and thus both enacted laws to curb domestic violence. Ethiopia incorporated provisions in its Criminal Code of 2004, and India enacted separate legislation in 2005, known as PWDVA. This study compares the laws governing domestic violence in these two countries and seeks to establish whether laws are effective in addressing domestic violence in India and Ethiopia.

CHAPTER 2

SYNOPSIS OF DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA AND ETHIOPIA

2.1. INTRODUCTION

Domestic violence has become a serious phenomenon that must be eradicated. It is prevalent around the world, irrespective of boundaries, culture, religion, or social structure. Research reports the prevalence of domestic violence around the world. This study hopes to contribute to the research base. Thus, in the first part of the chapter, the researcher provides an overview of domestic violence in Ethiopia and India, and in the second discusses international conventions and agreements, ratified by Ethiopia and India. This chapter concludes with a brief discussion of examples of international best practices regarding legislation governing domestic violence.

Domestic violence is a social issue not confined to a particular country, society, culture, or economic status. Until the end of the twentieth century, it was considered an arena of private life and many states abstained from interfering in private family affairs. Resultantly, many women rights groups began advocating against domestic violence and sought legislation to control, reduce and punish offenders. Domestic violence affects both the victim and the community on various levels. It affects the mental state of victims and their children and is costly to public health sectors because, when injured victims seek treatment, more often than not the public sector renders medical aid from public funds (World Bank, 2017: np). Domestic violence also affects employment through absenteeism due to injuries caused to victims of domestic violence (World Bank, 2017: np). In some countries, studies have proven that the cost for domestic violence, incurred by the public health sector and the private sector, such as companies where the victims are employed, is extremely high (National Network to End Domestic Violence, 2016: np). The researcher could not find any studies related exclusively

to the cost of domestic violence to the public health sector in India or Ethiopia but infers these to be similarly high as seen in the rest of the developing world (Chibber & Krishnan, 2011: 452).

By the end of the twentieth century, several regional and international response to violence against women began to see the light of day; mainly as a result of advocacy groups. For example, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 1981) came into force in 1981. Although it does not directly address the violence against women or domestic violence, it affirms the rights of women which created the platform to lift the curtain of silence that had long been drawn over women's struggles. However, it resolved to address the silence on the discrimination of women and stated that gender violence is a form of discrimination against women (see preamble and article 1 & 2). This discrimination incapacitates the ability to enjoy the rights and freedoms on the basis of equality with men (CEDAW, 1981).

The Secretary-General of the United Nations (2006: np), in an in-depth study, on violence against women, confirmed that violence against women occurs globally irrespective of boundaries, religions, customs, and education; and one-third of the world female population experiences violence in one form or the other. This study further found that women are subjected to violence in the family, community, in state custody and in armed conflict situations. The common forms of violence against women are intimate partner violence, harmful traditional practices, including early marriages and forced marriages, female genital mutilation, femicide, sexual harassment, trafficking in women and rape. The UN study aimed to highlight the unacceptable presence of violence against woman and to eradicate all such forms of violence. In addition, this study further addressed the implementation of state obligations covering forms and causes of violence, including long and short-term effects of violence against women, socio-economic factors, costs of violence against women and laws, policies, programmes and remedies to end and eliminate violence against women (UN Secretary-General, 2006: np).

As previously indicated violence against women is a significant public health problem as well as a violation of human rights. According to the World Health Organization (WHO), 35% of women worldwide have experienced either physical or sexual violence from intimate or non-intimate partners. In addition, 38% of murders, where the victim is female, are committed by intimate partners worldwide (WHO, 2013: np). Violence can significantly affect the health of a woman in general. More specifically, however, violence can have grave consequences for a woman's physical, mental, sexual, and reproductive health. Resultantly, the consequences become onerous on the state as it incurs social, economic, and health care-related expenses (Heise, 1996: 27). Heise (2002: np) affirms that violence against women occurs in different forms and settings and that domestic violence is the most pervasive form of violence against women.

In the EU, 43% of women face psychological violence from their partners in their lifetime. More than 700 million women worldwide were married below the age of 18 years, and from these, 250 million were married before they reached the age of 15 years. These women are naturally susceptible to early pregnancy and the complications arising therefrom and are usually unable to practice safe sex or family planning and were unable to manage safe sex and are also vulnerable to early pregnancy and transmitted diseases (Nour, 2006: 1645). About 120 million women and girls are subjected to forced sex at some point in their lives, and the most common perpetrators are their husbands or partners (UN, 2013: np).

National surveys around the world show that percentages of women who were physically assaulted by their intimate partners vary substantially from country to country. The jurisdictional rates include Barbados 30%, Canada 29%, Egypt 34%, New Zealand 35%, Switzerland 21%, USA 33%, and India 20%. In Turkey, 42% of women above 15 years of age experienced physical and sexual violence. Domestic violence is also prevalent during pregnancy; in the UK, the prevalence of domestic violence during pregnancy is at 3.4%, the USA between 32 -33.7%, and Ireland at 12.5% (UN, 2013: np).

Domestic violence is a pattern of abusive and threatening behaviour that may include physical, emotional, economic, and sexual violence as well as

intimidation, isolation, and coercion. The main aim of domestic violence is to exercise power and control over the victim (UN, 2013: np).

Since this research is confined to domestic violence in India and Ethiopia, the researcher now turns to a discussion of the phenomenon in these two countries.

2.2. DOMESTIC VIOLENCE IN INDIA AND ETHIOPIA

The UN (2013: np) reported that 35% of women worldwide had experienced physical or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives. On the same trend, Ethiopia and India are not immune to the phenomenon. For some women in India, violence is a lifelong reality often linked to patriarchy (Johnson & Johnson, 2001: 1053). In Ethiopia, domestic violence – often with a patriarchal component – is likewise rife. The patriarchal structure of Ethiopian society, coupled with poverty and elevated levels of illiteracy, is the primary reason for violence against Ethiopian women (Tayechemlam, 2009: np).

Domestic violence occurs in Ethiopian and Indian communities irrespective of religion, caste, education, or culture. Socio-economic factors such as poverty, lack of education, cultural practices and patriarchy perpetuate the dependency and subjugation of women to men, which only serves to worsen the problem. It is trite that social behaviour is mediated by culture in all societies and affects most manifestations of violence. Culture is not homogenous and includes competing and contradictory values. Thus, women suffer the negative aspects of culture but also benefit from positive cultural values. Some social groups, however, claim cultural traditions as justification for restricting female human rights. Various forms of femicide illustrate the interrelationship between culture and violence against women, for example (Zara, 2018: 1778). Intimate partner violence is directed against women as a means of control, and similarly, dowry disputes in India and the protection of family honour are used as control devices against women (UN Secretary-General, 2006: np).

The following section surveys domestic violence as reported by numerous studies conducted in different states in India.

2.2.1. Domestic violence in India

India is a complex society with citizens from various social, religious, and economic backgrounds (Dehejia & Dehejia, 1993: 146). Women are however, still in a disadvantaged position in terms of survival as the gender ratio remains disproportionately skewed towards males, irrespective of improvements in mortality rates (Dandekar, 1975: 1664). Unfortunately, patriarchy remains one of the underlying causes of violence against women in India. India is a society governed by a system where males hold power. Women are not permitted to accept employment without male permission, and a woman's role is traditionally considered to be that of serving family needs. The patriarchal ideal is that a woman's duty is to serve her father, brothers, and husband throughout her life (Johnson & Johnson, 2001: 1056).

Consequently, these cultural norms and other social practices, such as early marriage and child marriage, further advance violence against women. Admittedly culture is not homogenous and Indian societies practice diverse cultural norms, but the reality is that some of these norms and societal practices perpetuate violence against women (Sinha, Gupta, Singh & Srivastava, 2017: 135).

In illustration of the above contention, early marriages and/or child marriages are still practised in India and often leave a woman vulnerable to domestic violence as well as intimate partner violence. The National Family Health Survey (NFHS) (2006: np) conducted by the government of India shows that 20.7% of women between the age group 15-19 years' experience domestic violence. Women in early marriages are thus more prone to domestic violence. Women who are married in their teenage years may not be fully aware of or have the knowledge to deal with household challenges and may not be mentally prepared for marriage (NFHS, 2006: np). A recent report in the NFHS-IV illustrates that 28.8% of married women experienced spousal violence, and 3.3% experienced violence during pregnancy (NHFS-2016-17: np).

Another example of the effect of domestic violence relates to women who carry out productive labour in developing countries. Their labour totals 11 trillion USD

and 60% of the labour force in African countries consists of women. As previously eluded a woman's participation in economic development however is often determined by her male relatives, and as such, she has little chance of independent career development or higher career aspirations in India (Economist, 2018: [sa]). Further, if a man feels that his wife has transgressed his word (the wife should always be obedient to her husband, seek her husband's advice for everything, have no right to spend the money she earned and should entrust her wages to the husband) - he may react violently and it is seen as an acceptable part of life due to the customs of the area. In reality, many women remain in an abusive relationship because of economic dependency in India (Dhugel, Dhugel, Dhital & Stock, 2017 [sa]). Gender discrimination and violence marginalizes women in the sphere of development policies and programmes, and hence, they remain at a disadvantage in employment, education, health, and governance.

Nata,⁵ for example, is another widespread example of a customary practice prevalent in southern Rajasthan (Ragavan, Iyengar & Wurtz, 2015: 2). This custom permits a woman to enter into a relationship with a man, other than her husband when he deserts her; however, it requires the consent of the former husband, the woman's father, and the woman herself. An amount of money will be agreed upon between the former husband and the man who accepts the woman in nata and should be paid by the man who accepts the woman, to the former husband. The terms and conditions, the amount and the mode of payment are sometimes settled in *Jati Panchayath*⁶ and become binding in customary law on the signature of the agreement (Mathur, 2004: 176).

The termination of a relationship between men and woman in these situations arise for assorted reasons and are at times different for men and woman. Compelling causes for a man include the woman's chronic illness, inability to become pregnant, lack of interest in household chores as well as debt on the

⁵ Nata is a custom practised in Rajasthan, India which permits a divorced woman to enter into another marriage with the permission of divorced husband by giving him money agreed between the man who accepts the woman and former husband.

⁶ Jati Panchayath- A forum of elders who know the customary law of caste.

man's family. Causes for a woman can include alcohol abuse, immoral behaviour, wife-battering, unemployment, illiteracy, and continual discord with in-laws (Mathur, 2004:88).

In India, there is a general assumption that women are unequal to men, and in most instances, their status is considered low compared to that of their male counterparts. They have less chance at education and career development and less involvement in decision-making processes in both their private and public spaces. This imbalance of power in the family and society contributes to violence against women. Economic dependency perpetuates vulnerability and reinforces their vulnerable status. Some cultures go as far as prohibiting women from acquiring an education.

In Rajasthan; for example, the education of women is not encouraged. The belief is that education spoils a female and makes her susceptible to disobedience. Even though innovative programmes were initiated for education and empowerment of women, with the assistance of the World Bank, a large number of children do not attend school (Mathur, 2004: 90). The National Family Health Survey - III (2006: np) reported that women who are in the lowest wealth quintile are more vulnerable to domestic violence and the link between lack of education and poverty is trite.

Further, in traditional Indian family units, often parents prefer to send their male children to school and effectively side-line their female children. In India, 12% of women who lack education are subjected to extreme forms of domestic violence and women who have an education of fewer than 5 years are at 10.5% risk of violence. On the contrary, statistics show low levels of domestic violence (2.3%) in cases where women have some form of education (NFHS-III, 2006: np).

Political factors also contribute to and worsen domestic violence against women. Previously the India Government considered family matters to fall within the realm of private affairs and thus refrained from interfering with the practice of patriarchy and other forms of subjugation of women. However, by the end of the twentieth and twenty-first-century legislation began to emerge, which addressed issues relating to domestic violence in India. The Protection of Women from

Domestic Violence Act was enacted in India in 2005 (PWDVA, 2005). Solidarity (2009: np) reported that 72.32% of women in Uttar Pradesh, Bihar, Rajasthan, and Madhya Pradesh; in North- India approached authorities for help as per the Act while women in other provinces silently suffer.

While the PWDVA has been effective in curbing domestic violence, personal laws (family law) have been retained for reasons of political expediency. Hindu personal law has been reformed, but those of the Muslims have not been changed and remain discriminatory for political reasons; mainly to satisfy conservative Muslim leaders. Family laws (also known as personal laws in India) do not favour woman and remain discriminating. Hindu, Christian and Parsi women can prosecute their husbands for bigamy under the Penal Code of India (Indian Penal Code, 1860, section 494) while Muslim women are not entitled to do so as the Muslim personal law permits men to marry multiple women simultaneously.

While the government of India by signing the Convention on the Elimination of all Forms of Discrimination against Women, - made a unilateral declaration that it shall follow a policy of non-interference in the personal affairs of any community, she also ratified CEDAW in 1993 without any reservations. Despite the ratification of the convention, no changes have been introduced to date, and family laws remain unequal in their treatment of woman. In 1986 the Supreme Court of India in *Sha Banoo Begum*, however, ruled that Muslim husbands are bound to maintain their divorced wives under the Criminal Procedure Code (Singh, 1992: np). In order to overcome the effect of the judgement, the Government of India under the Prime Ministership of Rajiv Gandhi enacted a new law, namely Muslim Women's Protection of Rights on Divorce Act, 1986, which took away the right of women to proceed against their husbands and seek maintenance. The Muslim personal law permits divorced women to claim maintenance only for the period of

*iddat*⁷ - approximately three months after the divorce - and thereafter her own family or the *wakfboard*⁸ are responsible for her.

A Muslim woman is debarred from seeking maintenance under section 125 of the Criminal Procedure Code. This section was retained in the criminal code of India for years for the maintenance of deserted wives and children. When the Criminal Code was amended in 1974, the definition of a wife included a divorced wife. Fundamentalists and orthodox Muslims opposed to the inclusion of a divorced wife in the section, argued that a divorced wife is entitled to maintenance only for the period of *iddat* and the Government took heed of these views and retained the *iddat* requirement. Thus, Muslim women have been denied the right to equality in India via state interference and sanctioning of discriminatory laws and practices in some instances (Singh, 1992: np).

Although law abolishes domestic violence against women, it still exists in the Indian community, especially in the form of feticide, infanticide, physical assaults, and dowry deaths. Out of the 8000 cases of abortions, 7999 were of a female foetus, 90% of abandoned children are girls, and there is a 10% higher mortality rate for girls than boys due to malnutrition. Thousands of newly born baby-girls are abandoned or thrown into rivers or dustbins. One dowry death occurs every one hour and forty-two minutes, and it is increasing at an alarming rate with increases in dowry-related violence (Parmar, 2014: 48). Rajasthan, Madhya Pradesh, Andhra Pradesh, and Maharashtra are states that report the highest incidents of violence. This may very well be linked to low educational status amongst other factors in these areas. For example, the literacy rate of women in India is 65.46% compared to 82.14 % of men (Sharon, 2014: 90).

The Yugantar Education Society, (2000: np) reported that 90% of the women from the area under study experienced physical, economic and emotional violence from family. Violence is higher in rural areas (60%) than in urban areas

⁷ Iddat- a period of three months is observed after the divorce of Muslim women to ascertain whether the divorced woman is pregnant and if found pregnant, the man divorced must pay maintenance until the delivery of the child.

⁸ Wakfboard- is a body organised by the Government of India to manage the matters of Muslims relating to marriages and matters of religion.

(30%). 84% of women experience physical violence at some point in their lives. The generic forms of physical violence against women include beating, fisting, and slapping, kicking, throwing objects, beating with canes, burning with rods, tying up with ropes, and sexual coercion or assault. Solidarity found that 59.20% of respondents experienced beating (Solidarity, 2009: np). The Yugantar Education Society, (2000) which conducted a study in Andhra Pradesh, Madhya Pradesh, Gujarat, Maharashtra, and Chhattisgarh found that the different forms of physical violence include slapping, beating, pushing, kicking, throwing objects, beating with a cane, burning with rods, bonding with rope, and sexual assault. This study further found that 90% of the respondents are victims of domestic violence, and 30% of these victims were from rural areas and 60% from urban areas. The study further reported that violence was present in all classes in society but declines as the wealth quintile increases.

The Yugantar study also found that domestic violence in the upper classes was at 4%, higher-middle class 7%, middle-class 28%, lower-middle-class 31%; lower-class 12% and in families below the poverty line at 8%. Sunny conducted research in Kerala, India and reported that 74.6% of the women who participated in the study sustained a physical injury due to domestic violence, and 98% experienced mental depression. The study further revealed that domestic violence further contributes to suicide rates amongst victims at a rate of 23% (Sunny, 2005: 87). According to (Yugantar, 2004: np), emotional abuse usually takes place in various forms, including:

- using abusive language;
- insulting women in the presence of her children and other family members;
- blaming the woman for everything that goes wrong in the family;
- charging her frequently on small and negligible issues;
- making her guilty for no fault of her own;
- calling her names;
- a threat of divorce;
- treating her like a servant;
- keeping a strict watch on her movements;
- prohibiting her from having friends or having a relationship with her relatives;

- prohibiting her from expressing her views on family matters;
- suspecting her of extra-marital relations,
- insulting her for not engaging in house-keeping,
- demeaning her family background.
- criticizing her for lack of intelligence;
- threatening to kill or burn her.

Sunny further reported that 35.8% of women in Kerala experienced threats which caused them psychological strain; 26.6% of victims faced threats of abandonment and 21.1% demeaning treatment and 13% faced allegations of infidelity. Sunny further reported that 98% of the respondents experienced depression due to domestic violence, and 23% had been prompted to commit suicide. In general, domestic violence reduced the victim's ability to make an independent decision. The study, in addition, pointed out that 10% of the victims were severely affected and 72.6% were moderately affected by their experience of domestic violence in this region of India (Sunny, 2005: 96).

Saidi and Siddegowda (2013, [sa]) reported that emotional violence includes:

- ✓ humiliating women privately or publicly;
- ✓ controlling what the victim can and cannot do;
- ✓ withholding information from the victim;
- ✓ deliberately doing something to make her feel diminished; isolated from friends and family members;
- ✓ implicitly blackmailing the victim by threatening harm to others when the victim expresses independence or happiness;
- ✓ denying the victim access to money or other basic amenities.

Data collected from Mysore showed that 5% of the women under study were experiencing emotional abuse, and 6% faced verbal abuse (as cited in Saidi & Siddegowda, 2013: [sa]).

In Indian society, women are accustomed to remaining silent about the violence they meet in their lives. However, wife beating or sexual abuse is recognised as a social and public health problem. Domestic violence has the ability to create mental disturbances to its victims; these mental disturbances may result in an overall decline in the woman's ability to function properly. In rural Rajasthan, for example, women have no control over their sexuality and reproduction rights and are forbidden from using contraceptives and expected to bear two children. These practices are linked with the identity and status of women in the family. In some states like Rajasthan, women who are brought in marriage are forced to have sex with their brothers-in-law and fathers-in-law. There were incidents of murder reported in the case of refusal in Rajasthan (Solidarity, 2009: np). A lack of education seems to entrench the problem further. Among tribal inhabitants, for example, the average literacy rate 1991 was 38.55%, and for the Scheduled Tribes⁹ (ST) it was 19.44%. The female literacy rate for the state was 20.44%, but for the ST's it was only 4.42%. Very few tribal children gain higher education because of economic difficulties. If any natural calamity or failure of crops occurs, it reduces income from agriculture and the tribe's economic conditions become more fragile and reduce the household food security. Women from poverty-stricken families are then sometimes sold into prostitution in Kotda block in Udaipur district. This confluence of economic fragility and lack of education coupled with archaic customary practices, can very easily leave women vulnerable to domestic violence and abuse. Additionally, tribal women can enter into repeated *nata* relationships. At times, relatives, including parents, compel women to enter into *nata* relationships, simply for the monetary benefit which these relationships bring, often to the detriment of the girl. (Mathur, 2004: 90.)

In Uttar Pradesh, a study of over 6000 men reported that 7% of them sexually and physically abused their wives, 22% resorted to sexual violence, and 17% resorted to physical violence. Solidarity reported that 1.8% of women in India experienced sexual abuse, and 6.7% experienced both physical and sexual violence (Solidarity, 2009: np). Financial violence appeared as another form of

⁹ Scheduled Tribes - The Indian Constitution listed certain socially and educationally backward classes of people as Scheduled Tribes, to be given special consideration by the state to bring the tribes forward along with other classes of people.

violence in this study. According to (Solidarity, 2009: np), financial violence includes:

- depriving the family of money for daily needs;
- keeping or taking a woman`s earnings;
- withholding money;
- abusing a woman or her loved-ones for dowry;
- taunting the woman for bringing lesser or no dowry;
- destruction of property;
- not allowing the woman/wife to pursue a job;
- forcing her to resign from an existing job;
- and preventing her from using her assets and property.

In India, cases of domestic violence are largely related to dowry demands. It is reported that 6822 women were killed in 2002 in dowry-related disputes (UN Secretary-General, 2006: np). Purnima (2011: 43) reported that dowry is one of the main causes of domestic violence in India. From a total of 150,000 criminal cases registered annually, 50,000 crimes are related to domestic violence and dowry (National Crimes Report Bureau). Dowry continues Indian society despite being banned by the Dowry Prohibition Act of 1961. Even among highly educated sections, products of dowry are proudly exhibited in the marriage as a symbol of status. Bride burning is the most severe form of dowry-related abuse and results when the dowry is considered insufficient, and most of the incidents are reported as accidental kitchen burns or attempted suicide (Purnima, 2011: 40). These clandestine events are thus difficult to track with certainty as the results are often reported as injuries caused by other events. Anwasha (2012: 73), reported that dowry continues to be a determinant factor in Indian marriages and legal sanction, or punishment is not enough to prohibit its operation which has been in existence for more than 3000 years. In addition to the dowry system, many other factors cause domestic violence.

Studies on domestic violence in India were limited before the 1970's when social scientists in the West began to realise the gravity of the problem and initiated studies to establish the nature, cause, and extent of violence against women.

A study conducted by Saidi and Siddegowda (2013: np), for example, showed that 17% of women in Mysore were experiencing economic violence, which can be described as violence which denies women access or control to basic resources. Another study conducted on the socio-economic status of participants of Panchayatiraj in the Rohtak District of Hariyana State reported that 67.4% of participants draw a monthly income up to Rs2000 while 17.33% of men fall into that income group. Only eight out of 46 women fall within the income group of Rs2001-4000 (Samaria, 2015: 29).

Bharadwaj, a researcher from north-India, reported another form of domestic violence against women, namely, intellectual-abuse. So far, no studies elsewhere in the world identified such form of violence or reported thereon. According to Bharadwaj, intellectual abuse occurs when the entire socialization process isolates men and women from effective communication. Even in the family where harmonious relationships exist, there is a sense of isolation of thoughts whereby men and women experience alienation from each other and at a certain level, they become strangers. If the educational levels are different, it adds to the isolation on mental levels, and both find difficulties in relating to each other on an intellectual level in a marriage or relationship. Consequently, women are perceived to be intellectually inferior and unreliable. Even educated and economically independent women face this form of isolation (Bharadwaj, 2014: np).

Women are generally dependent on their husbands for economic survival, and they are usually compelled to obtain spousal approval before they can access family resources. Some men subjugate their wives, which facilitates control over a woman, which often results in violence where a woman resists such control. In some other instances, employed women are not allowed to use their salaries as they wish, thereby perpetuating their subservient status. In India, the majority of

women are unemployed and depend on their husbands for their economic needs (Bharadwaj, 2014: np).

Solidarity (2009: np) found that women at low-income levels (52.08%) experienced more violence than women who earned higher salaries (3%). Women are further discriminated against by receiving lower wages than men for performing similar work. Economic abuse against women not only occurs in the labour market but also in the employment of women. Female unemployment is greater than male unemployment in India. Women's wages are 30% less than that of men, and there is no official intervention to implement minimum wages in the agricultural sector. Landowners employ women at their agricultural farms for low wages. In cities, the majority of employed women engage in construction, domestic labour, factory work or handicraft producers. These women receive lower wages for the same job that would bring better pay for men (Mathur, 2004: 79.) Domestic violence against women is thus deeply rooted in various forms in India and women's equal status with men in society is wrested by various customs.

Visaria (1999: 47) disclosed that 66.66% of the women who participated in a study among 346 respondents were subjected to domestic violence physically, emotionally, or sexually. Among these respondents, 42% experienced either physical or sexual abuse and 23% experienced verbal abuse or threats or were made to feel insignificant.

Domestic violence in India is prevalent among all castes and creeds, but the prevalence of domestic violence is higher in lower and scheduled caste¹⁰ - 62% compared to the prevalence among a high caste of 35 % (Visaria, 1999: 48). Mitra (1998: 27) reported that 29.7% of all the cases registered in Madhya Pradesh and Maharashtra accounted for domestic violence. Mitra studied how the NGOs and the State responded to acts of domestic violence by collecting data from 20 NGOs from Madhya Pradesh, and 74 NGOs from Maharashtra and found that perpetrators were not properly prosecuted or punished (Mitra, 1998:

¹⁰ Scheduled caste- Some low castes are listed in the Constitution of India for special financial assistance and are called scheduled castes.

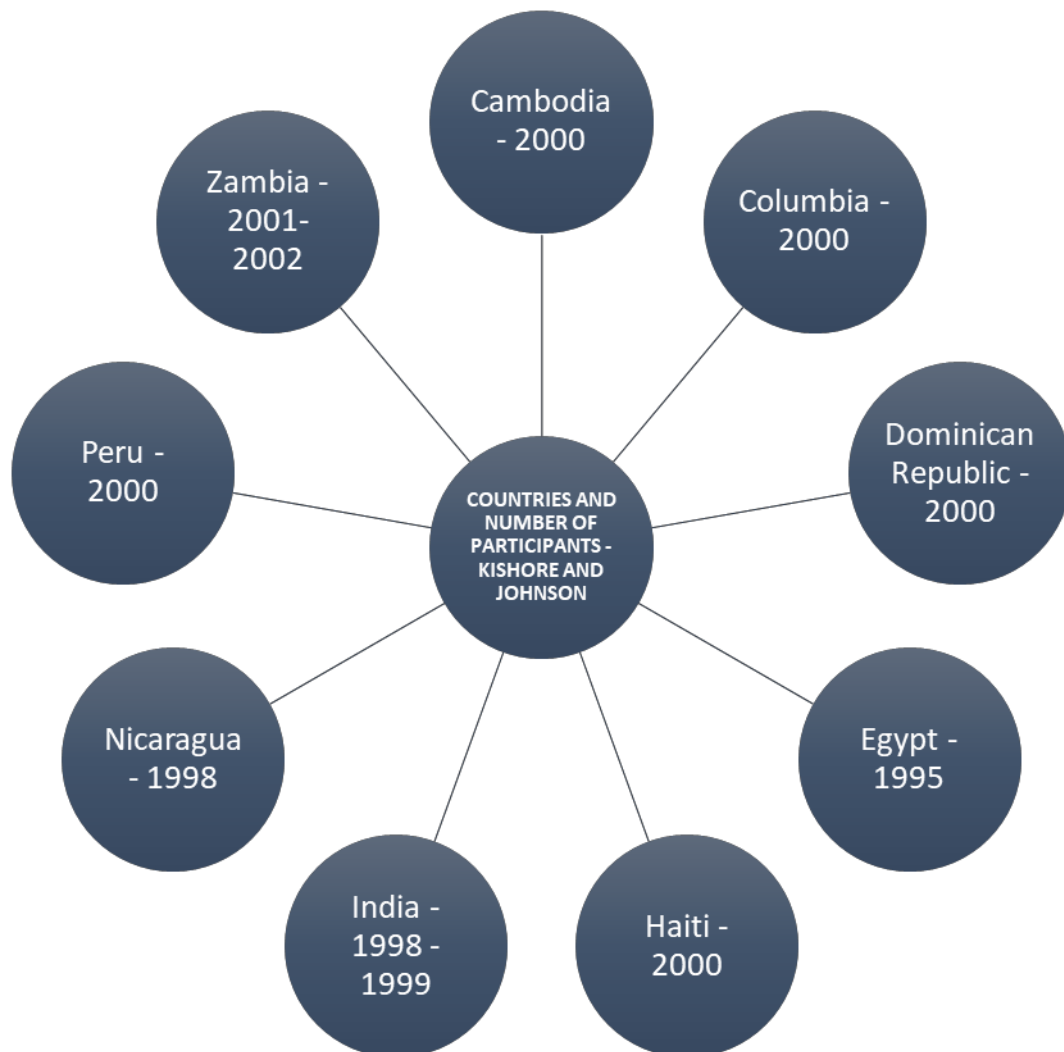
18). Jaiswal conducted a study on domestic violence by perusing the health records of Corporation Hospital, Thane, Mumbai urban outreach health centres, and health posts in low-income urban communities. Jaiswal reported that 53% of the women experienced domestic violence in Maharashtra (Jaiswal, 2000: np).

In addition, Rao et al. (1998: np) researched the problem of intimate partner violence between 1996 and 1998 and disclosed a high prevalence of domestic violence in Karnataka. Dave and Solanki (2000: np); furthermore, conducted research on domestic violence by scrutinising the case records of the Special Cell for Women and Children and reported a high prevalence of domestic violence in Mumbai, Maharashtra State. Dave and Solanki's study included approximately 3000 case records from 1990 to 1997. This study found that women within the age group 18-34 (65.4%) years are more vulnerable to domestic violence, including a fairly substantial number from the age group 35 – 44 years (Dave & Solanki, 2000: np).

The Centre for Women and Law, at the National Law School of the India University, studied the patterns and trends of domestic violence in Karnataka by examining court records and judgements in Bangalore from 1987 to 1997, and found that violence against women was seen as a subsidiary issue, in court and cruelty was indicted as the main allegation in most of the cases. Cruelty was not, however properly defined in the cases registered and due to the vague definition, the courts often acquitted perpetrators of domestic violence (Elizabeth, 2000: np).

Kishore and Johnson (2000: np) conducted a multi-country study on domestic violence and its effects on the health of women and their children in various countries, including India:

DIAGRAM 1: COUNTRIES AND NUMBER OF PARTICIPANTS - KISHORE AND JOHNSON



This study found that 21% of Indian women were experiencing domestic violence (Kishore & Johnson, 2000: np). Kishore and Johnson collected data for this study from 90303 respondents between the age group 15-49 years and further found that domestic violence caused health-related problems not only amongst the victims but also their children. The study also revealed that women who were not subjected to violence could concentrate better on their children's health. This study reported that vaccination rates for childhood diseases (5-10%) are lower among mothers who are subjected to violence.

Bhatt (2008: 23), who studied the communicative aspects of domestic violence from a South Asian perspective, found that the power situation centred on the family patriarch and matriarch. The patriarch was responsible for major family decisions in the family but was not often aware of the family dynamics and happenings, especially as it related to the female members of the family group. Instead, the female members of a family are often controlled by the family matriarch. The matriarch enjoys unlimited power within the inner circle (Bhatt, 2008: 31).

Panda (2014: 22) studied the role of micro-finance in domestic violence against women in India. The micro-financing industry has helped many women to develop their financial capacity. When women are enabled to make money, general perceptions and attitudes regarding woman change. The survey found that domestic violence decreased among 32% of the beneficiaries of micro-financing after such finance was made available to them. This study further reported a moderate reduction of domestic violence amongst 48% of the respondents (Panda, 2014: 23). It can, therefore, be assumed that a nexus exists between the financial status of a woman and the incidence of domestic violence.

Naik (2013: np) studied domestic violence from a human rights' perspective and reported that 45% of Indian women experienced either physical or sexual violence and stated, "*...for many women, their home was a regime of terror and violence*". This study also found that women experienced violence from those who they trusted most and who were obliged to protect them. In addition, Naik's study highlighted the limited police powers in India as they relate to the protection of women who are victims of domestic violence (e.g. limited powers of the police to enter a private dwelling where domestic violence is in progress).

Purnima (2011: 40) espouses that women are fully capable of leading the nation, political parties, and corporate businesses on one side, but they are often neglected from their childhood onwards, and experience inadequate nutrition, denial of or limited education, poor health, no property rights, child labour and domestic violence on the other. Socio-cultural factors are a hurdle to female

empowerment and parents often depend on their sons during their old age and thus place limited faith in their female offspring (Purnima, 2011: np).

Saha and Dutta (2004: np) gave an overview of domestic violence against women in India from a health perspective. These authors identified many forms of domestic violence such as abusive language, threats and intimidation, wife beating, dowry-related bride burning, and violence against pregnant women. Health consequences sometimes become fatal, which in turn resulted in significant economic consequences like non-productivity and increased expenses for treatment. Social attitudes also abet domestic violence against women. In some societies in India, for example, women must respect men and any action from a woman towards a man which may be construed as a form of non-respect could result in domestic violence. (Saha & Dutta, 2004: np).

Domestic violence is deeply embedded in the evolutionary history of India. Women were considered vulnerable and as a result, in a position to be exploited. Even though women have been acknowledged in different fields such as education, employment, and so on, they are still lagging behind in all other spheres of life. India ranked 129th in the Gender Inequality Index Value in 2011. Women are thus far behind in Parliamentary and other decision-making spheres. Only 10.7% of Parliamentary seats are held by women. In the area of education, only 26.6% of adult women have secondary educations compared to their male counterparts who average 50.4%. In the employment sector, women contribute 32.8% to the total figure, compared to men who contribute 81.1% of the total figure (Roy, 2016: 81). Marriage remains an essential pursuit for women in India irrespective of class, caste, or religion. This places the control over a woman's sexuality into the hands of a husband and is a primary motivating factor for domestic violence in India. This is complicated by the practice of early or child marriages. 30% of women are married during the age group 15-19-year years.

Gupta (2015: np) reported that spousal alcohol abuse and gender inequity are associated with intimate partner violence in India. Elevated alcohol use by an intimate partner tends to increase violence against women (Gupta, 2015: np).

Babu and Kar (2009: [sa]) conducted a population-based study on the prevalence and related issues of domestic violence in Eastern India and reported a 16% prevalence rate of physical violence, 52% prevalence rate of psychological violence, a 25% prevalence rate of sexual violence, and a 56% prevalence rate of miscellaneous forms of violence in Eastern India. The rate reported by men was 22%, 59%, 17%, and 59.5% respectively. Some socio-economic characteristics have significance in the occurrence of violence, such as urban residence, old age, lower education, and low income. The prevalence of domestic violence is remarkably high in Eastern India. The majority of the women in the study were house-wives, and their income was less than Rs2000. This study found that the prevalence of violence against women was 21.1% in Jharkhand, 14.6% in West Bengal and 13.2% in Odisha. Psychological violence was reported by more than 50% of the respondents and sexual violence at 32.4% in Odisha, 27.4% in Jharkhand and 19.7% in West Bengal. Husbands were the main culprits, and at times, the husband's parents were also implicated in the commission of domestic violence (Babu & Kar, 2009: [sa]).

Ghosh (2004:103) reported that dowry is one of the major reasons for harassment and domestic violence in India. It is one of the main social evils and a reflection of women's inferior status in Indian society. In family settings, both the mother-in-law as well as the sisters-in-law encourage violence against married women. The patriarchal structure of Indian families is as such that they avoid any form of independence and ensure that the woman's role remains subsidiary to that of the man. Women are controlled through patriarchal manipulation (Ghosh, 2004: 104).

Sahoo and Pradan (2003: np) reported that domestic violence is widespread in India at the rate of 21% between the age of 15-50 years, and 57% of married women justify their beating for one or other reason. These authors found that variables such as age, education status, the age of women at first marriage, ethnic and religious categories, women's autonomy, exposure to mass media, work status of women, and standard of living and place of living, contribute considerably to the prevalence of domestic violence. Domestic violence is usually a barrier to the socio-economic development and empowerment of women and

the demographic development of the country. In addition, a form of violence referred to as an acid bath is used as a “*weapon*” against women in domestic violence in India, more especially so in North India (Welsh, 2009: 16). In one such incident a male resident of Meerut, (a town in the state of Uttar Pradesh) married a woman. The woman’s father had a house and sold it for 4.5 lakhs, but the woman was continually harassed to hand over Rs50,000 so that the husband could start a business. The harassment became of such a nature that the woman left her marital home and went to her parental home. Her husband accompanied by his brothers intruded into his wife’s house and threw acid over her; his father-in-law and other family members present causing scalding of 5 people. (Indian Express, 2015: np).

Domestic violence in India has created significant health problems amongst women, and its prevalence has varied from 6% (in Himachal Pradesh State) to 59% (in Bihar State) (Charlette, Nongkynrih & Guptha, 2012: 57). Begum et al. (2015: 786) reported that women facing violence by intimate partners and factors such as early marriage, spousal alcohol abuse, unemployment and justifications for wife-beating contribute to intimate partner violence. Factors such as multiple children in the family, forced sex, jealousy, controlling behaviour and residence in an area with a high murder rate are also factors contributing to the increased rate of domestic violence (Dalal & Lindqvist, 2012: 266). Although domestic violence prevails in all settings, women in *slums*¹¹ face particular barriers in obtaining support and services, slum environments increase women's vulnerability to violence and force them to stay in abusive relationships. Socio-economic disadvantages with limited social ties and increased social isolation limit access to resources to address intimate partner violence (Beyer, Wallis & Hamberger, 2015: 44).

According to Kadam and Chaudhari (2011: 25), married women in India are more likely to experience violence at the hands of their husbands and nearly two in five women (37%) experience some form of physical or sexual violence from their husbands. The prevalence of physical or sexual violence is higher among women

¹¹ A slum environment is one of low socio-economic status, unhealthy living condition and lack of basic services.

in poor households (49%) than women in wealthier households (18%). Women whose mothers were beaten by their fathers are twice as likely to experience violence (60%) as women whose mothers were not beaten by their fathers (30%). Factors such as limited education, age, lower socio-economic background, partner traits such as alcohol or drug use, negative attitudes against women and witnessing domestic violence or being abused as a child are factors influencing the frequency of domestic violence. Kadam and Chaudhari (2011: 27) further found the risk of violence increases with marital conflicts, male dominance, economic stress and the malfunctioning of the family and the risk is higher where gender inequality exists, and no community cohesion or resources exist. Bad temperament, lack of understanding and sympathetic attitudes towards family members' lack of sense of reciprocal respect and persistent lack of interest in the husband, were factors contributing to the incidences of domestic violence against women. Domestic violence might cause many problems to the victims such as health problems, injuries, death; violence might be associated with sexually transmitted infections such as HIV/AIDS, unintended pregnancies, gynaecological problems, miscarriage, and foetal death etc. Risky behaviours increase health problems such as sexual abuse, substance use, and additional victimisation. Violence affects the mental and physical health and causes bodily and mental injuries which result into socio-economic costs such as the inability to work, loss of earning, lack of participation in regular activities and limited ability to care for children.

As per the 2001 census, 48% of the total population (then 1 billion) were women, but despite this high percentage, women still seem to lag behind men within the areas of employment, empowerment etc. This, irrespective of the implementation of many empowerment programmes. The literacy rate of women was 54% compared to men who stood at 74%, and most of the population below the poverty line in India are women. Men and male children get more care in families than women and female children. Wife-abuse prevailed in all parts of India irrespective of region, religion, caste, and socio-economic status ranging from 5.9% in Himachal Pradesh to 55.6% in Bihar. Factors such as socio-economic challenges, family problems, cultural problems, biological problems, and

psychological problems were found to cause domestic violence. The socio-demographic characteristics in urban and rural areas are distinct and poverty, illiteracy and unemployment tend to be higher in rural communities. Rural communities lack resources and services and consequently, women's access to health facilities, education and other social services are relatively lower in comparison to women in urban areas. Even when services are available women may be reluctant to seek the services because of the fear of stigma and community sanctions (Kadam & Chaudhari, 2011:31).

The study by Chokonathan (2012: np) reported that 77.2% of female respondents had some schooling and 56.6% were unemployed, 32.6% of women witnessed their fathers beating their mothers, 74.2% of women did not have money for their own use, 12.6% reported emotional violence and 21.6% reported that their husbands tried to control them. The respondents reported that 41.3% of their husbands were alcoholics. Rural women are more likely to suffer domestic violence than urban women as a direct result of a lack of schooling and employment, hailing from low economic families and having no money for their own use. The prevalence of wife-abuse in Tamil Nadu was found to be 25.8% less than the national average. The prevalence rates are similar in rural and urban areas (Chokonathan, 2012: np). Even though Tamil Nadu enjoys progressive development in terms of the low fertility rate, better access to education and health services, wife-abuse is none the less still common. It is suggested that this may be linked to rigid gender roles connected to culture. Female children are groomed for their future roles as housewives, and male children as breadwinners and heads of families and males are expected to play the role of guardian and gatekeeper of a women's physical, moral, and social well-being. Hence it is an accepted fact that men have the inherent right to dictate the behaviour and control the movements of females in their household through persuasion and physical abuse (Chokonathan, 2012: np).

