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Domestic Violence against Women in India: An overview

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ABSTRACT

Women constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. Globally, at least one in three women has experienced some form of gender based abuse during her life time. Of all the forms of violence against women 'Domestic Violence' is a serious type but caused silently. Domestic violence is the most serious violation of all basic rights that a woman suffers in her own home at the hands of members within her own family. The manifold problems associated with domestic violence have been systematically exposed by the women's movement. Indeed a number of recent studies such as the National Family Health Survey and National Crimes Records Bureau have identified the home as the site of violence against women and girl children. Almost every six homes some where in India, a married women between the ages of 15 and 49 have experienced domestic violence at some point in their lives, domestic violence has not only serious consequences for the health and well being of the individual women but it also serves to maintain their subjugation as a class, it is generally denying the woman her rights as an individual. The purpose of domestic law is to prevent such a situation and to restore the women to a position of equality with in marriage so as to give her the time and the space to decide what she wants to do in the rest of her life. No doubt, it is difficult to enable women to break the silence around their violent situations, so there was a dire need to have a law that can address the problem of domestic violence in more holistic manner and can change the lives and realities of women. The Protection of Women from Domestic Violence Act, 2005 was notified in the Gazette of India on 14-9-2005. This paper is an attempt to have a holistic view of the Domestic violence against women in india and I have made an attempt to analyze the statistical data on domestic violence against women in india.

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Introduction

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

Zimmerman¹

Domestic violence occurs at home which is considered as the safest place for all but statistics experience reveals otherwise. According to Sydney Brandon, "Statistically it is safer to be on streets, after dark with the stranger than at home in the bosom of ones family, for it is there that evident murder and violence are likely to occur".² The family is often equated with sanctuary— a place where individuals seek love, safety, security, and shelter. But the evidence shows that it is also a place that imperils lives, and breeds some of the most drastic forms of violence perpetrated against women and girls. Violence in the domestic sphere is usually perpetrated by males who are,

or who have been, in positions of trust and intimacy and power – husbands, boyfriends, fathers, fathers-in-law, stepfathers, brothers, uncles, sons, or other relatives. Domestic violence is in most cases violence perpetrated by men against women. Women can also be violent, but their actions account for a small percentage of domestic violence.

Domestic violence manifests as verbal, physical or psychological abuse, often in form that are more subtle than the violence elsewhere in society. Familiarity with the perpetrator and filial values deter resistance, closed door alienate the victim from remedies, resulting in a convenient status quo where the victim reconciles and society can connive. The hopelessness of their situation harms the women more than the violence itself as it erodes their personality and faiths in their own people³. Domestic violence or more simply violence at home is an invasion on one's right to live safely. It infringes on ones basic right to feel comfortable within the confines of ones house which to all domestic violence victims is not a home. A home where one can live without any fear or insecurity. It can also be seen as a violation of the fundamental right to live with dignity and of the right to equality and equal protection of the law guaranteed under the Indian constitution.⁴

¹ Cathy Zimmermann . Plates in a Basket will Rattle: Domestic violence in Combodia, (Phnom Pehn, Combodia. The Asia Foundation1994).

² Sydey Brandon in M. Borland(Ed); Violence in Family, (1976).

³ Justice A.S Anand : "Victims of Crime-The unseen side", (1998) 1 SCC(J) 3

⁴ Jaising, Indira, Law of Domestic Violence, 2000, pp v, vi, ix.

Domestic violence is undoubtedly a human rights issue and deterrent to development. The Vienna accord of 1994 and the Beijing platform of action (1995) both have acknowledged this. The United Nations Committee of Convention on elimination of all forms of discrimination against women (CEDAW) in its general recommendations (1989) has stated that state parties should act to protect women against violence of any kind especially accruing within the family.

Likewise other forms of crime, domestic violence is not a problem of our country only, it is prevalent in all the part of the world. Also it is not a very new phenomenon, it was as old as the origin of the family, though its nature was changed according to place and period of time. As in the market, similarly in family the resourceful person dominate to the resource less ones, which ultimately results into the violation of the rights of the weaker one and therefore a violence. However, due to the lack of reporting of these kinds of matters in the public and also it being considered from the very beginning as something that is "private" and "non-interferable matter" was not defined as crime and therefore was not address by the procedures of the law. Now a days with the increasing trend of reporting against the violence that occurs within the domain of domestic sphere it is clearly reflected that like other acts of crime, domestic violence is an universal phenomenon prevailing everywhere from the past till to date, may it be a developed countries or the developing one.

Definition of domestic violence

The recently introduced The Protection of Women from Domestic Violence Act, 2005 defines the expression "domestic violence" to include actual abuse or threat of abuse-physical, sexual, verbal, emotional or economic violence.

