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RESEARCH ARTICLE

DOMESTIC VIOLENCE AND THE LAW (WITH SPECIAL REFERENCE TO NATIONAL AND INTERNATIONAL DOCUMENTS)

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ABSTRACT

Women and men are created by the same Creator. Their rights and duties are equally divided by Him. Gradually, man started taking advantages of his strong physical power. As a result of this, the position of women was reduced to the mercy of men by imposing unreasonable customs upon women. With the progress of civilization people started realizing this fact. Law came for the rescue of women. Violence against women is present in every country, cutting across the boundaries of culture, class, education, income ethnicity and age. Even though most societies prescribe against violence but whenever violence takes place within home, a common phenomenon, the abuse is effectively condoned by the tacit silence and passivity displayed by the State and the law enforcing machinery. Violence against women is not a myth, but reality. It exists and exists everywhere. The problem of violence against women is as old as the world in cosmologies, mythologies or legends. The type, frequency, intensity and control of violence against women may vary from time to time or place to place but it is there everywhere. In post-independence, the Constitution of India, 1950 provided certain provisions relating to women and did not discriminate men and women but it treats alike. Constitution also included general and special provisions for upliftment and the development of the status of women. On 20 Dec., 1993, UN Declaration on the Elimination of Violence Against Women described domestic violence as: "any act of gender-based violence that results in or is likely to result in 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 in private life." The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that the Domestic Violence is undoubtedly a human rights issue. The phenomenon of Domestic Violence in India is widely prevalent and in order to provide a remedy in the civil law for the protection of women from being victims of Domestic Violence and to prevent the occurrence of domestic violence the Protection of Women from Domestic Violence Act, 2005 was passed by the Parliament. Protection of Women from Domestic Violence Act, 2005 provides for effective protection of rights of women guaranteed under the Constitution of India, 1950 who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. This research paper is a humble attempt to explore the issues of domestic violence against women in various national and international human rights instruments in the light of recent developments.

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INTRODUCTION

Concept of gender based violence: Gender based violence is violence that is directed at individuals on the basis of their gender, with women and girls making up the vast majority of victims. It may take many different forms and there may be distinctive pattern or manifestations of gender violence associated with particular communities, cultures or regions and historically epochs. Gender based violence has emerged as a global issue extending across regional, social, cultural and economic boundaries. It take place throughout society, in the home, in the community and in State institutions. It can be grouped into five main, though not exclusive categories:

Sexual violence: e.g. rape, incest, forced prostitution and sexual harassment;

Physical violence: e.g. wife battering and assault, honour killings, female infanticide, child assault by teachers etc;

Emotional and psychological violence: E.g. the acts of violence, insult and name calling, humiliation in front of others, blackmail and the threat of abandonment;

Harmful traditional practice: female infanticide, denial of certain foods and forced and/or early marriages.

Due to the immense vastness of the issue, it is not feasible to deal with every aspects of gender violence and it confines

itself to one of crucial aspect of gender based violence i.e. domestic violence occurring within the family.

Meaning of domestic violence: Domestic violence is essentially violence perpetrated by persons in intimate family relationships. It is the establishment of control and fear in a relationship through violence and other forms of abuse. The violence may involve physical abuse, sexual assault and other threats. Sometimes it is subtler, like making someone feel worthless, not letting him or her have money, or not allowing him or her to leave the home. Social isolation and emotional abuse can have long lasting effects as well as physical violence. Although both men and women can be abused, in most cases, the victim is a woman. Research from several parts of the world indicates that the perpetrators of the domestic violence are predominantly male and that the male on his female sexual partner usually perpetrates the violence. The acts of violence include physical and sexual attacks and threats. Domestic violence includes abuse of all kinds—physical, psychological, sexual, economic emotional and verbal. It includes denial of basic necessities and the additional emotional blackmail where are children concerned and the threat of dispossession from the matrimonial home. It is generally denying the woman her rights as an individual. Domestic violence in India has many aspects. Apart from violence between spouses, there is violence between siblings, between co-habited, abuse of children by parents and vice-versa. It cuts across all backgrounds be it social, cultural, economic or religious. It cuts across class, caste and ethnicities.