According to Bharadwaj (2014: np) during the post-Vedic¹² and Vedic periods¹³ women were respected and treated as equal to men. During the Vedic period,

¹² Post-Vedic period from 2000 BC to 1000 AD.

¹³ Vedic period BC 2000 to BC 5000.

women were well treated and honoured. The ancient law-giver, Manu, in his code known as Manu Dharmasastras, states:

“...where women are honoured, the gods are pleased; where they are not honoured sacred rights yield no fruits.”

Women in this period acquired educational and religious rites.

During the Vedic period, women were given equal status and acceptance of equity, however, post-Vedic and during the reigns of kings such as Kanisha, Asoka etc., there was a marked transition period and a steady decline in the status of women. This period marked social vices such as polygamy, prostitution, *sati*¹⁴ etc. Women had already contributed to the freedom struggle at all levels, and there was development at all levels and peace at every sphere, and all had to contribute equally to the family. But there remains a difference between the perceived objective and actual objective. Women experienced physiological and psychological change as they educated themselves and became physically stronger and mentally independent. However, these changes were ignored in the patriarchal agenda. Women started to suffer conflicting emotions that affected their mental and physical health; and insecurity in their relationships, which filled them with guilt, anxiety, anger, and a sense of helplessness. (Bharadwaj, 2014: np)

According to Bharadwaj (2014: np), 35% of Indian women are victims of physical violence, and 10% are victims of sexual violence by their intimate partners. Child marriage is a manifestation of domestic violence that uproots the entire existence of women. Despite this, parents still consent to child marriages for distinct reasons which include, economic necessity, protection of the girl's innocence, sexual violation, and the prevention of pregnancy outside of marriage (Bharadwaj, 2014: np).

Despite numerous laws prohibiting domestic violence in India, the Indian Government has not managed to reduce the rate of domestic violence effectively. A contributing factor to this ineffectiveness can be attributed to the local police

¹⁴ Sati- When the husband dies, the wife must jump into his funeral pyre and die.

force and their unwillingness to implement existing legislation. Deep-rooted cultural presumptions and attitudes regarding the position of a woman within a family also directly hamper the effectiveness of the legislation.

Moreover, the economic disempowerment of women, especially in rural areas, impacts on women who are insufficiently informed about their legal rights or fail to act on them. The violence suffered by women also makes them scared and sometimes incapable of decision-making (Saini, 2016: 437). Saini found that most of the domestic violence cases committed against women went unreported, and only 10% of cases are reported. This is an indication that the societal view of domestic violence remains murky and secretive despite intervention by the legislature.

Irrespective of Indian law prohibiting domestic violence, dowry deaths, have increased from 6995 in 1995 to 8391 in 2010. In a survey by the National Centre of Biotechnology conducted in 1996 in Uttar Pradesh, 45% of men admitted that they have physically abused their wives within the last year and 7.5% women admitted that they had attempted suicide finding no way to escape the violence. Crime is one of the main impediments to the empowerment of women in India. Domestic violence is one of the worst forms of violence against women. It is a vicious cycle from generation to generation. The United Nations International Children's Emergency Fund (UNICEF) report on adolescence during 2012 indicated that 53% of girls and 57% of boys justified husbands who resort to hitting or beating his wife. Major reforms in law are required to make changes in these attitudes, which will eventually create fairer societies (Saini, 2016: 439).

Care India (2016: 15) conducted a detailed study on domestic violence in Bihar and found the social profile of women as low status. The study further found rates of illiteracy amongst woman to be much higher (41%) than that of males (9%). The majority of respondents were married, 32% of males married between ages 18-20 years, while 43% of female respondents married below the age of 16 years. In addition, 30% of males and 46% of females stated that they were unaware of the equal rights of males and females. Disturbingly, 61% of females revealed that they could only eat after other members had taken meals and 74% of females

and 46% of male respondents responded that women only slept after all other male household members slept. 52% of male and 32% of female respondents reported that there are survivors of domestic violence in their neighbourhood; the data further indicated that 24% of male and 42% of female respondents do not understand domestic violence. In order to study domestic violence at homes, children were also interviewed in the study, and it was found that 28% of children said that there are quarrels between father and mother and 22% of these quarrels took the form of scolding, and 20% included abuse. The causes of the quarrels were in direct relation to household expenses, and 30% of children blamed their father's addiction to drugs. 13% of the children said that they were beaten during quarrels, and 4% said that their study was disturbed by these quarrels. 19% of the male respondents attributed suspicion of illicit relations with other men, and 15% of male respondents indicated addiction to drugs as a cause of violence. Moreover, 13% of male respondents cited economic problems as a factor contributing to domestic violence, jealousy of female partner for earning a high income, dowry and the desire for a son were also said to be the causes of domestic violence. The same number of respondents of either sex indicated that economically self-dependent women also experience domestic violence, and 63% of female and 48% of male respondent revealed women have no right over their earnings. The study further reported that 79% of the respondents mentioned that women who marry at an early age are vulnerable to domestic violence, and 56% responded that the survivors suffered from blood-pressure complaints and anaemia. The study found that 9% of male and 8% of female respondents said domestic violence causes miscarriage, and few said violence cause maternal death and abnormal childbirth. The study (Care India, 2016: 15) additionally disclosed that 80% of the respondents have no knowledge of which institutions the victims of domestic violence could approach for assistance and complaints. The study also found low levels of awareness regarding domestic violence among female respondents. The study also found that orders under PWDVA, (2005) are ineffectively enforced and there is a lack of coordination among departments and stakeholders (Care India, 2016: 15).

Having surveyed existing literature concerning domestic violence in India, the research now turns to consider reports of domestic violence in Ethiopia.

2.2.2 Domestic violence in Ethiopia

Domestic violence is an everyday reality for women in Ethiopia. Customarily a man beats his wife to show masculinity, and her cries must be heard by the neighbours as a symbol of his dominance (Tayechemlam, 2009: np)

A WHO study on violence against women reported high rates of violence against women in Ethiopia. Data collected by the UN shows that 70.9% of women under study experienced either physical or sexual abuse in their lifetime. Further to this, 48.7% of women faced physical abuse from their intimate partner in their lifetime, and 29% experienced physical violence during the last 12 months of the survey. Findings also indicated that 58.6% of women endured sexual abuse and 44.4% underwent sexual violence during the past 12 months of the survey, and 7.5% of women were abused during pregnancy (Berhane, 2003: np).

Much like in India, in Ethiopia, many social practices such as early marriage and bride abduction, seem to encourage domestic violence. Tayechelam (2009: np) reported that a staggering 30% of Ethiopian women between the ages 15-19 years were married, divorced, or widowed.

According to Tayechelam (2009: np), bride abduction is a generic cultural practice wherein young girls are married - in some cases without their consent. The Central Statistical Agency of Ethiopia (2014: np) reported that 17.8% of Ethiopian girls are married between the ages of 15-19 years, and 3% reside with their boyfriends without affecting a legal marriage.

In the Ethiopian region of Gumuz, women are often treated as property. One such example is the use of a woman as payment or compensation for damages incurred by rival groups who have killed people. During these rivalries, one group may incur more or fewer deaths than the other, and in order to settle these disputes, community leaders often resort to the customary practice of mediation. Woman and cattle are often used to compensate aggrieved groups and to settle any remaining disputes between groups. A similar traditional practice also exists

in the Somali region of Ethiopia. Women are treated as inferior to men, and this practice is observed in compensation practices. If a man is murdered, his family is compensated with a hundred camels, while the family of a murdered woman is compensated with fifty camels. If the confessed killer has insufficient livestock to pay the compensation ordered, one of his sisters or daughters may be taken from his family and given as wife to victim's family (Abdo & Abegaz, 2009: 33)

Much as the case in India, economic inequality manifests itself in all economic and social levels in Ethiopia, and its impact can be felt at local, national, and regional levels. Economic inequalities marginalise women in the field of employment, and a lack of access to economic resources limits their capacity in decision-making processes, which in turn increase their vulnerability to violence. (Central Statistical Agency - Ethiopia, 2014: np).

A UN Secretary-General's (2006: np) in-depth study on violence against women also indicates a high prevalence of intimate partner violence and female genital mutilation at the rate of 80% in Ethiopia. Andualem et al. (2014: 8) studied physical violence against women by intimate partners in Gozaman Woreda, by collecting data from 1035 married women and found that 43.7% of the women experience physical violence, however these incidents of violence are only reported in 19.5% of cases and have a conviction rate of only 4.4%. (Andualem et al., 2014: 8).

Berhane (2003: np) conducted a cross-national study, which included Ethiopia, on ill-health and injury associated with intimate partner violence, and strategies for women to cope with violence. The study revealed that 76% of the respondents in Ethiopia were illiterate, and 64% were unemployed, 49% reported physical violence and 29% experienced violence during the last 12 months of the survey. This study found abused that women were in poorer health compared with non- abused women.

Yimer, Gobena, Egata and Mellie (2014: np) studied the magnitude of domestic violence and factors associated amongst pregnant women in Hult Ejjju, North- West Ethiopia. This study reported that psychological, sexual, and physical violence against women stood at 24.9%, 14.8%, and 11.3% respectively and

domestic violence during pregnancy was at 32.2%. The prevalence of domestic violence during pregnancy is high, and in turn, causes serious health problems to both mother and foetus (Yimer et al., 2014: np).

Semahegn, Belachew, and Abdulahe (2013: np) studied the prevalence of domestic violence and its predictors among married women in Fagitalekema woreda; Awi Zone Amhara Regional State, North-Western Ethiopia. The study revealed that domestic violence was high in the area under study. The prevalence rate of domestic violence was 78%, of which 73.3% experienced psychological abuse, 58.4% experienced physical violence, and 49.1% experienced sexual abuse within the family. Spousal alcohol consumption, low income, pregnancy, and lack of power to make decisions in the houses were factors increasing incidents of domestic violence.

Shanko, Wolday, Assefa, and Aro (2013: 23) conducted research on domestic violence against women in Kersa, Oromiya Region, in Eastern- Ethiopia. This study revealed the prevalence rate for domestic violence at 19.6%, committed by intimate partner perpetrators. Domestic violence in this area is comparatively low compared to other areas of Ethiopia. This study further revealed that a vast majority of women experiencing domestic violence do not report the abuse, which may account for the low incidence rate compared to the rest of the country.

A cross-sectional community-based study conducted by Yigzaw, Yibrie, and Kebede (2004: 188) in the Zuria district in Gondar region, North-West Ethiopia, revealed that among 1104 women, domestic violence prevailed at 50.8%, and included physical, sexual, and psychological abuse. This research conducted between 2000 and 2014 revealed that domestic violence in Ethiopia against women by their husbands or intimate partners ranged between 20% and 78%. The study further found that lifetime physical violence against married women occurred at a rate between 31% and 76.5%, and lifetime sexual violence from 19.2% to 59%. The lifetime prevalence of emotional violence was reported as 51.7%. The study further revealed a high prevalence rate of domestic violence amongst pregnant women.

In another study by Allen, Mary, and Muireann (2013: np), Ethiopian women experience a high range of abuse within their intimate relationships. The women experienced physical, sexual, and emotional abuse, along with coercive control. The WHO (2002) study recorded the highest rate of domestic violence in Ethiopia. This study supported the previous study conducted by the WHO, which reported the highest recorded level of intimate partner violence amongst the countries that were studied. Domestic violence in Ethiopia often intensifies the already challenging issues of poverty, underdevelopment, and lack of education.

Mulatu (2007: 77) similarly reports that domestic violence prevails in Ethiopian society and is a complex phenomenon. Mulatu suggests that domestic violence in Ethiopia is influenced by many factors, such as poverty, alcohol use, and jealousy. Women experience physical, psychological, economic and sexual violence. In Ethiopia, forced sex by a husband is not considered rape. The Ethiopian culture, religion, and legal system justify forced sex as a method of securing silence, control, and subordination of the woman. The political and legal context further perpetuate domestic violence and sometimes even excuses incidents of domestic violence. It offers no protection or rehabilitation to disadvantaged women (Mulatu, 2007).

Research conducted by Getachew in 2007 (np), reported that from a total of 83 criminal cases involving the murder of women, 95% included an intimate partner as the accused.

The practice of abducting girls also exists in Southern Ethiopia, Western Ethiopia, Amhara, and Oromiya Regions, whereby abducted girls are raped and forced to consent to marriage with the abductor (Semhal, 2007: np).

The African Rights Monitor is of the opinion that legal provisions against domestic violence are nearly non-existent and local authorities and communities are unaware of the laws provided against domestic violence in the Criminal Code, 2004. According to Getachew (2007: np), the US State Department reports that there are significant gaps in the justice system in Ethiopia, as well as poor documentation, inadequate investigation, and lack of consideration in handling cases which involve women and children. Further to this, the US State

Department also noted that domestic violence and rape cases in Ethiopia often experienced time delays and were not flagged with an accepted level of importance which ultimately results in an extremely limited number of successful prosecutions (Getachew, 2007: np).

A study conducted by Regassa and Tsegie (2016: 15) in the region of South Nation, Nationalities and People's Region of Ethiopia (one region in Ethiopia) disclosed that 22.6% of married women were beaten by husbands, 24.1% were slapped, 47.9% were insulted, 15.2% were chased by husbands, 4.9% experienced physical harm or damage and 9% experienced sarcastic remarks. Women selected for the study experienced more than one form of violence. 26.7% of abused women experienced at least one form of violence from their husbands, 12.2% experienced at least two forms of violence, 9.5% experienced three forms of abuse, 5.2% experienced four types of abuse, 3% experienced five types of violence and 1.4% experienced six forms of abuse by their husbands. The study highlighted a significant decrease in intimate partner violence amongst women who have higher levels of education, increased autonomy, and woman with regular access to various media channels.

The study by Regassa and Tsegie (2016: 15) further found that gender-based violence is profoundly serious and life-threatening but has been steadily improving. This study found that the wealth index influences autonomy. High socio-economic status provides women with a better opportunity to participate in decision-making and may lead to a reduction in the occurrence of intimate partner violence. Even though the Ethiopian Criminal Code incorporated article 564 to punish perpetrators of domestic violence, this study reported that those provisions were not fully implemented for assorted reasons ranging from lack of awareness to the reluctance of courts to apply it in favour of women (Regassa & Tsegie, 2016: 15).

Another study on the attitude of women against intimate partner violence in Ethiopia disclosed that women tolerate domestic abuse by their partners. The study reported that very few women defend themselves against domestic

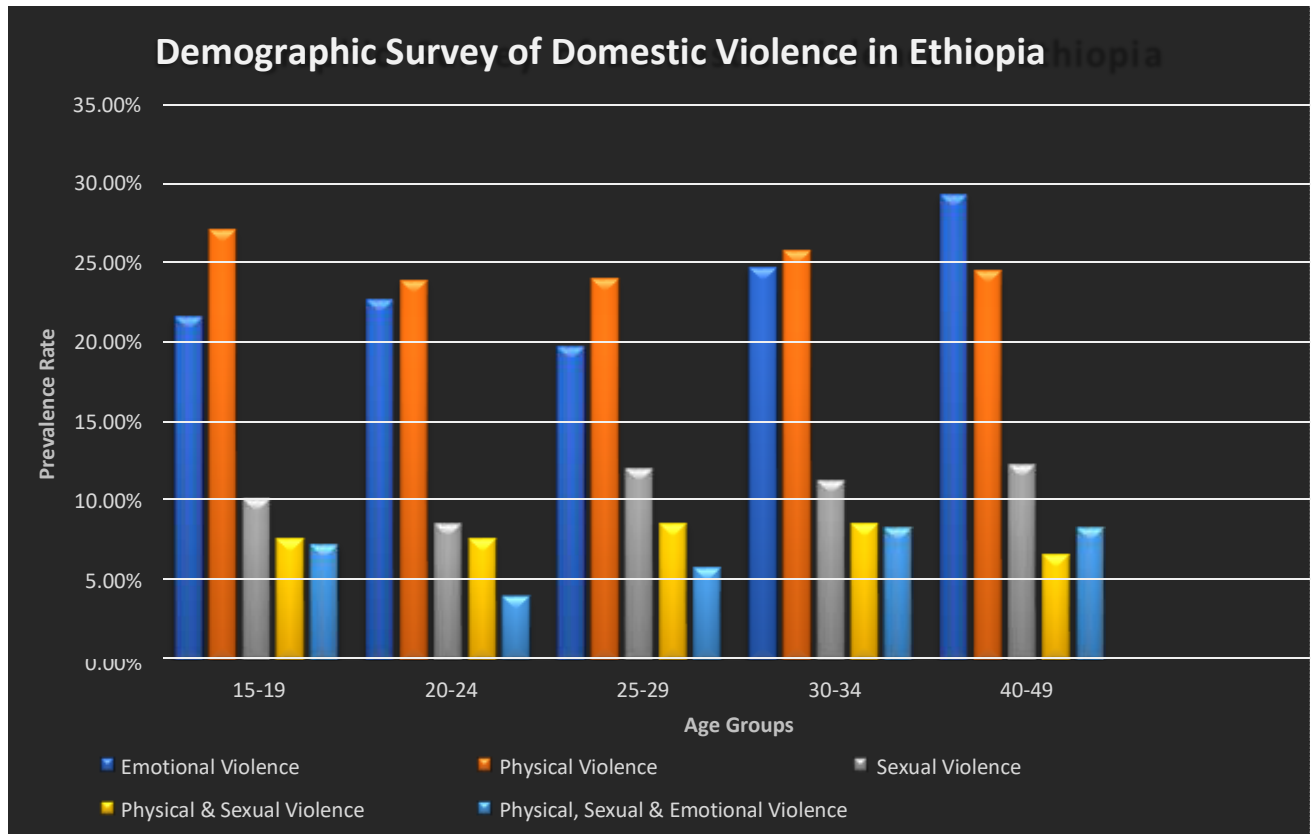
violence. Women are also excluded from the mediation and arbitration systems run by tribal elders (Abeya, Fantahun & Yalew, 2012: np).

The Ethiopian Demographic Health Survey (2016: np) reported that 13% of teenage girls are childbearing. The proportion of women aged 15-19 years that are childbearing has raised rapidly. Teenage pregnancy is more common in rural areas (15%) than in urban areas (5%). In the Afar region, Ethiopia, the percentage of teenage pregnancies is 23%, Somali 19% and Addis Ababa 3%. It was found that incidents of teenage pregnancies decrease as the level of education increases. Consequently, 28% of women between the age group 15 to 19 years with no education are childbearing, while 12% of teenagers with primary education, and 4% of teenagers with secondary education are childbearing. Moreover, rates of teenage pregnancy decrease with the increase of wealth, resulting in 22% of teenaged women in the lowest wealth quintile being childbearing, compared to 5% of those in the highest wealth quintile (Central Statistical Agency, Ethiopia, 2016: np).

The demographic survey conducted on domestic violence in Ethiopia found that domestic violence is a concern for human rights, economic and health perspectives. The survey reported that 21.6% of women in the age group 15-19 years experienced emotional violence, 27.1% experienced physical violence, 10% sexual violence, 7.5% experienced physical and sexual violence, and 7.2% experienced physical, sexual, and emotional violence. This survey further reported that 22.6% of women in the age group of 20 to 24 years, experienced emotional violence, 23.9% physical violence, 8.5% sexual violence and 7.5% experienced physical and sexual violence and 3.9% experienced physical, sexual, and emotional violence. In the age group, 25 to 29 years 19.6% of women experienced emotional violence, 24% physical violence, 12% sexual violence, 8.5% physical and sexual violence and 5.7% experienced physical, sexual, and emotional violence. In the age group 30 to 34 years, 24.7% of women experienced emotional violence, 25.8% physical violence, 11.3% sexual violence, 8.5% physical and sexual violence and 8.2% experienced physical, sexual, and emotional violence. In the age group of 40 to 49 years, 29.3% of women experienced emotional violence, 24.4% physical violence, 12.2% sexual

violence, 6.6% experienced physical and sexual violence, and 8.2% experienced physical, sexual, and emotional violence (Central Statistical Agency, 2016: np).

DIAGRAM 2: DEMOGRAPHIC SURVEY OF DOMESTIC VIOLENCE IN ETHIOPIA



Data Source: (Central Statistical Agency, 2016: np)

Domestic violence is evident in all societies in Ethiopia irrespective of the enactment of laws abolishing the same. This situation is similar to that experienced in India.

The above discussions revealed that domestic violence prevails in every section of society in India and Ethiopia. Domestic violence is reported more in low-class societies and slum areas, but it seems to decrease with an increase in education and wealth. Different causes are found for domestic violence. Cultural, religious, and political factors contribute to the prevalence of domestic violence. Some societies in India consider women as inferior to men and women need to respect men, and if the man feels disrespect, it may lead to domestic violence. Even

though polygamy is criminalised by the Indian Penal Code (section 494), it is still practised amongst Muslims who claim that the Muslim personal law permits the same. The Indian Government abstained from interfering in the personal laws of Muslims for political reasons. The Government is influenced by conservative Muslims, and the inaction of the Government has the ulterior motive of garnering political support for elections. It was further found that even in low-class societies, domestic violence seems to be reduced when the women began to earn an income. The Indian Government is required to implement programmes to empower women. More seats should be reserved for women in parliaments and State Legislatures in order to improve the status of women. *Kudumbasree*¹⁵ under Panchayatiraj should be implemented throughout the country, which enables women to empower themselves. Violence against women can be brought to the notice of authorities by *Kudumbasree*. Even though laws prohibiting domestic violence were enacted in 2005, it is reported that its implementation is not effective in all Indian States. Care India (2016: 15) reported that States such as Bihar have not effectively implemented this legislation.

The PWDVA provides only for civil remedies against domestic violence. The Government of India should consider amending the PWDVA to include provisions which will criminalise domestic violence and empower police to intervene in an emergency. In India, law and order problems and investigation of crimes are generally the duties of the state. Since domestic violence affects many spheres of life, the Government of India should pay attention to remedying the issue. The Indian Government should review the implementation of PWDVA, and effective measures should be taken if its implementation is proven defective. A Government agency should be entrusted to monitor the implementation of the PWDVA. The Government should establish committees at the district levels for scrutinising the implementation of domestic violence law and give support to the victims of domestic violence. Family laws which protect the perpetrators of domestic should be amended to bring the perpetrators under the ambit of the PWDVA and protection should be given to victims from all religions.

¹⁵ Kudumbasree - Panchayatiraj Act 1995 contains provisions for forming a group of women in the locality and permits them to manage and run small businesses, such as hotels etc. Profits can be divided among women. Thus, women can earn money from such business.

In Ethiopia, cultural practices directly affect incidents of domestic violence and tend to increase their occurrence. An increase in incidents of domestic violence is evident amongst Muslims in Ethiopia who recognise and practice Muslim personal laws permitting polygamy. Although Ethiopia has criminalised acts of domestic violence, incidents continue to rise, and the desired effect which criminalising these behaviours was meant to achieve has, unfortunately, not been realised.

Domestic violence cannot be treated as a simple single-faceted issue as it affects victims and their children on multiple levels, which include the mental and physical health of its victims. The snowball effect ultimately produces economic costs for the public sector, as they directly affect the production sector of victims, and often result in an inability of the victim to attend work. Therefore, it requires effective remedial action from the Government. Penalising domestic violence and permitting police to interfere in domestic violence incidents in emergencies may have the effect of lowering incidents of domestic violence. A monitoring body should monitor the implementation of domestic violence law and the role of the police. The Ethiopian Government should legislate a new law, including civil remedies and criminal prosecution of perpetrators, effective police intervention and provide asylum for the victims of domestic violence.

In Ethiopia, a provision is provided in the Criminal Code of Ethiopia, which penalises domestic violence. However, no provision is included in the Code to grant compensation or injunction or to restrain domestic violence. The victims have no direct access to courts if they are denied justice. Only the police are empowered to file cases. This may cause discrimination to women, especially in the lower classes.

The Ethiopian Government should enact a separate law curbing domestic violence, but which includes civil remedies. The inclusion of civil remedies would provide victims with direct access to courts, which at present is not possible.

Having discussed the literature findings on domestic violence in India and Ethiopia, the researcher now considers the influence of international agreements regulating violence against women.

2.3. INTERNATIONAL LAWS AND AGREEMENTS REGULATING VIOLENCE AGAINST WOMEN

The United Nations and regional human rights organizations have recognised the human rights of women, as well as the corresponding obligation which these rights place on the state to protect and uphold such rights. Human rights are detailed in treaties, conventions, resolutions, declarations, and guidelines. Treaties adopted by national governments create corresponding obligations. Governments are required to uphold and maintain regulations contained in the treaty and to ensure that its principles and purpose are realised. The international community has adopted, passed, and ratified various international documents and treaties which address the issue surrounding the protection of woman's rights.

The Women's Convention, General recommendation no 19, Beijing Declaration and Platform for Action are some of the international documents which detail woman's rights. These documents themselves are unenforceable. However, they have created a variety of reporting and monitoring agencies which empower nations with the ability to create and enforce legislation aimed at the eradication of domestic violence and which carry consequences for the violation of women's rights (International law and women's right, 2012).

Domestic violence has been recognised on an international level as a gross violation of human rights. Until 1990 international treaties provide generic protection against domestic violence, but after that much media attention and advocacy, the Committee on the Elimination of Discrimination against Women passed General Recommendation no. 19 in 1992 and the Declaration of Elimination of Violence against Women in 1993 (UN Treaties on Domestic Violence, 2012). In 1995, representatives from 189 nations participated in Beijing and determined to advance the goals of equality, development, and peace for all women in the world in the interest of humanity (Fourth Women's Conference in Beijing, 1995). The UN issued guidelines for a model legal framework to be followed by the member states in 2010 which requires that national laws should define different forms of domestic violence, contain a provision for prevention,

protection, and support, and the rights of survivors. Within this framework, provision should also be made for the investigation, prosecution, and sentencing of domestic violence perpetrators. In addition, legislative provisions aimed at the regulation of civil procedures and civil lawsuits instituted against perpetrators of domestic violence should be included. Domestic family law should also be amended to ensure sensitive consideration for violence against women and survivors of violence should be considered for asylum (Handbook for Legislation on Violence against Women, 2010: np).

India and Ethiopia are both signatories to the UN treaties on domestic violence against women and although India has taken legislative steps to prevent domestic violence by enacting the PWDVA she still has not fulfilled all of the obligations created by the treaty. These treaties and general guidelines for legislation require the criminalisation of domestic violence. India has however failed to incorporate this provision into her existing framework but has successfully made provision for civil remedies.

Women in Ethiopia experience high rates of domestic violence. The Constitution of FDRE (1995) provides special rights for women. Although specific rights are guaranteed by the Ethiopian Constitution, only physical violence in a marriage is viewed as a form of domestic violence. Ethiopian domestic violence law does not include provisions for civil remedies. The only article provided to tackle domestic violence is article 564, but it refers back to the provisions dealing with crimes against persons and health, which complicate evidence processes (Megeresa, 2014). In addition, the law does not provide an express definition of domestic violence, and this directly affects the efficacy of the Act. The UN guidelines for legislation were not carefully considered by the Ethiopian Government during the drafting of its current domestic violence laws.

One of the major steps taken by the international community to address violence against women was the approval of CEDAW in 1981, which is discussed below.

2.3.1. Convention on the Elimination of All Forms of Discrimination against Women

The UN Secretary-General (2006: np) reported that violence against women is a manifestation of unequal power relations between men and women which leads to the domination over and discrimination of women, and which results in the prevention of advancement of women. This study further pointed out different areas of violence against women, including family violence, violence in the community and violence perpetrated or condoned by states.

In the General Recommendation, the Committee for the Discrimination of Violence against Women confirmed that state parties are responsible for private acts if they fail to act with due diligence in matters relating to the prevention, investigation, and punishment for infringements of woman's rights as well as acts of violence against woman. This also includes a failure to provide adequate measures for victims of violence seeking compensation (UN Secretary-General, 2006: np).

CEDAW, an international treaty addressing the discrimination of woman, was adopted in 1979 by the United Nations General assembly and instituted on the 3rd of September 1981. The treaty failed to explicitly include and define the term and meaning of violence against women or the term and meaning of domestic violence. This limitation notwithstanding, state parties agreed to condemn all forms of discrimination against women (CEDAW, 1981). In 1992, the Committee on the Elimination of Discrimination Against Women, a monitoring body of CEDAW, adopted General Recommendation no. 19, which specifically addressed the issue of gender-based violence, and further sought to provide clarity in areas not adequately provided for at the outset of the treaty. General Recommendation no. 19, at point number 6, explicitly broadens the definition of discrimination against a woman to include gender-based violence, that is, violence directed against a woman simply because she is a woman. Gender-based violence includes acts which inflict physical, sexual, or mental harm (including threats of such acts), coercion and other deprivations of liberty (General Recommendation. No. 19 of 1992). In addition to the above, the UN adopted an optional protocol to

the CEDAW in 1999 and which came into force in 2000. The optional protocol provides for an additional method of submitting claims of violation of rights in instances where all domestic remedies have been exhausted. In such situations, the Committee is empowered to investigate grave situations of violation of women's rights, the findings, and decisions of which are published on the UN Women's website. (Optional Protocol to CEDAW, 1999).

Article 4 of CEDAW requires that member states condemn all forms of violence against women; this includes the abolishment of any customs and/or practices which violate or contradict CEDAW. Member states are not permitted to rely on customary law and/or customary practices as a ground of justification for the use of violence against woman, nor is the member state permitted to use such customary laws and/or practices as reason to avoid the fulfilment of obligations resultant from articles contained in CEDAW (CEDAW, 1981).

CEDAW further requires that member states develop and incorporate civil as well as penal remedies aimed at assisting victims who seek compensation for acts of violence. States are further required to develop and provide adequate access to justice and to incorporate these developments within their current domestic legislative frameworks.

India and Ethiopia are signatories to this treaty and are therefore obliged to follow its terms and meet its obligations.

The Government of India enacted PWDVA, in 2005, which includes civil remedies for victims of violence, such as the provision for compensation, however it excludes penal remedies. In the absence of penal remedies in the PWDVA, the researcher posits that has not fully met her obligations in terms of the treaty, which will be discussed further in a later chapter.

Ethiopia has not been successful in fulfilling its obligations under this treaty. The current legislation of Ethiopia does not include civil/penal remedies as required by CEDAW, nor does it adequately address issues of domestic violence. New legislation addressing domestic violence and/or amends to the current Criminal Code, 2004 should include provisions for the granting of civil remedies including

compensation. The researcher posits that future Ethiopian legislation should include detailed definitions for domestic violence and should also be broadened to include physical, emotional, sexual, and economic forms of domestic violence. This will be discussed further in later chapters relating to Ethiopian domestic law.

In the next part of this chapter, the researcher outlines the International Covenant on Social, Economic and Cultural Rights, which also aims to protect the rights of women.

2.3.2. International Covenant on Social, Economic and Cultural Rights (ICSECR), of 1966

In accordance with the principles proclaimed in the UN charter, all members of the human family are entitled to inherent dignity, equal and inalienable rights to freedom, justice, and peace and security. These rights can however, only be enjoyed if the necessary conditions are created to assist and facilitate the realisation of these rights (ICSECR, 1966).

The International Covenant on Social, Economic and Cultural Rights (ICSECR) of 1966 required states to provide a right of equal protection before the law. This Covenant came into force in 1976.

In terms of article 12, the ICSECR realises the importance of human rights and gives effect to these rights by stating that:

“...every person has the right to the highest standard of physical and mental health.”

Acts of domestic violence deprive women of the enjoyment of their rights, and therefore, acts of domestic violence can be viewed as a direct violation of international laws (ICSECR, 1976). Member states have an obligation to protect and uphold the rights of women and to adequately provide measures for protection against acts of domestic violence. In order to give effect to the high standard placed on physical and mental health rights contained in the convention, each citizen should be afforded living conditions within which freedom from violence is guaranteed. Member states are bound to this covenant and are therefore obliged to ensure the enactment of civil and criminal legislation which prevent and eradicate acts of violence.

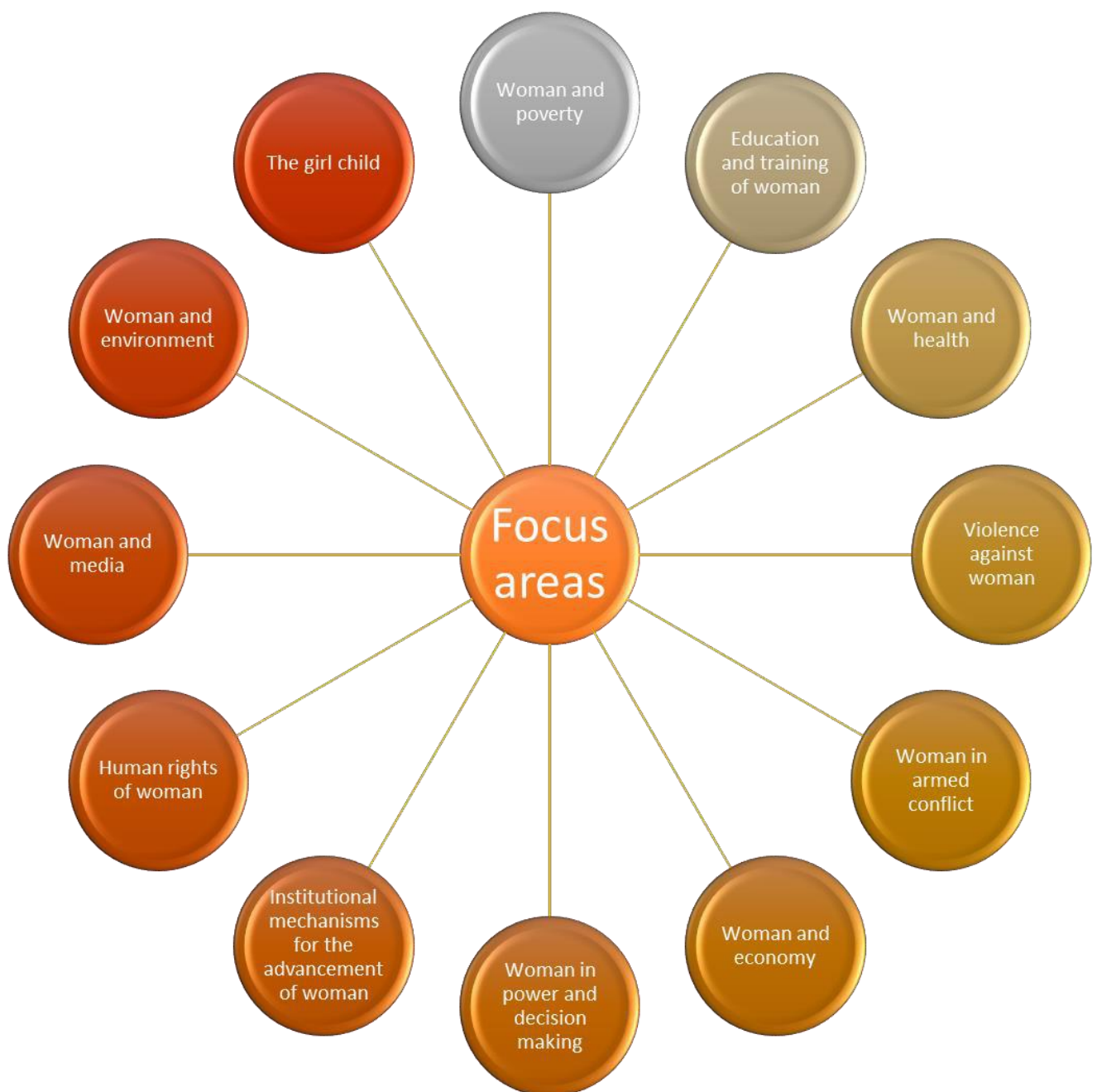
The spirit of this declaration is not reflected in the Ethiopian Criminal Code, of 2004. Ethiopia successfully incorporated provision 564, in her Criminal Code with the aim of addressing acts of domestic violence. The Criminal Code penalises acts of domestic violence, which, according to the Code, includes acts that inflict bodily or mental injury to a spouse, whether married or living together. This same provision, however, also refers to these acts of violence as general injuries and allegations of this nature bear a high burden of evidence which often impacts negatively on the success of the prosecution. Ethiopian domestic violence law does not penalise sexual harassment or marital rape or economic violence. No provision is provided for granting an injunction to restrain domestic violence or for civil remedies. Ethiopia is duty bound to adopt new legislation against domestic violence, or amend and refine current domestic violence legislation, and add provisions for civil remedies. In order to fulfil the obligations placed on the state by the treaty, Ethiopia must implement programmes focused on the upliftment of the living conditions of its citizens and in which the high standard of the convention will be maintained and realised. This will be discussed further in later chapters relating to Ethiopian domestic law.

The researcher proffers that India should amend the PWDVA to add penal provisions and thus fulfil her international obligation. Domestic violence in India is rife; women living in India experience violence for a variety of reasons; however, many acts of violence can be attributed to dowry-related issues. Other reasons include low income, cultural beliefs, and the inability to give birth to a male child. Although the Constitution of India provides for equality and liberty of its citizens, women living in poverty are unable to approach the High Courts for redresses. The Government of India must implement programmes to improve the social and economic status of these women, thus enabling them to enjoy a high standard of physical and mental health. The National Employment Guarantee Scheme under the National Employment Guarantee Act, of 2005; provides that the Government could provide employment for 152 days per year (Mathrubhumi Daily, 2014: np). This legislation was promulgated with the aim of reducing rural poverty rates. However, it is doubtful whether the enacted legislation actually achieved its aim and thus its impact on the incidence rate of domestic violence in India is moot.

2.3.3. The Beijing Declaration

The UN organised conferences for the advancement of women and the eradication of gender equality. These conferences focused on 12 major areas of concern which were identified and categorised as follows: (UN 2014, np):

DIAGRAM 3: BEIJING DECLARATION FOCUS AREAS



The first conference took place in Mexico City in 1975, the second in Copenhagen in 1980, the third in Nairobi in 1985 and the fourth in Beijing in 1995. The fourth world conference marked significant developments for the global agenda for gender equality. Consequently, the Beijing Declaration and platform for action was unanimously adopted by 189 nations.

In 2000, the General Assembly decided to conduct a five-year review and appraisal of the implementation of the Beijing Platform for Action. In 2005, a ten-year review and appraisal of the Beijing Declaration and platform for action were conducted as part of the 49th session of the commission on the status of women. The 49th session adopted a declaration emphasizing the need for the full and effective implementation of the Beijing Declaration and platform for action (UN, 2014: np). The Convention held in Beijing declared that violence against women creates an obstacle in the achievement of equality; the development of peace and violates and nullifies the enjoyment of human rights and fundamental freedoms of women.

Numerous factors can be attributed to the cause of violence against woman. Acts of violence against woman have been defined by the convention as acts of gender-based violence that result or likely result in, physical, sexual, or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life

Accordingly, acts of violence against women encompass but are not limited to the following:

- a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

The Beijing Declaration highlights women's rights and appeals to address violence against women that occurs, whether in public life or private life. The violence that occurs in private life includes domestic violence and its specifically

states physical violence, sexual violence, and psychological violence. The Beijing Declaration further reiterated that violence linked to dowry is usually found in India. It's further pinpointed marital rape as a form of violence against women, which is not considered a type of violence in Ethiopia .

- b) Physical, sexual, and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment, and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.

Recommendations of the Beijing Declaration cast obligations on states which condone violence against women. Some states are reluctant to interfere with family matters because they do not want to interfere in the private realm of life. Such states have been identified in the Beijing Declaration, and as a result, these state parties are now obliged to take corrective steps towards eradicating domestic violence by enacting appropriate legislation abolishing all forms of violence against women.

- d) Violence against women also includes forced sterilization and forced abortion, coercive or forced use of contraceptives, female infanticide, and prenatal sex selection (Beijing Declaration, 1995: np).

The Beijing Declaration further emphasises prenatal sex selection and forced abortion as forms of violence against women. Though some forms of sex selection practices are found in India, the current domestic violence laws of India do not consider it a form of violence.