Section 3 of the Act says that, any act, omission or commission or conduct of the respondent shall constitute **domestic violence** in case it –

- a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
 - b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.
- Explanation I. - For the purposes of this section,
- i. "**physical abuse**" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
 - ii. "**sexual abuse**" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
 - iii. "**verbal and emotional abuse**" includes-
 - insults, ridicule, humiliation, name calling and insults or ridicule** specially 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.
 - c) "**economic abuse**" includes-
 - i. **deprivation of all or any economic or financial resources** to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which

the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

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

Explanation II: - For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

Nature of domestic violence against women

Domestic violence has distinct character as opposed to other types of violent crime. It can be characterized by at following features:

- It is perpetuated by someone close to the victim, usually her partner or expartner;
- It happens in intimate settings which are presumed by society to be sites of support and care;
- It is a recurring form of abuse generally characterized by a cycle of violence: the abuse is followed by a period of respite after which tensions build up again and eventually explode into another violent episode;
- The abuser uses domestic violence to control and coerce the victim;
- The abuse has profound emotional and psychological effects on the victim, who often believes (and is often told by the abuser) that she is to blame for the violence.
- It happens behind the closed doors and is most often denied by the very woman who has been the victim of violence. It is this aspect of the crime that segregates itself from all other kinds of social violence.

Forms of domestic violence against women

The various forms of domestic violence against women can be categorized as below:

Son preference leading to female foeticide/Infanticide

Son preference plays a crucial role for violence against women during the period of pregnancy. The continuous pressure from the family and the society to be a mother of a male child keeps reminds a woman of a torture if she will give birth to a girl child. Further, if the girl child born, the trend of continuous violence through defamation and sometimes through physical handling get added to other kinds of mental torture⁵. Researches indicate that 30% of the abuse starts during pregnancy and it may get worsen during pregnancy or after the birth of the child. Tortures during pregnancy can put the unborn baby and the mother in danger. It may increase the chance of miscarriage,

⁵ Kumari, Ranjana, 'Female Infanticide & Foeticide: The Declining ratio'. Paper presented at the National Seminar on Violence Against the Girl Child, Jaipur, February 10-11, (2006).

infection, pre mature birth and sometimes death of the baby Denials of facilities are nothing but a stress for the women to survive to deliver the baby⁶.

Child sexual abuse

The sexual vulnerability of the girl child in and around her home is increasing day by day. Children and teenagers in our society are not spared from the evil of domestic violence. In fact, this form of violence is second in terms of number of reported cases after the violence against women. There are cases of paedophilia causing sexual harassment of children in homes by family member themselves. In fact the number of rape cases of pre-matured girls has been rising since last few years. A survey of teens and college students found that rape accounted for 67 percent of sexual assaults in girls. Apart from sexual abuse and rape, pushing, slapping, punching, stalking and emotional abuse are other forms of domestic violence against children. It reflects the height of cruelty and violence against innocent children⁷.

Child marriage

Child marriage limits young girls' skills, resources, knowledge, social support, mobility and autonomy. Young married girls have little power in relation to their husbands and in-laws. They are therefore extremely vulnerable to domestic violence, abuse and abandonment. Violence may include physical, sexual or psychological abuse⁸. ICRW and its partners conducted a survey on the well-being of adolescents in the states of Bihar and Jharkhand, India in 2004. The survey found that girls who were married before 18 were twice as likely to report being beaten, slapped or threatened by their husbands than girls who married later. They were three times as likely to report being forced to have sex without their consent in the previous six months⁹. The ICRW survey also revealed that girls who were married before 18 consistently reported being less able than young women married after 18 to talk to their husbands about the use of contraception, when they wanted to have children and how many children to have¹⁰. When asked if they never, sometimes or usually participated in decisions about aspects of their lives, women who had married as girls were more likely than those who married later to respond "never"¹¹.

Dowry related abuses and death

Dowry demand and dowry related crimes i.e. abuses and even deaths, are increasing day by day in our society. Our social stigmas have taught women to bear up with every humiliation, beating, molestation and even be burnt but not speak out because the honour of the family will be put in jeopardy. Demanding giving and accepting Dowry is illegal in

⁶ Waghmode R.H., Desai Bhavana and Kalyan J.L., "Domestic Violence against Women: An Analysis", *International Research Journal of Social Sciences*, Vol. 2(1), 35, January (2013) available at: www.isca.in-(visited on 7 March, 2013).

⁷ Acharya, Bijal Dave, "Domestic violence", *Utthan*, 4, 8, March (2012). available at http://www.dsw.gnu.ac.in/UserFiles/File/UTTHAN_MARCH_2012.pdf (visited on 12 March, 2013).