International scenario: In ancient Greek and Roman societies women were treated as inferior to men. Procreation of children has been held to be the only role for women. Conception was her only purpose. Hence women were greatly discriminated against. The perception of women among Christian theologians was highly unfavorable. Gender inequality continued into medieval societies. Under common law of England, a married woman hardly had any right; she had no right to her property after marriage. In the early history of the United States and Europe, women and children were considered as a man's possession. Women began working in industries, the conditions of work were atrocious but it was not until 1910 that the State passed legislations alleviating the conditions of work. Industrialization brought to fore new occupational classes and the feudal society gradually changed into an egalitarian society. Soft skills and knowledge became more important than brute physical force. Spread of education led to empowerment of women and ignited their hope and aspiration for a just order based on gender justice. It was a quest for individuality sans gender identity. Gender based inequality began to be questioned. In 1869 in his Article "The Subjection of Women" John Stuart Mill stated, "equality admitting no power of privilege on the one side, nor disability on the other". There were other philosophers also who raised their voice on the subject of gender equality, but it gained momentum and more comprehensive statutory force in the post war period since the inception of the U.N.O. in 1946. Various International Conventions and declaration reflect the importance of the family and the situation of women within it. Most noteworthy are the Universal Declaration on Human Rights, The International Covenant on Civil and political Rights, the Convention on the Nationality of Married Women, The Convention on the Consent of marriage, the Minimum age to Enter the Marriage and the Marriage Registry, and the

subsequent Central Assembly Resolution 2018/XX, and the Nairobi Forward-Looking Strategies for the advancement of Women. Any insight into this area must begin with the landmark United Nations Convention on the Elimination of All Form of Discrimination against Women (CEDAW), 1979. CEDAW Convention emphasizes that discrimination against women and girls violate the principle of equality and respect for human dignity. It provides a comprehensive framework for challenging the various forces that have created and maintained discrimination based on sex. The General Recommendation 19 adopted in the 11th Session of CEDAW, in 1992, describes gender violence as follows:

"Violence which is directed against a woman because she is a woman or which effects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivation of liberty".

In a landmark resolution 48/104 adopted by the United Nations General Assembly at its 48th Session, in December 1993 the Declaration on the Elimination of Violence Against Women (DEVAW) was passed. Violence against women is defined through it as:

"Any Act of gender based violence that result in, or is likely to result in, 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".

At the United National Conference on Human Right held at Vienna in 1993, it was adopted that: "Gender based violence and all forms of sexual harassment and exploitation.....are incompatible with the dignity and worth of human person and must be eliminated". The Fourth World Conference on Women (1995) and the Beijing Declaration and Platform for Action devoted an entire section to the issue of violence against women. The Beijing +5 conference held at New York in the year 2000, addressed issues of domestic violence, trafficking, HIV/AIDS and globalization. The above international convention hence explicitly acknowledge the State's responsibility for human rights violations by private actors in both the public and private sphere. By becoming State party to such international women's conventions, States agree to condemn discrimination in all its forms and to ensure compliance by their governments and to take all appropriate measures to effect the elimination of discrimination in all its forms by any person, organization or enterprise and to modify or abolish existing laws, regulations, customs and practices.

In brief, the following are the main international instrument which deal the elimination of gender discrimination

- United Nations Charter, 1945.
- Universal Declaration of Human Rights, 1948.
- Convention on the Political Rights of Women, 1952.
- Convention on the Nationality of Married Women, 1957.
- The International Covenant on Civil and Political Rights, 1966.
- The International Covenant on Economic, Social and Cultural Rights, 1966.

- Declaration on Elimination of Discrimination Against Women, 1967.
- Convention on the Elimination of All Forms of Discrimination Against Women, 1979.
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Effective 1981.
- Declaration on the Elimination of Violence Against Women, 1993.
- First World Conference on Women, Mexico, 1975.
- Second World Conference on Women, Copenhagen, 1980.
- Third World Conference on Women, Nairobi, 1985
- Vienna Conference, 1993.
- Fourth Beijing Conference, 1995.

