

# Domestic Violence against Women in India: A Critical Study

**Shubhangini Bhatnagar**

Assistant Professor & HOD,  
Deptt.of Law,  
Mewar Institute of Law,  
Ghaziabad

## Abstract

Domestic violence is a serious problem in homes across the nation. Largely under-reported, its criminal roots run deep, and can have far-reaching effects on victims and friends and family of victims. Several different types of domestic violence exist, including physical, verbal, mental and emotional, and sexual abuse. Each is very serious, and often accompanies one another.

It is only recently that domestic violence has been considered a violation of the law. Although men have battered, abused and mistreated their wives or intimate partners for a long time, historically, wife or partner abuse has been viewed as a "normal" part of marriage or intimate relationships. Only towards the end of the twentieth century, in the 1970s, has domestic violence been defined a crime, justifying intervention by the criminal justice system. Indian society makes domestic violence invisible and leaves it cocooned by feelings of guilt and embarrassment; according to some findings, two of every five women in an abusive relationship in India do not speak up about the abuse they undergo because of shame and family honor and this is despite the fact that surveys of women across urban slum; non-slum and rural areas have shown that up to fifty per cent of them have suffered from at least one form of domestic violence in their marital lives. Unfortunately, this attitude which makes domestic violence an invisible factor in India's social fabric vitiates not only societal responses to the issue but also institutional responses even though studies have repeatedly shown that domestic violence is one of the few phenomena which cuts across all the cultural, socio-economic, educational, ethnic and religious barriers which usually divide society, and, absurdly enough, not only seems to increase with a rise in a woman's education but also prevails among the so-called elite of society.

**Keywords:** Domestic Violence, Women, Criminal Justice System, Abuse, Women Empowerment, Social Justice, Fundamental Rights, Directive Principles of State Policy.

## Introduction

### Domestic Violence: Obstacles on the Empowerment of Women

Now-a-days often when we scan through the newspaper or while watching the television, we come across news related to torture and brutality against various members of the family. Mostly these members comprise women in the age group of 15-40 years. This brutality has been termed as domestic violence. Wife tortured and battered to death, girls facing sexual harassment in school or their workplace, and sometimes it's astonishing but they face such vindictive behavior in their own house from among the family members.'

Domestic violence against women has become very common in society and is present in every other household. Violence against women is rampant in India. Laws to deal with domestic violence do exist and they include Section 113 A of the Indian Evidence Act, Sections 498-A and 304 B of the Indian Penal Code, and the Dowry Prohibition Act of 1961 and the Domestic Violence Act which came into force in October 2006. The effect of such laws is, however, currently limited.

Judicial records show that the conviction rates in cases of domestic violence are very low and these records don't take into consideration those cases which never even make it to court. Lengthy court proceedings, inordinate delays in investigation and irrational procedures are serious deterrents for women to approach courts; in this paper we will discuss domestic violence as a criminal offense, and the justice system response to woman battering incidents. According to India's latest National Family Health Survey-III, which interviewed 1.25 lakh women in 28 states during 2005-06, over 40% of women reported being beaten

by their husbands at some point of time. Over 51% of the 75,000 men interviewed didn't find anything wrong with assaulting their wives. More shockingly, around 54% of the women surveyed thought that such violence was justified on one ground or the other. An earlier study done by Harvard on domestic violence in India had made another major finding—children of women beaten up or abused by husbands were 21% more likely to die before turning. Domestic violence is one of the crimes against women which is linked to their disadvantageous position in the society. Domestic violence refers to violence against women especially in matrimonial homes. Therefore, domestic violence is recognized as the significant barriers of the empowerment of women, with consequences of woman's health, their health health-seeking behavior and their adoption of small family norm.

#### **Objectives of the Study**

1. To identify the factors responsible for the socio-legal crime of Domestic Violence;
2. To analyze the sufficiency of various legal provision for prevention of Domestic Violence

Domestic violence now can be defined as any physical, mental, sexual or psychological abuse or just an attempt of it which creates fear in the minds of women and bewilders them. In one such case, it so happened that a woman asked for a required amount of dowry and gifts for her first pregnancy and the girl's father couldn't manage the amount. Some days later, the dead body of the girl was found near a tank. It was clear that the woman's hands and legs were tied and she was given electric shocks and then when she dies, her body was disposed of. In 1983, domestic violence was recognized as a specific criminal offense by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman.