⁸ Heise Pitanguy and A. Germain Violence against Women: The Hidden Health Burden, World Bank Discussion Paper. Washington. D.C. The World Bank (1994).

⁹ ICRW, Development Initiative on Supporting Healthy Adolescents (DISHA) Project. available at www.icrw.org.(2005)(visited on 8 mar,2013).

¹⁰ ICRW, "Child marriage and Domestic Violence", available at www.icrw.org(2005).

¹¹ Ibid.

India. The practice, however, still prevails in many sections of the society. The issue of dowry is probably the most common sources of domestic violence in India, where the husband along with his parents and relative tortures his wife for money. Incidents of murder or attempted murder for dowry-related reasons are regular items in the country's daily papers.

Matrimonial cruelty

Cruelty was defined as "any willful conduct which is of such nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life or limb or health (whether mental or physical) of the women". It includes harassment of the woman in connection with demands for property and alike¹².

Wife beating

Wife beating or in more extremes cases wife battering is the most common form of abuse worldwide irrespective of class, caste, religion and community. It is the crime which existed through ages, has been shrouded in secrecy, guilt and shame on the part of the victims. It is only in the last decade that wife battering has been recognized as a social problem of major proportions sometimes death. Husbands who beat their wives do so with utter impunity. They are convinced that the wives will accept the beating as their fate and will not tell about it to anyone and even if she protests or the act leaks out, neither the behavior nor the relatives will interfere in the matter which is so private. No one even talks about this crime openly. The odd slap or blow was regarded as routine husband like behavior, it was only if the beatings were very severe did women perceive of themselves as being abused. Wife sexual infidelities, her neglect to household duties and her disobedience of her husband's dictates are all considered legitimate cause for wife beating. Ram Ahuja has rightly pointed out that there is no woman who has not suffered at one time or harassment, humiliation and violence always shadows her sex. A woman's life lies between pleasure at one end and danger at other end¹³. The violence ranges from slaps and kicks to breaking or fracturing bones including physical and mental torture¹⁴. In the poverty stricken homes, it is a common feature, but rich families are not free from the episode. Even those who earn and are economically independent also face this type of violence¹⁵.

Marital rape

Rape by anyone is a heinous form of violence against women, however rape within the relationship of marriage; by one's own husband, is one of the most traumatic violence against women. Husband is the one from whom, also due to social, traditional and cultural values, a wife expects love, care, affection and the most security, however marital rape does exist in many marital relationship. And to the fear of social ostracization and stigma women rarely comes out with reporting of such crimes against their body. The much awaited Domestic Violence Act, 2005 (DVA) has also been a disappointment. Section 3 of the Domestic Violence Act, amongst other things in the definition of domestic violence, has included any act causing harm, injury, anything endangering health, life, etc., ... mental, physical, or sexual. It condones sexual abuse in a domestic relationship of marriage or a live-in, only if it is life threatening or grievously hurtful. It is not about the freedom of decision of a woman's wants. It is about the fundamental design of the marital institution that despite being married, she retains and individual

¹² Section 498A of IPC.

¹³ Ahuja. R, Crime against Women, Rawat Publications, Jaipur, 8 (1987).

¹⁴ Ibid, p. 10.

¹⁵ Ibid p.11.

status, where she doesn't need to concede to every physical overture even though it is only by her husband. Honour and dignity remains with an individual, irrespective of marital status¹⁶.

Causes of violence against women

The causes of violence against women can be studied under the following headings

Patriarchal Structure of society and social conditioning

The pervasiveness of violence against women, across the boundaries of nation, culture, race, class and religion points to its roots in patriarchy ---- the ideology that bestows on men the power and authority over women's lives and their bodies. Historically, gender roles—the socially constructed roles of women and men—have been ordered hierarchically, with men exercising power and control over women. Man occupies a superior status and the woman is merely his appendage. A woman is never an entity in her own right, she is "first the daughter, next the wife, and last the mother of a man". Men are consciously taught to be aggressive and tough while women are conditioned to be submissive and docile.¹⁷ According to a WHO assessment on intimate partner violence and HIV/AIDS, "men use violence against women as a way of disciplining women for transgressions of traditional female roles or when they perceive challenges to their masculinity."¹⁸

Cultural factors

Cultural ideologies – both in industrialized and developing countries – provide 'legitimacy' for violence against women in certain circumstances. Religious and historical traditions in the past have sanctioned the chastising and beating of wives. The physical punishment of wives has been particularly sanctioned under the notion of entitlement and ownership of women. Male control of family wealth inevitably places decision-making authority in male hands, leading to male dominance and proprietary rights over women and girls¹⁹. In India cultural norms encouraged the belief that failure of the marriage represented the women's failure as individuals. Thus, it is in the process of trying to save the marriage at all costs that women suffer from the intense feelings of shame and guilt, and this keep them trapped in their relationships. The Indian woman is directly or indirectly encouraged to sacrifice her own needs, feelings or interests of some other person or community: be it children, husband, family or community.