The fear of violence, including harassment, hampers the mobility of women and limits access to resources and basic activities. Social, health and economic costs of the individuals and society are followed with violence against women. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men. In many cases, violence against women and girls occurs in the family or home, where violence is often

tolerated. In order to address the issues raised above, the Beijing Declaration (1995) recommended that nations:

- a. Condemn violence against women and refrain from invoking custom, tradition, or religious considerations to avoid their obligations with respect to its elimination of violence.
- b. Refrain from engaging in violence against women and exercise due diligence to prevent, investigate, and in accordance with national legislation punish acts of violence against women, whether those acts are perpetrated by the states or private persons.
- c. Enact or reinforce penal, civil, labour and administrative sanctions in domestic laws to punish and redress the wrongs done against women and girls who are subjected to any forms of violence whether in the home, workplace, the community, or society.
- d. Analyse and review legislation periodically to ensure its effectiveness in eliminating violence against women.
- e. Provide women who are subjected to violence access to the mechanism of justice and just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms.
- f. Formulate and implement plans of actions at all levels to eliminate violence against women.
- g. Create and strengthen institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment without fear (Beijing Declaration, 1995: np)

The Beijing Declaration further states that human rights and fundamental freedoms are the birthrights of all human beings, and it is the first responsibility of governments to protect and promote these rights. Platform for Action reaffirms that all human rights - civil, cultural, economic political and social, including the right to development – are universal, indivisible, interdependent and inter-related as expressed in the Vienna Declaration. Governments must refrain from violating the human rights of women and must work actively to promote and protect these rights (Beijing Declaration, 1995: np).

In addition, the Beijing declaration specifically addresses violence against women in the family - such as physical violence, sexual violence, psychological violence, marital rape, and violence linked to dowry etc. Even though the Beijing Declaration has declaration status, the UN decided to implement the declaration for the advancement of women around the world, resulting in the acceptance of 189 nations. Though the rights in the declaration are unenforceable, the signatory nations are obliged to implement the terms of the Declaration. The Beijing Declaration further recommends that states condemn all forms of violence against women and refrain from invoking customs, tradition, or religion to avoid their obligation about the elimination of violence against women. It further recommends the implementation of penal consequences for the perpetrators of domestic violence under national and local laws. The recommendations appeal to state parties to enact proper legislation, including civil and criminal laws which address violence and domestic violence against women.

Both Ethiopia and India are signatories to the Beijing Declaration and Platform for Action and are therefore obliged to implement relevant legislation which addresses violence and domestic violence against woman and to incorporate these within their current legislative frameworks.

Ethiopia has however, not included civil remedies in her law to address domestic violence. Moreover, Ethiopia has not provided a definition of domestic violence within its current collection of laws. Article 620 of the Criminal Code of Ethiopia, (2004); does not supply penal consequences for acts of marital rape. Instead, it condones such acts. Consequently, Ethiopia must fulfil its obligation under the Beijing Declaration and Platform for Action and is required to amend her Criminal Code, (2004) and convert marital rape into an offence which carries penal consequences. Ethiopia only penalises forms of physical violence highlighted in the provisions of the domestic violence laws. Sexual and economic violence are not included. To fulfil its obligation, Ethiopia will need to implement amendments which will effectively broaden the current legislation to include sexual and economic violence.

Although India enacted separate legislation to address domestic violence, including all the forms of violence recommended by the Beijing Declaration, provisions for investigating and punishing perpetrators of domestic violence have not been included in Indian domestic violence law. The PWDVA (2005) does, however, supply access to the justice system for matters relating to dowry issues and effective remedies are available.

To fully meet its obligations, India must amend the PWDVA (2005) to include penal consequences for the perpetrators of domestic violence. This is further discussed in a later chapter relating to Indian domestic law.

In the next section of this chapter, the researcher evaluates the UN Resolution to intensify efforts to eliminate violence against women.

2.3.4. The United Nations General assembly - Resolution No 61/143

The UN General Assembly has adopted different resolutions and as a result, are required to prepare reports on various forms of violence against women. After the publication of UN Secretary-General's in-depth study of violence against women, in 2006, the General Assembly adopted a resolution no. 61/143, in order to intensify its efforts in the eradication of violence against women (VAW) (General Assembly, 2006: [sa]).

The UN General Assembly urges member states to act to eliminate all forms of violence against women by means of a systematic, comprehensive, multi-sectoral and sustained approach which is adequately supported, facilitated, and financed through national action-plans, including international cooperation. These systematic approaches should include aims:

- ✓ To ensure that all human rights and fundamental freedoms are respected and protected.
- ✓ To consider ratifying all human rights treaties, the Convention on the Elimination of all forms of Discrimination against Women and the Optional Protocol thereto.

- ✓ To review and revise, amend or abolish all laws, regulations, policies, practices, and customs that discriminate against women or have a discriminatory impact on women and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments, and principles, including the principle of non-discrimination.
- ✓ To exercise leadership to end all forms of violence against women and support advocacy in this regard at all levels.
- ✓ To take positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms, including with regard to women who need special attention in the development of policies to address violence, such as women belonging to minority groups, or women who are otherwise discriminated against; and
- ✓ to end impunity for violence against women, by prosecuting and punishing all perpetrators, by ensuring that women have equal protection of the law and equal access to justice and by holding it up to public scrutiny.

The UN General Assembly further adopted the Beijing Declaration (1995) and reaffirmed the recommendations in the Beijing Declaration as well as the recommendations in CEDAW and requested all member states to enact appropriate legislation to eradicate and prevent domestic violence. It reminded all nations that violence against women hinders social and economic development and internationally agreed upon development goal, and thus, attitudes which foster, justify, or tolerate violence against women should be eliminated.

The decisions of the UN have not been fully recognised in Ethiopian domestic violence laws. The UN stresses that states should strongly condemn violence against women and refrain from invoking any custom, tradition, or religious consideration to avoid their obligations with respect to elimination as set out in the Declaration on the Elimination of Violence against Women. The UN resolution additionally stresses that challenges and obstacles remain in the implementation of international standards and norms to address the inequality between men and women, and violence against women in particular, and pledges to intensify action to ensure their full and accelerated implementation. The Constitution of the

Federal Democratic Republic of Ethiopia (1995) enshrines fundamental rights, and a separate article is provided to improve the rights and freedom of women. However, no constitutional remedy is provided in the instance of violation of those rights, an area which demands urgent attention; as effectively, the rights afforded to individuals within the Constitution are nullified by the lack of a remedy and/or enforcement clauses.

The Criminal Code of Ethiopia (2004) reflects customs and traditions, which discriminate against women. Marital rape is not recognised as an offence in Ethiopia, and hence, the equality of women is not recognised within the family by the criminal law. The spirit of the UN resolution is not reflected in the criminal law of Ethiopia regarding the equality of women within the family. Ethiopia should thus amend the law in order to fulfil its obligation to the international community.

India enacted the PWDVA in 2005 and included civil remedies to prevent domestic violence. This statute provides for compensation for the loss sustained during domestic violence. The PWDVA further gives protection of property belonging to women. This law also provides asylum to victims of violence.

Nevertheless, the Government of India must move forward to ensure the protection of women belonging to all religions. Muslim women are still governed by Muslim personal laws which discriminate against women. The Indian Government has not implemented legislation to protect the rights of Muslim women. Conservative Muslim leaders argue that marriage, succession, divorce, and so forth fall within the scope of personal laws and Government should not interfere with such laws. As a result of this politicians try to abstain from interfering with Muslim personal laws, however, in so doing, further continue to neglect the fulfilment of their obligations, and further continue to encourage the discrimination against women in general and Muslim women in particular.

Violence against women, including domestic violence, is a gross violation of human rights and the following section discusses the rights of women under the Universal Declaration of Human Rights.

2.3.5. Universal Declaration of Human Rights

The Universal Declaration of Human Rights is a milestone in the history of human rights. It was drafted by representatives with different legal and cultural backgrounds from all regions of the world. The UDHR recognised the foundation of freedom, justice, and peace in the world and the inherent dignity, equal and inalienable rights of all members of the human family. It proclaimed freedom of speech, beliefs, and freedom from fear as the highest aspiration of people. It further states that violations of human rights result in barbarous acts which have outraged the conscience of humanity (UN, Universal Declaration of Human Rights, 1948).

The UDHR was adopted by the UN General Assembly in 1948. Even though this charter is not binding on its member states, it has received worldwide acceptance and acknowledgement in its use as a guideline to the foundation of human rights principles and protections.

Article 3 of the UDHR states –

“...everyone has the right to life, liberty, and security of person.”

Therefore, all forms of domestic violence clearly breach the basic principles of human rights of woman as framed within the UDHR. Violence and domestic violence curtail the liberty and security of women and also infringe their right to life; another fundamental right highlighted within the UDHR.

Article 5 of the UDHR states that every person has the right not to be subjected to torture, or to cruel, inhuman, or degrading treatment or punishment. Violence against women is considered cruel and degrading treatment. Violence and domestic violence against women, therefore, constitute direct infringement of the human rights of women whether such violence occurs in public or privately.

Even though the rights referred to in the UDHR (1948) are unenforceable, they are generally accepted as universal human rights. The human rights enshrined in the UDHR are not reflected in the Criminal Code of Ethiopia. Marital rape is not considered as an offence by the Ethiopian Criminal Code which discriminates

against women in the private sphere. Moreover, sexual violence is not recognised as a form of domestic violence, which is cruel and degrading treatment and is a direct infringement of article 5 of UDHR (1948).

Human rights and principles enshrined within the UDHR (1948) were accepted into and reflected within the constitutions of both Ethiopia and India. This form of acceptance can be construed as a type of tacit acceptance, which resultantly gives rise to obligations which must be fulfilled by the two countries. According to the constitutional provisions of these countries, domestic violence is regarded as degrading, and inhumane treatment and these countries have a responsibility to eradicate this treatment and ensure the protection of the human rights of women.

The researcher posits that Ethiopia should enact specific laws targeted to domestic violence and for this purpose, Ethiopia could follow the example of the Domestic Violence Act (116 of 1998) of South Africa, discussed further later in this work.

India should amend the PWDVA, (2005) to include provisions which empower the police to take immediate steps in the intervention of domestic violence incidents. In addition, the domestic violence definition should be amended to include stalking and other forms of violence. Stringent prison terms should be incorporated into Indian law, such as can be seen in the South African Domestic Violence Act 116 of 1998.

The UN has resolved to protect the rights of women and appealed to its member states to adopt the necessary legislation to promote the rights of women. State parties have an obligation to promote and protect all human rights and fundamental freedoms of women and girls and must exercise due diligence to prevent, investigate and punish perpetrators of violence against women and girls and provide protection to the victims. Failure to do so constitutes a violation of the treaty and impairs the enjoyment of human rights and fundamental freedoms afforded by the convention.

The spirit of these rights within international covenants have not been reflected in Ethiopian domestic violence laws. The Ethiopian Criminal Code does not provide

provision for protection orders to protect victims of domestic violence. Ethiopian domestic violence law does not comply with international requirements and should, therefore, be amended so as to include provisions granting protection orders to victims of domestic violence, as well as amendments empowering the courts to award compensation for the injuries and losses sustained by victims of domestic violence.

Article 16 of the Ethiopian Constitution provides:

“Every person has the right to be protected against bodily harm.”

Article 18 provides:

“Everyone has the right to protection against cruel, inhuman and degrading treatment or punishment.”

In order to fulfil its constitutional obligations stated above, Ethiopia should enact new legislation which addresses domestic violence in toto and not on the piecemeal basis currently enacted under the 2004 Criminal Code.

The Indian Constitution (1950) guarantees equality for all. One such example of equality is evident in article 14, which provides:

“Equality before the law - State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Another such example of equality is evident in article 15, which provides:

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

In other words, the Government of India is duty bound to protect women from domestic violence because domestic violence discriminates against them on the grounds of gender and status. The PWDVA (2005) should, therefore, be amended so as to include provisions for criminalising acts of domestic violence in order to fulfil its constitutional obligation of equal treatment for both men and women.

Several countries have enacted legislation to address domestic violence. The legislative instruments include criminal procedures and criminal remedies aimed at eradicating domestic violence. These laws are treated like best practices, and the following section discusses a selection of such laws.

2.4. EXAMPLES OF COMPARATIVE BEST PRACTICES IN DOMESTIC VIOLENCE LAW

In compliance with the enumeration of woman's rights in international treaties, declarations, and agreements, member states began to enact laws aimed at protecting women's rights and eradicating violence against them. These domestic violence laws adopted by different nations usually criminalise the act of domestic violence and include civil remedies, such as the provision of compensation for losses sustained during domestic violence, as recommended by various international instruments. Some countries which have enacted such laws include the USA and South Africa. Laws enacted by these countries include provisions empowering the police to grant protection orders to victims of domestic violence as well as provisions regulating compensation and other forms of relief.

The following section provides a brief discussion of domestic violence law in the USA.

2.4.1. Violence against Women Act of 1994 (federal law) the United States of America

Realising the seriousness of domestic violence, the US Congress criminalised domestic violence as a Federal crime and amended its Gun Control Act, 1994 to include provisions relating to the use of weapons during domestic violence (Polan, 2018: 1443).

Article 922 of the US Violence Against Women Act (1994) states that if any person is in possession of firearms or ammunition, he/she is subject to a qualifying protection order or is guilty of the offence of domestic violence as a crime. Article 992 accordingly states that leaving or crossing state borders to injure an intimate partner, or stalking harassing or cyberstalking are regarded as

Federal crimes and are punishable with a minimum prison sentence of 5 years if no injury is inflicted, and extended to life imprisonment where acts of domestic violence caused the death of a victim (VAWA 1994, section 2261 A(1) &A(2)). According to section 2262 of the VAWA, (1994) to travel from one US state to another or cross the border or enter another territory to violate a protection order also constitutes a crime.

The USA's Violence Against Women Act, of 1994, makes provision for the following rights which are afforded to victims of domestic violence.

- ✓ Right to be treated with fairness and respect for the victim's dignity and privacy.
- ✓ Right to be reasonably protected from the accused offender.
- ✓ Right to be notified of the court proceedings.
- ✓ Right to be present at all public court proceedings related to the offence unless the court determines that the testimony by the victim would be materially affected if the victim heard other testimony.
- ✓ Right to restitution.
- ✓ Right to information about the conviction, sentencing, imprisonment, and release of the offender (VAWA, 1994). In the USA, domestic violence laws are state laws, but because of the seriousness of domestic violence, the USA enacted the Violence Against Women Act, wherein certain acts were made Federal crimes by amending the Gun Control Act (Gun Violence Prevention Act, 1994).

Ethiopia has only one domestic violence law, which is common to all regions and power is vested in the police to investigate incidents of domestic violence. No provisions restricting the freedom of movement of perpetrators are included in the Ethiopian Criminal Code (2004). Incidents of domestic violence are reported to the police and are registered as crimes and followed up for investigation. Although Ethiopia has criminalised acts of domestic violence, physical injuries and mental health conditions caused as a result of domestic violence, and victimisation carry a high evidentiary burden. Ethiopia could follow the example of the USA as best practice and penalise perpetrators who commit acts of domestic violence, by prescribing a minimum punishment in the cases of no injury to the

victim, and summarily increasing the sentence in cases where injury to the victim was severe.

Even though India, enacted a special law against domestic violence, no provision is provided for criminalising of domestic violence as is required by international instruments. India should follow international examples of penalising domestic violence by making provision for punishing perpetrators of domestic violence, which will deter potential perpetrators. Even though civil remedies, including provision for granting an injunction order, is provided in the PWDVA, it lacks a deterrent effect. Hence India and Ethiopia could follow US law in this regard.

The next section of this chapter discusses important provisions in the South African Domestic Violence Act 116 of 1998.

2.4.2. South African Domestic Violence Act, 116 of 1998

South Africa promulgated law prohibiting domestic violence in 1998, namely the Domestic Violence Act, (DVA) 116 of 1998. South Africa was one of the first nations to enact such specific law relating to domestic violence. The DVA may be one of the first real movements towards addressing domestic violence in the world.

Section 1 of the DVA recognises physical, sexual, emotional, economic and psychological abuse and threats of such abuse as domestic violence. The South-African definition of domestic violence includes a wide spectrum of abuse, such as physical, sexual, emotional, verbal, psychological, and economic abuse. It also includes intimidation, harassment, stalking, damage to property and any other controlling or abusive behaviour.

Section 7 of the DVA further empowers the courts to grant protection orders imposing such conditions as the courts may deem fit under the Act. Section 7 of the DVA further prohibits persons from committing any act of domestic violence. The Act prohibits entry into any part of a shared household or entering from a specified part of the same household, entering into the complainant's residence or workplace, or from committing any other acts. The Act also incorporates provisions relating to monetary relief. Courts have the power to order the

perpetrator not to have contact with any child and if necessary, permits the imposition of any such conditions as the court sees fit. Along with protection orders, the court may issue an order to discharge rent, mortgage payments, whilst providing due regard to the financial obligations of the complainants as per section 7(3) of the DVA.

In addition, section 7(4) of the DVA also empowers the courts to order payment for any emergency financial needs of the complainants. Section 8 of the DVA further provides for the issue a warrant of arrest along with a protection order. Should there be imminent harm to the complainant; the Act also empowers the South African Police Service to arrest the respondent. Breach of a court order is subject to a prison sentence of 5 years or a fine or both as per section 17 (a) of the DVA.

DVA addresses many issues regarding domestic violence. Dereliction of duty by members of the South African Police Service is treated as misconduct and are liable to disciplinary action as per section 18(4) of the DVA. Hence police personnel is held liable for non-performance of their duties according to the provisions of the DVA.

Ethiopian law does not adequately define domestic violence, and as a result, it is difficult to identify acts which constitute acts of domestic violence. Ethiopian law rather stipulates that in the case of domestic violence, provisions 555-560 of Ethiopian Criminal Code (Criminal Code, 2004) can be invoked. Ethiopia could follow the South African example of law governing domestic violence as best practice inclusive of civil remedies.

Currently, Ethiopian police personnel is not held accountable for dereliction of their duties under the domestic violence law. This lack of accountability only serves to further encourage dereliction of duties and a loss of respect for the rule of law.

Indian law, although descriptive in its definition of domestic violence, does not include stalking and entry into a complainant's house without consent as acts of domestic violence. India likewise could follow the South African example by

authorising the police to investigate domestic violence incidents and provide protection to victims. India should amend her penal sanctions for violating protection orders and increase the prison term to more than one year to deter perpetrators. India should amend the PWDVA (2005) so as to include provisions which enable police to intervene in domestic violence incidents similar to the DVA. In addition, India should broaden its domestic violence definition so as to include stalking.

The following section discusses important sections of the Domestic and Family Violence Protection Act of 2012 of Queensland-Australia.

2.4.3. Domestic and Family Violence Protection Act of 2012 – Queensland, Australia

Similar to the USA and South-Africa, domestic violence is provided for under State law in Australia. Each state thus has its own law regulating the prohibition of domestic violence, including remedies.

Sections 8, 11 and 12 of the Domestic and Family Violence Protection Act, 2012 of Queensland, Australia recognise physical, emotional, sexual, and economic forms of abuse.

Section 32 of the Domestic and Family, Violence Protection Act, further empowers the courts to grant protection orders. Section 100 of this Act additionally empowers police to investigate domestic violence cases. Sections 101 and 102 stipulate that after the police have provided evidence confirming that an act of domestic violence has been committed, the police must apply to the court to obtain a protection order against the perpetrator, whether permanent or temporary, according to circumstances; or take the respondent into custody or issue a police protection notice with previous approval of a supervising police officer.

Section 177 to 179 of the Domestic and Family Violence Protection Act make provision for breach of court orders with a maximum punishment of 5 years imprisonment in cases where the respondent has a previous conviction of

domestic violence, and 3 years imprisonment in the case of respondents who have no previous convictions for domestic violence.

India and Ethiopia could follow the provisions as set out in the Domestic and Family Protection Act, of Queensland, Australia and empower police to seek protection orders from courts if they find evidence that an act of domestic violence has been committed.

2.5. SUMMARY

The chapter has revealed that domestic violence against women is prevalent around the world irrespective of country, region, class, culture, religion, language etc. and that domestic violence has become a problem in the development and economies of most countries.

Domestic violence is widespread, deeply ingrained and has serious impacts on women's health and well-being. It hampers a woman's enjoyment of her human and fundamental rights as a citizen.

However, the past few decades highlighted the intensity of the problem as advocacy movements gathered momentum and attracted the conscience of the international community, which in turn devised various interventions to address the problem.

The International Women's Conference in Beijing appealed to all nations to enact proper legislation addressing issues of domestic violence. The UN later approved the Beijing Declaration and appealed to all state parties to enact appropriate statutes to address domestic violence and not to invoke any custom or religion designed to evade their responsibilities. Both Ethiopia and India can implement these recommendations whilst ensuring that the customs of their respective countries do not hamper the implementation of the law which protects women from all forms of violence.

The discussion above also demonstrated challenges brought about by acts of domestic violence. Even though Ethiopia and India are signatories to international

treaties and conventions protecting women's rights, they must advance further for the protection of women's rights as enshrined in international instruments.

The South African Domestic Violence Act, 116 of 1998 includes a wide spectrum of issues relating to domestic violence. The South African law empowers police to intervene in a case of emergency, and they will be liable for any dereliction of duty.

In Queensland-Australia, the Domestic and Family Violence Protection Act empowers the police to seek protection orders for and on behalf of the victim. This practice could be implemented in both Ethiopia and India because many poor people are unable to approach the courts. Ethiopia must broaden the spectrum of domestic violence by including sexual, emotional, and economic forms of violence. Ethiopia should include civil remedies, including protection orders and prohibition orders. The discussions also highlight the challenges relating to the alignment of domestic laws with international obligations.

In the researcher's view, both Ethiopia and India must amend their laws to reflect the international principles properly and effectively. It is recommended that both countries adopt best practices as implemented by the countries discussed above.

Moreover, Ethiopia can benefit from the South African experience by introducing a specific law on domestic violence and by expanding her the definition of domestic violence so as to include other forms of violence. In addition, protection orders can prove beneficial to Ethiopia, and these should be issued whenever the lives of victims in a particular household are in imminent danger because of the perpetrator's conduct.

In the light of the intervention of the international community, Ethiopia included provisions in its Criminal Code of 2004, to curb domestic violence. India enacted separate legislation to prevent domestic violence in 2005. However, Ethiopia does not recognise sexual and economic violence against women as forms of domestic violence. She did not include civil remedies in her legal provisions governing domestic violence. An Ethiopian victim can only approach the police to

lay a complaint of domestic violence against a respondent and cannot approach the court directly seeking any remedy. This is a flaw in the legislative landscape.

India allows civil remedies including compensation to the victims for the loss incurred as a result of an act of domestic violence, but no provision is included to prosecute the perpetrator except in the case of breach of a court order. This is also a flaw identified in Indian law regarding domestic violence.

The South African DVA provides vast protection for the rights of victims of domestic violence. Ethiopia could thus follow the South African best practice to prevent and eradicate domestic violence against women.

Though India included many aspects in its PWDVA, (2005), for breach of court orders, India provides minimal prison term for perpetrators of domestic violence. Increase prison terms for perpetrators of domestic violence could serve as a deterrent to these types of actions. India could further follow South African legislation, which includes comprehensive forms of abuse and violence within her definition of domestic violence. The DVA also provides for harsher prison terms for the violation of court orders. The South African DVA is thus a more stringent law used to address the phenomenon of domestic violence. Should India follow the legislation of South Africa, domestic violence could be better managed than under the current provisions set out in the PWDVA. If police are empowered to intervene in domestic violence cases, poor women who do not have sufficient money, are able to approach the police and seek their assistance, which may deter perpetrators of domestic violence.

In the next chapter, the researcher discusses the domestic law governing domestic violence in both Ethiopia and India.

CHAPTER 3

LEGAL FRAMEWORK REGULATING DOMESTIC VIOLENCE IN ETHIOPIA AND INDIA

3.1. INTRODUCTION

As stated in previous chapters, by the end of the twentieth century, domestic violence became the subject of discussion around the world, and woman-rights organisations persuaded the UN to undertake measures to address violence against women. The International community galvanized and highlighted the abuse suffered by the women who are victims of domestic abuse. The UN General Assembly passed a resolution to end all forms of discrimination, including violence against women regardless of whether or not such acts of violence were committed in a private domain (UN Resolution 48/104, 1993). In addition, the UN insisted that all member nations enact appropriate legislation to eradicate all forms of violence - including domestic violence - against women (UN Resolution 48/104, 1993, Article 4)

In 1995, the UN Women's conference in Beijing provided a declaration which included rights of women accepted by the UN. The Declaration requested all nations to enact appropriate legislation to protect women from violence and commanded those nations may not invoke any custom or tradition or religious belief to avoid compliance with the Declaration. Ethiopia and India are signatories to these international treaties and as a result, are obliged to follow their provisions.

To fulfil these obligations, Ethiopia and India have enacted statutes to curb domestic violence in their countries. Ethiopian statutes include penal provisions in the form of the Criminal Code, 2004 and India enacted a separate statute in 2005, known as the Prevention of Domestic Violence against Women Act, 2005. The Ethiopian Criminal Code, 2004 came into force in May 2005, and India's PWDVA came into force in October 2006.

The sections below provide a brief discussion of the legal frameworks of Ethiopia and India as they relate to the regulation of domestic violence.

3.2. LEGISLATIVE FRAMEWORK FOR DOMESTIC VIOLENCE IN ETHIOPIA

3.2.1 Ethiopian Criminal Code (2004)

In the previous chapter, the researcher highlighted difficulties in defining domestic violence by showing how various authors and legislation have defined it differently. Many authors list various acts that they consider to be causative factors of domestic violence. Definitions of domestic violence include various forms of abuse, which include physical abuse, economic abuse, and so on. The General Assembly adopted the Declaration on the Elimination of Violence Against Women at the 85th plenary meeting on the 20th December 1993. The Declaration recognises the need for the universal applicability of various woman's rights, such as rights to security, liberty, integrity, equality, dignity, and so on. The Declaration further takes cognisance of the fact that most of these rights are contained in various other conventions including the CEDAW.

The Declaration notes that the effective implementation of CEDAW will contribute to the eradication of violence against women; therefore the Declaration on the Elimination of Violence Against Women compliments and strengthens the principles framed within CEDAW. Moreover, and of importance to this thesis, it recognises the need for a comprehensive and clear definition of violence against women.

Article 1 of the United Nations Declaration on the Elimination of Violence Against Women (UN, DEVAW, 1992) defines violence against women as:

"...any act of gender-based violence that results in or is likely to result in physical, sexual, or psychological harm or sufferings to women, including threats of such acts, coercion, or arbitrary deprivation of liberty whether occurring in public or private life."

Article 2 provides examples of acts of violence against women such as physical, sexual, psychological violence occurring in the family including dowry-related

violence, marital rape, and non-spousal abuse. The Declaration has provided women with a broad spectrum of protections, including acts that are based on cultural practices and which violate the rights of women in different settings.

In Ethiopia, however, domestic violence is a deeply ingrained practice and thus accepted by the majority of the people. Dugasa (2014: 17) observed that 50-60% of women in Ethiopia experience domestic violence in their lifetime and are also exposed to elevated levels of emotional, physical, and economic abuse. He also notes that cultural and historical practices in Ethiopia contribute to the occurrence and acceptance of domestic violence. He is also of the view that the old criminal law did not expressly prohibit violence against women, and thus, there were no harsh sentences imposed as punishment for acts of domestic violence.

The researcher is of the view that Ethiopia has an obligation to amend its laws in order to ensure compliance with the provisions as contained in the Declaration. For example, and relevant to this discussion, Ethiopia promulgated its latest Constitution in 1995, followed by the Family Law Revised Code in 2000 and Revised Criminal Code, in 2004. The relevant sections of these statutes will be discussed below. It is important to note that the Criminal Code is a major contributor to Ethiopian legislation and was promulgated with the aim of fulfilling its international obligations.

The Criminal Code was also amended to bring it in line with the Constitution, and now includes provisions aimed at protecting women from acts of domestic violence. Provisions relating to violence against woman have been enhanced in a way that they are now clearer and more explicit. The amendment of provisions also includes the introduction of new offences, as well as reform of penalties for acts of violence.

Ethiopia included a provision in its Criminal Code in order to fulfil its obligation towards the international community to address domestic violence against women. This law, however, only regards injury to the body and mental health as forms of domestic violence. Emotional violence, economic violence, and sexual violence are still not regarded as forms of domestic violence. The researcher,

therefore, avers that these omissions weaken the impact of the Code as they fail to consider different forms of violence.

Civil remedies are not provided in the domestic violence law of Ethiopia. Only one provision is provided in the Criminal Code to address domestic violence, and no provision is included in the Criminal Code which allows victims of domestic violence to approach the court directly if the police refuse to investigate domestic violence cases. Victims of domestic violence are required first to approach the police and remedies are at the discretion of the police. The law does not contain any provision enabling the court to grant any monetary remedy or to grant a protection order against a transgressor. There is no provision in Ethiopian law on domestic violence to enable the court to grant an injunction against the perpetrator of domestic violence.

Legal provisions for the punishment of the perpetrator are contained in the Criminal Code. However, victims are not entitled to approach the court directly in instances where they seek relief. The court can entertain cases only on police reports. If the police denied the investigation of a domestic violence incident, victims of domestic violence have no further options for relief available to them. Since domestic violence provisions are included in general penal law, a high standard of evidence is required, which, in most cases, results in the acquittal of the accused persons.

If a police officer refuses to register a case and investigate, no other avenues are available to the complainant; the institution of a case depends on the police officer.

Article 4 of the Criminal Code, 2004; declares that all people are equal before law irrespective of colour, sex, region, language etc. The criminal law applies to all alike without discrimination against persons, social conditions, race, nations, nationality, social origin, colour, sex, language, religion, political or another opinion, property, birth, or another status. All people are treated equally in terms of the Criminal Code, except in immunity cases granted by public international laws and the Constitution. If the crime committed is not serious, the punishment imposed will be in line with the crime. This is then related to the principle of proportionality.

The age of the offender and the circumstances under which the crime was committed are also taken into consideration.

3.2.2. Ethiopian Domestic Violence Law

There is only one provision that deals with domestic violence related matters in the Criminal Code of Ethiopia, namely Article 564, which was incorporated into the Criminal Code, 2004, for this purpose.

The code does not specifically define domestic violence but mentions acts of violence against women, which can be prosecuted.

Articles 555-560 refer to violence against a marriage partner or person living in an irregular union. Therefore these provisions may be utilized in matters dealing with family violence-related issues.

Article 564 stipulates that articles 555-560 apply to persons in a marriage or cohabiting in an irregular union, and who commits acts of violence or caused grave or common injury to his or her partner's physical or mental health.

The provisions in 555 to 560 are general provisions usually applied to offenders who commit acts of violence resulting in bodily injuries or mental injuries against others.

Article 564 does not state what acts constitute domestic violence; however, the article does refer to violence amongst marriage partners or persons living in an irregular union. Article 564 directs the police to apply articles 555 to 560. Police are empowered to register and investigate crimes prescribed in the Criminal Code. Police are therefore obliged to register and investigate cases of domestic violence in terms of article 555 of the Criminal Code where there is a *prima facie* case of domestic violence.

If the common injury is inflicted wilfully, the provisions of article 556 apply. Where a party in a marriage or union suffers bodily injury in instances where it can be proved that the other party exceeded the limits of necessity or legitimate self-defence, the provisions of article 557 apply. If the grave injury is caused unintentionally, the police shall institute the offence under article 558.

The provisions of article 560 apply in cases where the assault did not result in bodily injury or did not impair the health of the victim. These provisions can be applied against both husbands and wives if the injury is caused to the body or mental health of one of the parties.

The Criminal Code does not contain specific provisions which protect women, even though they remain vulnerable in comparison with their male counterparts. Articles 555 to 560 are applicable in all cases of assault under the criminal law and are usually extended to domestic violence cases depending on the seriousness of the injuries sustained. Thus, victims of domestic violence rely on the following provisions of the Criminal Code for relief:

Article 555 relates to the grave and wilful injuries resulting from assault or other forms of violence and provides:

Whoever intentionally:

- a) wounds a person so as to endanger his life or to permanently jeopardize his physical or mental health; or
- b) maims his body or one of his essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or
- c) in any other way inflicts upon another an injury or disease of a serious nature, is punishable, according to the circumstances of the case and the gravity of the injury, with rigorous imprisonment not exceeding fifteen years, or with simple imprisonment for not less than one year.

This article lists injuries which are punishable, such as injuries that are committed with an intention to endanger and/or maim and injuries that permanently jeopardize the physical or mental health of the victim. The sentences imposed by the courts are dependent on the circumstances surrounding each case. Courts may impose a maximum sentence of imprisonment of 15 years. Police invoke this section to institute criminal cases against perpetrators of domestic violence where intra-familial violence results in severe bodily or mental injuries.

Article 556 defines common wilful injury:

Whoever causes another to suffer an injury to body or health other than those specified in Article 555 above, is punishable, upon complaint, with simple imprisonment not exceeding one year, or with fine.

(2) The crime is punishable, upon accusation, with simple imprisonment from six months to three years where:

- a) the criminal has used poison, a lethal weapon, or any other instrument capable of inflicting injuries; or
- b) the criminal has inflicted the injuries in breach of duty, professional or other; or
- c) the victim is weak, sick, or incapable of defending himself.

This article prescribes a term of one-year imprisonment for a common injury and is actionable only upon complaint, and it extends up to three years if any lethal weapon or instrument was used to inflict injury.

Article 557 relates to extenuating circumstances:

(1) Whoever intentionally does injury to the person or health of another:

- a) by exceeding the limits of necessity (Art. 75), or legitimated fence (Art. 78); or
- b) following gross provocation, or under the shock or influence of a surprise, an emotion or a passion made understandably and, to some degree, excusable by the circumstances; or
- c) at the request or with the consent of the victim who is capable of realizing his action and its consequences, where the injury is forbidden by law or offends public decency,

is punishable with simple imprisonment not exceeding two years, or fine not exceeding four thousand Birr.

(2) In the case provided for in sub-article (1)(c), simple imprisonment shall not exceed four years where the victim, due to age, mental or other conditions, was partially or completely incapable of realizing the consequences of his request or consent.

Article 557 states further:



...if anybody causes injury on the body of another intentionally exceeding the limit of legitimate defence; the accused person is liable to imprisonment for a period not exceeding two years or a fine not exceeding 4000 Birr. When any person caused injury intentionally to another person, exceeding the limit of private defence, which he/she is entitled to use under article 75 of Criminal Code, the person accused is liable for prosecution under this article.

Article 557 stipulates defences in mitigation of guilt on the part of the offender, which could lead to a reduced sentence.

Article 558 addresses consequences not intended by the perpetrator:

Whoever has caused grave injury through criminal negligence, although his intention was to inflict common injury, is punishable with simple imprisonment from six months to three years.

Article 559 provides simple imprisonment of six months for injuries caused by a negligent act.

Article 559 spells out injuries caused by the negligence of one of the parties:

- (1) Whoever, by criminal negligence, causes another to suffer a common injury to person or to health is punishable with simple imprisonment not exceeding six months, or fine not exceeding one thousand Birr.
- (2) The punishment shall be simple imprisonment for not less than six months, and a fine of not less than one thousand Birr, where the injury inflicted is of the same kind as the one stated in Article 555, or where it was caused by a person like a doctor or a driver, who had a special duty to safeguard the body or health of another.
- 3) The crime is punishable upon accusation, where the injury is grave, and upon complaint, where it is common. The extent of the injury shall be determined in accordance with Articles 555 and 556

Article 559 provides simple imprisonment of six months for injuries caused by negligence

Article 560 relates to assault and states:

(1) Whoever assaults another or does him violence without causing bodily injury or impairment of health, is punishable, upon complaint, with a fine not exceeding three hundred Birr, or, in serious cases, with simple imprisonment not exceeding three months. Simple bruises, swellings or transient aches and pains are not held to be injuries to person or health.

(2) Minor crimes that do not come under sub-article (1) of this Article are punishable in accordance with the provision of Article 840 of the Code of Petty Offences

(3) Where the victim has returned assault for assault, the Court may refrain from inflicting any punishment other than a reprimand or warning for the future on either of the two or both parties

Article 560 provides punishment for acts of assault. When any person assaults another person or causes violence to another without injury, such accused person is punishable on a complaint, with a fine of 300 Birr and in a serious case with imprisonment not exceeding 3 months. (E, Cri.C, 2004). Punishment for assaults without injury attract a lighter sentence

Article 564 relates to violence against a marriage partner or person cohabiting in an irregular union:

The relevant provision of this Code (Arts. 555 - 560) shall apply to a person who, by committing violence against a marriage partner or a person cohabiting in an irregular union, causes grave or common injury to his/her physical or mental health.

He/she shall be tried by a court having authority over the case. Common injury and assault cases covered by articles 556 - 560 can be instituted against the accused and prosecuted only upon a complaint being lodged, or only when the offence is reported to the police. The latter shall then investigate and lodge the case before the court.

In the case of domestic violence, these provisions shall be applied according to the gravity of injuries sustained by the victims of domestic violence. For serious injuries, it is advisable for the victims to undergo medical treatment and to produce medical certificates in court to prove his/her case. Minor injuries must be reported to the police. Provisions which penalise sexual violence and economic violence are not included in the Code.

The Beijing Declaration regards marital rape as a punishable offence and obliged its state parties to incorporate the same view. It violates the human rights of the victims. Many nations enacted laws eradicating domestic violence and criminalising marital rape. They regard marital rape as a form of domestic violence, but in Ethiopia, marital rape is not actionable under the Criminal Code, 2004 as it is not viewed as a criminal offence.

Article 620(1) states that forcibly having sexual intercourse with a woman outside of wedlock attracts a heavy penalty. The article proscribes acts of sexual violence emanating from the use of force, 'grave' intimidation or after rendering the victim unconscious. Since the Article refers to sexual violence outside of wedlock, it is argued that the article excludes marital rape. A sentence of 5-15 years will be imposed on the guilty party.

Article 620 addresses the crime of rape by stating:

- (1) Whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years.
- (2) Where the crime is committed:
 - a) on a young woman between thirteen and eighteen years of age; or
 - b) on an inmate of an alms-house or asylum or any establishment of health, education, correction, detention, or internment which is under the direction, supervision, or authority of the accused person, or on anyone who is under the supervision or control of or dependent upon him; or
 - c) on a woman incapable of understanding the nature or consequences of the act, or of resisting the act, due to old age, physical or mental illness, depression, or any other reason; or
 - d) by a number of men acting in concert, or by subjecting the victim to act of cruelty or sadism, the punishment shall be rigorous imprisonment from five years to twenty years.

(3) Where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment.

(4) Where the rape is related to illegal restraint or abduction of the victim, or where the communicable disease has been transmitted to her, the relevant provisions of this Code shall apply concurrently.”

The Code provides for harsh sentences and under certain circumstances, courts take into consideration the age and/or the mental status of the victim (Article 620(2)).

The researcher argues that the Ethiopian Criminal Code does not recognize marital rape as an offence. It is a sharp deviation from the requirements of the Beijing Declaration and Platform for Action. Economic violence and emotional violence are not regarded as forms of domestic violence by Ethiopian Criminal Code 2004. Even though economic violence is not recognised or mentioned explicitly, the Criminal Code, 2004 imposes penalties on parties that fail to pay maintenance to parties that they are under a legal obligation to maintain. The responsibility usually falls on men or husbands to maintain their spouses or children, whether born in or out of wedlock. This is, however, the extent of protection offered against economic violence to women in Ethiopia.

Article 658 relates to instances where a party fails to maintain a person; they are responsible for without good cause:

- a) refuses or omits to provide maintenance which he owes, by virtue of law, to entitled person, even to a spouse who brought an action for divorce, until such divorce is pronounced;
- b) fails to meet the financial obligations he has incurred, by virtue of law or formal undertaking, towards a woman, whom he has made pregnant out of wedlock, or towards a person with whom he has lived in an irregular union, is punishable upon complaint, with fine or simple imprisonment not exceeding six months.

Ethiopian domestic violence provisions do not expressly recognise economic violence or sexual violence as forms of domestic violence. However, in the case of economic violence article 658 can be invoked partly in cases of non-

maintenance of a woman by her husband. Domestic violence is not defined expressly anywhere in the Criminal Code, and as a result, it is difficult to conclude what constitute acts of domestic violence in Ethiopia or to categorise same under the correct provision of the Criminal Code.