Regional conventions

At the regional level pursuant to the resolution entitled "Women and Violence", adopted at the Fifth Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean (ECLAC, 1991) and the General Assembly resolution 55/114 on Domestic Violence (United Nations, 1990), the documents and policy recommendation issued by the Economic Commission for Latin America and the Caribbean (ECLAC) have characterized the problem of gender-based violence as one of the obstacles that must be overcome in order to improve the status of women. With regard to women's movements at the regional level, in the San Jose Declaration on Human Rights, which was adopted at the conclusion of the Regional Meeting for Latin America and the Caribbean of the World Conference on Human Rights held in January, 1993 in Costa Rica, the Governments of Latin America and the Caribbean stated that the State should give priority to eradicate all forms of hidden or open discrimination, and eliminate gender-based violence. On 9 June, 1994, at Belem do Para, countries of the Latin America region adopted the Inter-America Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para). It was also by the Organization of American States through its Inter-American Commission of Women (IACW). It divides violence against women into three broad categories: violence which occurs: (i) in the family, (ii) in the community and (iii) where it is perpetrated or condoned by the State (Art. 2). Many other twentieth century international instruments too have obligated the states to launch aggressive moves to protect women from all forms of violence and to punish such violence. Such obligations are contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; the Convention on the Rights of Child, 1989; the Convention on the Protection of the Rights of Migrant Workers and Members of their Families, 1990; the Programme of Action of the International Conference on Population and Development, 1994; the Hague Convention on the Protection of the Children and cooperation in respect of Inter-country Adoption, 1993 too have implied provisions targeting various forms of gender violence. The Rome Statute of the International Criminal Court, 1998 and the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of Worst Form of Child Labour, 1999 also have embodied prohibitions on violence against women, particularly the sexual violence. The Millennium Session of the General Assembly, 2000, approved the Protocol

to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The Protocol aims to protect women from vice of human trafficking a contemporary form of slavery involving a medley exploitative prospects such as sexual exploitation, forced labour, slavery-like conditions, servitude, etc. After an assessment of the entire system of international standards for the protection of domestic violence victims a discussion is made that initial neutrality of international law towards the women issues, of late the problem of gender inequality, discrimination and violence, have gained increasing centrality in the international community. A number of international convention guarantees specific human rights to women. Yet, the guarantees, rights and freedoms remain meaningless. No redress can be sought when violence allegedly occurs. There must be an effective enforcement procedure both at the international and national level.

National scenario/national legal frame work

Article 14 of the Constitution of India provides for equality before the Law. Under Article 15(3), the State has the power to make special provisions for women and children. Article 14 read with Article 15(3) measures up to international standards in CEDAW and other international conventions. It follows that the violence against women in any form is a violation of rights to equality. State inaction in the field of preventing violence would itself be a violation of the fundamental rights of equality. In India, Courts rely on these international instruments not only in interpreting legislations, but also view these instruments as facets of fundamental rights guaranteed under the Constitution. Thus, in the case of Vishaka Vs. State of Rajasthan, it has been observed by the Apex Court:

"Any international Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of constitutional guarantee".

In addition, Article 39 (d) provides equal pay for equal work and Article 42, provisions are to be made by the State for securing just and humane conditions of work and for maternity relief. Article 51A (e) impose a duty on every citizen to renounces practices derogatory to the dignity of women. The entire concept of gender equality enshrined in our Constitution would be futile if a woman's rights to live with dignity or her right to be treated at an equal footing with her male counterparts is not ensured by the society. Besides, the severe punitive approaches of criminal law, constant monitoring by the National Human Rights Commission, the untiring efforts of women organizations and the National Commission for Women to liberate women from the hitherto unjust social, political and economic subjugation and suppression on violation of their human rights. Apart from the Constitutional provisions, there are some statutory enactment which protect the human rights, improve the dignity and safeguard from the domestic violence to Indian women. In India, although all laws are not gender specific, the provision of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with emerging requirements.

Some Acts which have been special provisions to safeguard women and their interest are

- Indian Evidence Act, 1872
- Child Marriage Restraint Act, 1929

- The Employees State Insurance Act, 1948
- The Plantation Labour Act, 1951.
- The Special Marriage Act, 1954.
- The Hindu Marriage Act, 1955.
- The Hindu Succession Act, 1956.
- Immoral Traffic (Prevention) Act, 1956.
- The Maternity Benefit Act, 1961 (Amended in 1995).
- Dowry Prohibition Act, 1961.
- The Medical Termination of Pregnancy Act, 1971.
- The Contract Labour (Regulation and Abolition) Act, 1976.
- The Equal Remuneration Act, 1976.
- The Child Marriage Restraint (Amendment) Act, 1976
- The Criminal Law (Amendment) Act, 1983.
- The Family Courts Act, 1984.
- The Factories (Amendment) Act, 1986.
- Indecent Representation of Women (Prohibition) Act, 1986.
- Commission of Sati (Prevention) Act, 1987.
- Protection of Women from Domestic Violence Act, 2005.
- Protection of Children from Sexual Offences Act, 2013.
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Protection of women from domestic violence ACT, 2005

The Beijing Declaration and the Programme of Action has regarded domestic violence as a human right issue and a serious deterrent to development. In order to provide effective protection of the rights of women who are victims of violence of any kind occurring within the family, the Protection of Women from Domestic Violence Act, 2005 was enacted by the Parliament. Domestic violence has been defined by the Act under Section 3 as may act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

- 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
- Harass, 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 harm, whether physical or mental, to the aggrieved person.

Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer. A Police Officer, Protection Officer, Service Provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person(a) of her right to make an application for obtaining a relief by way of protection order, an order for monetary relief, a custody order, a resident 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 Authority Act, 1987; (e) of her right to file a complaint under Section 498-A of the Indian Penal Code, wherever relevant. 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 the Act. The relief sought 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. The Magistrate may, after giving the aggrieved person and respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from (a) committing any act of domestic violence; or (b) aiding or abetting in the commission of acts of domestic violence; (c) entering the place of employment of aggrieved person or, if the person aggrieved is a child, it is school or any other place frequented by the aggrieved person; (d) attempting to communicate in any form, whatever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact; (e) alienating any assets, operating bank lockers or bank accounts; or (f) causing violence to the dependents and other relatives.

Conclusion

Under Indian law, both criminal and civil, few provisions exist for the married woman to address this issue. The existing personal laws (Hindu, Christian, Muslim, Parsi) and few secular ones like the Special Marriage Act deals only with marriage and the breakdown of marriage. None of these offer any safeguard or right for the woman to live in space and harmony in matrimonial home. This omission makes it easy to through a woman out on the street with or without the dowry she brought with her and to coerce her in to divorce and a maintenance settlement. Though the Dowry Prohibition Act was introduced in 1961, it did not bring much success. In the 1980s two tremendously important Acts that brought domestic violence out of private closet into public domain was enacted. The first of these was the introduction of Section 498A of the Indian Penal Code 1980 brought in through the Criminal Law (Amendment) Act, 1986, which criminalized violence in Marriage, both physical and mental, inflicted on woman. The second was the new provision of Section 304B of the Indian Penal Code and the Dowry Prohibition (Amendment) Act, 1986 read with Section 113-B of the Indian Evidence Act, 1872 creating a new offence dowry death. Now Section 498A of the Indian Penal Code has not really come to the rescue of woman though the police, judiciary and men think otherwise. Section 498A has further limitation and does not take in to account the day-to-day violence in the household. It is ineffective for unmarried, widowed, separated or aged woman who are subjected for their natal family. A woman subjected to occasional beating not causing 'grave' injury is not entitled to any protection from the State. While the history of legislation in India does show that laws have been amended numerous times. They do not seem to have served any purpose as yet. The pervasiveness and magnitude of domestic violence in the nineties is reflected in the Declaration on the Elimination of Violence against Women adopted by the General Assembly of the United Nations at its 23rd Plenary Meeting held on December 20, 1993. The Convention on the Elimination on Discrimination Against Women (CEDAW) is the first International, legal document, which pays specific focus to the violence that woman suffer due to legal, social and cultural traditions. The biggest pitfalls thus are the patriarchal

mentality and the ideology that woman's place is in the matrimonial home. There is no acceptance of the fact that she does not have a right to be free nor does she have alternate resources to move out of a violent relationship. Often, seeing no life beyond such relationship, a woman limits her cries to within the doors of her own home. Thus we see, woman who are the victims of the domestic violence, are unable to leave abusive situations due to several social and financial factors. Many of them are at the risk of further violence or even being killed by their partners, when they attempt to leave the abusive relationship. There is an urgent need to recognize that domestic violence is a serious crime against society; that many women are regularly beaten, burnt, tortured and in some cases even killed by their partners, husbands in-laws or co-habitant. Majority of the domestic violence are against woman, and this form of violence cuts across all social, cultural, economic and religious backgrounds. It is to be noted that the Act alone cannot eliminate the discrimination and violence against woman. In order to reduce discrimination and domestic violence we must change the attitude and behavior of men; and this has to start early, in boyhood. Enlightened fathers, husbands and brothers are more likely to respect daughters, wife and sisters.

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