Economic inequalities

The link between violence and lack of economic resources and dependence is circular. On the one hand, the threat and fear of violence keeps women away from seeking employment, or, at best, compels them to accept low-paid, home-based exploitative

labour. And on the other, without economic independence, women have no power to escape from an abusive relationship. The reverse of this argument also holds true in some countries; that is, women's increasing economic activity and independence is viewed as a threat which leads to increased male violence²⁰. This is particularly true when the male partner is unemployed, and feels his power undermined in the household. According to United Nations report "In Kerala, a survey found that 49 per cent women without property reported domestic violence compared with only seven per cent who owned property,"²¹.

Illiteracy

Illiteracy in India has, since long before independence, has been regarded as an obstacle to development. It is commonly believed that without substantially eliminating illiteracy, India cannot become a cohesive nation and give to all its citizens the quality of life they have long yearned for. The root cause behind any class of discrimination and victimization of women is its low literacy rate²². The latest National Family Health Survey-III found that 37.2 per cent women had experienced violence and cited lack of education as the key reason behind their woes. "Women with no education were much more likely than other women to have suffered spousal violence. However, spousal abuse also extends to women who have secondary or higher secondary level education, with 16 per cent reporting abuse," the survey said²³. But it does not hold always true because literacy and education do not change mindsets. A state that boasts India's highest literacy levels and excellent social development indicators see a 300% increase in violence against women. According to an ICRW-INCLIN (International Centre for Research on Women and International Clinical Epidemiologist Network) study (2000), Thiruvananthapuram, the capital city of Kerala, ranks first among five cities in India in prevalence of domestic violence. Violence in Thiruvananthapuram is about 64% in urban non-slum areas and 71% in rural areas, as shown in the graph. This is higher than Bhopal, Lucknow, Nagpur and Vellore²⁴. Another study on gender-based violence in Kerala, undertaken by Sakhi in 2004 for the Kerala government's department of health, revealed that 40% of respondents had experienced violence in the home at some point in their lives²⁵.

Dowry Demand

Domestic violence is not just confined to India but is experienced throughout the world. However, a number of factors complicate the issue in India, as in other ThirdWorld countries. First, women lack and are denied access to economic, political, and social resources. Second, they are vulnerable to indigenous oppressive institutions of caste, religion, traditional family structures and strictures, and nondemocratic political systems. Third, India stands apart in terms of heightened domestic violence due to dowry, a major reason for harassment

¹⁶ Priyanka Rath, Marital Rape and the Indian legal scenario, available at http://www.indialawjournal.com/volume2/issue_2/article_by_priyanka.html. www.indialawjournal.com/volume2/issue.../article_by_priyanka.html

¹⁷ Shobha Saxena, *Crime against women*, 23, (Ashish Publishing house. New Delhi.

¹⁸ World Health Organization, "Intimate partner violence and HIV/AIDS", WHO Information Bulletin Series, Number 1, Available from <http://www.who.int/gender/violence/en/vawinformationbrief.pdf>.

¹⁹ UNICEF, 'Domestic Violence Against Women And Girls', available at: www.unicef-irc.org/publications/pdf/digest6e.pdf

²⁰ *ibid*.

²¹ Two-third married Indian women victims of domestic violence: UN, available at [http://www.Expressindia.com,Thursday, Oct 13,\(2005\)](http://www.Expressindia.com,Thursday, Oct 13,(2005)).

²² Kaur, Kuljit, Domestic Violence Act: A step towards upholding the rights of women, *Nyaya Deep official Journal of NALSA*, 3 (4), 82-83, Oct (2007).

²³ 37 percent of Indian women face Domestic Violence; available at: <http://www.expressindia.com/news> Saturday, March 03, 2007.

²⁴ Aleyamma Vijayan, Violence against women on the rise in literate Kerala, available at: <http://www.Infochangeindia.org>, Nov(2007).

²⁵ *Ibid*.

and domestic violence²⁶. In today's Indian society, consumerism and a resulting aspiration for a better standard of living has almost turned marriage into a market where the highest prices are bid for a suitable bridegroom.

Marital maladjustment

Marital maladjustment is the cause in large number of cases of violence against women in matrimony. maladjustment may arise both because of the personality characteristics of the husband as well as that of the wife and the environment in which the marriage functions.