Article 564 states that the provisions of articles 555-560 as stated above shall apply where a party in an irregular union or marriage, causes common or grave injury to another's physical health or mental health. It is, however not clear from the wording of the Act what constitutes grave or common injuries, and the lack of proper definition makes it extremely difficult to punish perpetrators. Physical injury to the body is easy to establish and, in many cases, may require treatment and hence is easy to prove.

Whenever a person is injured, he/she is required to report the matter to the police who are required to investigate the alleged crime by registering it and collecting all the evidence and eventually filing a charge. Police are required to take the statements of witnesses and collect all other documentary evidence relating to the crime. The police must file the charge with the public prosecutor, and he is empowered to file before the court. If the public prosecutor is of the opinion that there is sufficient evidence, he will lay the charge before the court, and if he/she is of the belief that there is not sufficient evidence, he/she can order a further investigation or drop the investigation. The public prosecutor must initiate the proceedings as provided for in the Procedural Code. The trial may lead to either an acquittal or conviction of the accused person.

Since Ethiopian domestic violence law is included in the Criminal Code, the same procedure as in other crimes is followed. Cases of domestic violence are first reported to the police. If the police refuse to register the case; there are no alternate remedies in the Criminal Code available to the victim. The decision of the police is final. It extends its web to both male and female partners and applies to any person who commits violence against his/her partner. Any act causing mental or physical injuries falls within the ambit of the law and is therefore punishable. Legally married persons and persons living together without having entered into a legally recognised marriage fall within the scope of the law and are

thus protected. Despite the protection offered on paper, the execution is oftentimes difficult and ineffective.

For example, it is difficult to prove a case of domestic violence where parties are married or cohabiting. Whenever a marriage partner causes grave/common injury to another's body or mind, it is presumed that domestic violence is not committed. Moreover, when domestic violence is included in the ordinary penal code, a higher evidentiary burden is imposed on the victim to prove the guilt of the accused. In addition, the procedure provided under the Criminal Code must be followed, which usually takes time. There is no provision in the Code dealing with domestic violence cases on a protection order or injunction level.

The Ethiopian Code and other laws are not in alignment with international requirements which make provision for civil remedies. No civil remedies are available to victims of domestic violence. In terms of criminal law, the victims are required to report the matter to the police, who must, in turn, register a criminal case against perpetrators of domestic violence. The latter are tried in criminal courts like all other offenders. The law imposes punishment on the offender, and monetary relief is not available. Ethiopian law does not provide for civil remedies such as compensation to the victims for the loss sustained as a result of domestic violence. No provision is included in the Code to grant an injunction against the alleged offender or for relief such as maintenance. No provision is included to give shelter to women who are victims of domestic violence.

The researcher is of the view that in the absence of these remedies mentioned above the Code is seriously flawed and hampers the work of officials tasked with the responsibility of enforcing laws regulating and eradicating domestic violence in Ethiopia.

It is therefore recommended that remedies such as interdicts, compensation to victims and maintenances of spouses or partners who are no longer in a domestic relationship should be included in the Code. Economic remedies will go a long way in improving the lives of women who are victims of violence and who lose family support as a result of the same. The proper inclusion of effective

remedies may also have the effect of lowering incidents of domestic violence as perpetrators would have to face the financial consequences of their actions.

The police are a vital component of the criminal justice system. Unfortunately, there is no provision in place to cater for cases where police refuse to register or investigate a crime. Furthermore, the Code does not contain provisions to counter cases of dereliction of police duties. Victims find themselves depending on the mercy and discretion of the police for the prosecution of their cases.

Further, sexual and economic abuses are not recognized as forms of domestic violence against women under the Ethiopian Criminal Code. Marital rape or sexual abuse by an intimate partner is not an offence and if committed, is excusable. The lack of definition for domestic violence has led to confusion, resulting in non-prosecution of some offences. For example, abuse resulting in bodily injuries is prosecutable; however, emotional abuse cases are not because they are difficult to prove in court.

Since domestic violence is included in the general law under the Criminal Code, the clear, undisputed evidence is required for the conviction of the accused. Unfortunately, in some instances, domestic violence occurs in private spheres, and at times, happen at night with no witnesses. In such cases, it is extremely difficult to adduce evidence of domestic violence, and as a result, the guilty parties are often acquitted. The attitude of the prosecuting agency directly influences the prosecution, finalisation of the case and by extension, the proper implementation of the law.

Although economic violence is not recognized as a form of domestic violence, article 658 can be used against a person, usually a male partner who fails without a reasonable cause to maintain his wife or partner in an irregular union. The aggrieved party must lodge a complaint and if the respondent is found guilty may incur a fine or imprisonment for a period not exceeding six months. The researcher argues although lack of maintenance is a form of economic violence, it is not the only form of domestic economic abuse that should be criminalised under Ethiopian law.

The discussion above has highlighted some interventions introduced by the Code in order to give effect to international obligations surrounding the issue of violence against women in domestic relationships. Although it is argued that Ethiopia has put in place measures to address these obligations, it is clear that the Code has serious shortcomings that need to be addressed to make it more effective. Difficulties in defining the crime of domestic violence are alluded to elsewhere in this thesis. The Code does not include economic or sexual violence, especially rape within a marriage as a form of domestic violence. This omission, in the opinion of the researcher, is a major flaw, which seriously undermines the effectiveness of the Code.

Judgements from higher courts would prove helpful in the determination of the manner in which various Codes are interpreted and implemented by the courts, however at the time of this research; no such judgements were available. Ethiopia is a civil law country, and therefore the principle of *stare decisis* (precedent) is not implemented except in the decisions of the Cassation Bench of the Supreme Court, which is binding on all lower courts. No such cassation decision is available in the case of domestic violence law.

3.2.3. Ethiopian Constitutional Protections

The Constitution of Ethiopia contains provisions for the protection of victims of domestic violence. These provisions can be listed below as follows:

Article 15 provides that every person has a right to life, and this right can only be deprived as punishment for a serious offence determined by law.

Article 16 says; “every person has the right to protection against bodily harm”.

The researcher is of the view that acts of domestic violence result in bodily harm; therefore, victims can rely on this constitutional provision.

Article 17 says nobody shall be deprived of his or her liberty except on such grounds and in accordance with the procedure established by law.

Article 18 says, “everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.”

The researcher is of the view that domestic violence constitutes cruel and inhuman treatment; therefore, victims may rely on this provision.

Article 25 states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on the grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or another opinion, property, birth, or another status.

Article 35 is an important provision that guarantees the rights of women and gives women the same rights as men. Married women have the same rights as married men. It casts a duty on the state to eliminate all influences of harmful customs in order to enforce the right of women. It directs the government to prohibit all laws, customs, and practices that oppress or cause bodily or mental harm to women.

Women have the right to consultation in the formulation of national development policies, the designing, and execution of projects and particularly in the case of projects affecting the interest of women (Constitution of Ethiopia, 1995). Married women who suffer harm at the hands of their husbands may rely on this provision and Ethiopia can declare the actions of a spouse illegal by invoking the provisions of this article.

Irrespective of all these constitutional guarantees, no steps have been taken to eliminate the consequences of harmful customs on women. The enactment of the Criminal Code (2004) took place after the commencement of the Constitution, and yet it still does not explicitly criminalise marital rape. The researcher is of the view that this particular Code remains in contravention of the Constitutional provisions of equality under article 25; protections against bodily harm afforded under article 16 as well as article 35 which guarantees equal rights for woman when compared to their male counterparts, and also fails to observe the spirit within which the Ethiopian Constitution was framed.

In addition, the researcher argues that the inclusion of article 564 in the Criminal Code serves only as an illusory attempt on the part of Ethiopia to fulfil its international obligations, and is, however, nothing more than a farce. Article 564, as stated above, proscribes violence amongst married parties or persons

cohabiting in an irregular union. In practice, although victims of domestic violence can bring criminal cases to courts for prosecution, parties can succeed only if they provide full evidence, including medical evidence. In reality, it is difficult to provide such evidence, and many women are unaware of their rights and of the provisions of the Criminal Code.

Ethiopia has an obligation in terms of its international commitments, to ensure the proper implementation of laws which are proactive in the creation of an environment which allows victims to exercise their rights effectively. Ethiopia must review and amend the provisions of the Criminal Code or enact laws which provide civil remedies such as compensation for the loss sustained in domestic violence, and injunctions to prevent violence. In addition, Ethiopian law should recognise economic violence as a form of domestic violence.

3.2.4. Family law

The Revised Family Code, 2000; mandates both spouses to respect and support each other and contains inter alia the following provisions:

Article 49 makes provision for the respect, support, and assistance amongst spouses.

Article 49 (1) states that spouses owe each other respect, support and assistance and article 49(2) states that - the contract of marriage shall not derogate such rule. This provision requires parties in a marriage to respect support and help each other regardless of practices, beliefs that may dictate otherwise.

Article 50 entrusts a duty on both parties to a marriage to cooperate with each other in order to protect the interests of the family and ensure the good behaviour of their children.

Article 50 accords parties to joint marriage responsibilities to show that they are equal. In terms of the article parties, as a rule, have equal rights to manage the affairs of the family (article 50(1)). They both have a responsibility to protect the security and interests of their family and to instil values in their children in order

to make them responsible citizens (article 50(2)). This article is in line with the equality provision of the Constitution.

Article 56 obliges married persons to be faithful to each other and to ensure the harmonious existence of the family. In terms of this article, spouses are required to refrain from committing acts of violence as a way of keeping the harmonious interests of the family intact. Therefore, acts of domestic violence are in violation of the provisions referred to herein.

Ethiopia revised its Family Code in order to maintain and adhere to principles enshrined within her Constitution. For instance, article 49 of the Family Code directs both spouses to respect and support each other. This article supports, upholds, and guarantees the equal rights of women and men. Article 50 guarantees the equal rights of women in the management of the affairs of the family.

Unfortunately, married women in Ethiopia do not benefit from these legal provisions. All these laws rest in statute books, and irrespective of their existence women are still regarded as inferior to men. The cultural practice of degrading women remains firmly entrenched in Ethiopian society. The researcher argues that the Ethiopian Government must take the initiatives to educate its citizens about their rights as contained in the legislation as well as ways in which citizens may exercise the rights which have been afforded to them. In addition, the Government should embark on campaigns to create awareness among the people and to change attitudes and practices which oppress women. Law enforcement agencies such as police must be trained in the proper implementation of these laws.

3.2.5. Deviation of Ethiopian domestic violence law from international best practices

The Ethiopian Criminal Code does not reflect the recommendations expressed in CEDAW, which require that all state parties introduce laws curbing family violence, rape, sexual assault, and other forms of gender-based violence.

Furthermore, CEDAW requires state parties to provide women with adequate measures which ensure the protection of their rights and to refrain from invoking custom, tradition, or religion as grounds of justification for an inability to meet the international obligations placed on them.

The Beijing Declaration, a resolution adopted by the UN in 1995 promulgated principles relating to the equality of men and women. It resolved to prevent and eliminate all forms of violence against women and children. In addition, the Declaration re-affirmed a commitment towards upholding and uplifting equal rights and the inherent dignity of women and men. The Declaration also highlighted some of the same principles and values which have been enshrined in various other international instruments such as CEDAW.

Furthermore, the Beijing Declaration resolved that any gender-based act, which causes or is likely to cause physical, sexual, or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life, is strictly prohibited. It further requires that all states review, revise, amend or abolish all laws, regulations policies, customs, and practices which discriminate against women and further encourages states to comply with international human rights principles and commitments as set out in the Declaration. Unfortunately, the spirit of the UN resolution and the Beijing Declaration are not reflected in the Ethiopian Criminal Code. In addition, the researcher argues that sexual violence as a form of abuse is not incorporated into or reflected in the current Ethiopian Criminal Code as an offence and further offers that incorporation of same remains an urgent situation which must be addressed.

In terms of article 620 of the Ethiopian Criminal Code, marital rape does not constitute an offence nor is same criminalised by the Code. The researcher is of the opinion that the failure to provide for the same constitutes a gross deviation from international laws and UN resolutions. The UN general assembly resolved that acts of violence against women have the effect of nullifying their human rights and fundamental freedoms. The UN in its resolution requested that all nations ensure the protection and respect for human rights and fundamental

freedoms (UN Resolution 61/143). Nevertheless, Ethiopian law does not comply with this UN decision.

Further, the member states have an obligation to review, revise, amend or abolish all laws, regulations, policies, practices, and customs that discriminate against women. In addition, state parties have to ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments, and principles, including the principle of non-discrimination. The researcher argues that Ethiopia has not complied with any of these provisions.

The spirit of article 9, of the ICCPR that every person has the right to liberty and security of person and article 14, that every person has the right to equal protection is also not adequately reflected in Ethiopian law. One such example illustrating this statement can be found in article 620 of the Ethiopian Criminal Code. Failure on the part of the Code to adequately address the criminalisation of marital rape can be regarded as an inability to properly maintain the spirit of articles 9 and 14 of the ICCPR.

Article 12 of ICSECR affords every person with a right to the highest standard of physical and mental health. Article 564 of the Ethiopian Criminal Code states:

“...when injury is inflicted to the body or mental health; article 555-560 shall be applied”.

The application of sections 555-560 in the provision stated above, clearly prove to be difficult. As previously indicated, it is extremely difficult to adduce clear and sufficient evidence to support claims of domestic violence and more often than not, cases result in an acquittal. This leaves women who are victims of domestic violence without a right of recourse. The researcher places extreme emphasis on the need to re-visit the current definition of domestic violence and to expand on the same definition so as to include a wider range of various forms of abuse. The researcher also highlights the need to incorporate civil remedies for transgressions of domestic violence as a means of recourse for victims who been affected by such acts in Ethiopia.

Ethiopian does not have laws which permit the granting of protection orders to victims of domestic violence. The Beijing Declaration recommended that nations enact civil and criminal legislation targeted at the prevention of domestic violence. International best practices include provisions for the granting of protection orders and compensation for damages suffered by victims of domestic violence. Unfortunately, Ethiopia has not realised these UN resolutions and declarations. Moreover, there is no provision in Ethiopian law which allow victims to approach the court directly to lodge cases of domestic violence; victims are required to rely on police officers for help. There are no agencies which provide help and assistance to female victims of domestic violence when they are in need.

There is no agency or body with the inherent authority to act in domestic violence cases. Currently, this authority rests solely in the police who act as the agency charged with the responsibility of acting under the Criminal Code. It should, however, be noted that a potential problem arises within the Code as it relates to the inability to effectively provide victims with safeguards against police officers who use their power and discretion to prosecute ineffectively or abusively (*male fides*) or who simply refuse to investigate and/or prosecute cases of domestic violence.

The researcher now turns his attention to the domestic law governing domestic violence in India.

3.3. INDIAN LAW ON DOMESTIC VIOLENCE

3.3.1 The Protection of Women from Domestic Violence Act (2005)

The primary objective of the PWDVA (2005) is to protect women from domestic violence and eradicate all forms of domestic violence within the family setting. These protections extend to females living with partners or relatives, as well as women living in the household such as sisters, widows, or mothers. The Act is civil law and does not intend to criminalise the wrongdoer through the issuing of protection orders.

Rather, this was an attempt by the Indian government to fulfil its obligations as a member of the international community. The law includes civil remedies such as

compensation to the victims who sustain loss resulting from domestic violence. There are provisions empowering the court to grant protection orders against perpetrators of domestic violence, including provisions on counselling services and rehabilitation of victims.

The Indian PWDVA does not, however, include any penal provisions. This is an area, which the researcher avers, requires urgent attention. The only jail term prescribed in the law is for breach of a court order. The Act is restorative in nature in that it has made provisions for various forms of civil remedies. The researcher is of the view that this may be because the lawmakers may not want the breadwinner to go to prison as a direct form of intervention because it recognises that the victim and children may lose an economic benefit.

The Act is unique in that it has expanded the definition of domestic violence so as to include emotional violence, economic violence, and psychological violence as forms of domestic violence. This new broadened definition further helps to accommodate various forms of abuse, including acts of omission or commission by the respondent. This is an important development in the fight for the rights of women.

According to section 3 of the PWDVA:

“...any act or omission may constitute domestic violence if it harms or injures or endangers the health, safety or well-being, whether physical or mental of the aggrieved person”.

Acts of violence include physical abuse, sexual abuse, emotional abuse, and economic abuse. In the Indian context, any unlawful demands for dowry by either an aggrieved person or any related person are regarded by the Act as domestic violence. Hence illegal dowry demands are included in the definition of domestic violence as a form of domestic violence inclusive of threatening by any relative of the aggrieved person. The researcher is of the view that this development in the law could significantly reduce dowry-related deaths and would, therefore, be a victory for victims of domestic violence.

Victims of domestic violence can approach the Magistrates' court directly or through a protection officer appointed under the Act, or service provider for help. The magistrates, service providers and protection officers are all regarded as civil servants for the purposes of the Act.

There are various duties accorded to protection officers under the Act. For instance, the protection officer or service provider shall file a petition before the Magistrates' court for and on behalf of the victim along with their domestic incident report. The court must peruse the petition, and from the averments, it can conclude that domestic violence exists and pass orders under sections 18, 19 or 20 of the PWDVA, discussed below.

The court can also pass an order of injunction under section 18 of the PWDVA or a protection order under section 19 of the PWDVA. In addition, the court may make an order for monetary relief or compensation resulting from injuries sustained from the violence according to the circumstances of each case. The court can pass orders against the perpetrator/respondent restraining him from entering a particular area that the victim is occupying or the household where she is residing or order the removal of the perpetrator from the joint household.

The court can direct police or protection officers to ensure the proper implementation of the order. In terms of the Act, legal proceedings must be completed within 6 months. Any breach of a court order may attract a sentence of imprisonment up to one year in duration.

Section 2 of the Act contains definitions of various words and phrases used in the context of the statute. Courts are at times required to interpret the provisions of the Act, which has resulted in some amendments to the Act.

The Indian Supreme Court interpreted the words used in the statute such as ` *live-in relationship*'. In this regard, the court had to decide whether the words implied the existence of some form of marriage. In of *Indra Sarma v V.K.V. Sarma* (2013), the Supreme Court of India in its criminal appellate authority interpreted the clause "live in". The court had to consider whether the live-in relationship based on the facts presented before it amounted to a marriage, put

differently, whether the relationship was a marriage, in this case, the appellant was a married person with two children, and the aggrieved party was unmarried. The parties started an intimate relationship, which ended in them living in the same household. Relatives of the woman (including her parents), as well as the wife of the respondent, were opposed to the relationship. The woman fell pregnant three times during the relationship, all of which were aborted. She alleged that the respondent had taken Rs 100000 from her and promised to buy a piece of land in her name, he also took Rs 25000 to use towards starting a beauty parlour for his wife, and she also gave him a loan of Rs 250 000 which he never returned. The appellant alleged further that the respondent never took her to meet relatives or friends or to attend functions. She also alleged that the respondent abandoned her and failed to maintain her.

The Metropolitan Magistrate court in Bangalore after considering the evidence concluded that the aggrieved person and the respondent lived together for a long time, and therefore, a live-in relationship was established. The court considered the evidence that the petitioner and respondent lived together for a long time as husband and wife and the respondent were in control of the petitioner's income. The court took the view that domestic violence was proven in terms of the Act and ordered the respondent to pay monthly maintenance of Rs 18 000.

An appeal to the High Court was successful, prompting the appellant to approach the apex court. The Supreme Court considered all the facts of the case and held that the parties, on three separate occasions, decided to terminate a pregnancy and in light of this, never intended to bear children. There was no evidence produced to show that the parties gave each other mutual support and companionship and no evidence to show that the parties had projected themselves as husband and wife. Parties could not produce evidence of having carried themselves as a couple in public or socialized as husband and wife. In addition, there was no evidence of the pooling of resources or any financial arrangements between them.

Moreover, there was no evidence to show that the respondent had endangered the health, safety, life, or well-being of the appellant, nor was there any evidence

of physical or sexual abuse suffered by the appellant except for the fact that he did not maintain her.

The court remarked on the fact that the appellant was fully aware that the respondent was married and as such could not have entered into a live-in relationship, which could be construed as a marriage.

The Court further noted that not all live-in relationships are considered marriages. Given the facts, the relationship between the appellant and respondent failed to meet the definition of a domestic relationship as provided for in PWDVA (Lawyer's collective, 2011: [sa]).

The Supreme Court observed that the respondent was a married person with children and that the aggrieved person failed to adduce evidence in support of her claim to the existence of a marriage. The respondent alleged that the appellant had three abortions, which showed that the parties did not intend to have children as couples in a marriage relationship generally do. The parties never appeared in public as a married couple, nor was there evidence to show that they lived as husband and wife. There was absolutely no evidence of domestic violence. Thus, owing to the lack of evidence, the court allowed the appeal filed by the respondent.

Indian culture permits a woman to live with a man only in a marriage. However, it does not provide protection to parties who cohabit as husband and wife. These parties (parties cohabiting) are regarded by the Act as husband and wife, even in the absence of marriage, provided that they present themselves as same.

In *of Krishna Bhattacharjee v Saraswathi Chaudhari and another* (2015) the aggrieved woman filed a petition under PWDVA to get back her stridan (money or property given in lieu of marriage). The respondent (husband) argued that her claim could not succeed on the basis of prescription. Indian law requires that monetary claims be filed within three years of the transaction and that the payment of stridan, in this case, did not fall within this time period.

The magistrates' court accepted the contention and dismissed the petition. The Court of Sessions and the High Court denied the appeal.

The Supreme Court interpreted domestic relationships in the PWDVA as a relationship between two persons who live or have lived together *at any point in time in one* household, as a married couple or were in a relationship akin to marriage or living with other family members as a family unit. The court held that stridan was the exclusive property of the wife, and when she proved that stridan was entrusted to her husband or any member of the family, there was no need to establish anything further. (Lawyers collective, 2015: [sa]).

In *Gajendra Singh v Smt. Minakshi Yadav and another* (2011) the respondent approached the Rajasthan High Court (Jaipur Bench) to defend court proceedings filed in the lower court by his wife who was seeking relief under the provisions of the PWDVA. He contended that the domestic relationship ended before the enactment of PWDVA and the Act had no retrospective effect. Therefore the wife could not institute proceedings relying on the Act. He argued for the dismissal of the case. The court held that civil wrongs had been committed as the wife did not receive stridan, maintenance or access to the shared household and that these civil wrongs continued well after the promulgation of the Act. The issue surrounding the retrospective application of the Act, in this case, was therefore deemed irrelevant. (Lawyers collective, 2011: [sa]).

In *Kaushar Banu v State of Delhi and other* (2010) the Delhi High Court was required to interpret the phrase 'at any point in time' in terms of section 3 of PWDVA. The facts, in brief, were that Kaushar Banu was married to Zahid Khan on March 1994. Zahid Khan died in 2002. After his death, Kaushar Banu filed a case against her mother-in-law and other relatives based on various allegations such as cruelty, dowry demands, and so on in 2003. When the PWDVA came in to force in 2005, she filed the case under section 12 of the said Act in 2007, for an interim residence order. The trial court granted the interim residence order based on the contention that the house belonged to the father-in-law of the aggrieved person who died intestate and hence her husband had a share in the intestate property, which was in the town of Gulaothi, in Bulandshahar District U.P. Her physical address was in Delhi. The order was challenged, and on appeal before the Delhi High Court, the court ascertained evidence of residency in Delhi. The court held that the wife resided in Delhi. The High Court observed

right to the property based on coparcenary or inheritance but required the filing of a separate civil suit and not a petition under 12 of PWDVA. The court observed that a domestic relationship continues so long as the parties live under the same roof and enjoying the shared household. Temporarily leaving the joint household by the aggrieved person shall fall under the phrase ‘...at any point of time’ in terms section 3 of the Act. The court said that if for example the wife goes to her parent’s house or relative’s house and leaves all her belongings in the shared household and has not left the household permanently, the domestic relationship continues. When male and female attain self- sufficiency after education and take up jobs and settle in other places, a man in such a situation does not have a domestic relationship with persons whom he left behind. His relationship with a brother and sister, father and son, father and daughter, father and daughter-in-law survives, but the domestic relationship of living in a joint household would not survive and effectively ends (Lawyers collective, 2010: [sa]).

In a related but separate matter a woman working in USA approached the court and filed a case against her brother and his wife under the PWDVA on the fact that when she returned to India on vacation she was denied entry into her parental house where she had lived before marriage in a shared a house which was owned by her deceased father; by her brother and his wife,. She successfully sought interim orders at the trial court. The court found that the petition sought was only intended to obtain the petitioners share in the property and held that the provisions of PWDVA should not be used to claim property rights as this constituted a gross misuse of the Act (Lawyers collective, 2010: [sa]).

In terms of section 2(q) “*respondent*” means “*any adult male person who is or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this act*” “*Provided that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or a male partner.*” In *Sandhya Manoj Wankhade v Bhimrao Wankhade* (2011), the Supreme Court interpreted the words of the statute whilst exercising its appellate authority. In this case, the Supreme Court interpreted section 2(q) of the Act and held that section

2(q) defined a respondent to mean any adult male person who is or has been in a domestic relationship with the aggrieved person. Nevertheless, the provision has a wider definition and includes a relative of the husband or male partner within the scope of the complaint. The Supreme Court further held that the legislature never intended to exclude the husband's female relatives from the ambit of the complaint. The court further held that the provision does not contain the word female in section 2(q). However, no restrictive meaning should be given to the word 'relative'. It held that referring only to adult males in section 2(q) is a breach of article 14 of the Indian Constitution, which provides for equality before the law and equal treatment by the State irrespective of caste, religion, gender etc. The Supreme Court observed that 'adult male' in section 2(q) of PWDVA was not in line with article 14 of the Constitution and hence liable to be struck down. Instead of an 'adult male', the court interpreted the phrase to mean any adult person, whether male or female who was engaged in domestic violence against the aggrieved party. (Lawyers collective, 2016: [sa]).

Both the Indian Supreme Court and High Courts have the power to interpret laws and statutes, and the decision of the Supreme Court will form the law of the land as per article 142 of Indian Constitution (Constitution of India, 1950).

The section below discusses selected provisions of PWDVA and includes a brief analysis of such provisions.

Section 3 (PWDVA, 2005) defines domestic violence as:

“any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or endangers or injures the health, safety, life, limb, or well-being whether physical or mental 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 dowry or valuable security or property, or

- (c) has the effect of threatening the aggrieved person or any person related to her by conduct mentioned above in clause(a) or clause(b) or
- (d) Otherwise, injuries or causes harm whether physical or mental, to the aggrieved person.”

The expansion of the definition of domestic violence is a positive development in the fight against domestic violence. The Act in its expansion has not restricted itself to forms of physical violence only but has included forms of non-physical violence such as threats, harassment, unlawful dowry demands etc.

The Act also includes an explanation clause under section 3. For instance, the following words are defined, thus:

“Explanation I –

- (i) ‘Physical abuse’ means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life-, limb, or health, or impair health or development of the aggrieved person and includes assault, criminal intimidation, and criminal force-
- (ii) sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of woman;
- (iii) verbal and emotional abuse includes
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specifically with regard to not having a child or a male child, and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested
- (iv) Economic abuse includes
 - (a) Deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her Stridan or any other property jointly or separately held by the aggrieved person: and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.”

The legislators have once more gone a long way in defining concepts of abuse by including various forms of abuse. For instance, physical abuse includes conduct that is intended to impair the health or development of the aggrieved party. The aggrieved party can argue that physical abuse impaired her health. Moreover, sexual abuse includes any act of a sexual nature intended to harm or degrade the aggrieved person, including an act that violated her dignity.

Given this expanded definition, the researcher argues that rape within a marriage violates the dignity of the aggrieved party, and as such, is actionable within the provisions provided for in the Act.

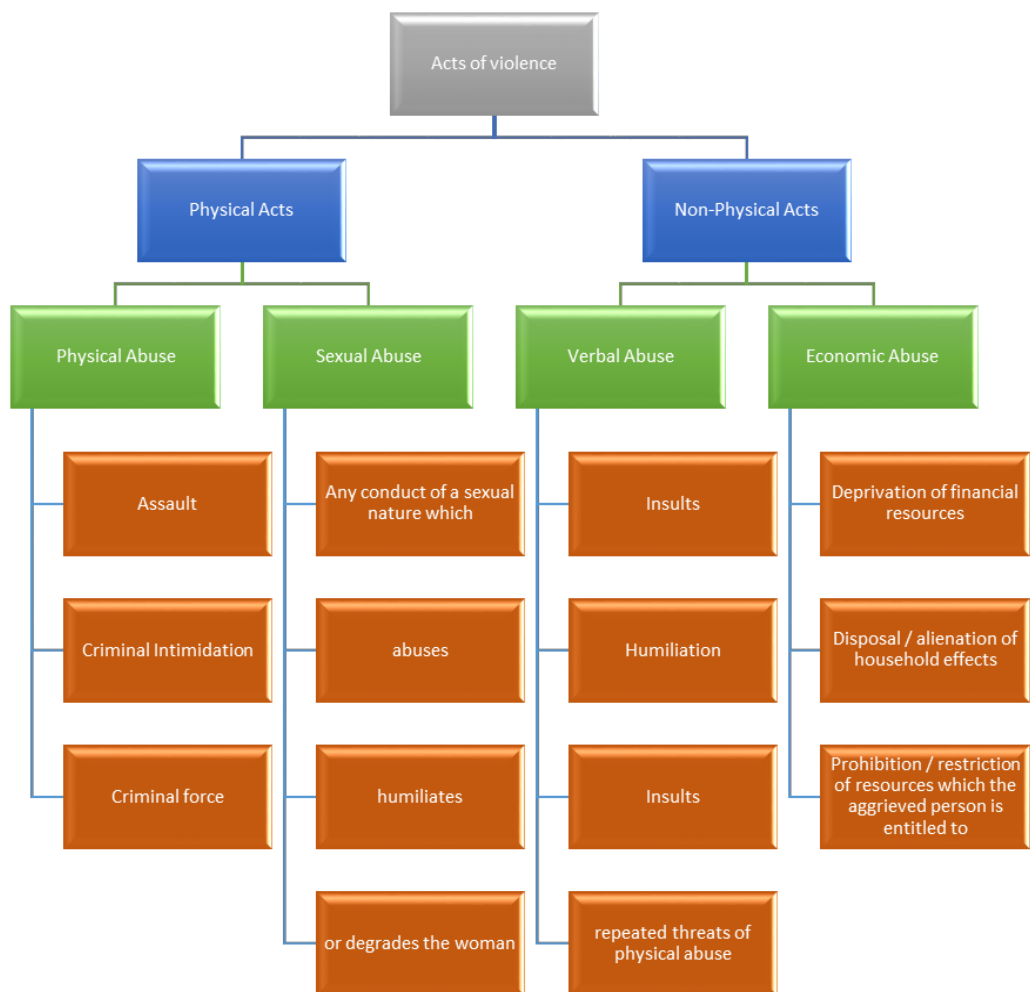
Many women across the world have experienced some form of verbal or emotional abuse, and it is important that the Act regards ridicule or insults against women who cannot bear children, or male children as a form of verbal or emotional abuse. Many societies attach a higher value to women who can bear children, especially male children, and there are many cases of banishment of women from their homes or divorced, resulting from an inability to bear children.

The explanatory clause contained in the Act mentions acts covered by the definition of domestic violence. It states-

“Explanation II – for determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts, and circumstances of the case shall be taken into consideration.”

As stated previously, a wide range of acts are included in the definition of domestic violence in both physical and non-physical form. For instance, any form of physical abuse, emotional abuse, verbal abuse, economic abuse, and sexual abuse fall within the definition of domestic violence. The diagram below reflects the various forms of violence visually.

DIAGRAM 4: ACTS OF VIOLENCE



The act requires members of the community to report incidents of domestic violence. In this regard, the law makes provision for any person to report the matter to a protection officer. This provision enables any person who is not

necessarily in a domestic relationship to provide information to relevant officers regarding the occurrence of domestic violence.

This provision is in line with many statutes across the world intended to protect vulnerable people such as women and children against various forms of abuse.

Section 4 of the Act spells out the powers and duties accorded to professionals who in terms of the said Act are responsible for the implementation of its provisions.

Section 4 provides:

“any person who has reason to believe that an act of domestic violence has been or is being or likely to be committed may give information about it to the concerned Protection officer.”

It is clear that the Act makes provision for people who are not necessarily ‘aggrieved persons’ to provide information about the occurrence of domestic violence upon reasonable suspicion. This is in line with international trends, thus a neighbour, for example, can provide such information if he/she has a reasonable suspicion that domestic violence is taking place.

The PWDVA makes provision for the appointment of protection officers who assist the State with the implementation of the provisions of the Act. In addition, the Act identifies Magistrates, service providers and police officers as officers responsible for the implementation of the Act.

Protection officers work very closely with victims of domestic violence and any person, who in good faith reports an incident of domestic violence. The Act empowers a protection officer or service provider to file a complaint on behalf of the aggrieved person and also allows for an aggrieved person to file a complaint in their own capacity.

Section 4(2) states:

“no liability, civil or criminal, shall be incurred by a person who gives information in good faith”.

This provision is in line with international norms and is intended to encourage people to report incidents of domestic violence without fear of prosecution. The person reporting the incident has to have a reasonable suspicion that domestic violence has occurred or is about to be committed.

According to section 5:

Duties of police officers, service providers, and Magistrate. -A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

- (a) of her right to make an application for obtaining relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
- (b) of the availability of services of service providers;
- (c) of the availability of services of the Protection Officers;
- (d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- (e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

Section 6 requires the State to establish as many shelter homes as required to provide shelter to the victims of domestic violence. The Act obliges a person in charge of a home to provide shelter when requested by the victim or by the protection officer on behalf of the victim.

Section 7 requires a person in charge of a medical facility to provide medical care when requested by a protection officer or service provider on behalf of a victim.

In terms of the Act, protection officers or services providers can file a complaint before a Magistrates' court for and on behalf of the victim of domestic violence. The Act empowers service providers or protection officers on behalf of the victim to seek shelter homes; when such requests are made the person in charge of the shelter home is bound to make arrangements for such victims.

Protection officers appointed under this law must assist victims of domestic violence and work under the supervision of the Magistrates' Courts. They are required to assist the court in the discharge of its functions under the law and make domestic violence reports in the prescribed manner. They must forward copies of the reports to the police station under whose authority the domestic violence was allegedly committed. The protection officers are under the control and supervision of the Magistrates' Courts for the effective implementation of the law.

Domestic violence incidents reported to the police are forwarded to the Magistrates' Court because magistrates are mandated to deal with domestic violence cases by the Act.

The Act stipulates the process undertaken by the magistrate on receipt of a complaint under the Act. Section 12(1) states:

“An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act.”

The Act provides for interventions and orders which the magistrate may issue. The magistrate can grant interim orders before serving notice to the respondent if the circumstances so warrant.

If there is no emergency, for example, if the applicant does not face imminent danger, the magistrate will issue a notice to the respondent for his appearance. The petition should be disposed of within two months. The magistrate is empowered to grant protection orders, residence orders, restraining orders and orders for monetary relief (sections 18-26, PWDVA).

The Act requires a magistrate to take into consideration any domestic incident report received by him from a protection officer or service provider before making such an order.

Section 12(2) states;

“the relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent.”

Sub-section (2) states further that

“provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.”

Section 12(3) states:

“[e]very application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto”.

Moreover, in terms of section 12(4):

“The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court”.

In addition, section 12(5) provides:

“that the Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing”.

The provisions above are all intended to assist the aggrieved party by ensuring that the matter is dealt with expeditiously and in her best interests.

Section 17 guarantees the aggrieved person a right to reside in the shared household. In terms of the Act, the woman has a right to reside in the matrimonial or shared home whether or not she has rights in the household. The party can secure a residence order from the court. Eviction of the respondent from the household must be in accordance with the law.

When a Magistrate receives a complaint under the Act, he/she must peruse the complaint and if satisfied, that domestic violence exists from the averments made, shall pass an interim order under section 18. The court may issue a protection order to prevent the abuser from committing an act of domestic violence or any specified act or entering a place of employment or any place frequented by the aggrieved party.

The orders granted by the magistrate are wide and intended to protect the aggrieved person in whatever circumstances she may find herself. Protection orders are issued on behalf of children born of a marriage or domestic relationship where domestic violence is reported. Proceedings are held in camera under section 16. Proceedings in camera occur where the aggrieved party faces acts of harassment from the respondent or members of his family. The Act also takes cognisance of the fact that domestic violence may be extremely traumatic to the aggrieved person or in some cases even the respondent; hence, section 14 makes provision for counselling services.

Where the aggrieved party leaves the matrimonial home, the magistrate may direct the respondent to secure the same level of alternate accommodation for the aggrieved person and may impose any other conditions or pass any other direction, which he/she deems necessary to protect the safety of the aggrieved person. In addition, the magistrate may require the respondent to execute a bond, with or without sureties, for preventing domestic violence.

Section 19(5) empowers the magistrate to direct the police officer in charge of the nearest police station to give protection to the aggrieved person if she requires the same. The magistrate may direct the respondent to return the stridhan or valuable property to the aggrieved party.

Section 19(1) - makes provision for issuing of various residence orders by the courts. The magistrate may issue the following orders: -

- a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- b) directing the respondent to remove himself from the shared household;
- c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;
- e) restraining the respondent from renouncing his rights in the shared household except with leave of the Magistrate or
- f) directing the respondent to secure the same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require;
- g) Provided that no order under clause (b) shall be passed against any person who is a woman.

In terms of section 12(2) the relief sought may include an order for compensation or damages without prejudice to the right of such a party to institute a suit for compensation or damages arising from the domestic violence committed by the respondent.

Section 12(6) provides that while making an order under sub-section (1), the magistrate may impose on the respondent an obligation relating to the discharge of rent or other payments, having regards to the financial needs and resources of the parties.

Section 12(7) states that the magistrate may direct the officer in charge of the police station under whose jurisdiction the victim resides to assist in the implementation of the protection order.

Section 12(8) state that the magistrate may direct the respondent to return *stridan* or any other property or valuable security to which an aggrieved party she is entitled.

Section 20 regulates the issuing of monetary relief or compensation to the aggrieved party. The relief sought may include, but is not limited to loss of earnings, medical expenses, and loss arising from the destruction, damage, or removal of the property from the control of the aggrieved person. The Act stipulates that the monetary relief shall be adequate, fair, reasonable, and consistent with the standard of living of the aggrieved person (section 20(2)).

Section 20(1) provides:

“while disposing of an application under section 12(1) the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence, and such relief may include, but not limited to-

- a) the loss of earnings;
- b) the medical expenses;
- c) the loss caused due to the destruction, damage, or removal of any property from the control of the aggrieved person; and
- d) the maintenance of the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the code of criminal procedure, 1973 or any other law for the time being in force”.

Section 20(3) states that the Magistrate shall have the power to order an appropriate lump sum payment or monthly payment of maintenance, as the nature and circumstances of the case may require.

Section 20(4) obliges the Magistrate to send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the officer in charge of the police station within the authority wherein the respondent resides.

Section 20(6) provides guidance on steps to be taken in cases of non-compliance with court orders. For instance, the magistrate may direct the employer or a debtor of the respondent to pay money directly to the aggrieved person.

In the case of *Om Prakash v State of Rajasthan* and another (2011), the respondent argued that he was unable to maintain the aggrieved party. The husband contended that he was physically challenged and not able to maintain his wife and that the Act was not applicable to him. The High Court of Rajasthan held that the Act does not make any exception in favour of people with physical disabilities. The court held that the respondent could not raise the issue of poverty to avoid his responsibilities. The argument that the wife was not staying with the husband was not deemed a valid reason to absolve the husband from maintaining his wife under the law. (Lawyers collective, 2011: [sa]).

In *Rajkumar Rampal Pandey v Saritha Rajkumar Pandey* (2012) the Bombay High Court ruled that the personal rights of women under the PWDVA supersede the husband's proprietary interest. The husband was evicted from the matrimonial home, on appeal, the husband argued in court that he had no interest in the flat and asserted that it was owned by his mother, the latter who sold the said flat to another person. Nevertheless, the court rejected this contention and held that the Family Court had rightly interpreted the law by allowing the appellant's claim (Lawyers collective, 2012: [sa]).

Section 21 empowers the magistrate to grant orders for temporary custody of any children to the aggrieved person, and it may grant permission to the respondent to visit the child. The magistrate can refuse visitation rights if he believes that they would be harmful to the best interest of the child.