#### **Domestic Violence in Rural Areas**

The possibilities of domestic violence are more rampant in rural areas. In rural areas, young girls are married off at the tender age of 12 or 13 before they reach puberty. They have little knowledge about sexual relationships which they are going to share with their husband. On the other hand, men are mature enough and they expect a lot from their marriage. When the women can't fulfill the needs and urges of the man, he starts exploiting and man-handling her. She has no clue how to handle the situation and so she escapes to her father's house. But there also, she gets no sympathy from her own parents and she is forced to return to her husband. Rural women are less or not educated at all, so it is difficult for them to find a solution to fight against domestic violence. They are not even welcome in their father's family. Such social dogmas weaken a woman from inside and she is forced to take some drastic step which can put an end to her problems permanently.

#### **Domestic Violence in Urban Areas**

Well if people believe that only women in the rural areas are subjected to domestic violence, then we should think again. It is present even in the well-educated sections of Indian society. Even educated men who claims to have a rational mind and the ability

to think and distinguish between what is correct and what is wrong make such grave mistakes of domestic violence. Even if they are educated, when it comes to giving women a position at par with them, their orthodox mentality comes forth. They can never accept the fact that their wife (better half) can prosper more than them and have a better position in the society. If a wife is earning more than a husband, it also becomes a reason for domestic violence. But it has been noticed that majority of the women in the fear of bringing bad name to their family, don't open their mouths and go on suffering through all the pain and pressure. However, educated a man is, the wish for a male child is prevalent even in today's society. Even well-to-do families wish to have a male child so that when he grows up, he can carry forward the family business or any family legacy, in the greed of a male child, women have to face a lot of violence.

#### **Significant Constitutional and Legal Provisions for Women in India**

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at woman's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

#### **Constitutional Provisions for the Welfare of Women in India**

Despite of women contribution in all spheres of life and they enjoy a unique position in every society and country of the world, but they suffer in silence and belong to a class which is in a disadvantaged position on account of several barriers and impediments. India, being a country of paradoxes, is no exception. Here too, women, a personification of Shakti, once given a dignified status, are in need of empowerment. Woman's empowerment in legal, social, political and economic requires to be enhanced. However, empowerment and equality are based on the gender sensitivity of society towards their problems. The intensification of woman's issues and rights movement all over the world is reflected in the form of various Conventions passed by the United Nations.

Gender equality is always escaped the constitutional provisions of equality before the law or the equal protection of law. This is because equality is always supposed to be between equals and since the judges did not concede that men and women were equal. Gender equality did not seem to them to be a legally forbidden inequality. Basically, as pointed out by **Dicey**<sup>1</sup> the Constitutional theories of Rule of Law and the fundamental rights stemmed from the struggle for individual liberty and were intended to curb the power of the State.

The Constitution aims at creating legal norms, social philosophy and economic values which are to be affected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals. The Constitution of India contains various provisions, which provide for equal rights and opportunities for both men and women.

#### **Preamble: Equal Economic, Social and Political Justice**

The Preamble contains the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity. Political Rights Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly represented in politics. There were only seven women members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers.

Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity benefits, equal remuneration and property/succession have been enacted to provide the necessary protection in these areas. Social justice for providing social justice to women, the most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of law worked to the disadvantage of a woman accused because in some of the cases it imposed a heavy burden on the prosecutor, for e.g. in cases of rape and dowry. Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, unthought-of.

These examples of gender insensitivity were tackled by the judiciary and incorporated into binding decisional laws to provide social justice in void spheres. Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-Natal Diagnostic Techniques (Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb. Despite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the objective of securing to each individual dignity, irrespective of sex, community or place of birth.

#### **Fundamental Rights: Judicial Approach towards Women Upliftment**

Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution. Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India.

Justice Bhagwati in **Maneka Gandhi v. Union of India (AIR 1978 SC 597)** said:

"These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent."

Article 14 guarantees that the State shall not deny equality before the law and equal protection of the laws; Article: 14 Equality before Law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 prohibits discrimination against any citizen on the ground of sex: and Article 15 (3) empowers the state to make positive discrimination in favor of women and child; Article: 15 Prohibition of discrimination on grounds of religion, race, cast, sex, or place of birth. Accordingly, Article 15(1) prohibits gender discrimination and Article 15(3) lifts that rigor and permits the State to positively discriminate in favor of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. Article 16 provides for equality of opportunity in matter of public employment.

The Constitution, therefore, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the Courts realize that these Articles reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent the Constitution intended. There is still a considerable gap between constitutional rights and their application in the day-to-day lives of most women. At the same time it is true that women are working in jobs which were hitherto exclusively masculine domains. But there are still instances which exhibit lack of confidence their capability and efficiency.