Other Influential Factors

Besides these, other influential components are responsible for the violence in the country, poverty, Drug Abuse and Alcoholisms lack of education, and awareness in case of women, gender disparity, practice of power, land dispute, illicit love affair, denial of love and marriage, opposing second marriage, expansion of political supremacy in the specific area and others, are directly or indirectly associated with criminal activities including women violence.

Consequences of domestic violence against women

Violence against women has far-reaching consequences for women, their children and community and society as a whole. Women who experience violence suffer a range of health problems and their ability to earn a living and to participate in public life is diminished. Their children are significantly more at risk for health problems, poor school performance and behavioural disturbances. The costs of violence against women, apart from the human costs, go beyond lowered economic production and reduced human capital formation but also include the costs associated with political and social instability through intergenerational transmission of violence, as well as the funds required for programmes for victims/survivors of violence.

Denial of fundamental rights

The most crucial consequence of violence against women and girls is the denial of fundamental human rights to women and girls. International human rights instruments such as the Universal Declaration of Human Rights (UDHR), adopted in 1948, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, and the Convention on the Rights of the Child (CRC), adopted in 1989, affirm the principles of fundamental rights and freedoms of every human being. Both CEDAW and the CRC are guided by a broad concept of human rights that stretches beyond civil and political rights to the core issues of economic survival, health, and education that affect the quality of daily life for most women and children. The two Conventions call for the right to protection from gender-based abuse and neglect. The strength of these treaties rests on an international consensus, and the assumption that all practices that harm women and girls, no matter how deeply they are embedded in culture, must be eradicated. Legally binding under international law for governments that have ratified them, these treaties oblige governments not only to protect women from crimes of violence, but also to investigate violations when they occur and to bring the perpetrators to justice²⁷. Domestic violence can be

seen as a violation of the fundamental right to live with dignity, and of the right to equality and equal protection of the law guaranteed under the Indian constitution²⁸.

Human development goals Undermined

There is a growing recognition that countries cannot reach their full potential as long as women's potential to participate fully in their society is denied. Data on the social, economic and health costs of violence leave no doubt that violence against women undermines progress towards human and economic development. Women's participation has become key in all social development programmes, be they environmental, for poverty alleviation, or for good governance. By hampering the full involvement and participation of women, countries are eroding the human capital of half their populations. True indicators of a country's commitment to gender equality lie in its actions to eliminate violence against women in all its forms and in all areas of life.²⁹

Health consequences

Violence places women at higher risk for poor physical and reproductive health. Women subjected to violence are more likely to abuse alcohol and drugs and to report sexual dysfunction, suicide attempts, post-traumatic stress and central nervous system disorders³⁰. In a recent study of 3,000 women aged 18-50 years conducted by a pan-India NGO - Sangath - in nine villages in Goa, a popular tourist destination in western India, 14.5 per cent women complained of having an abnormal vaginal discharge due to verbal, physical and sexual violence and psychosocial distress. Depression and anxiety were common complaints amongst these women. Women who complained of vaginal discharge also reported that due to stress, they had meager interest in their daily lives³¹. A few studies based in health facilities indicate a relationship between intimate partner violence and death during pregnancy. For example, a study of 400 villages and seven hospitals in rural western India found that 16 per cent of all deaths during pregnancy were the result of partner violence³². For many women worldwide, the threat of violence exacerbates their risk of contracting HIV. Fear of violence prevents women from accessing HIV/AIDS information, being tested, disclosing their HIV status, accessing services for the prevention of HIV transmission to infants and receiving treatment and counseling, even when they know they have been infected. Studies show the increasing links between violence against women and HIV and demonstrate that HIV infected women are more likely to have experienced violence, and that women who have experienced violence are at higher risk for HIV³³. A woman's fear of violence from her husband or

²⁸ Jaising, Indira, Law of Domestic Violence, V, VL, IX. (2000).

²⁹ Supra note 19 p 9.

³⁰ Ending Violence Against Women, From Words to Action, Study of the Secretary-General, United Nations Publications, 58 (2006).

³¹ Neetalal, Violence Against Women in India, Available from <http://www.opinionasia.org>, 16 April, 2007.

³² Ganatra, B., Coyaji, K. and Rao, V., "Too far, too little, too late: a community-based case control study of maternal mortality in rural west Maharashtra, India", *Bulletin of the World Health Organization*, 76(6) 591-598, (1998).