In terms of section 22, the magistrate may grant an order for the respondent to pay compensation to the aggrieved person for injuries; mental torture and emotional stress suffered as a result of domestic violence.

Section 23(2) states that the magistrate may issue temporary and *ex-parte* orders on behalf of an aggrieved person if satisfied that the application discloses a *prima*

facie case of domestic violence or there is a likelihood of domestic violence occurring under section 18, 19, 20 or 22 as the case may be.

The Act makes provision for temporary orders applicable until the aggrieved person applies for discharge.

The Act is not exclusionary. Therefore, any remedy sought under the PWDVA, is not a bar for seeking any relief under the ordinary civil law. The victim can approach the civil court for the same remedy she sought under PWDVA.

It is an offence under section 31 to fail to obey orders issued by the magistrate. The Act prescribes a jail sentence not exceeding one year, or a fine stipulated in the provision. The perpetrator will not be granted bail if he is found to have breached the terms of a court order.

While framing a charge under the provisions of domestic violence Act, section 31(3) directs the magistrate who acts under clause (1) to frame charges under 498(A) of Indian Penal Code, or any provisions under the Dowry Prohibition Act 1961, if the facts disclose commission of an offence under those provisions. The PWDVA is added to other laws, and it does not prevent the operation and application of laws enacted previously to protect women such as the Dowry Prohibition Act, 1961.

The PWDVA makes provision for the conclusion of a case on the uncorroborated evidence of the victim who asserts non-compliance of court orders issued by the magistrate or any other court, by the perpetrator.

Furthermore, in terms of the Act, any protection officers who fail to execute their duties or refuses to discharge duties as directed by a magistrate under the PWDVA without sufficient cause, are guilty for contravention of court orders and liable to imprisonment for a period of one year or a fine.

Section 35 prohibits civil claims against protection officers arising from any damage caused in good faith. This provision ensures the effective implementation of the law for the benefit of the victims of domestic violence. The

dereliction of duties by protection officers is a serious offence in terms of section 33.

In conclusion, the discussion above shows that legislators applied their minds when developing legislation on domestic violence to protect women and children from domestic violence. The law has made provision for an inter-sectoral approach between the departments dealing with domestic violence. In this regard, it makes provisions for law-makers, law-enforcers, home-affairs, health, and human resource departments to work in tandem to eradicate domestic violence in India.

The Act is innovative in the way it defines domestic violence. The researcher notes that legislators are aware of failures in other countries and the inability of their laws to grapple with these issues. The Act provides training and educational programme officers responsible for the implementation of the Act.

The researcher now turns to consider constitutional protections in India as they relate to women's rights and domestic violence.

3.3.2. Constitutional Protections

In terms of article 14, all persons are equal before the law and afforded equal protection. Article 14 states:

“The state shall not deny to any person equality before the law or equal protection of law within the territory of India.”

This article resonates with the PWDVA - the latter has a similar equality provision which mirrors that of the Constitution.

Article 15 (1) is a non-discrimination clause affirming the state's commitment not to discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth etc.

Article 15(3) gives authority to the States to enact special laws for women and children. The researcher opines that PWDVA is an expression of this provision.

Women are in a weaker position in India society because of their gender and based on cultural beliefs discussed earlier in this study. This makes them vulnerable to various forms of abuse and exploitation. Accordingly, governments are obliged to develop policies and legislation to promote and protect their interests.

The Parliament of India passed the Panchayatiraj Act in 1995; which reserved 33% of the seats in Parliament for women. The intention was to improve the social position of women in society in line with article 15(3) of the Constitution.

The Constitution is the supreme law in India, and its provisions are binding on the Supreme Court and High Courts. Unfortunately, these courts are inaccessible to the majority of indigent people who would benefit from their protections. The PWDVA has, however made it possible for all members of the community to access courts regarding based on acts of domestic violence.

3.3.3. Deviation of the PWDVA from international best practices

The Indian Constitution guarantees its citizens the right to equality and equal treatment before the law (article 14). Article 15 empowers the Parliament to make special provisions for the advancement of women and children and for socially and educationally disadvantaged classes. Despite these constitutional imperatives, women in India continued to suffer domestic violence. Thus, India enacted the PWDVA in 2005 to fulfil its obligations to the international community and to align its laws with the Constitution.

The researcher argues that although PWDVA (2005) is laudable in its effort to meet its international obligations, there are still a number of aspects which require further attention. The PWDVA (2005) currently contains no criminal sanctions for acts of violence. Reported cases of marital rape and physical violence are dealt with in terms of the Indian Penal Code and not within PWDVA.

International best practices on domestic violence provide stringent punishments for domestic violence and police are empowered to arrest perpetrators of domestic violence. However, police are not granted the same powers by PWDVA. Where a *prima facie* case of domestic violence is established, the police

may forward these cases to the relevant courts or register the case in terms of the Indian Penal Code

International best practices provide police powers to investigate cases of domestic violence and can arrest perpetrators if so required. Unfortunately, the PWDVA (2005) does not provide Indian police with the same powers. The researcher asserts that the powers of the police in India should be extended to include powers to arrest and investigate domestic violence cases.

3.4. SUMMARY

International treaties require all nations to enact appropriate legislation to prevent and punish perpetrators of intra-familial violence, whether such violence takes place in public or private.

The Beijing Declaration, approved by the UN, and recommendation no. 19 proscribes state parties from invoking customs, practices, or religion as a way to avoid their obligations.

State parties must incorporate civil remedies, such as protection orders, monetary relief, and compensation for loss resulting from domestic violence. State parties must include criminal sanctions in their statutes relating to domestic violence.

Ethiopia incorporated provisions regulating domestic violence in the Criminal Code (2004), and India enacted the PWDVA (2005) as discussed above.

Despite amendments to the Criminal Code, Ethiopia is still required to further protection for women exposed to violence in their homes. Shortcomings include the lack of a comprehensive definition of domestic violence, failure to criminalise acts of violence and failure to give police powers to execute their mandate. Victims of domestic violence in Ethiopia cannot approach the courts directly and must rely on the discretion of police whether to pursue their cases.

Ethiopia must amend the law so as to create provisions which promote the rights of women and prevent domestic violence in households. The new provisions must include a variety of orders including restraining orders and injunctions

against wrongdoers. Provisions for establishing shelter homes to provide shelter to the victims in appropriate cases, and provision for the appointment of special officers or agencies to investigate domestic violence cases, must be incorporated in the Act. In addition, the Ethiopian government should invest in educational and awareness programmes.

The Indian PWDVA defines domestic violence broadly to include physical violence, emotional violence, psychological violence, and economic violence as forms of domestic violence. Unlawful demands for dowry also fall under the ambit of the Act.

Indian law enables victims of domestic violence to approach the court directly or through protection officers appointed under this law, or service providers who may be non-governmental organisations approved for this purpose. The protection officers appointed under this law have to investigate and report to the Magistrates' Court on incidents of domestic violence.

The magistrate is entitled to assume that domestic violence has taken place from averments and statements made in each case. If the magistrate finds that domestic violence has taken place, he/she has to grant interim orders of injunction or protection orders along with compensation orders for loss suffered by the aggrieved party. The magistrate can grant temporary custody orders for any child to the aggrieved person depending on the circumstances.

The court can issue an injunction restraining the respondent from entering any parts of the household where the victim is residing or prevent the respondent from entering the household whether it belongs to the respondent or his relatives, where the victim and respondent continue living.

The Indian provisions are in line with international standards and UN recommendations. Unfortunately, there is no provision in Indian law to penalise violence against women. This may be viewed as a limitation within Indian legislation which may require further attention and development.

The Beijing Declaration and the UN recommended penalizing this offence as a measure to control domestic violence, but India did not implement this

recommendation. This is a drawback to the rights of women. Despite this limitation, the law makes provision for the appointment of protection officers in addition to other enforcement agencies mentioned in the Act. The researcher opines that this is a positive development. Further, there are provisions for the establishment of shelter homes to rehabilitate victims of domestic violence, which is a positive development.

The law empowers non-governmental organisations to provide service and help to victims of domestic violence.

Non-criminalization of domestic violence is a deviation from international best practices and norms. India must amend her law and include provisions which criminalise domestic violence and allow the police powers of arrest as a means of dealing with perpetrators.

The above discussion focused on the laws regarding domestic violence in India and Ethiopia and therein highlighted shortcomings and positive practices in both jurisdictions.

The researcher asserts that the laws of India are advanced when compared to Ethiopia and India has made commendable efforts in protecting victims of domestic violence. Ethiopia may benefit from the Indian experience, and perhaps her first point of call should be the enactment of separate legislation relating to domestic violence in Ethiopia.

CHAPTER 4

PRESENTATION OF RESULTS FROM INTERVIEWS

4.1. INTRODUCTION

In this chapter, the qualitative data (in-depth interviews with participants as discussed in chapter 1) are presented and discussed by means of themes to illustrate the aim and objective of this study (as discussed in chapter 1). In order to promote the trustworthiness of the study, the research methodology (as discussed in chapter 1) was implemented and adhered to during the collection and analysis of data. Firstly, interviews conducted with Ethiopian participants are discussed, followed by the results of interviews conducted with participants in India.

4.2. RESULTS FROM INTERVIEWS: ETHIOPIAN PARTICIPANTS

In this section, the results from the in-depth individual interviews are presented according to themes in order to illustrate participant experiences of laws governing domestic violence in Ethiopia.

Interviews were designed to address the following three areas:

1. the effectiveness of Ethiopian law in addressing domestic violence;
2. the effectiveness of the implementation of these laws; and
3. whether current legislation is sufficient to address domestic violence in Ethiopia.

The interview questions posed are detailed below and followed by the responses to the questions as posed. The responses are indicated verbatim without editing in order to ensure authenticity. The interview schedule used during the interviews is attached as an Annexure at the end of this document.

- **Emergent themes, categories, and codes emanating from data analysis**

The central storyline that emerged from the participant responses displayed that legislation governing domestic violence in Ethiopia:

- Lacks effective implementation within the study area (Jimma);
- women lack awareness of domestic violence laws.

TABLE 1: THEMES, CATEGORIES, AND CODES

Theme	Category	Code
Duration of domestic violence	Below 15 years 91.66% Above 15 years 8.33%	Domestic violence is punishable by Ethiopian Cri.Code (2004)
Education of the respondents	Illiterate 33.3% Upper primary 25% High School 25% Higher Secondary 16.67%	Education
Employment of the respondents	Unemployed 91.67% Employed 8.67%	Employment
Nature of domestic violence	Slapping, beating, kicking, and hitting ----- -- 100% Scolding, ridiculing, and insulting----- 100% Sexual violence ---- 25% Economic violence ----nil	Type of violence
Awareness regarding domestic violence laws	Awareness of DV laws by victims positive- 0% Negative ----- 100%	Awareness of DV laws
Implementation of domestic violence laws	Lacks implementation	Implementation of DV laws
Benefits of the laws to the victims	Not benefited by DV laws-100%	The benefit of DV laws
Whether police/court informed the rights of the	Not informed- 100%	Whether court/police informed the rights of the

victims		victims
Whether the police/ court has given efficient support	No support is given- 100%	Whether support has given by police/court
Whether timeously reacted by police/court	No timeous reaction – 100%	The timeous reaction by police/court
Impact of DV law on perpetrators	No impact	Impact of law on perpetrators
Impact of law on victims	No impact	Impact of law on victims
DV reduced or not based on the implementation of the law	Positive –nil Negative—100%	Effect of implementation of DV law
DV law addressed needs	Not addressed – 100%	The benefit of DV law
The approach of the court/police	Negative	
Suggestion	Govt: should interfere and scrutinise police performance - 66.67%	

The first ensuing theme explores the period that the participants were subjected to domestic violence.

4.2.1 Participants period of exposure to domestic violence

Women internationally are continuously exposed to incidents of domestic violence regardless of class, caste, or religion. Most incidents of domestic violence are committed against women for assorted reasons; however, the extent and period of exposure to these incidents vary. Domestic violence against women often leads to morbidity and mortality and often goes unrecognised until severe injury or death has occurred.

The answer to the following question gave rise to the subsequent theme:

How long have you been subjected to domestic violence?

The purpose of this question was to determine the period the participants were exposed to domestic violence.

Participant responses to the interview questions presented diverging experiences. The participants had different experiences regarding the duration of violence. From the participant responses, it is clear that they had been subjected to domestic violence for periods between six months to eighteen years. Selected responses from participants follow hereunder:

“women in the study area were subjected to domestic violence, and when it becomes intolerable, they approached the court for divorce as a last resort”.

“I had been experiencing domestic violence for 18 years and had no remedy”.

“I had experienced domestic violence for five years”.

“I had been subjected to violence for nearly 10 years”.

“I had experienced domestic violence for ten years, and I could not suffer it anymore, when I approached police, they told that it was not our duty to interfere in your matter, I had no other way, and I approached the court for a divorce”.

“I had suffered violence from my husband for 5 years, and I could not continue there, so I approached the court seeking a divorce”.

“I was abducted by her husband and forcibly married, and he raped me in order to force me to give consent to marriage. My parents approached the court and my husband was convicted for abduction. I approached the court for divorce, and it was granted on the ground of lack of consent”.

The next theme explores the educational status of the participants.

4.2.2. Education of participants

Many studies report that lack of education thereof plays a role in domestic violence. When women are educated, domestic violence appears to decrease in incidence, which suggests a causal link between lack of education and domestic violence.

The answers to the following question gave rise to the next theme:

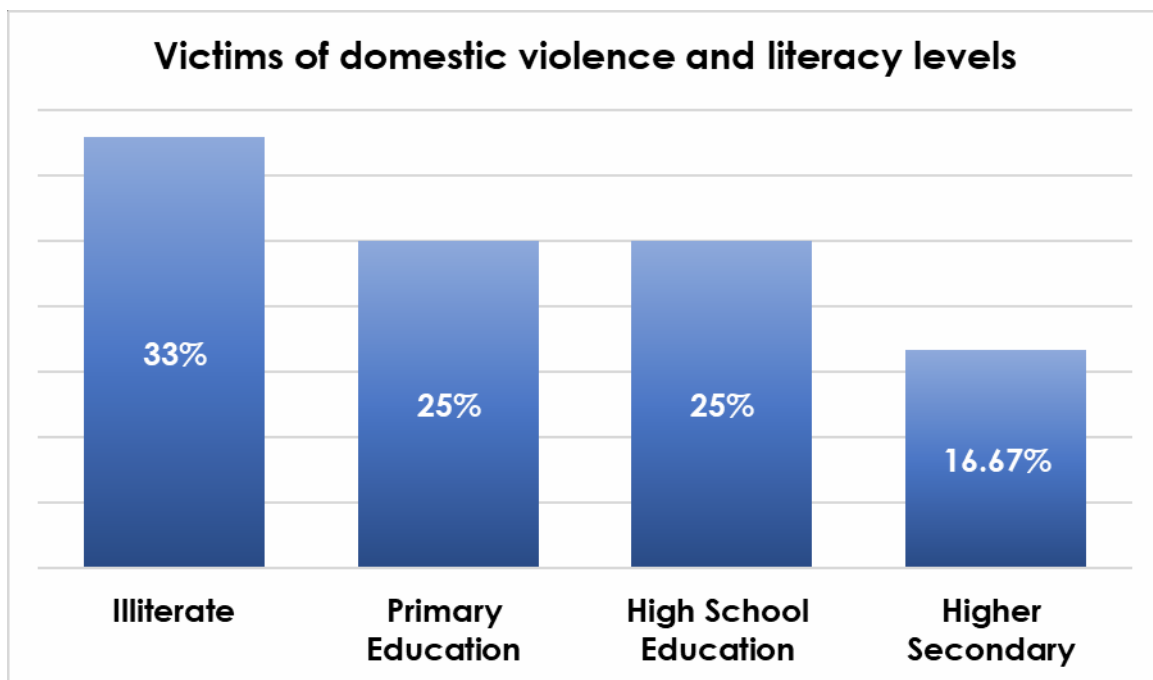
What is your educational qualification?

The purpose of this question was to determine the educational background of the participants.

Responses from the participants demonstrated that their educational levels varied from illiterate to higher secondary level. Some participants were illiterate, and some participants had completed upper- primary education.

A few participants had a high school level, and only two participants studied up to the level of higher-secondary. The data disclosed that 33.33% of the participants were illiterate, and 25% of the participants have upper primary education. From the participants, only 25% have a high school education, and 16.67% have higher secondary education.

DIAGRAM 5: LITERACY LEVELS AMONG VICTIMS



One participant reported

“At the time of marriage, I finished grade 5, and I wanted to continue the study and went to school up to grade 7, and thereafter, my husband compelled me to stop schooling.” Another participant told, I wanted to go to school, but my husband did not like it, so I dropped that plan”.

The next theme for discussion explores the employment status of the participants.

4.2.3. Employment status of participants

Studies on domestic violence around the world report that employment/unemployment are contributory causes of domestic violence. Some studies reported that employment in low-grade positions is a cause for domestic violence, but high-grade employment reduces domestic violence.

The answer to the next question gave rise to the next theme.

What is your employment status?

The purpose of this question was to determine the employment status of the participants.

The responses of the participants demonstrated that only one participant had employment, and all others were unemployed. The participants had to depend upon their intimate partners for all their needs.

"I had no employment".

"I had daily work, but my husband did not like me to go for work, and he began to quarrel me for going for employment, and so I stopped it".

"I was working as a secretary of a computer school".

The next theme for discussion explores the nature of domestic violence.

4.2.4. Nature of domestic violence

Numerous studies have reported different forms of domestic violence perpetrated against women. Studies report physical violence, emotional violence, sexual violence, and economic violence.

The answer to the next question gave rise to the next theme.

What was the nature of the violence you experienced?

The purpose of this question was to determine the nature of violence the participants had experienced.

The participants experienced physical, emotional, and sexual violence from their intimate partners. All the participants reported that they were subjected to slapping, beating, kicking, hitting (sometimes with objects), scolding, ridiculing, and insulting (emotional violence).

“I had experienced beating, slapping, kicking, and hitted with stone”,

“He insulted me before the neighbours and insulted my parents”.

“He came after drinking alcohol and demanded to have sex with him when I denied he raped me, and I kept silence because my children did not sleep”.

The next sub-theme for discussion explores physical violence specifically.

4.2.4.1. Physical violence

Acts of physical violence include slapping, kicking, beating, hitting with stones etc.

The answer to the next sub-question gave rise the next sub-theme.

Were you physically man-handled?

The purpose of this question was to determine whether the participants were victims of physical violence.

Answers provided by the respondents indicated that all of them had been victims of one or all of the forms of physical violence listed above.

One participant responded:

“He came very late in the night at that time I was asleep, and he became violent and beat me, kicked me several times and on hearing my cry children woke up”.

The next sub-theme for discussion explores emotional violence.

4.2.4.2 Emotional violence

Emotional violence includes suspecting fidelity of female partners, denying the paternity of children, ridiculing wives in the presence of others without reason, ridiculing their parents etc.

The answer to the next subquestion gave rise the next sub-theme.

Did you experience emotional violence?

The responses of the participants clearly demonstrated that all the participants were subjected to emotional violence. All participants responded that in addition to physical violence, they were subjected to emotional violence.

One participant responded,

“My husband was suspicious of my fidelity, and he was beating, kicking and scolding all the time and in front of neighbours.”

The next sub-theme explores sexual violence.

4.2.4.3. Sexual violence

Sexual violence against women is trite globally.

The answer to the next gave rise to the next sub-theme.

Were you sexually harassed?

The purpose of this sub-question was to determine whether the participants experienced sexual violence.

One participant responded:

“I was abducted by him and had forced sex with me while he had another wife”.

Participant responses revealed that 25% of the participants experienced sexual violence.

The next sub-theme explores economic violence.

4.2.4.4. Economic violence

Economic violence includes not maintaining the victim and her children, denying access to a source of money, resisting accepting any employment etc.

The answer to the next sub-question gave rise to the next theme.

Did you experience economic violence?

The purpose of this question was to determine whether the participants experienced economic violence.

Many studies reported from different countries disclosed economic violence. However, the participants in this study did not report any form of economic violence. This may be due to the fact that economic abuse is not recognised as a form of domestic violence in Ethiopia.

The next theme for discussion explores awareness regarding domestic violence.

ILLUSTRATION 1: NATURE OF DOMESTIC VIOLENCE



4.2.5. Awareness regarding domestic violence laws

Studies reported from different countries reveal that lack of awareness is a cause for domestic violence.

The answer to the next question gave rise to the next theme.

Are you aware of domestic violence laws?

The purpose of this question was to determine the awareness of domestic violence laws among the participants.

The responses from the participants revealed that they were not aware of the existence of domestic violence laws in the Criminal Code, 2004 of Ethiopia. The participants reported that they had not even heard about such laws in Ethiopia.

One participant responded

“When I went to the police station seeking help from violence from my husband, the police told me, it is not our duty to deal your complaints I am hearing about domestic violence law for the first time”.

The participants further revealed that when they approached the courts for a divorce, maintenance, paternity issues, or domestic violence, they were not educated about their rights or the laws surrounding domestic violence. From the experience of participants, the domestic violence law is not implemented within the area of study (Jimma court).

The next theme for discussion explores the implementation of domestic violence laws.

4.2.6. Implementation of domestic violence law

Studies around the world report the need for special laws against domestic violence. The UN recommended the enactment of special laws against domestic violence. The UN requested all its members to enact appropriate laws to abolish domestic violence and required that no customs or religious tradition should be

accepted to negate liability of any country to enact laws banning domestic violence.

The answers to the next question gave rise to the next theme.

Whether domestic violence law is implemented effectively?

The purpose of this question was to determine whether the participants benefitted from the implementation of domestic violence laws.

Participant responses disclosed that domestic violence law was not implemented in the study area, Jimma. The participants revealed that police did not take any action against their complaints, and instead, the women were forced to seek alternative remedies. All the victims reported that they have no faith in the police because they were partisan and against women. 42% of the participants approached police for assistance, but they were sent back by the police without taking any legal steps.

The police who are empowered to implement the domestic violence law, appear reluctant to act upon domestic violence causes in the study area. One participant responded, “...when I approached Jimma police against domestic violence; they told that it was not our duty to investigate your case”.

The next theme for discussion explores the benefits of domestic violence laws to the victims.

4.2.7. Benefits of domestic violence law for victims

As a result of the numerous reports and studies around the world which indicate an alarming rate of violence against woman, many countries began to enact legislation which criminalises domestic violence and which makes provision for a woman to seek remedies for these acts.

The answer to the next question gave rise to the next theme.

Are benefitted by the implementation of domestic violence laws?

The purpose of this question was to determine whether the participants have benefited from the implementation of domestic violence laws in Ethiopia.

All participants reported that they have not benefitted from domestic violence laws and further indicated that the police did not assist them when complaints were filed, nor did police act against the perpetrators.

One participant responded,

“If there is domestic violence law in Ethiopia, it should be implemented soon, and so many women are facing violence and ill-treatment in their family from their husbands. No government machinery is here to take care of women.”

All the participants responded that they were not aware of domestic violence law.

The next theme for discussion explores the impact of domestic violence laws on perpetrators.

4.2.8. Impact of domestic violence law on perpetrators

The UN appealed to all nations to enact laws to abolish and eradicate domestic violence. It reminded member-nations not to invoke any customs, culture, or religious practice to exempt perpetrators of domestic violence. The international community required all members nations to criminalise domestic violence and provisions should be made to grant civil remedies.

The answer to the next question gave rise to the next theme.

What is the impact of domestic violence law on the perpetrators?

The purpose of this question was to establish the impact of domestic violence laws on perpetrators if any.

Participants responded that current Ethiopian laws which regulate domestic violence did not create any impact on perpetrators. All participants responded that police took no action against complaints of domestic violence.

One participant responded:



“when I approached police complaining about domestic violence, police told me that it was not our duty to take action on your complaint”.

Another participant responded,

“when I went police complaining violence against me, police told me to go out and go to court; it is not our duty to investigate your complaint”.

The police are supposed to investigate domestic violence, but they refused to carry out investigations after the participants had reported to them.

One participant reported:

“I had no faith in police agency, so I didn` t approach the police seeking their assistance, and I approached the court for a divorce. When the perpetrators are allowed to free what impact could be created on the perpetrators”.

As a result of this, perpetrators face no legal action for their acts, and therefore, they continue to commit acts of violence as they fear no punishment.

The next theme for discussion explores the impact of domestic violence laws on the victims.

4.2.9. Impact of domestic violence law on the participants

As previously discussed, the international community requires nations to implement domestic violence laws with the aim of protecting victims but also to penalise perpetrators. Through the creation of domestic violence laws, it is hoped that victims would feel protected but also that the laws would act as a deterrent against violence.

The answer to the next question gave rise to the next theme.

What is the impact of domestic violence laws on the victims?

The purpose of this question was to determine what impact the implementation of DV laws had on the participants.

The participant responses disclosed that the domestic violence laws in the Ethiopian Criminal Code, 2004, had not created any impact on them.

One participant responded:

“when I approached the police, they told me it was not our duty to investigate your complaint. I did not get any assistance from the police when I faced violence. The DV law is not beneficial to women, so it is incapable of producing any impact on the women”.

The law has not been implemented and has not created any impact on the participants.

The next theme for discussion explores the duration of violence and reason for the delay in acting.

4.2.10. Duration of violence and reason for the delay in acting

Many women undergo domestic violence for years without complaining to the police or court.

The answer to the next question gave rise to the next theme.

What is the reason for the delay in acting?

The purpose of this question was to determine why participants remained in homes where they were victims of domestic violence and why acts of violence against them were not reported.

Some participants indicated that they had been victims of domestic violence from as early as six months old. Acts of violence continued well into adulthood, and no action was taken against perpetrators.

The participant responses disclosed that they suffered for the sake of their family.

One participant responded:

“I thought that he would change his nature in the near future, I had no means for livelihood, so I had to depend upon him, but when the violence crossed all the borders, I had no other option but to approach the court for divorce”.

The participants continued in abusive relationships because they had to depend on the perpetrators for their livelihood. Most of the participants were unemployed

and had no means to live. Their dependency might be the cause of continuing in abusive relationships without acting.

The next theme for discussion explores the effect of domestic violence law.

4.2.11. Effect of domestic violence law

The intention of enacting domestic violence laws is to reduce acts of violence against woman. It is hoped that the enactment of legislation which is regulated correctly would act as a deterrent against acts of violence.

The answer to the next question gave rise to the next theme.

What is the effect of domestic violence laws?

The purpose of this question was to determine the effect of domestic violence law in society.

The participant responses disclosed that domestic violence laws had no effect on society even though the domestic violence laws were enacted, they not implemented by Ethiopian police.

One participant responded:

“I was not aware of the domestic violence laws. When I approached the police, they did not take any action on my complaint of domestic violence. So I approached the court for divorce as the last option, and at that time, the court also did not mention anything about domestic violence laws. if such be the situation how the DV laws can create an effect? Without implementing domestic violence law, how domestic violence can be reduced?”

The laws had no effect in reducing domestic violence in Ethiopia, according to this study.

The next theme for discussion explores the attitude of court and police.

4.2.12. The attitude of court and police

The attitudes of police and courts are of particular importance in the implementation of any law. Correct implementation and interpretation could result in a successful reduction of domestic violence offences.

The answer to the next question gave rise to the next theme.

What is the attitude of court/police?

The purpose of this question was to establish the attitudes of the court/police and whether they regularly and effectively implement domestic violence laws with the aim of reducing acts of domestic violence.

The participant responses disclosed that the court and police had a negative attitude towards victims of domestic violence. The participants reported that when they approached police with claims of domestic violence, they were sent away without any action taking place. When participants approached courts on matters of divorce resulting from continued acts of domestic violence, the court did not mention anything about domestic violence laws, nor were they helpful in assisting participants to become educated on the laws.

One participant responded:

“when I approached police seeking assistance against domestic violence, the police sent me away. When I approached court for divorce, it didn't mention anything about domestic violence law. The court/police had negative attitude towards victims of domestic violence”.

Another participant responded:

“these laws are not women; the Government should interfere in this matter”.

The next section discusses the findings of results from Indian participants.

4.3. INTERVIEW RESULTS- INDIAN PARTICIPANTS

The PWDVA 2005 was implemented throughout the country in 2006. The researcher selected cases from Ranni Court, Kerala, India, for the purpose of this study.

From 1-1-2014 to 1-1-2015, 163 cases were heard under the Act, and only 3 cases were decided by the court on merits. From 1-1-2015 to 1-1-2016, 88 cases were filed, and only 1 case was decided by the court on the merits.

The researcher established from the court orders that some cases were dismissed based on the absence of the petitioner at court. The researcher enquired with legal representatives involved in the cases and found that the remainder of the cases were settled between the parties in the process of mediation and thus did not reach the court.¹⁶ The researcher selected 16 cases for an interview out of which 12 cases are settled cases.

Emergent themes, categories, and codes emanating from data analysis:

TABLE 2: EMERGENT THEMES, CATEGORIES, AND CODES EMANATING FROM DATA ANALYSIS:

Theme	Category	Code
Duration of violence	Up to 15 years—93.75% Above 15 years—6.25%	Duration of violence
Education of the participants	Secondary —87.5% Higher secondary—6.25% Degree—6.25%	Education

¹⁶ The Mediation Centre is a forum working under the authority of the court, where the mediators are lawyers appointed by the judge of the court in every place. A law was enacted in 1986 known as the Legal Service Authority Act, 1986. Under the Act national legal service authority was formed under the chairmanship of a senior judge of the Supreme Court and at state, levels state authority under the chairmanship of senior High court judge. District level authority is headed by the principal district judge and below its authorities in every court centre headed by senior judicial officers of that centre. The legal service authority is entrusted with the task of providing legal awareness to the public and free legal aid to poor people.

Employment of the participants	Employed—6.33% Unemployed—93.67%	Employment
Nature of violence	Slapping, beating, kicking, hitting (physical violence)100% Scolding, ridiculing, threatening (emotional violence)-100% Sexual violence-6.25% Not maintaining, no access to money, no access to dowry (economic violence)31.25% Attempt to murder- 12.5 Domestic violence due to intoxication- 56.25% Domestic violence for dowry- 31.25%	Nature of violence
Causes of violence	Husband`s alcoholism, suspecting fidelity of wife, demand for dowry	Causes of violence
Awareness of domestic violence law	Participants had awareness about DV law-100%	Awareness of law
Police or court informed of rights	Legal service authority had informed the rights of victims	Provide support
Benefitted or not by DV law	Benefitted by DV law-100%	Benefits
Efficient support is given	Efficient support provided	Support provide

by court or police	by the court- 100%	
Whether timeously reacted by court or police	Timeously reacted by court-100%	Timeous reaction
Reduction of domestic violence due to the implementation of PWDVA	Participants suggested that domestic violence is reduced due to the implementation of PWDVA	Reduction of DV by the implementation of PWDVA
Whether PWDVA addresses the needs of the participants	Participants opined the DV law addresses the needs of the participants	Address the needs
Impact on the perpetrators	Law impacted on the perpetrators- creates fear- 100%	Impact on the perpetrators

The first ensuing theme that follows for discussion explores the period that the participants were subjected to domestic violence.

4.3.1. Participant periods of exposure to domestic violence

Many studies in India report that though law against domestic violence is in force, many women experience domestic violence for an extended period without seeking any relief under the domestic violence law.

Answers to the following question gave rise to the subsequent theme.

How long have you been subjected to domestic violence?

The purpose of this question was to determine the period the participants were exposed to domestic violence.

From the participant responses, they revealed that they had undergone domestic violence from between one year to twenty years.

Here below is a selection of participant responses:

"I had experienced domestic violence for one year, and thereafter I approached the court against it, and now I am living happily with him without any violence".

"I suffered violence for 10 years, and thereafter I approached the court and secured orders and thereafter no violence".

"I had been suffering violence for 15 years and at I approached court and protection order was granted to me, my husband then approached for a compromise, and now we are living happily".

"I have 50 cents of land, he demanded more, and my mother again had given 25 cents more and 10 sovereigns of gold again. But my husband beat and kicked me after intoxication for more dowry. I had been suffering the violence for 20 years."

The next theme for discussion explores the educational status of the participants.

4.3.2. Educational status of participants

As previously discussed, studies report that education status has an effect on the occurrence of domestic violence.

The answer to the next question gave rises the next theme.

What is your educational qualification?

The purpose of this question was to ascertain the level of education of participants. From the responses, it was noted that education levels ranged from secondary to tertiary level.

Responses included:

"I had studied up to secondary level".

"I had studied up to higher secondary level".

"I had completed B.A. degree".

The next theme for discussion explores the employment of the participants

4.3.3. Employment of the participants

Many studies, as previously discussed, have reported that employment reduces domestic violence. As earning capacity increases, violence decreases.

The answer to the next question gave rise to the next theme.

What is your employment?

The purpose of this question was to determine how many participants were employed?

Participant responses included:

“I had no job”.

“I was working as a house-maid, and also I went for work given by local Panchayat under the Prime Minister`s job guarantee scheme, but my husband did not like it, and he assaulted me for discontinuing the work, and I have no other option and stopped the work.”

“I have a job in a vegetable shop as a salesgirl, he usually comes there and showered filthy words. I have no other option but to approach the court for a protection order after that I am living peacefully”.

From the responses gathered, it was noted that a substantial number of Indian participants were unemployed.

The next theme for discussion explores the nature of domestic violence.

4.3.4. Nature of domestic violence

As previously discussed, many studies have reported that women are exposed to different forms of domestic violence, such as physical, emotional, sexual, and economic forms of violence.

The answer to the next question gave rise to the next theme.

What type of domestic violence have you experienced?

The purpose of this question was to determine the nature of violence the participants were subjected to.

Participant responses explored the nature of domestic violence such as beating, kicking, slapping, and hitting and emotional violence scolding, ridiculing, and threatening.

Responses included:

“He beat me daily after intoxicating alcohol and on 8-9-2012, he tried to attack me after drinking alcohol, and in order to escape I ran away from home, and I fell down on the road while running and broken my leg and admitted in the hospital for one month.”

“He was not maintaining me, and I have no access to money how can I live, I approached the court for maintenance and protection order and was allowed by the court”. (Four other participants reported a similar story.)

“My parents gave dowry to him, but I was not allowed to deal with that money, and I was not maintained also.”

“My husband raped me several times and beat me”.

The next theme for discussion explores the causes of violence.

4.3.5. Causes of violence

As previously discussed, many studies have indicated different causes of domestic violence. They included suspicions of infidelity of the partner, spousal alcoholism, extra-marital relations etc. In India, dowry demands gave rise to the most common reason for domestic violence.

The answer to the next question gave rise to the next theme.

What was the cause of domestic violence?

The purpose of this question was to determine the causes of domestic violence among Indian participants in this study.

Responses gathered from the participants indicated a wide range of causes for domestic violence, which included, alcoholism as well as dowry demands.

Responses included:

“My parents had given a dowry of five lakh rupees to him, but again he demanded more and my parents gave him two lakhs. After that, he was demanding more gold”.

“My parents gave dowry to him, but I was not allowed to deal with that money, and I was not maintained also”.

The next theme for discussion explores awareness about domestic violence law.

4.3.6. Awareness of domestic violence law

The lack of awareness restricts women from taking legal action. Awareness of law is a weapon to resist violence.

The answer to the next question gave rise to the next theme.

Are you aware of domestic violence law?

The purpose of this question was to determine awareness of domestic violence laws among the participants.

Responses gathered from participants indicated that they were aware of domestic violence laws.

One such response:

“I attended the classes and had awareness about domestic violence laws”.

The next theme for discussion explores the benefits of domestic violence law.

4.3.7. Benefits of domestic violence law

When a law is enacted, it should have some benefit. Social evils are banned by law, and hence, people should be benefitted by its implementation.

The answer to the next question gave rise to the next theme.

Are you benefiting by the implementation of PWDVA?

The purpose of this question was to determine whether the participants are benefitted by the implementation of PWDVA.

The participant responses revealed that they had benefitted by the implementation of PWDVA. Responses disclosed that the prayers of the victims were allowed by the court. Protection orders, residential orders, prohibitory orders, maintenance to the victims as well as to their children were granted.

Responses included:

“her petition to the court, she prayed for alternate residence and compensation for the mental agony she suffered due to domestic violence, the court allowed the prayer”. [She said the court ordered her husband to pay monthly rent for alternate residence and compensation of Rs 100000 as compensation for the sufferings due to domestic violence.]

“The court reacted very promptly in time in all their cases and granted interim ex-parte protection orders, residence orders, and prohibition orders wherever necessary and direct the police to implement its orders”.

“In my case, the court granted me protection order and residence order and directed police to implement the order.”

As per court orders, the police accompanied the victims to the matrimonial house and reinstated them there in most cases. The police also informed victims to call them if they required their assistance. The participants reported that the victims are benefitted by the domestic violence law in India.

The next theme for discussion explores the reduction of domestic violence due to the implementation of DV laws.

4.3.8. Reduction of domestic violence due to the implementation of DV law

Law is effective only if it is able to control the offence. The PWDVA could really only be viewed as successful if it has achieved what it was set out to do, i.e. protect victims of domestic violence and potentially reduced acts of violence against woman. The answer to the following question gave rise to the next theme.

Whether PWDVA, 2005: reduced domestic violence?

The purpose of this question was to ascertain whether domestic violence was reduced by the implementation of domestic violence law.

Participant responses indicated that domestic violence was reduced in the study area due to the implementation of PWDVA, 2005.

Responses:

“When I approached the court for a protection order, residence order and maintenance, the court granted it without hearing the opposite party and directed police to implement the order immediately, and police implemented it suddenly”.

“When I approached the court against domestic violence, the court granted protection order, and residence order also order for maintenance. While the case is pending, my husband approached me with the help of mediators and requested to settle the case, and the case was compromised on condition that he would not do any domestic violence. Now we are living together, harmoniously”.

Most of the participants reported that they were staying with their spouses as they had successfully managed to reach a compromise with one another.

The researcher found from the registry of the court where the study was conducted that between 1-1-2014 to 1-1-2015, the total number of domestic violence cases was 163 and from 1-1-2015 to 1-1-2016, the total number of domestic violence cases registered was 88. There is a decline of half the number of cases compared to the previous year.

The next theme for discussion explores whether the DV law addresses the needs of the participants.

4.3.9. How the PWDVA, 2005, India addresses the needs of the victims

The effectiveness of the law depends upon how the law addresses the needs of the beneficiaries. The law is effective if it can address the problem for which the law is implemented.

The answer to the next question gave rise to the next theme.

Whether the PWDVA addresses the needs of the victims?

The purpose of this question was to determine whether the domestic violence law was effective and capable of addressing the needs of the participants.

The participant responses revealed that the needs of the participants were addressed by PWDVA, 2005.

Responses:

“When I approached the court and prayed for a protection order and residence order, the court granted it without hearing my husband and directed the police to implement it. The police immediately accompanied me and reinstated me in the matrimonial house. My husband tried to compromise the case by apologising for his mistakes, and now we are living together harmoniously”.

“I approached the court for alternate residence and compensation for my sufferings; the court allowed me Rs 1500 as monthly rent for alternate residence and Rs 100000 as compensation”.

The next theme for discussion explores the impact of legislation on the perpetrators

4.3.10. Impact of legislation on the perpetrators

Legislation should have an impact on the expected category of offenders. The offenders should be fearful and deter from committing an offence in the future.

The answer to the following question gave rise to the next theme.

What is the impact of PWDVA, 2005 on the perpetrators?

The purpose of the question was to determine whether domestic violence laws were effective in reducing incidents of domestic violence.

Participant responses revealed that PWDVA was effective in reducing incidents of domestic violence and that the enactment of the legislation had a deterrent effect.

One such response:

“When I approached the court, it granted me protection order and residence order and directed the police to implement it soon. As result, police accompanied me to the matrimonial house and re-instated me there and warned my husband and his relatives against violence. They became afraid”.

From the participant responses, it can be seen that perpetrators tried to settle cases with victims. Twelve participants reported that their cases were settled and that they were living together with their intimate partners.

The next theme for discussion explores the reason for the delay in adopting a legal remedy.

4.3.11. Reason for delay in adopting the legal remedy

Many studies disclosed that women continue in an abusive relationship for assorted reasons. Reasons include the dependency of a woman on the perpetrators, unemployment, religious customs, culture etc.

The answer to the following question gave rise to the next theme.

What is the reason for the delay in taking legal action against domestic violence?

The purpose of this question was to determine the reasons why women continued to remain in an abusive relationship for prolonged periods of time.