In case of **C.B. Muthumma v. Union of India**<sup>2</sup>, The Supreme Court through V.R. Krishna Iyer and P.N. Singh, JJ. Held that:

"The credibility of the Constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievance of Ms Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess."

In case of *Air India v. Nargesh Meerza*<sup>3</sup> The court held that: *"It was a sound and salutary*

provision. Apart from improving the health of the employee it helps a great deal in the promotion and boosting up of our family planning programme."

In *Sarita Samvedi v. Union of India*<sup>4</sup>, the Supreme Court held invalid a provision of the Railway Board Circular dated 27th December, 1982 which restricted the eligibility of a married daughter of a retiring official for out-of-turn allotment of a house, to situations where such a retiring official had no son or where the daughter was the only person prepared to maintain the parents and the sons were not in a position to do so. This was held to be discriminatory on the ground of sex.

In *Madhu Kishwar v. State of Bihar*<sup>5</sup>, Justice K. Ramaswamy felt that the law made a gender-based discrimination and that it violated Articles 15, 16 and 21 of the Constitution. In his dissenting judgment he said:

"Legislative and executive actions must be conformable to and for effectuation of the fundamental rights guaranteed in Part III, Directive Principles enshrined in Part IV and the Preamble of the Constitution which constitute the conscience of the Constitution. Covenantants of the United Nations add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order."

In *Vishaka v. State of Rajasthan*<sup>6</sup>, the Supreme Court, in the absence of legislation in the field of sexual harassment of working women at their place of work, formulated guidelines for their protection. The Court said:

"Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose."

Article 23 prohibits trafficking in human beings and forced labor; Article 23 of the Constitution specifically prohibits traffic in human beings. Trafficking in human beings has been prevalent in

India for a long time in the form of prostitution and selling and purchasing of human beings. 23. Prohibition of traffic in human beings and forced labor.

#### **Directive Principles of State Policy**

However, Directive Principles of State Policy are not enforceable in any court of law they are essential in the governance of the country and provide for the welfare of the people, including women. These provisions are contained in Part IV of the Constitution. Fundamental Rights furnish to individual rights while the Directive Principles of State Policy supply to social needs.

Article: 39 certain principles of policy to be followed by the state. The State shall, in particular, direct its policy towards securing -

(a) That the citizen, men and women equally, have the right to an adequate means of livelihood;  
(d) That there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

1. Article 39(a) directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood.
2. Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State in furtherance of this directive passed the Equal Remuneration Act, 1976 to give effect to the provision.
3. Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.

#### **Article: 42 Provisions for Just and Humane Conditions of Work and Maternity Relief.**

The State shall make provision for securing just and humane conditions of work and for maternity relief. Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

Uniform Civil Code Article 44 Uniform civil code for the citizens.—

The State shall Endeavor to secure for the citizens a uniform civil code throughout the territory of India.

Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a 50 Uniform Civil Code in India, the judiciary has recognized the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc. but as it is only a directive it cannot be enforced in a court of law.

However, one of the most dynamic members of the Assembly, Shri K.M. Munshi, expressed his opinion that:

"if the personal law of inheritance, succession, etc. is considered as a part of religion, the equality of women can never be achieved."

Fundamental Duties Parts IV-A which consist of only one Article 51-A was added to the constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of eleven fundamental duties for citizens.

Article 51-A (e) is related to women. It states that; "It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women"

**Article: 243 D Reservation of Seats. (73rd Amendment -w.e.f. 1-6-1993)**

2) *Not less than one-third of the total number of seats reserved under clause*

1) *shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.*

**Eleventh Schedule (Article 243G)** Women and child development.

**Legal Safeguards to Prevent Violence Against Women Including Domestic Violence**

Though the term 'Domestic Violence' was not in vogue in those reforms, nevertheless their aim was indirectly responsible for making the woman's life more humane and protecting her against domestic violence. Even during the colonial period there were provisions under the IPC and CrPC that aimed at providing protection to women against violence.

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services specially for working women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories:

**IPC and CrPC (Penal) Provisions on Domestic Violence**

1. Till 1983 there were no specific legal provisions pertaining to violence within home. Husbands could be convicted under the general provisions of murder, abetment to suicide, causing hurt and wrongful confinement. In Section 304-B, IPC, where the death of a woman is caused by burns or bodily injuries or occurs due to reasons other than normal circumstances within seven years of her marriage and if it is established that the wife is subjected to cruelty by her husband or his relatives, the death is termed as 'dowry death'. The husband or relatives who subject the wife to cruelty is/are presumed to have caused the

dowry death and will have to prove that the death was not a result of the cruelty.