³³ Global Coalition on Women and AIDS, background paper on "Violence against women and AIDS" available from http://data.unaids.org/GCWA/GCWA_BG_Violence_en.pdf; amfAR, Gender-based violence and HIV among women: Assessing the evidence, Issue Brief No. 3, June 2005; and

²⁶ Huma Ahmed-Ghosh, Chattels of Society, *VIOLENCE AGAINST WOMEN*, 10 (1), Sage Publications, available at <http://people.stfx.ca/accamero/Gender%20and%20Health/Other%20Readings%20Avaliable/other%20readings/Domestic%20violence%20in%20India.pdf> Jan (2004)

²⁷ Supra Note 19, p. 9

partner may make her afraid to bring up the issue of contraceptive use, leading to unintended pregnancy. A study of women in Colombia, for example, found that women who experienced intimate partner violence had higher rates of unintended pregnancy³⁴.

Economic Costs of Violence

Violence against women impoverishes individual women and their families, as well as their communities, societies and nations at many levels. It reduces the capacity of victims/survivors to contribute productively to the family, the economy and public life; drains resources from social services, the justice system, health-care agencies and employers; and lowers the overall educational attainment, mobility and innovative potential of the victims/survivors, their children and even the perpetrators of such violence³⁵.

Magnitude of Domestic violence

The hydra headed problem of domestic violence confronts all women. it assumes hideous forms and faces. The threat of violence controls women in insidious ways, curbing their freedom, their mobility, their rights and distorting their very identities. Domestic Violence is one of the most extreme expressions of female oppression. According to a recent World Health Organisation (WHO) report, one in six women around the world suffer from domestic violence. Based on a survey of 24,000 women from rural and urban areas in 10 countries, the report noted that female victims of domestic assault were twice more likely to suffer poor health than other women. This kind of abuse was also responsible for the spread of HIV amongst women, as abused women were not in a position to demand safe sex³⁶.

Data from various studies reveal that violence against women is indeed very common in India.

Eight studies coordinated by the International Center for Research on Women (ICRW) document the pervasiveness of domestic violence among women in India regardless of age, education level, class, length of marriage, and family living arrangement. For example, in a multi-site study of nearly 10,000 households, 40 percent of the women reported experiencing at least one form of physical abuse and 26 percent reported severe physical abuse, including being hit, kicked, or beaten. Fifty percent of the women experiencing severe physical abuse reported being beaten three or more times in their lifetime and at least once during pregnancy³⁷. According to the third National Family Health Survey, covering the period 2005-06 and released during the second week of October 2007, about 40% of ever-married women have experienced violence, and over half the sample believes that "wife-beating" is justifiable. It's a shocking revelation in this age that not just Indian men, but even adolescents - in the 15-19 age group - feel that wife beating is

justified. As per Unicef's " Global Report Card on Adolescents 2012", says that 57% of adolescent boys in India think a husband is justified in hitting or beating his wife³⁸. So if a woman goes to a police station complaining about violence by her husband, she is told to "adjust" and that the occasional beating could not be called violence or that she must have done something wrong to justify the violence. A national conference of special significance for women in this country was conducted recently in Delhi by the Lawyers Collective Women's Rights Initiative. The occasion was the first anniversary of the passing of the Protection of Women from Domestic Violence Act 2005 (PWDVA) and the release of the first monitoring and evaluation report on this piece of legislation, aptly named 'Staying Alive'. This may be the first time in the country that a law is being evaluated on its first anniversary. The report states that 7,913 cases totally were filed under the Protection of Women from Domestic Violence Act 2005 in the one year since its enactment. The figures are based on information received by the Office of the Chief Justice of India from different high courts in the country. According to the report, the greatest number of cases has been filed from Rajasthan (3,440), where no protection officers have been appointed or any infrastructure put in place. Second comes Kerala, with 1,028 cases registered under the PWDVA³⁹.

Around 70% of women in India are victims to domestic violence according to Renuka Chowdhury junior minister for women and child development. National Crime Records Bureau reveal that a crime against a women is committed every three minutes, a women is raped every 29 minutes, a dowry death occurs every 77 minutes and one case of cruelty committed by either the husband or relative of the victim⁴⁰. The National Crime Records Bureau (NCRB) report 2010 the Cases of Dowry Deaths (Sec. 302, 304B) have increased by 0.1% over the previous year (8,383). 26.4% of the total such cases reported in the country were reported from Uttar Pradesh (2,217) alone followed by Bihar (1,257) (15.0%). The highest rate of crime (1.3) was reported from Bihar as compared to the National average of 0.7. It also reports that Torture cases (Cruelty by Husband & Relatives) (Sec. 498-A IPC) in the country have increased by 5.0% over the previous year (89,546). 18.9% of these were reported from West Bengal (17,796). The highest rate of 26.0 was reported from Tripura as compared to the National rate at 7.941.