The responses gathered revealed that participants continued to remain in abusive relationships despite having knowledge of domestic violence laws, as the participants believed or rather hoped that their partners would change their behaviours.

Responses included:

“I had been suffering abuse for twenty years, and I suffered it for the sake of my children. I thought if I left from the relationship, it might affect my children and if any legal steps are taken, it may further worsen the relation, but I approached the court as

the last option, by approaching the court, I got a protection order, and my husband became afraid and settled the case.”

Almost all the participants responded in the same way as above.

The next theme for discussion explores the adequacy of punishment in the PWDVA (2005).

4.3.12 Adequacy of punishment provided in PWDVA, (2005)

The deterring effect of the law is the punishment prescribed by the law for offences. If stringent punishment is prescribed in law, it should have a deterring effect, even though the nexus between the two has never been fully proven.

The answer to the next question gave rise to the next theme.

Whether the punishment prescribed in PWDVA, 2005, is adequate?

The purpose of the question was to evaluate whether punishments prescribed by the Act had a deterring effect on offenders.

Participants revealed that even though no penal provisions were provided for in the Act, the PWDVA nonetheless had a deterring effect on offenders. The PWDVA provides for one-year imprisonment if any court order is violated. The participants opined that even though imprisonment is only one-year people are generally afraid of prison terms, and it may be sufficient to deter the perpetrators of domestic violence.

Responses included:

“Though one-year prison term is provided for the violation of court orders, my husband became afraid when the court ordered protection order”.

“Though one-year prison term for breach of a court order, my intimate partner became frightened, and he initiated to compromise the case. Though it one-year people would not like to go to prison”.

The next theme for discussion explores the implementation of a restraining order.

4.3.13. Implementation of restraining orders

The implementation of a court order is the basic measure of the success of the legislation.

The answer to the next question gave rise to the next theme.

How is the order of the court implemented?

The purpose of this question was to determine how the court orders were implemented.

The participant responses revealed that court orders were successfully served on the perpetrators and that they obeyed court orders.

One such response:

“When I file a case before the Magistrate court, the granted protection order, and residence order. The court directed police to implement its order and serve a copy of the order to my husband. As per the court direction, police implemented court order and served a copy of the order to the perpetrator. Police direct me to call them in case of any needs. My husband had obeyed the court order; otherwise, he was afraid of arrest by police for breach of the order”.

All participants responded in an equivalent way.

The next theme for discussion explores the impact of PWDVA, 2005 on victims.

4.3.14. Impact of PWDVA, 2005 on victims

All the legislation must have an impact on the beneficiaries. If there is no impact, then the legislation is ineffective.

The answer to the next question gave rise to the next theme.

What impact was caused by PWDVA on the participants?

The purpose of this question was to determine the impact caused on the participants.

Response:

“PWDVA created feeling protection in my mind. If this law was not in existence, I had to undergo violence, either throughout my life or I had to go for divorce”.

Participants responded that domestic violence was not repeated after court interference.

The next theme for discussion explores the approach of the court/police.

4.3.15 Approach of the court/ police

The approach of the court/police is a major factor contributing to the success of legislation, especially legislation like domestic violence law. If court/police are not interested in its implementation, the law may not be successful.

The answer to the next question gave rise to the next theme.

What was the attitude of court/police?

The purpose of this question was to determine the attitudes of court/police in implementing domestic violence law.

The participant responses revealed that court/police are effective in their implementation of PWDVA.

Responses:

“When I approached the court, on the same day the court granted protection order, residence order and directed police to implement the order immediately and police accompanied me to the matrimonial house and re-instated me there and also warned my intimate partner and his family members against repeating violence. They became frightened by the court order and police interference”.

“My husband married another woman while marriage with me is subsisting; he used violence to close my mouth”.

“I approached the court and sought alternate residence, maintenance, and compensation for the agonies suffered. The court allowed me alternate residence, and he was ordered to pay a rent of Rs 1500/- per month and compensation of Rs 100000/ and also maintenance. If domestic violence law was not in existence what I could have done”.

The PWDVA provides that if the allegation discloses offences under the Prohibition of Dowry Act, 1961 or dowry harassment under section 498(A) of Indian Penal Code 1860, the court is bound to take cognisance under those provisions as well as the provisions of the PWDVA which makes the latter Act multi-effective in nature.

The following section discusses judgements in domestic violence cases from Ranni Court, Kerala, India. The researcher aims to demonstrate the impact of the PWDVA from an applied perspective.

4.4. ANALYSIS OF JUDGEMENTS FROM RANNI COURT, INDIA

There were only four cases decided by the court between 1-1-2014 to 1-1-2015 and 1-1-2015 to 1-1-2016. The cases included in this study were heard between 1-1-2014 to 1-1-2016. The cases are anonymised to prevent identification, and because the matters include sensitive information.

On inquiry with lawyers, it was disclosed that all cases, except cases discussed herein, were settled through the Mediation Centre with assistance from lawyers.

Case No. I

The gist of the allegation is that the petitioner, A, got married to the respondent, in the year 2001 as per religious rites and rituals. After marriage, she lived together with her husband in the matrimonial home and was subjected to physical and mental cruelty by her husband. When the abuse became intolerable, she shifted her residence to her native state where a piece of land was allotted by her brother, and she constructed a house wherein she resided.

The respondent also arrived there and lived together with her, and two children were born to them in wedlock. The respondent again began to abuse the petitioner physically and mentally and suspected infidelity of the petitioner, and he began to quarrel with the petitioner's relatives. On 3-5-2014 at about 8.30pm, the respondent began verbally and physically abusing the petitioner. When the children intervened, he assaulted them and forcibly evicted the petitioner and children from the house. Hence the petitioner approached the court seeking a

protection order, residence order, and monetary reliefs as per section 18, 19 and 20 of the PWDVA, respectively. The evidence adduced by the petitioner was delivered by declaration of facts in lieu of oral evidence.

From the respondent's side, neither oral nor documentary evidence was adduced in defence. Though he appeared initially he later failed to appear and hence the matter proceeded *ex-parte*. From the sole evidence of the petitioner the court arrived at the conclusion that domestic violence had been perpetrated by the respondent and it passed a protection order under section 18, and a residence order in favour of the petitioner, and a prohibitory order restraining the respondent from dispossessing or disturbing the petitioner's possession in any manner, or from alienating or disposing of the shared household or encumbering same.

Though she sought Rs 4500 per month for her maintenance and Rs 3500 for her elder son and Rs 3000 for her younger son's educational expense, the court awarded Rs 3000 in toto because no evidence was produced before the court to prove the dependency of the children and the nature of the claimed educational expense. However, the court considered the facts and circumstances of the case as provided under section 20 of PWDVA that monetary relief should be adequate, fair, and reasonable and consistent with the standard of living of the aggrieved. The order stipulated that the monthly maintenance shall be paid to the petitioner on or before 12th of every month.

Copies of the order were sent to Station House Officer, Perunad Police Station and Women Protection Officer, Pathanamthitta. The cause of violence noticed in the case is suspected infidelity of the petitioner and forms of violence alleged are physical violence and emotional abuse.

Case No. II

The petitioner P married the respondent, Q, as per the rites and ceremonies of the Hindu religion. An amount of Rs 50, 000 in cash along with 14 sovereigns of gold ornaments were given to the respondent as patrimony. After marriage, the respondent managed to get 14 sovereigns of gold and Rs 100, 000 from the

petitioner and misappropriated the same. A male child was born in wedlock on 16-3-2006. The respondent abused her physically and mentally after consuming alcohol and was reluctant to maintain the petitioner and the child. The respondent assaulted her on many occasions and forcibly evicted her and the child from the shared household and poured chili powder on the petitioner and her child.

Aggrieved by this the petitioner approached the police (Moozhiyar Police Station-local police) but the respondent continued the abuse. She claimed to be unable to maintain by herself with the amount she draws from ARS Ootty Vegetables. The respondent also began to threaten her at her workplace.

During the initial phase of the case, the respondent appeared before the court but later withdrew from the court proceedings and hence the matter was heard *ex-parte*.

The petitioner filed a declaration of facts in lieu of examination and the court considered her sole evidence for the remedy sought. From the undisputed evidence of the petitioner the court was satisfied that domestic violence had taken place or was likely to occur and granted a protection order under section 18, residence order under section 19 - restraining the respondent from dispossessing the petitioner from the shared household or disturbing her possessions in any manner and also from alienating or disposing off the said shared household. He was also restrained from visiting the shop where the petitioner worked. Though she sought monetary relief of Rs 5000 per month for her maintenance and Rs 4000 for the educational expense of her son, only Rs 2500 was allowed for her maintenance. It was observed by the court that monetary relief should be adequate, fair, reasonable, and consistent with the standard of living of the petitioner as per section 20(2) of the PWDVA; but that no positive evidence was adduced to prove the standard of living and nature of educational expenses. Hence according to the facts and circumstances of the case, the court allowed Rs 2500 per month for her maintenance and directed the respondent to pay the same on or before the 12th day of every month with effect from the date of order. The court directed orders were sent to Police station, Moozhiyar and Women Protection Officer, Pathanamthitta for enforcement.

The cause of violence alleged was the husband's alcohol use and form of violence was physical and mental cruelty and not maintaining the petitioner and her child and forcibly evicting them from the shared household. Moreover, the respondent began to threaten the petitioner at her workplace. The respondent assaulted the petitioner on many occasions and showered chili power over her and her child.

Case No. III

The averments in the petition are that the marriage of the petitioner, M, with respondent, N, took place on 22-11-2004 according to Hindu religious rites and rituals at Mahavishnu temple at Kattoor.

A male child was born to them in wedlock. After one month of marriage, the respondent left abroad, and he was reluctant to take care of the petitioner and the child. When the respondent and his family began to neglect her continuously, she was compelled to approach the family court seeking maintenance and the husband was directed to pay a monthly maintenance of Rs 2000 to the petitioner. The respondent did not, however, comply with the court order and the petitioner and her child survived at the mercy of her brothers. Since that amount awarded was meager the petitioner also approached the Family Court for an order increasing the original maintenance amount. The respondent managed to produce an order claiming to be issued by Family Court Kollam dissolving the marriage between the petitioner and her husband before the sub-registrar and he subsequently married another woman cited as the second respondent but on inquiry, it was revealed that the order was fake. This foul play caused the petitioner mental agony and she sought compensation for mental agony suffered from the respondent. She also sought a residence order.

The respondents appeared initially and later abstained from court proceedings and hence the matter proceeded *ex-parte*. The petitioner produced an affidavit in lieu of examination and produced a marriage certificate confirming her marriage to the first respondent.

The certificate which showed that the marriage between first and second respondent was registered while the marriage existed with the petitioner, and a reply letter showing that no order of dissolution of marriage was issued by Family Court, Kollam as per Right to Information Act, were also presented to the court. By this time, the Family Court enhanced the maintenance amount to Rs 4500 per month. The petitioner sought a residence order and compensation against the first respondent. The petitioner sought to issue a direction to the first respondent to provide a house for the residence of the petitioner and her child.

The court after considering the facts and circumstances of the case granted an order directing the first respondent to pay Rs 1500 per month as rent to the petitioner for alternate accommodation and directed the first respondent to pay an amount of Rs1lakh as compensation to the petitioner for the mental agony sustained.

The cause of violence, though not expressly pleaded, was the husband's lover. The form of violence - the respondent neglected to maintain the petitioner and her child, and he had relations with another woman which caused mental agony. The respondent made a fake certificate from the Family Court and produced it before sub-registrar to register the second marriage which shocked the petitioner and caused mental agony.

Case No. IV

The averments in the petition are that the marriage between petitioner, C and respondent, D, were solemnized according to Christian rites and ceremonies at St. Thomas C.S.I Church Chengannur on 22-12-2013. At the time of marriage 7 sovereigns of gold ornaments and Rs 100,000 in cash were given to the respondent.

He was employed abroad as a spray-painter. After marriage, he went abroad on 31-12-2013. During the time of cohabitation with him, the respondent abused the petitioner physically, mentally, and sexually. The respondent took the ornaments to pledge and handed over the money to his brother. When the petitioner contacted the respondent abroad his response was not cordial, and he called the

petitioner obscene words. On 13-1-2015 the respondent returned from abroad and from then onwards he began to quarrel with petitioner after consuming alcohol and compelled the petitioner to take part in sexual acts as depicted in pornographic films. Lastly, the petitioner was forcibly taken to the paternal house on 15-1-2015 where after the respondent left. All her certificates such S.S.LC, +2 Certificate, Degree Certificate-Ray Technician Certificate, CT., and MRI scan were kept by the respondent and he threatened to torch all of her possessions and documents. Though he was drawing a monthly salary of Rs 25, 000 he was not willing to maintain the petitioner who was unable to maintain herself. Hence the petition sought maintenance of Rs 10000 per month and a direction to the respondent to give back her personal effects and documents.

The respondent abstained from court proceedings and hence the matter proceeded *ex-parte*. The petitioner filed an affidavit in lieu of examination and on the basis of the affidavit the court was inclined to grant an order under section 20 of the PWDVA. However, the court observed that no positive evidence was adduced before the court to show the standard of living of the petitioner to allow a monetary relief as claimed in the petition. But the court took notice of the circumstances of the case and found that Rs 3000 per month was reasonable and fair and consistent with the standard of life of the petitioner and granted the same.

It further ordered the respondent to hand over the petitioner's personal effects and documents within one month of the order failing which the petitioner could take possession with the assistance of the Women Protection Officer who could secure police assistance if necessary. The court also observed that value of the personal effects and documents were not mentioned in the petition and as such the court was unable to pass any monetary relief for same. The court directed the respondent to pay maintenance on or before the 10th day of every month.

The cause of violence alleged was the husband's alcohol consumption. The form of violence was physical, mental, and sexual abuse. The wife was forced to perform sex acts as depicted in pornographic films. There was an allegation that

her gold ornaments were misused by her husband and of withholding of her certificates. She was forcibly taken to a parental house and abandoned.

The next section discusses the causes of domestic violence as alleged in the cases discussed above.

4.4.1. Causes of domestic violence

TABLE 3: CAUSES OF DOMESTIC VIOLENCE

CASE NO	CAUSE OF DOMESTIC VIOLENCE
I	Infidelity of the wife
II	Alcoholism of the husband + Possible dowry demand
III	Infidelity of the husband
IV	Alcoholism of the husband

The next section discusses the forms of violence.

4.4.2. Forms of domestic violence

TABLE 4: FORMS OF DOMESTIC VIOLENCE

CASE NO	FORM OF DOMESTIC VIOLENCE
I	Physical violence Emotional abuse
II	Physical violence

	Emotional abuse Economic abuse
III	Economic abuse
IV	Physical violence Sexual abuse Emotional abuse Economic abuse

The four cases disclose that the victims in the three cases were unemployed and had no income. All the women were house-wives and fully dependent upon their husbands for maintenance. Even though the victim in case no II was employed in a vegetable shop, she was not self-sufficient and independent regarding her economic needs.

In all cases, it was disclosed that the victim's main relief sought was a plea for maintenance as they are unable to maintain themselves.

The next section discusses the religious background of the petitioner.

4.4.3. Religious Background

The cases disclose the religion of the victims and hence it is also discussed.

Three out of the four case studies were of the Hindu religion whilst one belonged to the Christian CSI diocese. This does not indicate that domestic violence only occurs amongst the Hindu and Christian faiths, however, the majority of the population residing within the jurisdiction of the Ranni court are practicing Hindu's. The Hindu religion does consist of many castes and the

Christian religion of many dioceses; however, research indicates that domestic violence occurs across all castes and dioceses.

The next section discusses the educational background of victims.

4.4.4. Educational background

Education of the victims (petitioners) was not recorded in the judgements.

The next section discusses the economic background of the victims of domestic violence.

4.4.5. Economic Background

Studies report that economic status influences domestic violence. Domestic violence occurs more frequently in lower-class families than it does in higher class families.

From the four case studies, it was noted that the victims in three cases were unemployed and had no income. All of the women in the case studies were housewives and were fully dependant on their husbands for their maintenance. Even though the victim in case no. II was employed in a vegetable shop, she was not self-sufficient.

In all case studies, the victim's main relief sought was maintenance as they are unable to maintain themselves. In all cases, averments disclosed that the petitioner women and their children were not maintained by their husbands.

The next section discusses the duration of domestic violence.

4.4.6. Duration of Domestic Violence

Many studies in India report that women continued in the abusive relationship for many years.

TABLE 5: DURATION OF DOMESTIC VIOLENCE

CASE NO	YEARS OF ABUSE
I	Year of marriage: 2001 (years of abuse: 15 years)
II	Year of marriage: unavailable, pregnancy in 2006 (years of abuse: 10 years)
III	Year of marriage: 2004 (years of abuse: 12 years)
IV	Year of marriage: 2013 (years of abuse: 3 years)

In all cases, it was alleged that domestic violence commenced immediately after the solemnization of marriage. As per the allegations, the victims in the first three cases continued in the abusive relationship before the enactment of the PWDVA.

In the fourth case, the victim continued the abusive relationship for nearly two years. It seems that the victims are forced to continue in the relationship for reasons beyond their control.

The next section discusses the standard of proof considered by the court.

4.4.7. Standard of proof

In a domestic violence case, even those filed in criminal court, only the probability of domestic violence occurring is to be considered by the court based on the circumstances of the case. The burden of proving the case beyond reasonable

doubt is avoided in domestic violence cases. Unlike other criminal cases, evidence can be adduced by way of sworn affidavit, in lieu of examination in chief. The opposite party can cross-examine the party who filed the declaration of facts. The standard of proof is not as strict as that in criminal cases. In all the cases studied here, the petitioners filed an affidavit in lieu of chief examination and the evidence of the petitioners alone was considered for relief.

The next section discusses the impact of PWDVA, 2005.

4.4.8. Impact of PWDVA, 2005

Every legislative instrument must have an impact on the expected victims and offenders otherwise the legislation is in effect useless.

In the period of one year, from 1-1-2014 to 1-1-2015, 163 cases were filed in Ranni court, and from 1-1-2015 to 1-1-2016; the number of cases filed reduced to 88. There was a clear reduction in the number of cases filed in the court and the researcher avers that such reduction may have been caused by the enactment of domestic violence laws in India, and thus demonstrates the ineffectiveness of the law. Naturally, further research is necessary to establish the effect of independent and nuisance variables in this phenomenon.

The next section discusses the attitude of courts/police

4.4.9. The attitude of the Court

The attitude of courts/police is important in the implementation of all laws, especially relating to domestic violence. If their attitudes are negative, the legislation will fail.

On examination of the judgements of the court, it was found that the court granted all the relief sought. In case no I, the court accepted the sole evidence of the petitioner and granted a protection order under section 18, residence order and a prohibitory order and monetary relief under section 20 of the Act. Regarding monetary relief; though the petitioner sought Rs 4500 for herself and Rs 3500 for her elder son and Rs 3000 for her younger son's educational expenses, only Rs 3000 was allowed for her maintenance. The court observed

that no evidence was produced to show the dependency of the children or the nature of the educational expenses. In case no II, the court allowed a protection order under section 18 and a restraining order under section 19, and maintenance under section 20 of PWDVA, based solely on the evidence of the petitioner. The court stated that since no positive evidence was adduced to show the nature of the educational expense, and/or standard of living as required by the Act, it declined certain prayers and rather allowed an amount considered adequate, reasonable, and fair in the circumstances of the case. In case no III, the petitioner sought alternative residence and compensation of 5 lakhs for the mental agony she suffered by the conduct of the respondent. Considering the circumstances of the case the court ordered the respondent to pay Rs 1500 per month towards alternate accommodation for the petitioner and her child. The alternate residence was sought on the fact that the respondent had married another woman, and compensation of Rs 100000 for the mental agony the petitioner had sustained. In case no IV, the petitioner sought Rs 10000 per month for maintenance and a direction to hand over her clothing and personal effects. The court allowed maintenance of Rs 3000 per month and directed the respondent to hand over her personal effects with the assistance of a protection officer if the respondent refused the same. The police were further directed to give necessary assistance when approached. The court observed that no positive evidence was adduced before the court to prove the standard of living that the aggrieved person was accustomed to, however, the court considered the circumstances of the case and awarded an amount it considered adequate, reasonable, and fair.

The next section discusses possible relief.

4.4.10 Relief

The relief granted by the courts is intended to reduce the occurrence of domestic violence and thus, in theory, has a deterrent effect.

The court granted protection orders, residence orders and orders for monetary relief in case no I & II as sought by the victims. In case no III alternate residence

and compensation was permitted. In case no IV monetary relief and an order to return personal effects were granted.

The next section summarises the discussion.

4.5. SUMMARY

This chapter discussed the findings of the emergent themes. The participant responses to the in-depth interviews were discussed by means of developing themes, to explore the outcomes of the interviews. Participant responses were reported verbatim to ensure the integrity of the data and honesty in its presentation.

The following chapter presents the interpretation of the research findings.

CHAPTER 5

INTERPRETATION OF FINDINGS

5.1 INTRODUCTION

This chapter presents the research findings. Findings are interpreted in a manner accessible to the reader. The interpretation of data focuses on providing clear explanations based on the data and its analysis. The interpretation of the findings commences with an outline of each emergent theme. The main purpose of interpreting the findings is to arrive at an understanding of the implementation of domestic violence laws in Ethiopia and India and to explore any shortcomings and suggest recommendations to strengthen the legislative responses to domestic violence in these areas.

The section below presents an overview of the developing themes.

5.2. OVERVIEW OF DEVELOPING THEMES

In chapter 4, the researcher identified a number of themes which arose during data analysis. The identified themes are structured and discussed there. The primary themes, appearing from the data analysis presented in chapter 4, are as follows: the duration of domestic violence; education; employment; nature of domestic violence; participant awareness of domestic violence laws; participant experience of the implementation of domestic violence laws; and victim benefits of domestic violence laws. In addition, themes included whether the police/court informed victims of their rights; whether police/court gave efficient support to the victims; and whether police/court timeously acted to prevent domestic violence. Other themes included participant experiences of the impact of domestic violence laws on perpetrators; participant experience regarding the impact of domestic violence law on victims; whether domestic violence incidents have been reduced following the implementation of domestic violence law; whether domestic violence laws sufficiently address the needs of the victims. The last two themes

encompass police efficacy and approach and further suggestions from the participants.

The following section provides an overview of the evolving themes from interviews conducted with Ethiopian participants.

5.2.1 Overview of evolving themes developed from interviews with Ethiopian participants

This chapter commences with themes emanating from interviews with participants from Ethiopia. Thereafter the themes that developed from interviews with participants from India are presented.

The following section discusses the duration of domestic violence against Ethiopian victims.

It is apparent that domestic violence laws are not well implemented. The researcher avers that domestic violence cases should be separately listed, and a high official of police or government must verify effective implementation of domestic violence legislation. A gap in the investigation system was observed. Non-implementation of domestic violence law resulted in more domestic violence as reported by WHO (2002). Ethiopia witnessed high rates of domestic violence because of the non-implementation of domestic violence laws. The victims cannot approach the court directly, because legal provisions are not structured to allow a direct approach on a domestic violence complaint. If the police refuse to take legal action, no remedy is left for victims of domestic violence; consequently, women who experience domestic violence, must either continue to suffer in silence or approach the court seeking a divorce order as a last resort.

5.2.1.1. Duration of participant exposure to domestic violence

Responses from participants indicated that they encountered domestic violence for periods ranging from six months to 18 years before seeking redress.

The data collected from the interviews, as illustrated in chapter 4, furthermore disclosed that nearly 50% of the participants continued abusive relationships for more than 10 years.

Among these participants, 8.33% continued in the abusive relationship for up to 18 years before seeking a remedy; and 50% of the participants experienced domestic violence continuously for five years before approaching a court to seek a divorce. Although the Ethiopian Criminal Code, (2004), penalises domestic violence, it remains an ongoing crime in the Ethiopian legal landscape. Although the Ethiopian Criminal Code (2004) criminalises physical and emotional violence these offenses still occur and pose a challenge to an ineffective legal system.

The literature review in chapter 2 illustrated the prevalence of domestic violence in Ethiopia. The WHO reports that many women continued to be at risk. Tayechelam (2009:24) further illustrates victims' exposure to violence, reporting that bride abduction is a common cultural practice wherein girls are married without their consent. Husbands also beat their wives as a method of displaying masculinity. Abdo and Abegaz (2009: 24) further illustrate victim exposure to violence; stating that women are inferior to men and considered property.

From the discussion above it is evident that despite the criminalisation of domestic violence, laws are not implemented effectively, and resultantly women continued to be subjected to domestic violence. When the violence becomes unbearable victims' approach civil court seeking divorce orders as a last resort. The police only have the power to charge domestic violence cases under the Criminal Code of Ethiopia (2004), and if the police do not open a case no other alternatives are provided in the Criminal Code to approach the court to seek appropriate relief.

From the perceptions presented in chapter 4, all the participants had no understanding of domestic violence laws incorporated in the Criminal Code of Ethiopia, 2004. Participants reported that they have not heard of the existence of domestic violence laws in the Ethiopian Criminal Code. No awareness campaigns were conducted for the benefit of the public either by the Government or by any other organisation.

As a result, the victims of domestic violence are unaware of the interventions afforded by the law. Moreover, although police can take legal action in cases of

domestic violence, they are reluctant to implement the law when approached by victims of domestic violence.

Even though domestic violence is penalised, victims of domestic violence do not benefit from the law. A major hurdle appears to be police attitudes towards domestic violence cases. Although empowered by domestic violence legislation to act; there is no supervisory machinery to check and balance the powers of the police to pursue cases of domestic violence. As a result, women are often subjected to extended periods of domestic violence without remedy. There is no governmental supervision in Ethiopia to monitor the implementation of domestic violence cases. There is a gap in the justice system of Ethiopia, which currently cannot be challenged using any legal remedy. When justice is denied to a section of society, in this case, women, no arrangement has been made in either the Code or in the administration to address the same. No case based solely on domestic violence has been registered since 2004, and no one had investigated the reasons for this underreporting of domestic violence. As a result, women experiencing domestic violence can only approach a civil court for a divorce. Non-implementation of domestic violence law leaves women discriminated against, despite the provisions of article 35 of the Ethiopian Constitution. This is a clear violation of international treaties signed and ratified by Ethiopia.

The conclusion reached is that non-implementation of domestic violence laws results in women being continuously exposed, often over extended periods, without any avenue of legal relief.

The following section discusses the education of the participants.

5.2.1.2. Educational status of the participants

The data disclosed that 33.33% of the participants were illiterate, and 25% of the participants have upper primary education.

From the responses only 25% have a high school education, and 16.67% have higher secondary education. The data disclosed that illiteracy is not a cause for domestic violence; however, the lack of schooling was reported as a cause for domestic violence. Nevertheless, illiterate women experience domestic violence

more than literate women. Domestic violence decreases with the increase in education. The rate of domestic violence among higher secondary level educated participants is 16.67%.

Most of the participants were illiterate or had a primary education. Only 16.67% of participants had a high school level of education. Hence domestic violence reduces with an increase in the woman's level of education.

The conclusion reached is that the educational status of victims has an influence on domestic violence. The more educated women are, the less likely they are to encounter domestic violence or to remain in relationships marred by domestic violence.

The following section discusses the employment status of the participants.

5.2.1.3. Employment status of participants

The participants did not report unemployment as a cause of domestic violence. However, 91.67% of the participants subjected to domestic violence were unemployed. Only 8.33% of the participants who experienced domestic violence were employed. The data disclosed that employment status coupled with a lower level of education is a contributing factor for domestic violence.

The data confirm that unemployment is a cause of domestic violence. Mulatu (2007:88), reported that poverty is a contributory cause for domestic violence.

Even though participants did not directly blame unemployment for domestic violence, it is evident that domestic violence is more prevalent among unemployed women. The data revealed that unemployed women (91.67%) experienced domestic violence, while only 8.33% of employed women experienced the same offence.

The majority of the participants were unemployed and dependant on the perpetrators for their livelihood. Only one participant responded that she was employed. Although participants reported that employment was not a cause for domestic violence, the data revealed that only one employed woman had been the victim of domestic violence. Low-grade employment was however cited as a

cause for violence. One participant reported that she was working as a house- maid and was subjected to violence intended to force her to resign from her employment.

The conclusion reached is that the employment status of the victims had an influence on domestic violence. High status employed women are less likely to encounter domestic violence.

The following theme discusses the nature of domestic violence experienced by participants

5.2.1.4. Nature of violence experienced by participants

In chapter 2, diverse types of domestic violence were discussed and included physical, emotional, and economic violence.

The collected data disclosed that women primarily experience physical violence, emotional violence, and sexual violence. The physical violence includes beating, slapping, kicking, and hitting with objects.

The nature of emotional violence reported includes scolding, ridiculing, threatening, insulting and so forth. All participants reported that they encountered physical and emotional violence. Among the participants, 25% reported sexual violence. However, no reports of economic violence were reported in the study area. This is perhaps because Ethiopian domestic law does not recognise economic violence as a crime and hence no legal remedy is provided for.

The Central Statistical Agency (2016:4), reported that domestic violence is a matter of concern in Ethiopia and that married women experience domestic violence at high rates. One participant reported that she was forced to marry an already married man without her consent. Researchers confirm this form of violence which includes bride abduction - a widespread practice in Ethiopia

The responses corroborate the findings of previous studies, discussed in chapter 2. All participants faced physical and emotional violence at the hands of their intimate partners. Regassa and Tsegie (2016:27) highlight that women experience more than one form of domestic violence, which was also confirmed

by this study. In addition, 25% of the participants in this study confronted sexual violence.

This study found physical, emotional, and sexual forms of domestic violence in Ethiopia. All participants had experienced physical and emotional violence and 25% of the participants reported sexual violence. Though economic violence was not reported, data disclosed that the majority of the participants were unemployed and had no means of income. They are thus dependant on the perpetrators for their livelihood and have no other access to money. This study is in conformity with other studies which reported physical, emotional, sexual, and economic forms of violence.

The conclusion reached is that physical, emotional, and sexual violence prevails in Ethiopia.

The next theme discusses the awareness of participants of domestic violence laws.

5.2.1.5. Participant awareness of domestic violence laws

A question to participants regarding the domestic violence laws in the Ethiopian Criminal Code (2004) was intended to ascertain their awareness of the law regulating domestic violence. All the participants reported that they were unaware of domestic violence provisions in the Ethiopian Criminal Code. The participants reported that they had never heard of such law until the researcher made them aware thereof. No agency or department in Ethiopia provides awareness of domestic violence law to the citizenry.

The lack of awareness and the reluctance of police to apply domestic violence law entrenches non-implementation of the law in Ethiopia. In addition, no government machinery supervises police action. Hence, the participants were unaware of domestic violence law; and ordinarily approached civil courts to apply for divorce on the grounds of continuous exposure to domestic violence.

Data illustrates that all participants were unaware of the domestic violence law in the Ethiopian Criminal Code (2004). A WHO study found a high rate of domestic

violence in Ethiopia. In addition, various other studies, as discussed in chapter 2, found that domestic violence in Ethiopia is rife. Unawareness of domestic violence law among participants contributes to continued domestic violence, which corroborates the results in this study.

The conclusion reached is that victims have no awareness of domestic violence laws.

The following section discusses participant experiences of the implementation of domestic violence laws in Ethiopia.

5.2.1.6. Participant experiences of the implementation of domestic violence laws

Although domestic violence is prohibited under the Criminal Code of Ethiopia, numerous studies disclosed a lack of implementation of domestic violence laws.

The responses of participants confirmed a lack of implementation of domestic violence laws in the study area, since their enactment in 2004. Participants were asked whether they benefited from domestic violence law, however, all of the participants reported that they experienced no benefit therefrom because the police do not implement the law. Nearly 42% of the participants reported that they sought the help of the police after they were exposed to domestic violence by a partner, however, the police sent them away without taking any legal action. One participant reported, *“When I went to the police station seeking help from violence from my husband, the police told me, it is not our duty to deal with your complaints”*. The police were reluctant to act in cases of domestic violence and they do not entertain complaints from women experiencing domestic violence even though they are duty bound to act under the law. Ethiopian law does not make provision for the aggrieved party to approach the courts directly and bypass the police.

Mulatu (2007:89) reports that the political and legal context in Ethiopia perpetuates domestic violence as was discussed in chapter 2. In addition, Getachew (2007:101) reports that there is a significant gap in the justice system,

poor documentation, lack of investigation and lack of consideration in handling cases of domestic violence as previously discussed in chapter 2.

In agreement with Mulatu and Getachew, 42% of the participants in this study confirmed that they were denied justice when they approached the police for help.

Hence, the machinery entrusted with the task of implementing domestic violence law denies justice to a section of citizens entitled to equal treatment and protection under the law.

It was further confirmed in a number of studies that the customary laws in Ethiopia discriminate against women; who are treated as subordinate to men, irrespective of the fact that the Ethiopian Constitution guarantees equality of women and men. This is an indication that the Ethiopian people live mainly according to customary law.

Domestic violence law in the Criminal Code of Ethiopia has clearly not been implemented in the study area. No cases were registered by the police since the inception of the law in 2004. However, even if women approached the police complaining of domestic violence, the police often sent them away without registering a case. It appears that the police do not consider the registration of domestic violence cases as part of their duties. In these cases, the victims had no other option but to approach the civil court for a divorce as a measure of last resort. The domestic violence law in the Criminal Code is not beneficial to the victims and no provision is provided to approach the court directly to seek a remedy in cases of domestic violence. Hence the domestic violence provisions provided in the Criminal Code are simply a mirage.

The conclusion reached is domestic violence law is not implemented in the study area.

The following section discusses the benefits of domestic violence laws to victims.

5.2.1.7. Benefits of domestic violence laws to participants

Subsequent to the formation of international treaties for the protection of the rights of women, and the elimination of all kinds of discrimination, countries around the world began to enact laws prohibiting violence against women. Subsequently, Ethiopia incorporated domestic violence laws into her Criminal Code in 2004.

However, from the responses of the participants in this study, police in the study area of Jimma do not implement domestic violence laws resulting in non-beneficence to victims. Not all the participants in this study benefited from the protections under the law because of a lack of implementation in the study area. Among the participants, 42% approached police for help but the police refused to act. The machinery entrusted with the task of implementing law did not grant justice to a section of the citizens entitled to it. *Prima facie*, the police do not implement the constitutional provisions of equality in practice.

From the responses of participants in this study; police declined to register cases or investigate incidents of domestic violence when the victims approached them. 42% of the participants reported that the police did not investigate, or even register their case when reported. The outcome of this study fully supports previous studies as discussed in chapter 2. Hence, the victims of domestic violence do not benefit from the domestic violence laws provided in the Criminal Code of Ethiopia (2004). No government machinery is in place to evaluate the implementation of domestic violence law despite the fact that Ethiopia has an obligation to fulfill its commitment to the international community in terms of eradicating domestic violence.

The conclusion reached is the victims do not benefit from the protections offered by domestic violence laws.

The following section discusses whether the police/court inform victims of their rights.

5.2.1.8. Participant experience of being informed by the police/court of their rights as victims

The data collected in this study disclosed that neither police nor the courts informed the victims of their rights. All the participants reported that the court did not inform them of their rights when they approached the court for divorce on the ground of domestic violence. The participants reported that police attitude towards victims of domestic violence was in contradiction to the Criminal Code of Ethiopia. Responses from participants revealed that 42% of the participants who approached the police for help were denied such assistance. As a result, the Ethiopian constitutional mandate is violated. Getachew (2007:102) reports the US State Department reported that there are significant gaps in the justice system, poor documentation, and inadequate investigation in Ethiopia regarding incidents of domestic violence.

Regassa and Tsegie (2016:28) further report that though article 564 is incorporated into the Criminal Code of Ethiopia, to punish perpetrators of domestic violence, those provisions are not fully implemented for distinct reasons ranging from lack of awareness to the reluctance of courts to apply the law in favour of women.

This study fully supports the findings from previous studies, discussed in chapter 2. The participants (42%) reported that when they approached the police, they are sent away without registering their cases. Police do not take cognisance of the constitutional provision, which guarantees equal treatment of women and men. As a result, the Ethiopian authorities blatantly violate constitutional provisions, as well as article 4 of the Ethiopian Criminal Code (2004). The participants in this study confirmed that when they approach the court for a divorce on the ground of domestic violence, they were not informed of their rights.

The police, who were bound to register cases and investigate, openly declare that they were not bound to deal with domestic violence cases. This shows that they could violate the laws of the land openly without fear of reprimand. The government has not implemented any system of checks and balances to verify the implementation of domestic violence laws. Police appear least concerned for

the rights of victims of domestic. The court also did not inform the victims of their rights when they approached the court for divorce on the ground of domestic violence. This study revealed that the rights of victims of domestic violence are not protected by either police or courts.

The conclusion reached is the police /courts do not inform victims of their rights and subsequently their rights go unprotected.

The following section discusses whether the police/court provides efficient support to victims of domestic violence.

5.2.1.9. Participant experience of receiving efficient support from police/court

The data disclosed that neither the court or police have given efficient support to victims of domestic violence. All the participants reported a lack of efficient support. The police - an institution duty bound to protect the citizens - denied protection or efficient support to the victims of domestic violence.

The courts and police do not give efficient support to the victims of domestic violence when they approach these authorities. All the participants reported that they were not given efficient support either by police or by courts. This study also supported the findings of previous studies discussed in chapter 2. The police, as well as the court, discriminate against women which, in turn, promotes domestic violence committed against women. No liability is cast on the police if they take no action. One participant responded, “...*when I went police complaining violence against me, police told me to go out and go to court, it is not our duty to investigate your complaint*”.

Participants responded that when they approach police, they were often turned away without any protection of the law. Without any hesitation, police told participants that it was not their duty to register domestic violence nor investigate such cases. The participants reported that they were not given any support from the police or the court in domestic violence cases. The only option available to the victims is approaching the civil court for divorce on the ground of domestic violence. However, it appears that the courts also do not give any advice

regarding domestic violence laws. Hence victims of domestic violence were not given any support from the police or court.

The conclusion reached is the police/court are not giving any efficient support to the victims of domestic violence.

The following section discusses whether the police/court reacts timeously to victim complaints.

5.2.1.10. Participant experience of police/court response to complaints

The data collected revealed that neither the police nor the court reacted timeously to domestic violence. All the participants reported that they did not get a timeous reaction from either the police or court.

When some victims approached police seeking aid, they were sent back by the police without taking any legal action. From a verbatim response from one of the participants, the police stated “...*it is not our duty to deal with your complaints...*” If this is the attitude of the police, the timeous reaction cannot be expected from the police. From this situation, police as well as the court encourage domestic violence or at least do extraordinarily little to stem its incidence. It appears further that the police are not answerable for dereliction of duty under domestic violence law.

This study found that police do not implement the domestic violence provision in the Criminal Code (article 564) in the study area, and that women who approached the police were often turned away without remedy. All the participants reported that they were not supported by the police or court in term of timeous response to reports of domestic violence.

Ethiopia penalised domestic violence incidents. Article 564 of the Criminal Code, 2004, provides that in case of any violence against an intimate partner by the other partner, article 555 to 560 should apply. The provisions should be invoked according to the gravity of injury sustained by the victim, and police are empowered to register cases and investigate. No cases were however registered by the police in the study area since the inception of the Criminal Code in 2004.

The victims cannot agitate directly in the court because no provision is provided for this in the Code if police refuse to register cases and investigate. Hence the victims must approach civil courts for divorce as a last resort. When victims approach the court, it also does not inform them about domestic violence law or their rights.

The conclusion reached is that complaints are not responded to by the police and no provision is provided in the Criminal Code to approach court directly.

The next discussion presents the impact of domestic violence law on perpetrators.

5.2.1.11. Impact of domestic violence laws on perpetrators

The participants reported that there is no impact on the perpetrators of domestic violence because nobody knows about the law. The data showed that domestic violence law had no impact on the perpetrators. Police do not take any action against the perpetrators of domestic violence. When the victims approached the police seeking assistance, police often refused to help and thus no action was taken against the perpetrators. The perpetrators of domestic violence were untouched and allowed to go free in the community. It is clear that the law as it is on paper is intended to have a deterrent effect, however, this is moot if the law is not implemented.

Regassa and Tsegie (2016: 112) report that even though article 564 of the Criminal Code imposes sanctions for wrongdoing, perpetrators are not held accountable for their wrongful acts because the law is essentially a paper dragon.