2. Sections 313-316, IPC—female infanticide, or forcing the wife to terminate her pregnancy—are also forms of domestic violence recognized as offences under the IPC.
3. According to Section 305, IPC, often victims of domestic violence, especially brides harassed for dowry, are driven to commit suicide. Abetment of suicide of a delirious person is an offence punishable with death or life imprisonment. Abetment of suicide is also an offence punishable with ten years imprisonment (Section 306).
4. Under Section 319, causing bodily hurt is a common form of domestic violence. The IPC defines hurt as causing "bodily pain, disease, pain or infirmity to any person". A hurt may be 'grievous' if it results in serious injury such as a fracture, loss of hearing or sight, damage to any member or joint, etc. (Section 320).
5. The IPC makes it an offence to voluntarily cause hurt (Section 321) or grievous hurt (Section 322 read with Section 323, IPC). Also criminalized is voluntarily causing of grievous hurt by dangerous weapons (Section 326, IPC) and voluntarily causing hurt to extort property (Section 327, IPC).
6. Another common form of domestic violence is in the form of the wrongful restraint (Section 349) or confinement (Section 340) of the spouse within her matrimonial home. Use of force and assault on the spouse, other common forms of domestic violence, are also punishable under the IPC.
7. In 1983, matrimonial cruelty was introduced as an offence in the IPC (Section 498A, IPC). Cruelty was defined as "any wistful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman". It includes harassment of the woman in connection with demands for property and the like.

**The Dowry Prohibition (Amendment) Act, 1986**

Dowry death or related harassment is a unique kind of crime practiced in the Indian subcontinent. A legal ban was put on the practice of dowry way back in 1961 (Dowry Prohibition Act, 1961). The Act was amended 1984 and then in 1986 to make it more stringent.

**The Commission of Sati Prevention Act, 1987**

'Sati' means the burning or burying alive of a widow along with the body of her deceased husband or any other relative, or with any article, object or thing associated with the husband or relative. The practice of 'sati' was declared unlawful during the colonial period itself. No Act, however, was drafted in post-colonial India to prohibit the occurrence of sati. It was only after the shocking incidence of sati in Rajasthan in 1987 that a law was enacted in 1987; that Act declares the observance, support, justification or propagation of sati as criminal activity.

**The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994**

It is not only that women face violence during their lifetime but also even before birth. Female

feticide using the Pre-Natal Diagnostic Technique is widely prevalent in India. A law was drafted for the purpose of curbing female feticide unless medically required.

#### **Civil Law**

In India the problem of domestic violence has always been looked upon from the perspective of both criminal and civil laws. Under Indian civil law also several provisions are available to deal with different types of domestic violence.

#### **Dissolution of Muslim Marriages Act, 1939 (DMMA)**

The DMMA stipulates cruelty as a ground for divorce. Cruelty is defined to include:

1. Habitually assaulting the wife or making her life miserable by cruelty of conduct even if
2. such conduct does not amount to physical ill-treatment
3. Associating with women of ill-repute or leading an infamous life
4. Attempting to force the wife to lead an immoral life
5. Disposing of the wife's property or preventing her from exercising her legal rights over it
6. Obstructing the wife in the observance of her religion.

#### **The Hindu Marriage Act, 1955 (HMA)**

Under the HMA, cruelty is a ground for divorce as well as judicial separation (Section 10, HMA). However, the term 'cruelty' is not defined in the HMA. It is through decided cases that the term has been understood to mean acts of physical as well as mental cruelty.

#### **Other Matrimonial Laws**

1. The Special Marriage Act, 1954 (SMA),
2. the Indian Divorce Act (IDA), and the
3. Parsi Marriage and Divorce Act (PMDA)—all allow 'cruelty' as a ground for divorce. However, all these laws are not sufficient as they do not elaborate the nature and extent of domestic violence.

Each religion has different Personal Laws relating to women and each religious group has its own law of Dharma (conduct). Indian woman's domestic and extra domestic spheres are largely derived from religious conceptions. Her 'virtues', her 'vices', her 'strength', her 'weaknesses', her 'nature', her 'capacities', so on are assumed on religious practices and norms. Religion, therefore, has a definite role to play in an individual's life such as birth, initiation, marriage and death. Religious personal laws govern family relations in India traditionally, in which these laws place men at higher stage.