Legal framework on domestic violence

Introduction

The Protection of Women from Domestic Violence Act 2005 was notified on the 26th of October 2006. This law, for the first time, recognizes a woman's right to a violence free home. In doing so, this law provides a comprehensive definition of domestic violence, recognizes a woman's right to reside in the shared household, provides for relief's that she is entitled to in cases of violation and lays down a mechanism to facilitate her access to justice and other support services. This law is a first step towards bringing women's human rights into the home. Violence in "private" sphere by "private actors", as is the case in

Human Rights Watch, Just die quietly: Domestic violence and women's vulnerability to HIV in Uganda, (August 2003).

³⁴ Pallitto, C., "Relationship between intimate partner violence and unintended pregnancy: Analysis of a national sample from Colombia", *International Family Planning Perspectives*, **30(4)**, 165-173 (December 2004).

³⁵ Ending violence against women, From words to action, Study of the Secretary-General, United Nations Publications, 2006, Pg. 62.

³⁶ Neeta lal, Violence against women in India, 16 April 2007, available at: [http:// www.OpinionAsia.org](http://www.OpinionAsia.org).

³⁷ Domestic Violence in India II: Exploring Strategies, Promoting Dialogue, ICRW information bulletin, available at: <http://www.icrw.org>, (jan 2001)

³⁸ The Times of India, Available at: http://articles.timesofindia.indiatimes.com/2012-04-25/india/31398208_1_domestic-violence-spousal-violence-centre-for-social-research

³⁹ India tackles domestic violence, available at: <http://news.bbc.co.uk/2/hi/6086334.stm>.

⁴⁰ Supra note 39.

⁴¹ www.ncrb.nic.in

domestic violence, is more difficult to deal with. This poses a challenge to our understanding of human rights itself and to our notion of justice. Human rights do not reside in the private sphere where most women do, because they are enforceable only against States, and apparently, there is no State in the private sphere. After all, are we not familiar with adages such as “a man’s home is his castle”; a place where he alone and not the state has jurisdiction. One of the major successes of the women’s movement has been to pierce the veil of privacy and bring human rights standards into the home under the slogan ‘the personal is political’. This has been done by achieving international consensus in incorporating the Convention of Elimination of Discrimination against Women (“CEDAW”) in the international human rights framework. Taking cue, the Indian women’s movement, in the early years, raised its voice against dowry related harassment within the home which resulted in the recognition of the offence of “cruelty” within marriages in the Indian Penal Code⁴². This, however, was a beginning of the campaign. The PWDVA marks a significant step forward. The goal of equality rights for women is still a distance away.

Legal framework on domestic violence

The act at a glance

The key features of this law are as follows:

The definition of domestic violence

Based on the UN Model Code, the definition of ‘domestic violence’⁴³ has been provided for in Section 3 of the PWDVA. It includes all acts of omission and commission that result in injury or harm or threats to cause injury or harm, as well as harassment to meet unlawful demands (such as dowry). Injury may be physical or mental in nature. Conduct includes physical abuse, verbal and emotional abuse, sexual abuse and economic abuse. In arriving at a conclusion that an act of domestic violence has been committed, the overall facts and circumstances are to be considered.

Definition of domestic relationship

The term ‘domestic relationship’⁴⁴ has been broadly defined to include all women who ‘live or have lived together in a shared household’ with the respondent and are related to the respondent by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. ‘Respondent’⁴⁵ has been defined to include adult male perpetrators of violence and incases of married women (or women living in the nature of marriages); relatives of the husband or the male partner.

Rights recognized under the Act

The PWDVA recognizes a woman’s right to live in a violence free home. The right to reside has been given statutory recognition under the law.⁴⁶ This guards against the illegal dispossession of women from the shared household. A woman who has faced domestic violence from the respondent is entitled to relief’s under this law.

Remedies provided for in the law are:

a. **Protection Order (Section 18)** - protection orders or stop violence orders can be passed to restrain the respondent from committing any further acts of violence, as well as committing any other acts that detrimentally affect the rights of the aggrieved woman.

b. **Residence order (Section 19)** - orders under this provision give effect to the right to residence recognized in Section 17. Orders may be passed to prevent dispossession or disturb possession or to restore possession, directions to the respondent to remove himself from the share household (though female respondents cannot not dispossessed), or provide alternate accommodation if the woman so desires.

c. **Monetary relief (Section 20)**- orders for monetary relief can be passed to meet actual expenses incurred due to medical expenditure, loss of earnings, etc and includes maintenance.

d. **Custody order (Section 21)**- orders for temporary custody may be passed in favor of the aggrieved person in pending applications for protection orders. The nature of custody provided is temporary and has no effect on personal / civil laws governing issues of permanent custody. The issue of custody is to be decided in keeping the welfare of the children in mind.

e. **Compensation order (Section 22)**– in consonance with tort law principles of awarding damages for mental and physical suffering caused due to illegal conduct, this provision empowers a magistrate to order additional relief for mental torture and emotional distress.

f. **Ex parte and interim orders (Section 23)** – the magistrate is empowered to pass *ex parte* and interim orders if a *prima facie* case is made out under this law. This Section is important in providing immediate and emergency relief to women in situations of violence.