This study found a lack of implementation of the provisions to punish the perpetrators of domestic violence. The researcher could not trace any case under article 564 in the Jimma court. The Jimma police have not implemented these provisions since the enactment of the law in 2004. Police will not investigate domestic violence cases reported to them. The police are reluctant to apply domestic violence provisions in favour of women in the study area. Since the law is not applied against perpetrators, it cannot make any impact because perpetrators are allowed to go untouched.

If the police refuse to register and investigate domestic violence, and the victim has no alternative option to seek redress, the perpetrators are safeguarded. Perpetrators do not fear prosecution on charges of domestic violence and hence, in effect, the law has no effect on them.

The following section discusses the impact of the law on victims.

5.2.1.12. Impact of domestic violence laws on victims

All participants reported that the domestic violence law in Ethiopia has no impact on the victims mainly because victims were unaware of the law. The police have a legal obligation to investigate cases of domestic violence, nevertheless, police send back victims without having assisted them, or acting against alleged perpetrators. Resultantly, victims of domestic violence do not benefit from the protections provided by the law. The researcher thus argues that the impact of the law on the victims cannot be established/measured.

Regassa and Tsegie (2016:79) reported that the lack of implementation is attributable to several reasons but that ultimately the police and courts are reluctant to apply the provisions of the domestic violence laws for the benefit of women.

This study disclosed a lack of implementation of domestic violence provisions under article 564, as discussed previously, ever since its enactment.

This study supports the findings of other studies discussed in chapter 2. When a legal provision is not implemented, it cannot create any impact on the victims because they are not benefitted by such a law.

The researcher concludes that domestic violence laws have no impact on victims of domestic violence.

The next section evaluates whether the implementation of the law has reduced incidents of domestic violence.

5.2.1.13. Participant experience and the impact of domestic violence laws on the reduction of domestic violence cases

Information gathered from the participants established that incidents of domestic violence have not decreased since the implementation of the law in this regard.

The domestic violence provision in the Criminal Code (2004) is clearly not being implemented in Jimma. The victims were not aware of the law and the police - the agency mandated to implement the law - are reluctant to implement its provisions when victims approach them for assistance. Instead of investigating the crimes as reported, the police refuse to take legal action. The perpetrators need not worry about the law, and thus the law has no deterrent effect. Consequently, the crime of domestic violence perpetuates and there is no evidence of a decrease in its incidence.

This study found that the provisions of the Act are not implemented in the study area. The impact of the law on the victims and perpetrators cannot be established because of a lack of implementation. The law rests in the statute book and has no effect and is thus incapable of producing results. In conclusion, the law does not serve the purpose of reducing incidents of domestic violence.

The next section discusses whether domestic violence law addresses the needs of participants.

5.2.1.14. Participant experience in domestic violence laws addressing their needs

The information provided by the participants' shows that domestic violence law in Ethiopia does not address the needs of victims. All the participants reported that the law did not protect victims who sought help. The Criminal Code, (2004) incorporates domestic violence law and police are entrusted with the task of registering and investigating cases. Unfortunately, police are reluctant to register domestic violence cases when approached by female victims.

Subsequent to the enactment of the law in 2004, no cases were registered, and no charge sheets presented before the court. Even though domestic violence law

was included in the Criminal Code, (2004), its implementation does not meet the needs of domestic violence victims.

There is no provision in the law for victims to approach the court directly; if police refuse to register or investigate the case victims have no legal recourse. No provision exists in the law to hold police accountable for dereliction of duty under domestic violence law. No superior authority is entrusted with the task of supervising police performance.

This study found a lack in the implementation of the provisions prohibiting domestic violence since their enactment in 2004. The law does not serve its purpose because police do not act on reported cases of domestic violence. The existence of this law does not benefit victims. One participant's response clearly demonstrates this position: "...when I approached Jimma police against domestic violence, they told that it was not our duty to investigate your case".

The domestic violence provisions were not implemented in the study area. When victims approach police seeking assistance, they are discarded, and no assistance is provided. The police will not register or investigate domestic violence incidents and often victims are driven from the police station. As a result, perpetrators of domestic violence go unquestioned which prompts them to commit further acts of violence. Thus, the law has no deterrent effect and lacks a mechanism to improve the lives of Ethiopian women.

In conclusion, it is clear that the domestic violence law does not address the needs of victims.

The following section discusses the attitude of the police/court toward victims of domestic violence.

5.2.1.15. Participant experience regarding the attitude of police/court towards domestic violence victims

The data showed that the attitude of the police/court towards victims of domestic violence is negative.

This is a major hurdle in the implementation of domestic violence law in the study area, Jimma, Ethiopia. Nearly half of the participants reported that when they sought assistance, the police denied them justice and due process. When the victims approached the court for a divorce on the ground of domestic violence, the court did not inform them of their rights or about the provisions of domestic violence law.

The approach of the police towards the victims of domestic violence is partisan and discriminatory. All the participants reported that they have no faith in the police and 42% of the participants revealed that when they approached police complaining about the commission of domestic violence against them, the police did not care to register their complaints.

The police violate the provisions of the Criminal Code stated in article 4 that all people are equal before the law and entitled to the human rights enshrined in the Ethiopian Constitution.

The negative attitude of the police and courts towards victims of domestic violence has resulted in them being denied justice and equal treatment guaranteed by the Ethiopian Constitution, and in non-implementation of the domestic violence law.

This study found that police and courts showed negative attitudes towards women when they complained of domestic violence, and the finding of this study supported the results of other studies discussed in chapter 2. Police deny victims of domestic violence remedies provided by the law when approached for help.

Moreover, victims who approach the court for divorce because of violence in their homes are not informed of their rights. The negative attitudes of courts and police promote domestic violence.

The conclusion reached is that there is a negative attitude by police/court against women experiencing domestic violence.

The following section discusses suggestions made by the participants to improve the implementation of legislation governing domestic violence in Ethiopia.

5.2.1.16. Suggestions from participants on improving the implementation of legislation governing domestic violence in Ethiopia

The majority of the participants (66.67%) suggested that the Ethiopian Federal Government should interfere and scrutinise police performance regarding domestic violence. A minority did not make any suggestion when asked. Police have unlimited power, but the Government does not control or supervise their performance. The Government must appoint a special forum of officials to monitor and supervise police performance in implementing domestic violence law.

In conclusion, the researcher posits that the Federal Government should scrutinise police performance in domestic violence cases otherwise nearly half of the population (women), will continue to live in abusive relationships which is an infringement of their constitutional and human rights.

The following section discusses the identified shortcomings of the Criminal Code (2004) of Ethiopia.

5.2.1.17. Identified shortcomings of the Criminal Code (2004) of Ethiopia

Ethiopian domestic violence law recognises only physical and emotional violence as domestic violence. Sexual violence is not recognised as a form of domestic violence. Marital rape under the Criminal Code (2004), is not considered an offence which is evident from article 620. Further, economic violence is not considered a model of domestic violence.

The domestic violence law of Ethiopia is not competent to address all forms of domestic violence because it does not include sexual or economic violence within its ambit.

The following section discusses the obligation of the Ethiopian government to fulfill international treaties on violence against women.

5.2.1.18. The obligation of the Ethiopian government to fulfil international treaties preventing violence against women

Ethiopia has ratified various international and regional conventions; thus, it has an obligation to fulfill its commitments in terms thereof.

Even though Ethiopia is a party to international treaties on violence against women, it has not fulfilled its obligation fully as required by those treaties, because its laws are not properly implemented as discussed above and in previous chapters. Most of these conventions require all state parties to enact appropriate legislation to eradicate all forms of discrimination against women; and state parties are prohibited from invoking culture, tradition, or religion to avoid addressing violence against women, including domestic violence. International laws require incorporation of civil remedies such as protection orders, compensation for the loss suffered by women due to domestic violence, and the provision of shelter homes for victims of domestic violence.

To comply with the international requirements, Ethiopia must amend the Criminal Code 2004; and incorporate provisions for civil remedies and compensation; and widen the definition of domestic violence to include other forms of violence such as economic and sexual violence.

Currently, there is no forum or authority to monitor or verify whether police properly exercise their duties with respect to complaints of domestic violence. In addition, no provision is provided in Ethiopian law to approach the court and file complaints directly against domestic violence perpetrators.

Ethiopian police do not adequately implement domestic violence law, thus the intervention outlined in the statute does not benefit victims of domestic violence. People do not respect the law on domestic violence because its provisions are not applied to perpetrators. There are no penal provisions in the Criminal Code to be used against police officers who refuse to apply the provisions of the Act or refuse to act on reported cases of domestic violence. The domestic violence law as contained in the Criminal Code 2004 of Ethiopia, does not include sexual violence and/or economic violence within its ambit, which is an identified

shortcoming. The non-implementation of domestic violence law provisions by the police promotes acts of violence against women.

Other shortcomings include the lack of civil remedies such as protection orders, monetary compensation, residence orders or similar orders that can effectively protect the needs of victims. Consequently, the Criminal Code of 2004, fails to adequately address the needs of victims or protect their rights to dignity and life. This view is supported by the experiences of the participants.

The conclusion reached is that the Ethiopian government is duty bound to amend domestic violence laws by incorporating sexual and economic violence as domestic violence and also including civil remedies within domestic violence law. In addition, awareness campaigns would promote the protection of victims and perhaps serve as a deterrent to would-be perpetrators of domestic violence.

The following section discusses domestic violence themes from the perspective of Indian victims.

5.3. OVERVIEW OF EVOLVING THEMES FROM DISCUSSIONS WITH INDIAN PARTICIPANTS

Domestic violence exists in all Indian states irrespective of religion, culture, or region. In the study area (Ranni, of Pathanamthitta district, Kerala State, India) the participants were aware of the domestic violence laws. The legal service authority conducted various awareness campaigns which resulted in community members knowing about the domestic violence laws. In India, police implement the PWDVA, 2005. The courts are empowered by the domestic violence law to grant civil remedies including protection orders, prohibitory orders, and compensation. The police act only when the courts direct them to implement court orders. PWDVA incorporates only civil remedies and acts of domestic violence are not criminally penalised.

The following section discusses the participant duration of exposure to domestic violence.

5.3.1. Duration of participant exposure to domestic violence

The data collected from participants in India disclosed that victims experience domestic violence from periods of one year to twenty years. Most of the participants (57%) experienced violence for less than 5 years.

Nearly 31% of the participants experienced domestic violence from 5 to 10 years and 12.66% continued in the abusive relationship for more than 10 years.

The researcher established that the victims continued in abusive relationships and tried to adjust for many years without seeking recourse under PWDVA. The victims sought recourse under domestic violence laws as a last resort.

Johnson and Johnson (2001:1052) reported that women were not allowed to seek employment and men believe that a woman's role is to serve men. The patriarchal ideal is that women have a duty to serve their fathers, brothers, and husbands throughout their lives.

Some cultural norms, and other social practices such as early marriages and child marriages, expose women to the risk of domestic violence. Culture is not homogenous, and Indian societies uphold distinct cultural practices and, in some instances, these practices perpetuate violence against women. For example, early marriage and child marriages still exist in India and these practices have left women vulnerable to domestic and intimate partner violence. The National Family Health Survey (2015/2016:88) conducted by the Government of India shows that 20.7% of women between the age group of 15-19 years of age experience domestic violence.

This study supports previous research findings discussed in chapter 2. Some women stay in abusive marriages because of social and cultural norms that tolerate patriarchy. Resultantly, many women are reluctant to seek help and opt to stay although the PWDVA came into force in 2006. It was only around 2014- 2015 that women began to seek recourse under the Act.

Even though PWDVA was enacted in India in 2006 women tend to choose legal remedies as a last resort. The data disclosed that some women underwent

domestic violence for up to twenty years without choosing remedies under domestic violence law. This may be due to the influence of culture and religious rites and beliefs. The patriarchal belief is that women should obey the men in their families and men are given preference. Women approach courts against domestic violence only when there is no other way to survive. Resultantly women often endure extended periods of domestic violence without seeking a legal remedy or recourse under the law.

The section below discusses the educational status of the victims.

5.3.2. Educational status of participants

Different studies reported that education has a negative influence on domestic violence; they reveal that educated women are less likely to be subjected to domestic violence.

The data shows that the majority of the victims have secondary education and one participant has higher secondary education and another has collegiate level education.

The data shows that the more women were educated the less likely were incidents of domestic violence, which corroborates reports from previous studies referred to in chapter 2.

The National Family Survey (2006: 33) reported that domestic violence incidents de-escalate when women have some sort of education. Sharon (2014: 99) reported that literacy rates of women in India were at 65.4% compared to that of men at 82.14%. Mathur (2004:88) reported that women have less chance of education and career development and are less likely to be involved in decision- making processes in both their private and public spaces.

This study endorses the findings of earlier studies discussed in chapter 2. As the level of education of women increases domestic violence decreases.

The next section discusses the employment status of the victims.

5.3.3. Employment status of participants

Many studies have reported that the employment status of victims has a bearing on domestic violence. Research reveals that unemployed women are more vulnerable to domestic violence than employed women.

The interviews with participants revealed that only one participant had employment. She works as a sales-person in a vegetable shop. Another participant reported that she was working as a domestic worker under the Prime Minister's employment scheme but that her husband forced her to give up her job and she stopped working because of the pressure. Even though unemployment is not reported as a cause for domestic violence, violence decreases as employment levels increase. Low-grade employment, however, seems to be a contributory factor to domestic violence.

Solidarity (2009: 67) reported that women at low-income levels experienced more violence than those who earned higher salaries. Mathur (2004: 97) reported that there is an assumption that women are not equal to men and in most instances, their status is considered low compared to that of their male counterparts. They have less chance to get an education and/or opportunity for career development.

One participant reported that she was employed as a housecleaner, but that her husband persuaded her to give up the job. Only one participant was employed, and she was working as a sales-person in a vegetable shop and all other participants were unemployed and dependent on their partners.

The following theme discusses the nature of domestic violence experienced by participants.

5.3.4. Nature of domestic violence experienced by participants

Many studies report different forms of domestic violence such as physical, emotional, sexual, and economic violence.

All participants reported that they experienced physical violence such as beating, slapping, kicking and hitting with objects. Physical violence stood at 100% amongst participants.

The data disclosed that 100% of the participants experienced emotional violence such as scolding, ridiculing and threatening. Only 6.25% of the participants reported that they experienced sexual violence. 31.25% of the participants reported that they had experienced economic violence such as not being maintained by their husbands, denial of access to money or resources, and denial of access to dowry. 12.5% of the participants reported that their husbands attempted to murder them.

Solidarity (2009: 68) reported that in Uttar Pradesh a study of over 6000 men found that 7% of them sexually and physically abused their wives, 22% resorted to sexual violence, and 17% resorted to physical violence. This study further reported that 1.8% of women in India experienced sexual abuse and 6.7% experience both physical and sexual violence. Saidi and Siddegowda (2013: 46) reported that 17% of women in Mysore have experienced economic violence. Visaria (1999: 34) reported that 66.66% of the women, who participated in a study, were subjected to physical, emotional, and sexual forms of domestic violence.

This study also reinforces the findings of other research studies discussed in chapter 2. All the participants were subjected to physical violence such as beating slapping, kicking and so on, and all the participants reported that they had experienced emotional violence such as scolding and ridiculing. Moreover, 6.25% of participants reported that they had experienced sexual violence and 31.25% of participants reported that they had experienced economic violence. This study is in conformity with previous studies discussed in chapter 2.

There are different causes for domestic violence, such as suspicion of infidelity by wives, unemployment, and a husband's alcoholism. In India dowry is one of the main causes of domestic violence.

The data disclosed that the causes for domestic violence are spousal alcoholism, suspecting the infidelity of the wife and demands for dowry. 56.25% of the participants reported that domestic violence was due to the alcoholism of their husbands and 31.25% reported that domestic violence arose from husband's demands for additional payment of dowry.

Anwasha (2012:116) reported that dowry continues to be a determinant factor in Indian marriages and legal sanctions or punishment for dowry-related crimes are not enough to control these offences. Purnima (2011) reported that dowry-related offences still exist in Indian society even though dowry is prohibited by statute. Sahoo and Pradan (2003: 73) reported that many variables like age, education, ethnic and religious categories, women's autonomy, exposure to mass media, work status and standard of living, and place of living contribute considerably to the prevalence of domestic violence. Begum et al (2015:784) reported that women were facing violence by intimate partners and factors such as early marriage, alcohol use, unemployment and tolerance of wife beating are some of the factors which contribute to intimate partner violence.

In this study, 56.25% of the participants reported the causes for domestic violence as alcoholic addiction by their husbands and 31.25% reported that the cause for domestic violence was demands for more dowry. This study supports the findings of previous studies discussed in chapter 2.

The conclusion reached is physical, emotional, sexual, and economic violence prevail in Indian society and dowry continues as a cause for domestic violence irrespective of penalisation of the demand for dowry.

The next section discusses participant awareness of domestic violence law.

5.3.5. Participant awareness of domestic violence laws

All the participants reported that they were aware of the domestic violence law in India. The participants reported that the legal service authority had conducted a series of awareness classes in all Panchayat, (local self -administration units). All participants confirmed that they attended awareness classes. The Kerala Legal Services Authority conducted awareness classes throughout the state and people are aware of the domestic violence laws.

Kadam and Chaudhari (2011: 23) reported that rural communities lack resources and services and consequently women's access to health facilities, education and other social services are relatively low compared to women in urban areas.

The study showed that women are reluctant to seek help for fear of stigma despite the existence and availability of such services.

Solidarity (2009:68) reported that 72.32 % of women in Uttar Pradesh, Bihar, Rajasthan, and Madhya Pradesh; in North India approached authorities for help as per the Act while women in other provinces silently suffered.

This study supported the findings of research reports discussed in chapter 2. Irrespective of awareness campaigns by the legal service authority, women were still reluctant to seek relief under the law. Instead, they suffer silently and approach the court as a last resort.

The following section discusses the theme of whether police/court informed victims of their rights.

5.3.6. Participant experience of being informed of their rights by police/court

Police and courts are bound to inform the victims of their rights under the domestic violence law when approached for assistance.

All the participants reported that they had been informed of their rights under the PWDVA (2005) by the Legal Service Authority headed by a judge of the court of each station. The participants reported that the legal service authority arranged awareness classes in the authority of all local self-administration bodies, and they attended classes and are thus aware of their rights under domestic violence law.

The task of creating awareness of the law in the community's vests with the Legal Service Authority under the Legal Services Authority Act, 1986.

The legal service committee is headed by the presiding officer of the court at every court centre. The Service Authority provides free legal aid to the indigent.

The section below discusses whether victims benefit from the protections of domestic violence law.

5.3.7. Participant experience of benefitting from the protection of domestic violence laws

The domestic violence law was enacted to prevent domestic violence and awareness campaigns were conducted to create awareness among the people; nevertheless, many women are reluctant to approach the court for assistance. This may be due to the fear of social stigma or exclusion.

In the study area, all the participants reported that they benefitted from protections offered by the domestic violence law. All the participants reported that they were aware of the PWDVA, (2005) and they benefitted from the implementation of that law.

The participants were aware that they could approach the court directly or through protection officers if abused by their husbands or partners. All the participants got the relief sought from the court. The court granted interim orders of protection, residence orders, and other monetary relief according to the circumstances of each case. Further, the court ordered the police stations having authority over the area where domestic violence occurred, to implement its orders. One participant reported that she requested the court to grant an order for alternate accommodation and for compensation for the agony she suffered due to domestic violence.

The court granted the order for rent to be paid for alternate accommodation and also granted the victim compensation of Rs 100000. The PWDVA makes provision for protection orders, prohibitory orders, and compensation for the loss sustained in domestic violence. Section 23 of Act empowers the court to issue *ex-parte* orders when required. The courts are sympathetic toward the victims of domestic violence.

Saini (2016:439) reported that most of the domestic violence cases went unreported and only 10% of cases are reported. This study supports the finding that despite awareness, women are reluctant to approach the courts seeking relief.

All the participants, however, reported that they benefitted from the implementation of PWDVA in the study area and the court reacted immediately when petitions were filed.

The section below discusses support given by the police or the court.

5.3.8. Participant experience of receiving efficient support from the police or court

The attitude of the courts and police are critical in the management of domestic violence. If the court and police exhibit a positive attitude towards victims, violence can be reduced considerably.

All the participants reported that they were given efficient support by the court when they approached it seeking assistance.

The court heard the petition on the same day it was filed and granted interim protection orders, residence orders, order for compensation and interim maintenance orders according to the circumstances of each case. Further, the court directed police having the authority to implement the court orders. Accordingly, the police implemented the order of the court. The perpetrators had no other choice but to obey the court order out of fear of the consequences of not doing so.

The next section discusses the theme of timeous action by the police/courts.

5.3.9. Participant experience of reaction by police/court

All the participants reported that the court had timeously reacted when they approached it for assistance. The court granted protection orders, residence orders according to the circumstances of each case. The court granted residence orders to victims which entitled the victims to be re-instated in the matrimonial home, which they had vacated because of abuse.

The court ordered police to protect the victims as and when required and the police strictly followed the court orders in these cases. All the participants reported that they benefitted from court orders.

Section 23 of PWDVA empowers courts to grant *ex-parte* relief according to the circumstances of the case as discussed in chapter 3. The court must form a conclusion from the overall circumstances of the case whether domestic violence exists and grant interim relief.

The participants reported that they all benefited from interim relief granted by the court and that the court ordered the police to implement court orders. Effective court and police intervention brought relief to the victims of domestic violence.

The following section discusses whether the implementation of the PWDVA, (2005) reduced incidences of domestic violence.

5.3.10. Participant experience of reduction of incidence of violence due to the implementation of PWDVA (2005)

Effective implementation of domestic violence laws results in a reduction of domestic violence. The experiences of the participants demonstrate that court intervention is effective and positive as far as the victims are concerned.

All the participants reported that domestic violence began to decline due to the implementation of domestic violence law. About 75% of the participants reported that their husbands approached them through their lawyers to settle cases when the victims secured protection orders and residence orders. Accordingly, this resulted in the negotiation and settlement of cases in a mediation centre.

The perpetrators undertook not to repeat these acts and some couples now live together peacefully. The views of the participants are confirmed by the statistics of domestic violence cases recorded in the domestic violence register of the Judicial First-Class Magistrate court, Ranni. In 2014 (1-1-2014 and 1-1-2015), there were 163 cases of domestic violence. In 2015 (1-1-2015 and 1-1-2016), the cases recorded were down to 88.

The next section discusses whether the PWDVA addresses the needs of victims.

5.3.11. Participant experience of the PWDVA addressing their needs

Section 18 of PWDVA empowers the court to grant protection orders, section 19 makes provision for residence orders and section 20 empowers courts to grant compensation orders according to the circumstances of each case. Section 23 makes provision for interim orders. Sufficient provisions are provided to grant relief to victims of domestic violence and the court has to evaluate each case and make an appropriate ruling based on the merits.

All the participants reported that domestic violence laws addressed their needs. The participants said when they approached the court seeking relief, the court granted interim protection orders, residence orders and/or monetary relief according to the circumstances of each case. The court ordered the police to implement its order. This has resulted in perpetrators opting to settle with victims out of court as opposed to facing the judgment of the courts.

In some cases, courts deny perpetrators access to premises near where victims reside. The court orders and follow-up by police on orders deter perpetrators from committing crimes.

Court orders reduced cases of domestic violence. Thus 160/163 cases in 2014, and 87/88 in 2015 were settled at the initiation of perpetrators and in some cases, couples reconciled and continue to live together in peace. Participants who settled the cases with perpetrators reported that domestic violence ceased after the court intervention. The participants state that the PWDVA is a deterrent and it empowers victims.

The section below discusses the impact of domestic violence law on perpetrators.

5.3.12. Participant experience of the impact of domestic violence laws on perpetrators

The court is empowered to grant any remedy after evaluating the overall circumstances of the case at hand. The court has the power to order the respondent to vacate their house if the court considers it necessary to avoid

domestic violence. Effective orders passed by courts deter the participants as discussed in chapter 3.

All the participants reported that PWDVA created fear among the perpetrators; as a result, perpetrators approach the victims to settle the case out of court. Data on out of court settlements support the participants.

The conclusion reached is the PWDVA created deterrence for the perpetrators.

The section below discusses the impact of domestic violence law on victims.

5.3.13. Participant experience of the impact of domestic violence laws on victims

The effective implementation of domestic violence law may result in the reduction of these cases; the courts and police play a vital role in ensuring this.

The participants reported that the court and police provided adequate relief. All the participants reported that domestic violence laws created a feeling of safety among the victims. They stated their confidence in the court and its ability to assist them.

The conclusion reached is the PWDVA created feelings of protection for the victims.

The section below discusses the reasons for delays in adopting legal remedies.

5.3.14. Participant reasons for the delay in seeking legal remedy

Many women continue to stay in abusive relationships without seeking help despite successful awareness campaigns. The victims provided assorted reasons for this, in some instances they stayed because they thought reporting would damage their relationships, in some instances, they said they thought their partners would change for the better eventually. Though the law is effective, the victims approach the court after extended periods of abuse. It was noted that the majority of the participants were unemployed and had no income and had to depend on the perpetrators for their livelihood. Only one participant had a job, but her income was not enough to meet household expenses. She successfully

requested the court to grant an order for monetary relief. In all the cases, the participants asked for an order of maintenance, which shows economic dependency. Economic dependency is one of the reasons for the prolonged stay in an abusive relationship.

Saini (2016: 437) reported that the majority of domestic violence incidents are unreported and only 10% of cases are reported. This study also found that women continued in abusive relationships for a long time without reporting domestic violence to the authorities. This may be because of the fear of social stigma. However, some participants reported that they had not taken legal steps in consideration of their children.

The conclusion reached is that the delay in taking legal action against domestic violence may be due to anxiety over the future of their children and a fear of social stigma in a patriarchal society.

The section below discusses the adequacy of punishment under domestic violence law.

5.3.15. Participant responses regarding the adequacy of punishment prescribed by domestic violence law

International law and the Beijing Declaration (1995) recommended that all nations enact laws criminalising domestic violence and incorporate provisions on civil remedies for the victims of domestic violence.

PWDVA does not criminalise domestic violence. Prison sentences rather follow from violation of court orders under section 30, as discussed in chapter 3.

Participant views on punishment were sought. In their view, one-year imprisonment for violation of a court order is sufficient to deter the perpetrators. PWDVA provides for civil remedies. The only prison term prescribed in the Indian domestic violence law is one- year imprisonment for breach of court orders.

PWDVA deviates from international best practices in this aspect. International treaties and the Beijing Declaration (1995) recommend criminalising domestic

violence but Indian law does not criminalise domestic violence as a crime in and of itself.

The conclusion reached is that although the PWDVA deviates from international best practices, participants believed that a prison term for any violation of a court order is adequate.

The following section discusses the implementation of restraining orders.

5.3.16. Participant experiences of the implementation of restraining orders

Police cannot interfere directly in domestic violence incidents. PWDVA directs the victims to approach the court directly. After passing orders, the court directs the police to implement and the concerned police officer is bound to implement the court order as per the PWDVA. All participants reported that police implement court orders successfully.

The court takes timeous action in all cases filed under the domestic violence law. Interim orders are granted as requested and police implement the orders as ordered. Accordingly, the police implemented court orders without unnecessary delays.

The court further sends copies of the order to the protection officers who are bound to check and verify the implementation of the orders. If not implemented, protection officers are duty-bound to report to the court and the court can act for non-implementation. The protection officers are under the control and supervision of the court and are liable for imprisonment for dereliction of duty.

The conclusion reached is the restraining orders are implemented effectively with the assistance of the police.

The next section discusses whether domestic violence recurs after court intervention.

5.3.17. Participant experiences of domestic violence after court intervention

The effectiveness of the law depends on whether it can control the violence. If the law is effective, violence will not be repeated, therefore, the law must have a deterrent effect.

Section 30 of PWDVA makes provision for one-year imprisonment for breach of court orders and proof of breach requires the uncorroborated deposition of the victim. Therefore, on the evidence of victim alone the respondent can be sentenced to imprisonment, which is a deterrent.

All participants reported that acts of domestic violence did not recur after court intervention. This was the case in mediated cases and in settled cases.

The conclusion reached is after court-intervention domestic violence has a lower rate of repeat.

The next section discusses the attitude of the court/police.

5.3.18. Participant experiences of the attitude of the court/police

The attitude of the court and police are critical in implementing the domestic violence law and managing cases.

All participants reported that the attitude of the court was incredibly positive and compassionate towards the victims. When the petition under domestic violence law was filed the court heard the petition on the same day. The court grants interim orders and asks the police to implement the court orders. Further, it directs the protection officer to check and verify the implementation of the court order. It is the duty of the protection officer to report progress to the court. The successful implementations of the court orders are enough to produce deterrence and reduce the frequency of these cases.

The following section provides an overview and interpretation of selected judgements in domestic violence cases in Ranni, India.

5.4. PRESENTATION AND INTERPRETATION OF SELECTED DOMESTIC VIOLENCE JUDGEMENTS IN RANNI COURT, INDIA

Judgements on domestic violence cases rendered by Ranni court are analysed below.

5.4.1. Duration of participant exposure to violence

On analysing the judgements of the court, evidence showed that victims endured violence for periods ranging from two to ten years. The victims approached the court as a last resort. After experiencing long years of violence, the victims approached the court for relief.

The following section discusses the causes of domestic violence.

5.4.2. Causes of domestic violence

The judgements disclosed causes for domestic violence as suspicions of fidelity on the part of the wife, alcoholism by the husband, husbands' multiple relationships and sexual maladjustments.

In one case, it was alleged that the unlawful demand of dowry was the cause of domestic violence. Suspecting infidelity by wives and alcoholism are also causes for domestic violence. The causes of domestic violence were the same as reported by other researchers discussed in chapter 2.

The following section discusses the nature of violence.

5.4.3. Nature of domestic violence experienced by participants

The nature of violence reported by other researchers is similar to those identified here and include physical, emotional, sexual, and economic violence; which were part of reported judgements. In the first case, the petitioner was manhandled by her husband and when their children interfered, they were also manhandled and called filthy and obscene words. In the second case, the allegation was physical and mental cruelty including allegations of failure to maintain children and the

victim. There were also allegations of harassment of the victim at her workplace. In the third case, it was alleged that the petitioner and her child were neglected and not maintained by the husband.

In the fourth case, the allegation was that the petitioner was subjected to physical, mental, and sexual violence and that her gold ornaments were pledged, and the money was appropriated by her husband's brother. The victim was forced to perform sex as depicted in pornographic films.

The following section presents the religious background of the victims.

5.4.4. The religious background of victims

Out of the four cases that were part of the study three participants belong to Hindu Religion and one to Christian CSI diocese. Hindus constitute the majority of the population within the authority of the Ranni court; therefore, incidents of domestic violence are high among Hindus compared to other religions. That, however, does not indicate that domestic violence exists only among Hindus and Christians.

The Hindu Religion consists of many castes and the Christian Religion consists of many dioceses in India and Kerala; domestic violence occurs in all castes and religions.

The conclusion reached is domestic violence prevails irrespective of religion.

The following section discusses the economic background of the victims.

5.4.5. Economic status of the victims

Researchers found that the economic background of victims is also a cause for domestic violence.

The petitioners in three cases were unemployed and had no income of their own. The petitioner in case no II was employed in a vegetable shop but she was not self-sufficient and was unable to meet her economic needs. In all the cases the relief sought by victims were orders for maintenance for themselves and their

children. This shows that the victims have economic needs which may account for women staying in abusive relationships/marriages.

The conclusion reached is low economic background is a cause for domestic violence.

The next section discusses the standard of proof adopted by the court.

5.4.6. The standard of proof in domestic violence cases

In domestic violence cases, even though the cases are filed in criminal courts, the standard of proof is on a balance of probabilities.

The burden of proving the case beyond reasonable doubt is not applicable in domestic violence cases. Unlike other criminal cases, evidence can be adduced by way of sworn affidavit in lieu of examination in chief. The opposing party can cross-examine the party who filed the statement of facts. The standard of proof is not as high as that required in criminal cases. In all the cases considered in the study, victims filed affidavits in lieu of appearing before the court and giving evidence in chief. The court relied on the evidence contained in the petition alone in arriving at a decision.

The following section discusses the general impact of PWDVA (2005).

5.4.7. Impact of domestic violence law

In the period of one year, from 1-1-2014 to 1-1-2015, 163 cases were filed in Ranni court, and from 1-1-2015 to 1-1-2016; the number of cases filed had reduced to 88. There is a reduction in the number of cases filed in court. The implementation of the domestic violence law may account for the decrease in these cases in the study area. The reduction in the number of cases filed confirms the effectiveness of law in reducing domestic violence.

The next section discusses the attitude of the court.

5.4.8. The attitude of the court

An examination of the judgements of the court in the present study shows that in all contested cases, the court granted all the relief sought. In the first case, the court accepted the sole evidence of the petitioner and granted a protection order under section 18. The court also granted a residence order, a prohibitory order and monetary relief under section 20 of the Act.

Regarding monetary relief, though the petitioner sought Rs 4500 for herself and Rs 3500 for her elder son and Rs 3000 for her younger son for educational expenses, only Rs 3000 was granted for her maintenance. The court observed that no evidence was produced to show the dependency of the children and the nature of the educational expenses required. In the second case, the court granted a protection order under section 18, a restraining order under section 19 and a maintenance order under section 20 of PWDVA (2005), solely on the evidence of the petitioner. The court however observed that since no actual evidence was adduced to show the nature of educational expenses and standard of living required by the Act, it refused to grant that amount sought. Instead, the court granted what it considered an adequate amount, being reasonable and fair in the circumstances of the case.

In the third case, the petitioner sought alternative residence and compensation of 5 lakhs for the mental agony she suffered from the conduct of the respondent. Taking into consideration the circumstances of the case, the court ordered the respondent to pay Rs 1500 per month for an alternate house for the petitioner and her child. The alternate residence was sought on the grounds that the respondent had married another woman. The petitioner was awarded compensation of Rs 100000 for the mental agony she had sustained.

In the fourth case, the petitioner sought Rs 10000 per month for maintenance and an order directing the respondent to hand over personal effects. The court granted maintenance of Rs 3000 per month and ordered the respondent to hand over personal effects. Furthermore, the court ordered the protection officer to ensure the petitioner police assistance and to escort her to her husband's home and recover the goods if not handed over voluntarily. The court observed that no

positive evidence was adduced before the court to prove the standard of living that the petitioner was accustomed to. However, the court considered the circumstances of the case and awarded an amount adequate it considered reasonable and fair.

The cases referred to above show that courts granted petitioners orders prayed for, even though they had not established their claims sufficiently. The court could have granted the petitioners higher amounts if they had provided sufficient evidence to show the lifestyle they were accustomed to. The court awarded relief taking into consideration the overall circumstances of each case.

The next section discusses relief granted by the court.

5.4.9. The outcome of judgements

The courts granted protection orders, residence orders and orders for monetary relief in the first and second cases as sought by the victims. In the third case, alternate residence and compensation were sought and rent for an alternate house and compensation was allowed. In the fourth case, monetary relief, and an order to return personal effects was sought and granted.

On analysing the judgements, the court allowed all prayers by the petitioners. The court particularly mentioned in the judgements why it declined to allow the pecuniary prayers as prayed in the petitions. The court had verified the overall circumstances of the cases and allowed the prayers of the victims of domestic violence.

To allow the full amounts sought in the petition, the petitioner had to adduce evidence as to the standard of living they were accustomed to, which was not proven by positive evidence. This may be due to a lack of quality legal advice given to petitioners.

5.5. SUMMARY

This chapter interpreted the findings and evaluated the developing themes. The laws on domestic violence in Ethiopia and India were compared and the researcher identified the shortcomings of these legislative instruments.

Since these two countries are signatories of international treaties on domestic violence, both Ethiopia and India have an obligation to adhere to the terms of these treaties and are duty bound to make amendments to their existing legislation were necessary in order to meet their international obligations and agreements.

The chapter that follows, summarises the study, presents conclusions and provides recommendations.

CHAPTER 6

SUMMARY, RECOMMENDATIONS, AND CONCLUSION

6.1. INTRODUCTION

This chapter presents a synopsis of the thesis from chapter 1 to 5, after which the interpretations resulting from chapter 5 are studied and conclusions are drawn. Recommendations will then be made founded on the findings resulting from the identified themes and sub-themes that arose in chapter 5; in order to compare the laws governing domestic violence in Ethiopia and India and thereby explore any lacuna in these two legal systems.

This chapter further outlines recommendations to address gaps in the Criminal Code of Ethiopia, 2004 and the Protection of Women from Domestic Violence Act, 2005 of India. Moreover, this chapter makes recommendations based on the findings of this study, by making suggestions on how the laws governing domestic violence in Ethiopia and India could be effectively implemented.

6.2. SUMMARY

The first chapter of this thesis provides a general orientation to the whole thesis, followed by the problem statement. Thereafter, the aim and importance of the research were provided. The goals and objectives of the study were explained; they provide the main aim and reason for the study, as well as a clear and unambiguous statement of the research objectives. The primary objective of the study was to compare laws governing domestic violence in Ethiopia and India and to explore any lacuna in these two legal systems and to make recommendations on how these legal systems can be strengthened.

The secondary objective was to study the effectiveness of laws in Ethiopia and India used to address domestic violence. The delimitation of the study that addressed how the study was narrowed followed, and geographical and time limitations were discussed. The research methodology was outlined and

explained the explorative characteristics of the study, the research approach, and design, methods of data collection and analysis, methods to ensure validity and reliability, as well as the ethical considerations; which concluded the chapter.

The literature review and overview of the legislative framework governing domestic violence in Ethiopia and India was supplied in the second and third chapter. The analysis of the collected data was presented in chapter four, with the aim of understanding various elements of data obtained through an analysis of the relationship between concepts, constructs and data collected. They were described and illustrated by means of interviews with victims of domestic violence who approached Ranni court under the PWDVA, 2005 (India) and victims of domestic violence who approached the court for a divorce in Jimma court (Ethiopia). Research design and approaches were triangulated to ensure the richness of data. The results of the interview schedules concluded the chapter and were presented as tables to indicate the respondent reaction. The results of the analysis done in chapter 4 were interpreted and measured against the legislative framework and presented in chapter 5. Interviews were integrated with literature reviews to form a holistic interpretation of the findings. Lastly, the impact of each of the above themes was explained to round off the holistic findings of the interpretations.

The next section discusses a comparison of Ethiopian and Indian laws on domestic violence.

6.3. A COMPARISON OF THE LAWS GOVERNING DOMESTIC VIOLENCE IN ETHIOPIA AND INDIA

India and Ethiopia are countries which signed and ratified the international treaty of the Declaration of Human Rights and the treaty on the Elimination of All Forms of Discrimination Against Women. Moreover, the constitutions of both countries guarantee the right to equality to their citizens. Therefore, these countries have to fulfill their obligations to their citizens as per their undertakings in their respective constitutions and international treaties. Consequently, in line with their

obligations, Ethiopia incorporated provisions to penalise domestic violence in her Criminal Code.

India enacted a separate law (PWDVA, 2005) to curb the problem in addition to the provisions incorporated in the penal code to penalise harassment for extracting dowry and marital rape and included provisions under the Dowry Prohibition Act. Comparing domestic violence-related statutes in the two countries is mutually beneficial because best practices from both will improve implementation and development/amendment of laws in the respective jurisdictions. The researcher outlines these comparisons below.

1. Ethiopian domestic violence provisions are applicable against both parties in a domestic relationship but PWDVA is applicable only against a male partner and his relatives. Ethiopian law extends its web to cover both men and women who use violence against their spouses or intimate partners. According to article 564, any person who causes any act which results in the grave or common injury to bodily health or mental health to the other spouse or persons living together has committed domestic violence. In such cases the provisions under article 555 to 560 are applicable. Article 556-560 provide punishment for bodily injury caused to any person including those in a domestic relationship and article 555 makes provision for injuries resulting in mental health injuries. The article is invoked if the grave injury is caused to any person and results in permanent mental health problems. It is clear using an ordinary interpretation of the provisions in the Code, that a punishable offence of mental abuse amongst intimate partners is provided for.
2. Economic abuse and sexual abuse are not regarded as offences by the Ethiopian domestic violence law; nevertheless, article 658 can be applied against a spouse who fails to maintain his wife. It is difficult to prove the occurrence of mental injury although it is punishable. Only physical violence (assault) against an intimate partner can be tried as an offence especially where there is physical evidence.
3. Domestic violence is not defined in Ethiopian law while the PWDVA defines domestic violence. Specific acts which constitute domestic violence have not been mentioned in the Ethiopian Criminal Code, 2004. In contrast, the Indian

PWDVA specifies what acts constitute domestic violence. Indian law narrates what acts constitute physical violence, what constitutes emotional or mental violence, economic violence, and sexual violence. A narration of incidents of domestic violence itself reveals what type of domestic violence has taken place. The researcher opines that a definition of domestic violence is required to understand and penalise acts of domestic violence.