Another social setup that exerts pressure on status of women and men in India is Kinship, Marriage and Family, which are deep rooted in history, religion and culture. Kinship, Marriage and Family Kinship Women in matrilineal systems seem to fare better as members of kin groups and in interpersonal relationships. However, majority of Indian population follows the Patrilineal system of descent. In the Patrilineal kinship system, a son is the father's natural apprentice, successor, and supporter of the parents in old age. Sons are supposed to build up family

prestige and prosperity. Therefore, a father believes that he will continue to live in this world through his son. All this imparts a special value to the son to continue the family name. As per religious customs, a son is necessary for performing the prescribed rituals for his parents when they die. This right is not given to women till date. Although ritual considerations are less compelling among the lower castes, the relative importance of the son is general to entire Hindu society.

#### **Domestic Violence under Protection of Women from Domestic Violence Act, 2005**

1. The Protection of Women from Domestic Violence Act 2005 differs from the provision of the Penal Code-section 498-A of the Indian Penal Code -in that it provides a broader definition of domestic violence.
2. Domestic violence is defined by Section 3 of the Act as "any act, omission or commission or conduct of the respondent shall constitute domestic violence in case if it:
  - a. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
  - b. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
  - c. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
  - d. Otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

#### **Explanation 1,**

To define "physical abuse", "sexual abuse", "verbal and emotional abuse" and "economic abuse".

#### **Scope of the Act**

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

The salient features of the Protection from Domestic Violence Act, 2005 are as follows:

1. The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or

living with they are entitled to get legal protection under the proposed Act.

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

#### **International Aspect towards Women's Rights Declaration on Elimination of Discrimination against Women, 1967**

It consolidates fundamental principles found in other basic documents, including the United Nations Charter, the Universal Declaration of Human Rights, and the International Covenants on Human Rights. It reaffirms the need to advance the status of women in family life, social, political, economic and cultural affairs at the national and international level. It lays down the following principles:

1. That discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offense against human dignity.
2. That all appropriate measures shall be taken to educate public and to direct national aspirations towards the eradication of prejudice and abolition customary and all other practices which are based on the idea of the inferiority of women.
  - a. Women shall have the same rights as men as to nationality.
  - b. All provisions of Penal Codes, which constitute discrimination against women, shall be repealed.
  - c. All appropriate measures, including legislation shall be taken to combat all forms of traffic in women and prostitution.
  - d. All states shall implement the principle of equality of rights between men and women in accordance with the U. N. Charter and the Universal Declaration of Human Rights.

#### **Conclusion**

The phenomenon of domestic violence is basically rooted in the socio-cultural fabric of India. Indian society is highly patriarchal. It not only discriminates between a son and a daughter but also the former is highly preferred and latter unwanted. Gender discrimination culminates into and is manifested in various types of violent practices within 'home'. Since 'family' and 'home' denote 'private space', an area free from state as well as non-state interventions, therefore, domestic violence has largely remained free from legal restraints and remains even unacknowledged as a crime. Consequently, violence within 'home' and by their own relatives is not perceived as a crime or something wrong by women themselves.

The state has also failed in making required arrangements like sensitization of masses; bringing the entire family in the purview of the domestic violence law; legal awareness, economic empowerment of women etc. for preventing the occurrence of domestic violence.

Over and above these, the attitude of the law-enforcement agencies is highly non-cooperative. Since the problem of domestic violence is rooted in social values and cultural practices that shape the attitude of police as well, therefore many a time the police refuses to register the cases of domestic violence. The law enforcement agencies also presume that the husband has a right to beat his wife.

Efforts are being done on across the globe to provide, protect and promote human rights for women. Several measures have been taken in India in this regard including the rights granted under the Constitution, criminal law, labor laws and other social welfare legislations. But the events like the Jammu & Kashmir Bill and the Supreme Court verdict in Christian Community case as well as the defects in the Domestic Violence Bill reflect the age-old male dominance. The time to fight for their rights is not yet over for the women.

To conclude, it may be said that the strategy of the Indian state towards a problem, and particularly that of women, is to rely largely on law and often only on law. The responsibility of the state ends with the drafting of the required laws, whereas the problems relating to women, particularly domestic violence, are socio-economic and cultural problems which demand a multifaceted approach. Multiplication of laws relating to women has led to the problem of overlapping, legal dilemmas and legal confusion. Moreover, to overcome the problem of socio-economic and cultural hurdles, it is desirable to adopt a human rights approach to woman's problems. It is only through the human rights perspective that one can help safeguard human dignity and create a "violence-free home" leading to a "**Violence-free Society**".

"To call woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant brute strength, then, indeed, is woman less brute than man. If by strength is meant moral power, then woman is immeasurably man's superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? Without her, man could not be. If nonviolence is the law of our being, the future is with woman. Who can make a more effective appeal to the heart than woman?" –

**Mahatma Gandhi**

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