Appeals from the orders of the Magistrate lie with the Sessions Court.⁴⁷ A breach of a protection order or any interim order constitutes an offence under Section 31 attracting maximum imprisonment of 1 year and or a fine that may extend to twenty thousand rupees⁴⁸. An aggrieved woman may file for the discharge of a protection order⁴⁹. Either parties can file for the alteration, modification or revocation of any order passed by the court⁵⁰. Such an application should show a change in circumstances.

Infrastructure made available under the law

The implementing authority of this law is the Protection Officer. A Protection Officer works under the supervision of the court and is vested with the responsibility of facilitating an aggrieved woman’s access to the court and assisting the court in discharging its functions. Service providers engaged in providing services, to women are to be registered under the Act⁵¹. By registering under this law, service providers attain the status of public officers⁵².

The State is to notify medical facilities and shelter homes which cannot refuse to provide services to aggrieved women⁵³. Police are bound to provide information on this law to women approaching them with complaints of domestic violence. This is in addition to their duties to register complaints under criminal law. The court may also order the police to assist Protection Officers in discharging their functions⁵⁴. Protection Officers are vested with the responsibility of facilitating an aggrieved woman’s access to legal aid services⁵⁵.

⁴² Section 498A.

⁴³ Section 3.

⁴⁴ Section 2(f).

⁴⁵ Section 2(q).

⁴⁶ Section 17.

⁴⁷ Section 29.

⁴⁸ Section 31 (1).

⁴⁹ Section 25 (1).

⁵⁰ Section 25 (2).

⁵¹ Section 10(1).

⁵² Section 30.

⁵³ Section 6 & 7

⁵⁴ Section 5.

⁵⁵ Section 9 (d).

Courts empowered to deal with applications

An aggrieved woman or the Protection Officer on her behalf may file an application for relief to a Magistrate⁵⁶. Section 26 provides that an application under this Act can also be filed in pending proceedings affecting the aggrieved woman. Prior to filing an application, an aggrieved woman can record her complaint of domestic violence in the form of a 'Domestic Incident Report' ("DIR"). A DIR may be recorded by the Protection Officer or by any Service Provider⁵⁷. A DIR may be attached to the application for relief's. A magistrate shall consider any DIR's filed at the time of deciding on relief's to be granted.

Conclusion and suggestions

"Fight for gender equality is not a fight against men. It is a fight against traditions that have chewed them—a fight against attitudes that are ingrained in the society—it is a fight against system—a fight against proverbial Laxshman Rekha which is different for men and different for women. The society must rise to the occasion. It must recognize and accept the fact that men and women are equal partners in life. They are individuals who have their own identity".

Dr. Justice A.S. Anand

A strong conclusion emerges from this study is that domestic violence is a pervasive phenomenon in india . Solutions to much of domestic violence must be found within the family and the community setting. Strategies that should be explored further are education of women and girls, gender-

sensitive education directed at males. Education of girls should aim at strengthening their inherent abilities and utilising them for their own development as well as for the society's development. For the emancipation of women in every field, economic independence is of paramount importance. Along with economic independence, equal emphasis must also be laid on the total development of women—creating awareness among them about their rights and responsibilities—the recognition of their vital role and the work they do at home. It is necessary, that a new social system must evolve. The society must respond and change its attitude. Major surgery is required and not merely cosmetic changes. This empowerment will help in improving the status of women and raising voice against atrocities and harassment. Pre-marital counselling and post-marital counselling is essential. Pre-marital counselling would enable couples to have better understanding of the rights and responsibilities of married life. Post-marital counseling of couples may facilitate better interaction and interrelationships among them. This would result in better understanding of the problems and underlying causes. Setting up of legal literacy camps in susceptible communities, and self-help groups would help women open up their problems and find solutions. Help from service organisations should be made available to all concerned irrespective of caste, creed, and status. Mobile family courts to settle disputes should be initiated. Representatives from communities having links with various agencies to spot cases could also be adopted as a mechanism to reduce the occurrence of domestic violence. Men should understand the value of women and have respect for them; only then violence could be prevented.

⁵⁶ Section 12

⁵⁷ Section 9 & 10.