4. Ethiopian law brought both men and women within its ambit and hence either partner can be prosecuted before the court, however, the PWDVA applies only against men. However, the Supreme Court recently held that women shall also be tried along with men if accused of domestic violence. There are incidents in which women are perpetrators, but they fall outside the remit of the law.
5. The researcher opines that since Ethiopian law is an integral part of the penal code, domestic violence incidents should be reported to police and after they investigate the case, they can then charge the perpetrator. Under these circumstances, the attitude and the expertise of the investigating officer are crucial because the outcome of the case rests solely on them.
6. Ethiopian domestic violence law does not provide specific remedies to victims of domestic violence. The PWDVA provides specific remedies, such as protection orders, residence orders and other civil remedies, including imprisonment for breach of court orders.
7. In terms of the Ethiopian Penal Code, the abused spouse will not get any relief from the law. The remedy available is only the prosecution of the intimate partner and no other civil remedies such as protection orders or monetary remedies are available under the law. Specially trained police officers are appointed to deal with family related cases. In India, domestic violence law is quasi-civil though it is designed to be dealt with by criminal courts. The person aggrieved can approach a protection officer or service provider or go directly to the court through lawyers to seek a remedy. Even if domestic violence incidents are reported to police, they cannot take any action, they must forward the matter to the protection officer(s) or to the court. The police must implement court orders. The protection officer must conduct an inquiry and report to the court, the court has to take the report into

account in issuing orders. The court is vested with wide powers and can grant civil remedies.

8. The Ethiopian Penal Code makes no provision for civil remedies or monetary relief. On its part, the Indian law provides for civil remedies as well as monetary relief. The court may issue an order preventing the husband from entering in the shared household regardless of whether he has ownership or not. The law gives women rights over the shared household. The respondent can be restrained from causing any act of domestic violence or he can be ordered to vacate the home where the aggrieved person is residing. Monetary relief can be issued against the respondent if circumstances warrant it. If the aggrieved person is not able to maintain herself, maintenance can be sought against the respondent and a separate residence order issued at the expense of the respondent. The court can award an order for compensation provided it is adequate, fair, reasonable, and consistent with the standard of living the aggrieved person is accustomed to.
9. Ethiopian law does not provide for shelter for victims of domestic violence. The PWDVA makes provision that the aggrieved party is provided with shelter. The Ethiopian Code does not provide for the establishment of shelter homes for victims or for the appointment of protection officers to look into the affairs of abused persons. However, Indian law directs governments in all the districts to establish as many shelter homes as possible to accommodate victims. The PWDVA directs the Government in the districts to appoint the required number of protection officers to assist with the implementation of the Act. For example, protection officers must file domestic violence incident reports or provide shelter homes for victims.
10. The Ethiopian domestic law does not make provision for counseling services. On its part, the PWDVA empowers the magistrate to order counseling services for both parties or for whichever party may require it. Ethiopian law does not make provision for counseling services and does not contain rights for women to the shared household. The Indian domestic violence law creates special rights for women over the shared household even though they may have no title over the shared property.

11. Ethiopian domestic violence law does not contain any provision(s) on the appointment of protection officers. The PWDVA requires all the State Governments to appoint protection officers to help victims and improve the implementation of the Act. The Ethiopian law makes no provision for the appointment of protection officers or any officials who are authorised with the task of protecting women experiencing domestic violence or to extend any assistance to such women.
12. Ethiopian domestic violence law does not include sexual and economic violence in its definition of domestic violence. The PWDVA recognises physical, sexual, emotional, and economic violence as forms of domestic violence. In effect, Ethiopian law does not recognize sexual violence as domestic violence and no rule is incorporated in their law to deal with such forms of violence within a domestic partnership. Moreover, article 564 identifies grave or mental injury to a person's mental health as a punishable offence; but it is difficult to prove such an injury. To control and eradicate domestic violence the law must be amended, and administrative measures put in place. The researcher is of the view that Ethiopia has not fulfilled its international obligations in line with its commitments because of the shortcomings in her laws. For example, the definition of domestic violence is too narrow, and victims cannot approach the courts directly.
13. Protection officers are liable for dereliction of duty under the PWDVA; however, the Ethiopian Criminal Code does not prescribe any punishment for dereliction of duty by police.
14. The PWDVA makes provision for the appointment of protection officers responsible for the enforcement of the Act and therefore are liable for dereliction of their duties in terms of the Act. Notwithstanding, the police who are responsible for the enforcement of the Act is not liable for dereliction of duty under the Ethiopian Criminal Code.
15. The protection officers, in India, are appointed to assist the magistrates to enforce the provisions of the PWDVA, 2005 and they are under the supervision and control of magistrates. Ethiopian courts have no control over police officials empowered with registering and investigating domestic violence offences.

16. There are no provisions for compensatory awards under the Ethiopian domestic violence law. However, the magistrate may issue compensatory remedies/awards under the PWDVA. Section 20 of PWDVA, 2005 empowers the magistrate to grant monetary relief to the victims of domestic violence reflective of the standard of living the victim is accustomed to. In addition, section 22 empowers the magistrate to award compensation and damages for injuries including injuries ensuing from mental torture and emotional distress caused by domestic violence. In Ethiopia, courts may not award compensation as a relief.
17. There is no provision in the Ethiopian Criminal Code for granting temporary orders favourable to the victims of domestic violence. The PWDVA empowers a magistrate to grant temporary or *ex-parte* orders. Furthermore, magistrates may grant temporary or *ex-parte* orders in terms of section 23.
18. No standard of proof is provided in Ethiopian domestic violence law. Since it is included in the Penal code, the same standard of proof is expected as in other criminal offences. The PWDVA provides that uncorroborated evidence of the victim is sufficient proof. The Act mandates magistrates to look into the entire allegation and circumstances of each case to reach the conclusion whether domestic violence has taken place and it is not required to strictly follow the rules of the law of evidence. The standard of proof in terms of Ethiopian law is higher compared to the one in the PWDVA, which means that the general standard of proof shall be applied to domestic violence cases. The researcher opines that it is difficult to meet the standard of proof required in instances of intra-familial violence.
19. Ethiopian domestic law does not create any right for victims over shared households. PWDVA creates rights for victims of domestic violence over the shared household whether or not they have real rights/ownership over such property.
20. Ethiopian domestic violence law does not make provision for civil remedies whereas PWDVA specifically gives rights to the victims of domestic violence to seek a civil remedy in civil courts. In terms of section 26 of PWDVA victims of domestic violence can approach the civil court for a civil remedy in addition to

remedies provided under the PWDVA. Seeking remedies under the Act no longer affects the victim's right to approach a civil court. Thus, a victim of domestic violence can seek all remedies provided under other laws in India in addition to the domestic violence law. The law of double jeopardy cannot be raised against the victims of domestic violence under these circumstances.

21. The Central and State Governments are obliged to facilitate awareness and educational campaigns to educate communities about the PWDVA, 2005 through public media such as television, radio and so on. The Criminal Code does not contain similar provisions.
22. In terms of the PWDVA, 2005 police officers, protection officers, service providers, if they receive a complaint from the aggrieved person, have an obligation to inform such a person of her rights. These include the right to make an application for relief by way of a protection order, an order for monetary relief, custody order, to inform the aggrieved party of free legal aid under the Legal Service Authority Act and the right to file a complaint under section 498(A) of Indian Penal Code. Ethiopian law does not have similar provisions; police officers have no obligations to inform victims of their rights under the law.

6.4. RESEARCH FINDINGS

1. The Ethiopian Criminal Code, 2004; is not comprehensive enough to address sexual and economic violence in Ethiopia.
2. The Ethiopian Criminal Code, 2004; is not sufficient to address domestic violence in Ethiopia.
3. The PWDVA, 2005; has the potential to reduce domestic violence in India.
4. The PWDVA, 2005; does not criminalise domestic violence in India, instead, it provides quasi-criminal and civil remedies to women which is a deviation from international best practices.
5. Within the PWDVA, 2005; most of its provisions are aligned to best practices except for its lack of criminal sanctions. On its part, the Ethiopian Criminal Code,

2004 in as far its provisions relate to domestic violence, is not in keeping with international best practices/standards.

A selection of these research findings is clarified below.

6.4.1. Ethiopian Criminal Code, 2004; is not comprehensive enough to address domestic violence

Article 564 of the Code states that when an injury to bodily health or mental health ensues from a domestic violence incident, articles 555-560 apply. It provides only for physical and emotional forms of domestic violence. The Act contains no provisions for addressing sexual and economic forms of violence because they are not recognised by the Act as domestic violence.

The definition of domestic violence in this study includes physical, sexual, emotional, and economic forms of violence. The UN recognises physical, sexual, emotional, and economic forms of violence as domestic violence and these definitions are internationally accepted. Under the Ethiopian Criminal Code, 2004, marital violence, including marital rape are not regarded as domestic violence offences.

Under the Ethiopian Criminal Code, 2004; civil remedies such as protection orders, restraining orders or monetary relief to the victims of domestic violence are excluded. Hence the Courts cannot grant relief to the victims of domestic violence to protect and help them in times of need. The Code does not provide shelter for victims as a remedy, therefore abused wives are often left at the mercy of their abusers because of lack of alternative accommodation or places of safety.

One of the major defects of Ethiopian Criminal Code, 2004; is a lack of definition of domestic violence. Resultantly, it is difficult to understand from the Ethiopian Criminal Code what acts constitute the offence of domestic violence. The researcher opines that if domestic violence is defined in the act, its existence is easy to establish from an account of events by the victims. A definition is required to address domestic violence. The definition of domestic violence under the Ethiopian Criminal Code, 2004; is too narrow and does not include sexual and

economic violence forms of violence. Moreover, the exclusion of civil remedies such as protection orders, restraining orders, or monetary relief to the victims of domestic violence or temporary *ex-parte* orders to timeously address the problem, renders the Act less effective. Moreover, no provision is made for the appointment of authorities to supervise the implementation of domestic violence provisions or shelter homes for victims or free legal aid to victims of domestic violence. In addition, the Act lacks provisions on how victims can access or exercise their rights under the Act.

Police officers have a duty to enforce the Act, nevertheless, no sanctions are provided for in the Act where police fail to exercise their responsibilities; the victims are left without any recourse in these situations. The situation is exacerbated in cases where complaints are lodged only for victims to be told that they did not follow the correct processes such as registering their complaints. This is despite the fact that the Ethiopian Constitution guarantees everyone the right to life and the right to protection against bodily harm. The researcher asserts that the Ethiopian Criminal Code fails to uphold these constitutional guarantees and entitlements.

The researcher could not find any judicial cases dealing with domestic violence in the Jimma area of study. Since the inception of the Act in 2004, no domestic violence cases have ever been decided in courts of law in this area.

The results from interviews show that domestic violence prevails in the study area Jimma, Ethiopia. The data established that the interviewees experienced domestic violence for periods extending from six months to 18 years. One interviewee (a house-wife) revealed that she was experienced domestic violence for 18 years.

The causes for domestic violence are identified as spousal alcoholism, suspecting infidelity of wives, extra-marital relations and so on which are previous research findings in Ethiopia. One interviewee reported that she was working as a house-maid but her husband forced her to stop working and she gave up the job because of violence.

Different forms of domestic violence included beating, slapping, hitting with stones, kicking, scolding for no reasons, ridiculing, controlling behaviour, sexual violence, and bride abduction. This study did not find economic violence, but previous research reported cases of economic violence. All forms of violence such as physical, sexual, emotional, and economic violence exist in Ethiopia – notwithstanding the lack of recognition by the law.

Information given by the interviewees reveals the unwillingness of the police to register reported cases of domestic violence. Out of 12 interviewees, 5 approached Jimma police for assistance, but they were sent away from the police station without registration of their cases and in some instance without police listening to their complaints. All of the five women interviewed stated that the police told them that it was not their duty. The police said, “...*it is not our duty to take action on your complaint*”. The domestic violence provisions contained in the Ethiopian Criminal Code, 2004 have never been implemented. The police refuse to assist victims although they have a statutory obligation to do so. If the police refuse to register cases and undertake investigations, unfortunately, victims cannot approach the court directly.

All the interviewees revealed that they were not aware of domestic violence provisions in Ethiopian Criminal Code, 2004; some said they never knew the law existed. There are no awareness or educational campaigns conducted by either the government or non-governmental organisations. Specific questions were put to the interviewees whether the police or court informed them of their rights as victims when approached and interviewees responded negatively. They reported that they were turned away by the police and were not informed about their rights. The interviewees who have not approached police stated that the police would not act on family disputes in favour of women. There are no interventions to create awareness around the scourge of domestic violence.

The interviewees were asked whether they benefitted from the domestic violence provisions contained in Ethiopian Criminal Code, 2004. All the interviewees responded in the negative, some alleged police would not take any action against the perpetrators or even register their cases or record their complaints. Their view

is that the law is never used in favour of women who experience domestic violence. They assert that women are discriminated against by police in violation of Article 4 of the Criminal Code, 2004, which provides for equal treatment of all under the Code.

The interviewees were asked whether they got efficient support from the police or the court and all of them replied in the negative. They told the interviewer that no efficient support was ever provided to them either by the court or the police. When they approached the court for divorce on the ground of domestic violence, the court failed to inform them about the domestic violence provisions under the Code and it simply proceeded with their divorce cases. The interviewees revealed that no timeous action against perpetrators has ever been taken either by police or the courts.

In effect, although the domestic violence provisions are included in the Ethiopian Criminal Code, 2004; women experiencing domestic violence are not protected by the law in Ethiopia.

6.4.2. PWDVA, 2005 can reduce domestic violence

PWDVA, 2005; includes in its definition physical violence, sexual violence, emotional violence, and economic violence as forms of domestic violence. Domestic violence is also defined in section 3 of the legislation.

Any act listed in section 3 will attract domestic violence proceedings and the court is empowered to implement the law. The victim or any person who has information of the commission of domestic violence can report it to the protection officer who shall in turn file a complaint on the prescribed form to the court with a report. The victim can directly approach the court under section 12 and file a complaint. On filing a complaint, the court can hear the matter and issue an interim order of protection, residence order, restraining order or interim monetary relief according to the circumstances of each case, and direct police having territorial jurisdiction over the area to implement its order. In addition, the court is empowered to decide on interim custody orders. An alternative residence can be ordered in a case where it is found suitable to the victim or if the victim sought a

shelter home, the court can direct the victim to be allowed to stay in a shelter home.

The protection officer is under the supervision and control of the court and he is entrusted with the task of ensuring the protection of domestic violence victims. He is liable for any dereliction of duty entrusted by the Act and liable to be punished by the court for dereliction of duty. An order by the court shall be obeyed by the police or any authority or anybody, and breach of a court order will attract an order for contempt of court.

Moreover, police are bound to obey court orders. Besides the relief from magistrate courts, the victims of domestic violence can approach civil courts for remedies available under other civil laws. Interviews results show that the interviewees in India encounter domestic violence ranging from one year to 20 years. One interviewee, a house-wife, reported that she was experienced domestic violence for a period of 20 years. The researcher established that 56.25% of victims had undergone domestic violence up to a period of 5 years and 43.75% of the interviewees had experienced domestic violence from their intimate partners for more than 5 years. The causes of domestic violence reported included suspected cases of infidelity of wives, husband's alcoholism, dowry demands, and husbands' extra-marital relations. These causes are reported by previous studies.

The forms of domestic violence reported are physical violence such as, beating; slapping, kicking and so on. Two interviewees reported that their husbands tried to murder them. Emotional violence, such as scolding, name-calling, harassment was reported. Sexual harassment and economic abuse including non-payment of maintenance for the victim and her children were identified. The majority of domestic violence in India, 56.25% resulted from alcoholic consumption by intimate partners. All the interviewees in India are subjected to physical and emotional violence and 6.25% are subjected to sexual violence along with physical and emotional violence and 31.25% experienced economic violence along with physical and emotional violence.

Regarding awareness of laws, all the interviewees revealed knowledge of the PWDVA, 2005 and understanding of the legislation. Nevertheless, they took long to approach the court for a remedy. When asked about the delay in approaching the court all the interviewees stated that they were concerned that approaching the court will put a further strain on their relationships.

When asked whether they benefitted from the law, they confirmed that they did benefit and received adequate support from the courts. In addition, their cases were dealt with expeditiously and protection and residence orders were granted in their favour. The courts directed the police to implement the court orders, consequently, the police implemented the orders.

There are four court judgements. In two out of four of those cases, no protection or residence orders were sought. In case no III and case no IV no protection order or residence order or restraining order was sought. In case no III alternate residence and compensation was sought and in case no IV maintenance and direction to return personal effects and a protection order was sought and allowed. In case no IV the duty of returning the petitioners, personal effects were entrusted to the protection officer with a direction to obtain police assistance whenever required.

All interviewees stated that their needs were addressed by the PWDVA, 2005 and reported that domestic violence incidents reduced after the implementation of the PWDVA, 2005. All of the interviewees opined that the legislation created a feeling of protection among the victims and fear among the perpetrators. Because of the fear, most of the perpetrators opted to settle the case with the help of their lawyers through the Mediation Centre, run by Legal Service Authority. Most of the interviewees herein (12/16) are from the category, who settled the case with the perpetrators.

When questioned about repeated cases of domestic violence, they responded negatively and said that they are now residing with the perpetrators without any further incidents of violence. During negotiation in the Media Centre, the perpetrators realised their mistakes and apologised and undertook not to repeat

the violence. Accordingly, cases were settled by the victims without appearing in the court and in turn, the court dismissed cases on default.

All the interviewees confirmed that the PWDVA, 2005; addressed their needs and no domestic violence was repeated after approaching the court for relief. Regarding the approach of the court and police, they all confirmed that the approach of the court was effective, and they provided no suggestions for improvement. This study concludes that PWDVA, 2005 is comprehensive to address the problem of domestic violence in India.

6.4.3. PWDVA, 2005 does not criminalise domestic violence acts which is a deviation from international best practices of domestic violence laws

The information derived from interviews shows that there is an awareness of domestic violence law among women and they understand the law. The interviewees' report that the court gives efficient support and takes timely action on complaints of domestic violence. The needs of the victims of domestic violence are addressed adequately. Irrespective of these gains, data from interviews shows interviewees experienced domestic violence from one year to 20 years before approaching the court intervention. The PWDVA, 2005 came into force in 2006, since then, the Legal Service Authority embarked upon various educational and awareness campaigns. Regardless, interviewees took long before seeking help from the courts. This reveals that some research is needed to better understand the dynamics engendered by these cases.

The PWDVA does not criminally penalise acts of domestic violence. Only civil remedies are provided in the law. Imprisonment is provided only for breach of court orders; the courts may impose only one-year sentences. Within the South- African domestic violence law, a 5-year sentence may be imposed for breach of court orders which is more of a deterrent (DVA of South Africa, Act 116 of 1998). International best practices of domestic violence laws penalise domestic violence acts and police are empowered to investigate and institute cases for domestic violence.

6.4.4. PWDVA, 2005, is on par with international best practices

International covenants require State parties to enact proper legislation to address domestic violence which occurs in the private life of women. It recognises physical abuse, sexual abuse, emotional abuse, and economic abuse as abuses against women in households and all these acts should be eradicated by proper legislation. PWDVA, 2005, provides for all acts of physical violence, sexual violence, emotional violence, and economic violence.

Section 3 of PWDVA, 2005, narrates each and every act which constitutes domestic violence. It provides remedies such as protection orders, residence orders, prohibition orders and provision for granting monetary relief and compensation for damages suffered due to domestic violence. International covenants require the incorporation of civil remedies in the national legislation of State parties for the protection of women living in abused relations.

Provision is included in the statute to establish shelter homes. The Act directs all the State Governments to establish as many shelter homes as required in the states. If the victims request shelter homes to stay, these are made available in terms of the PWDVA. The latter makes provision for protection officers or service providers to request shelter homes for and on behalf of victims of domestic violence and when such an application is made, the officer in charge must admit such a person to the shelter home.

The reliefs provided in the legislation are in keeping with internationally accepted standards and hence PWDVA, 2005, is aligned with international standards except for its lack of criminal sanctions.

6.5. RECOMMENDATIONS

1. Ethiopia should enact a law to specifically deal with domestic violence cases and incorporate civil remedies. It should include provisions empowering the courts to grant protection orders, prohibitory orders and orders for compensations. At present Ethiopian domestic violence law is included in the Criminal Code which lacks provision for civil remedies and does not permit the victim to approach the court directly. So, it is better to enact a special law for

eradicating domestic violence in Ethiopia. Besides criminalising domestic violence, provision should be incorporated to empower the court to grant protection orders, restraining orders and provisions to award compensation to victims. The new enactment should contain a provision for the appointment of protection officers or any other officials to render assistance to the victims of domestic violence, and provision should be made to establish shelter homes for providing shelter to the victims of domestic violence. Provisions should be enacted to create awareness of law for women by the Federal and State governments, and provision should be given in such new law for adequate publicity through electronic and social media. The present law casts no liability on the police for non-fulfillment of their duty under domestic violence law. Hence provision should be provided in the new law for punishing police or other officials for non-performance of their duty under domestic violence law.

2. The proposed Ethiopian legislation should allow victims to approach the court directly as is the case in India and other jurisdictions such as South Africa. At present, the victims of domestic violence in Ethiopia have only one option of approaching police to complain about domestic violence. In case the police rejected the request of the victim, they have no other option but to approach civil court for a divorce. Such helplessness should be avoided by giving ample provision in the domestic violence law to approach the court directly and enable victims to seek civil as well as other remedies. Ethiopia can follow the examples of South-Africa and Indian in this regard. If such a provision is made in Ethiopian domestic violence law, the number of divorce cases will be reduced.
3. Provisions should include the appointment of officers akin to protection officers under the Indian law. These officers should be given powers to implement the provisions of the Act including aiding victims and working with non-governmental organisations to create awareness amongst communities. The present domestic violence law in Ethiopia does not contain a provision for the appointment of any public officers for giving assistance to the victims of domestic violence. The only provision in the domestic violence law is to punish the perpetrators of violence if police charged a case against such

people. But in actual practice police are not charging domestic violence cases which have resulted in the free movement of the perpetrators of domestic violence and police are not liable if they rejected a charge of domestic violence. Hence the new enactment should contain a provision for the appointment of protection officers or any other officers who should be responsible for not discharging their duty under the domestic violence law. Provision should be made to cast a duty on them to assist the victims of domestic violence. Provision should be made in the law to inform the rights of the victims when they approach such officers. Provision should be made to enable protection officers or other officers under domestic violence law to work with non-governmental organisations to create awareness among women.

4. Similar to the Indian experience, the law should include provisions for shelter homes for victims of domestic violence. The newly enacted law should contain a provision for the establishment of shelter homes for rehabilitating the victims of domestic violence. Because of the fear of insecurity, the victims of domestic violence now approach the court for a divorce. The victims should be provided security and all democratic governments have the duty to protect its citizens. At present Ethiopian law does not provide provision for the establishment of shelter homes and the victims have no other option to escape from the perpetrators and hence they are compelled to seek divorce as the last resort. The new law should contain a provision to establish shelter homes throughout the country for rehabilitating victims of domestic violence.
5. Police should be trained specially to deal with domestic violence cases and awareness should be created around discriminatory social and cultural practices. Manuals for police should be developed and they should include best practices on the implementation of the Act and other related legislation. The police are empowered to register and investigate domestic violence offences but the Ethiopian experience revealed that police are reluctant to register domestic violence cases. Interview results revealed that police have no hesitation to tell the women approaching them seeking assistance that it is not their duty to interfere in their case. In order to enable the victims of

domestic violence to seek assistance from police, police manuals should be enacted, and they should follow such manuals and stringent provision should be made for punishing police personnel who do not assist victims of domestic violence. Police should be trained in such a way to change their attitude towards the victims of domestic violence and superior officers should be deputed for supervising police action regarding domestic violence.

6. Police should be made aware of the importance of applying the provisions of the Act and failure to do so must be regarded as a dereliction of duty and thus punishable. Police should be trained in such a way to be aware of the importance of applying the provisions of domestic violence law and any failure from the side of the police must be considered as dereliction of police duty and such police personnel should be liable for punishment. Such provisions should be enacted in the new legislation. If such provisions are not enacted any implementation of domestic violence law will become a futile attempt.
7. A statutory body should be created for supervising police and reviewing domestic violence cases. Moreover, Ethiopia must consider the establishment of a body similar to the South African Human Rights Commission. This commission should preside over cases of violations of human and constitutional rights. The new enactment should incorporate provisions for the establishment of a statutory body for reviewing domestic violence and human rights. Since domestic violence is a violation of human rights, a supervisory body like the South African Human Rights Commission is required to curb incidents of violence. The commission should be vested with enough power to consider the cases of human rights violation. If such a commission is established domestic violence will be reduced considerably.
8. Ethiopia through this law must consider an extended definition of domestic violence and it should include other forms of violence such as sexual abuse, economic abuse, and marital rape. Another important provision that should be incorporated into the domestic violence law should define domestic violence, as including sexual violence, economic abuse, and marital rape. At present domestic violence is not defined and economic violence and sexual violence

are beyond the purview of the domestic violence even though the international community accepted economic and sexual violence as part of domestic violence.

9. On its part, India should amend the PWDVA, 2005 to include provisions to criminally penalise domestic violence acts in line with international trends. India though having included many civil remedies for the victims of domestic violence, has not criminalised the act of domestic violence. The only penal provision provided in the PWDVA is the prison term of one-year for violating court orders. This is a clear deviation from the international best practices of domestic violence law and the spirit of the recommendations of the UN Women Forum and UN Resolution. Hence India should amend the PWDVA and incorporate provision penalising domestic violence which would reduce domestic violence to a great extent.

6.6. CONCLUSION

Analysis of data collected by way of interviews shows that the Ethiopian Criminal Code, 2004, does not effectively address domestic violence in Ethiopia because it does not contain provisions to address sexual violence and economic violence. The Code does not contain provisions to allow civil remedies, which are necessary for addressing the needs of victims living in abusive relationships.

In India, PWDVA, 2005, is implemented and effective remedies are granted to the victims by courts. It contains provisions allowing protection orders, residence orders, and monetary relief. After the implementation of the domestic violence law, the incidence of domestic violence began to decline. The court records and interview results confirmed the reduction of domestic violence after the promulgation of the PWDVA, 2005. The latter is on par with international best practices except for the lack of criminal sanctions.

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ANNEXURE A: ETHICAL CLEARANCE CERTIFICATE



COLLEGE OF LAW RESEARCH ETHICS REVIEW COMMITTEE

Date: 2016/10/19

Reference: ST 66

Applicant: Mr R. Nair

Dear Mr R. Nair
(Supervisor: Prof R. Songca, co-supervisor: Prof J. G. van Graan)

DECISION: ETHICS APPROVAL

Name	Mr R. Nair
Proposal	A comparative study of laws governing domestic violence in Ethiopia and India
Qualification	LLD

Thank you for the application for research ethics clearance by the College of Law Research Ethics Review Committee for the above mentioned research. **Final approval is granted.**

The application was reviewed in compliance with the Unisa Policy on Research Ethics.

The proposed research may now commence with the proviso that:

1. *The researcher will ensure that the research project adheres to the values and principles expressed in the Unisa Policy on Research Ethics which can be found at the following website:*

http://www.unisa.ac.za/cmsys/staff/contents/departments/res_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf

2. *Any adverse circumstances arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated in writing to the College of Law Ethical Review Committee.*



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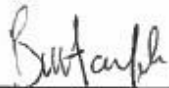
An amended application could be requested if there are substantial changes from the existing proposal, especially if those changes affect any of the study-related risks for the research participants

- 3. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study.*

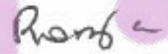
Note:

The reference number (top right corner of this communique) should be clearly indicated on all forms of communication (e.g. Webmail, E-mail messages, letters) with the intended research participants, as well as with the UREC.

Kind regards



PROF B W HÄFELE
CHAIR PERSON: RESEARCH ETHICS
REVIEW COMMITTEE
COLLEGE OF LAW



PROF R SONGCA
EXECUTIVE DEAN:
COLLEGE OF LAW

ANNEXURE B: IN-DEPTH INTERVIEW SCHEDULE INDIA

I-A COMPARATIVE STUDY OF LAWS GOVERNING DOMESTIC VIOLENCE IN ETHIOPIA AND INDIA

SECTION. I BIOGRAPHICAL INFORMATION

1	In which country do you live?	
2	How long have you been subjected to domestic violence?	
3	Did you have a formal educational qualification during your marriage/relationship that was characterized by domestic violence? If yes, what qualification?	
4	Were you employed during your marriage/relationship that was characterized by domestic violence? If yes, what was your occupation? If not, was any form of domestic violence the reason for non-employment?	
5	What was the nature of domestic violence during your marriage/relationship?	
6	Are you familiar with the Prevention of Domestic Violence Against Women Act of 2005 / <u>Ethiopian Criminal Code of 2004</u> ?	

SECTION 2: THE IMPLEMENTATION OF LEGISLATION GOVERNING DOMESTIC VIOLENCE

7	Do you have an understanding of what the Prevention of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004 involves? From your experience, has the police/court clearly explained your rights as a victim?	
8	According to you, as a victim of domestic violence, have you benefited as a result of the implementation of the Prevention	

	of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004? If yes, how? If not, why not?	
9	From your experience, has efficient support been provided to you by the police/court after laying a complaint of domestic violence?	
10	From your experience, has the police/court reacted timeously the first occasion you laid a complaint of domestic violence? If any what was the reason for non/delayed reaction?	
11	Have you experienced shortcomings and challenges to effectively implement the provisions as set out in the Prevention of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004? If any, name these shortcomings and challenges?	

SECTION 3: THE EFFECTIVENESS OF LEGISLATION GOVERNING DOMESTIC VIOLENCE

12	According to you, how important is the enforcement of legislation addressing domestic violence?	
13	From your experience, do the laws governing domestic violence contribute towards the reduction/prevention of domestic violence?	
14	From your experience, have the Prevention of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004 efficiently addressed your needs? If yes, in what way? If not, why not?	
15	According to you, what impact does legislation governing domestic violence have on perpetrators of this crime? Why	
16	How long did you endure domestic	

	<p>violence during your marriage/relationship before laying a complaint? If not immediately, what was the reason for postponement? Has the court efficiently addressed your complaint? If not, why not?</p>	
17	<p>In your opinion, is punishment against perpetrators of domestic violence appropriate? If yes, please provide reasons? If not, why not?</p>	
18	<p>From your experience, was a restraining order served against the perpetrator? Was the restraining order successfully executed? Did the perpetrator adhere to the restraining order? If not, did the police/court react upon non-adherence?</p>	
19	<p>According to you, what impact does legislation governing domestic violence have on victims of this crime?</p>	
20	<p>From your experience, how would you describe the approach of the police and courts towards domestic violence? In your opinion, how effective is the approach? What can be done to improve this approach?</p>	

ANNEXURE C: IN-DEPTH INTERVIEW SCHEDULE ETHIOPIA

A COMPARATIVE STUDY OF LAWS GOVERNING DOMESTIC VIOLENCE IN ETHIOPIA AND INDIA-1

SECTION. I BIOGRAPHICAL INFORMATION

1. Which country you are living?

ETHIOPIA	INDIA	✓ Ethiopia
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2	How long have you been subjected to domestic violence?	
3	Did you have a formal educational qualification during your marriage/relationship that was characterized by domestic violence? If yes, what qualification?	
4	Were you employed during your marriage/relationship that was characterized by domestic violence? If yes, what was your occupation? If not, was any form of domestic violence the reason for non-employment?	
5	What was the nature of domestic violence during marriage/relationship?	
6	Are you familiar with the Prevention of Domestic Violence Against Women Act of 2005 / <u>Ethiopian Criminal Code of 2004</u> ?	

SECTION 2: THE IMPLEMENTATION OF LEGISLATION GOVERNING DOMESTIC VIOLENCE

7	Do you have an understanding of what the Prevention of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004 involves? From your experience, has the police/court clearly explained your rights as a victim?	
8	According to you, as a victim of domestic violence, have you benefited as a result of the implementation of the Prevention of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004? If yes, how? If not, why not?	
9	From your experience, has efficient support been provided to you by the police/court after laying a complaint of domestic violence?	
10	From your experience, has the police/court reacted timeously the first occasion you laid a complaint of domestic violence? If any what was the reason for non/delayed reaction?	
11	Have you experienced shortcomings and challenges to effectively implement the provisions as set out in the Prevention of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004? If any, name these shortcomings and challenges?	

SECTION 3: THE EFFECTIVENESS OF LEGISLATION GOVERNING DOMESTIC VIOLENCE

12	According to you, how important is the enforcement of legislation addressing domestic violence?	
13	From your experience, do the laws governing domestic violence contribute towards the reduction/prevention of domestic violence?	
14	From your experience, have the Prevention of Domestic Violence Against Women Act of 2005 / Ethiopian Criminal Code of 2004 efficiently addressed your needs? If yes, in what way? If not, why not?	
15	According to you, what impact does legislation governing domestic violence have on perpetrators of this crime? Why	
16	How long did you endure domestic violence during your marriage/relationship before laying a complaint? If not immediately, what was the reason for postponement? Has the court efficiently addressed your complaint? If not, why not? When did you decide to approach court?	
17	In your opinion, is punishment against perpetrators of domestic violence appropriate? If yes, please provide reasons? If not, why not?	

18	<p>From your experience, was a restraining order served against the perpetrator? Was the restraining order successfully executed? Did the perpetrator adhere to the restraining order? If not, did the police/court react upon non-adherence?</p>	
19	<p>According to you, what impact does legislation governing domestic violence have on victims of this crime?</p>	
20	<p>From your experience, how would you describe the approach of the police and courts towards domestic violence? In your opinion, how effective is the approach? What can be done to improve this approach?</p>	

ANNEXURE D: PARTICIPANT INFORMATION SHEET



PARTICIPANT INFORMATION SHEET

Ethics clearance reference number: ST66

Title: A comparative study of laws governing domestic violence in Ethiopia and India

Dear Prospective Participant

My name is Raveenran Nair and I am doing research with R. Songca and J.G van Graan, professors at the College of Graduate Studies and Department of Police Practice at the University of South Africa, towards a PhD in Criminal Justice at the University of South Africa. We are inviting you to participate in a study entitled "A comparative study of laws governing domestic violence in Ethiopia and India".

WHAT IS THE PURPOSE OF THE STUDY?

I am conducting this research to compare the laws governing domestic violence in Ethiopia and India; to explore any lacuna in these two legal systems and produce recommendations on how these laws can be strengthened.

WHY AM I BEING INVITED TO PARTICIPATE?

The researcher will purposively select domestic violence cases in the authority of Ranni Court in India for a detailed study of the causes, forms, and incidences of domestic violence. Therein court judgements are also interrogated. After perusing these selected cases from Ranni Court the researcher will purposively select cases to interview victims of domestic violence and study whether domestic violence is repeated after court interference.

In-depth interviews will be conducted with victims of domestic violence in Jimma, Ethiopia, and Ranni, India. It is anticipated to conduct not less than 10 in-depth interviews with victims of domestic violence who approached the court seeking a divorce, and not less than 15 victims of domestic violence in Ranni, from randomly selected victims of domestic violence who filed cases under the PWDVA (2005).



University of South Africa
Preller Street, Muckleneuk Ridge, City of Tshwane
PO Box 392 UNISA 0003 South Africa
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150
www.unisa.ac.za

WHAT IS THE NATURE OF MY PARTICIPATION IN THIS STUDY?

The study involves in-depth interviews with domestic violence victims. You will be expected to provide your experience as a victim of domestic violence relating to laws governing domestic violence. Questions that will be asked during the interviews will include questions pertaining to your experiences of the implementation of legislation governing domestic violence, as well as questions regarding your experiences of the effectiveness of legislation governing domestic violence. The expected duration of the interviews is approximately 1 hour.

CAN I WITHDRAW FROM THIS STUDY EVEN AFTER HAVING AGREED TO PARTICIPATE?

Participation in this study is voluntary and that there is no penalty or loss of benefit for non-participation. Participants may withdraw from the study at any stage without the burden to explain, or may refuse to answer any question they found intrusive. Participating in this study is voluntary and you are under no obligation to consent to participation. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a written consent form. You are free to withdraw at any time and without giving a reason.

WHAT ARE THE POTENTIAL BENEFITS OF TAKING PART IN THIS STUDY?

It is my hope that the participants partaking in this study will feel the satisfaction of contributing to solving a social problem and facilitating in illuminating the problem. Participant's information will assist in providing insights and a better understanding of the problem, which can stimulate future research. Successful completion of this research and its results could have benefits for prospective students researching similar information. The academic community and larger society can obtain valuable guidance and opinions from this study that can lead to enhance the research institution's significance. Successful completion of this research and its results could have benefits for prospective students researching similar phenomena. The academic community and larger society can obtain valuable guidance and opinions from this study. On a personal level, it is the hope of the researcher that the participants will obtain personal satisfaction once they have discussed certain issues with the researcher and thus gaining personal insights that were not gained prior to the interviews.



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ARE THERE ANY NEGATIVE CONSEQUENCES FOR ME IF I PARTICIPATE IN THE RESEARCH PROJECT?

The researcher will make every effort to ensure the comfort and minimise the risks of the participants. When you feel any discomfort at responding to some questions, please feel free to ask to pass the question. The participants may become tired or feel emotional discomfort at which point a break may be requested or the interview may be postponed to a later date or terminated if so desired. Women who are victims of domestic violence can be considered as a vulnerable group, thus, the researcher will take adequate protective measures to minimise and mitigate emotional harm to participants. The services of a qualified social worker will be made available to participants, if required.

WILL THE INFORMATION THAT I CONVEY TO THE RESEARCHER AND MY IDENTITY BE KEPT CONFIDENTIAL?

You have the right to insist that your name will not be recorded anywhere and that no one, apart from the researcher and identified members of the research team, will know about your involvement in this research. Your name will not be recorded anywhere and no one will be able to connect you to the answers you give. Your answers will be given a code number or a pseudonym and you will be referred to in this way in the data, any publications, or other research reporting methods such as conference proceedings.

Your answers may be reviewed by people responsible for making sure that research is done properly, including the external coder, and members of the Research Ethics Review Committee. Otherwise, records that identify you will be available only to people working on the study, unless you give permission for other people to see the records. Your anonymous data may be used for other purposes, such as a research report, journal articles and/or conference proceedings. A report of the study may be submitted for publication, but individual participants will not be identifiable in such a report.

HOW WILL THE RESEARCHER) PROTECT THE SECURITY OF DATA?

Hard copies of your answers will be stored by the researcher for a period of five years in a locked cupboard/filing cabinet for future research or academic purposes; electronic information will be stored on a password protected computer. Future use of the stored data will be subject to further Research Ethics Review and approval if applicable. Hard copies will be shredded and/or



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electronic copies will be permanently deleted from the hard drive of the computer through the use of a relevant software programme.

WILL I RECEIVE PAYMENT OR ANY INCENTIVES FOR PARTICIPATING IN THIS STUDY?

Participation in this study is voluntary and participants will not receive payment or any incentives for participating in this study.

HAS THE STUDY RECEIVED ETHICS APPROVAL

This study has received written approval from the Research Ethics Review Committee of the College of Law Ethics sub-committee, Unisa. A copy of the approval letter can be obtained from the researcher if you so wish.

HOW WILL I BE INFORMED OF THE FINDINGS/RESULTS OF THE RESEARCH?

If you would like to be informed of the final research findings or require any further information or want to contact the researcher about any aspect of this study, please contact Mr Raveenran Nair on 7558015387 or krishraveendran2@gmail.com.

Should you have concerns about the way in which the research has been conducted, you may contact Prof R Songca at the College of Graduate Studies, Unisa at songcr@unisa.ac.za. Contact the research ethics chairperson of the College of Law Ethics Sub-Committee, Unisa, Prof T Budhram at budhrt@unisa.ac.za if you have any ethical concerns.

Thank you for taking time to read this information sheet and for participating in this study. Thank you.

RAVEENRAN NAIR K.P.



University of South Africa
Preller Street, Muckleneuk Ridge, City of Tshwane
PO Box 392, UNISA, 0003 South Africa
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150
www.unisa.ac.za