

# Domestic Violence against Women in India: A Human Rights Perspective

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## **Abstract**

*Violence against women is one of the most important threats to women's equality and enjoyment of human rights. This can be explained as the use of force or threats of force by a boyfriend or husband or in family for the purpose of threatening and pressurizing a woman into submission. The violence can take the form of choking, slapping, pushing, hitting, kicking, burning or stabbing. Violence against women is an epidemic and violates the fundamental human rights of women around the world. Domestic violence, in particular, has been found to be an omnipresent problem in every country in which it has been studied. The main incidents of domestic violence transcend culture, class, education and income. The present study focuses on Domestic violence and Human Rights of Women in India.*

**Key Words:** Domestic Violence, Stabbing, Slapping, Epidemic and pervasive.

## **INTRODUCTION**

Women consist half of the world's human population and have been treated as the weaker sex in all societies of the whole world. Hence, the crime against women, rape and molestation, freedom of women and their identity problems have been extensively argued and debated. The lives of millions of women's throughout the world affects mostly by violence, in all social, psychological, political, cultural, economic and educational classes. It slashes across cultural, economic, political and religious barriers and also hinders the right of women to participate fully in the society. Violence against women takes a panic variety of forms, from domestic violence, abuse and rape to child marriage and female circumcision - all these are the violations of the most fundamental rights. The problems of violence against women in the form of rape, dowry is to be looked from a wide perspective of the unequal status of women in the whole society. Women are also considered pivots not only of domestic life, but of the entire society are clearly evident in the epics. Indian Constitution has provided various social, economic and political rights to women to enable them to lead a superior and dignified life. By govt. of India a number of laws have been enacted from time to time to give women their equal rights and privileges with men to eliminate discrimination against them and to remove all kinds of hindrances coming in their way of self-realization, progress and development. But despite of all these efforts there is a large level violation of human rights against women in India. In each and every sphere of life women are discriminated. Every women and girl is permitted to understand all of human rights civil, political, psychological, economic, social and cultural on equal terms with men, free from all kinds of discrimination. Women also enjoy certain human rights - which are particularly linked to their status as women.

## Meaning of Domestic Violence

Domestic violence is fundamentally violence perpetrated by persons in intimate family relationships. It is the establishment of fear and control in a relationship through cruelty, violence and other forms of abuse. The violence may involve psychological problem, physical abuse, sexual assault and other threats. Sometimes it is subtler, like making some one feel insignificant, not letting him or her have money, are 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 physically and psychologically abused, in most cases the victim is a woman. It includes sexual and physical attacks and threats. It also includes abuse of all kinds – physical, psychological, sexual, economic, verbal and emotional. It includes contradiction of basic necessities and further the emotional blackmail where children are concerned and the threat of dispossession from the marital home. In India domestic violence has many aspects, apart from the violence between spouses; there is violence between the siblings, the co-habited, abuse of children by parents and vice-versa. It cuts across all backgrounds be it psychological, social, cultural, economic or religious. It cuts across the class, the caste and the ethnicities

## CAUSES OF DOMESTIC VIOLENCE

Indian society is first and foremost a male dominated society wherein man occupies a superior status and the woman is merely his appendage. A woman is never an entity in her own rights, she is first then daughter, next the wife and last the mother of a man. Men are consciously taught to be aggressive and taught while women are conditional to submissive and docile. Discrimination against girl starts the moment a child is born and continues to be maintained and reinforced through the process of differential throughout her. Sex related distinctions are evident in terms of occupation and education. It makes every woman convinced about her subordinate status. Thus crimes against woman may have been deviated by the law of the land but society considers otherwise. Whenever a crime against a woman is committed, the judgment is predator minded the woman must be at fault. Society will always have an excuse to blame the woman and absolve the man. Although social realities of life have changed drastically, the old thinking about submissive and dependant role of woman has not changed. The husband still expects her to play the role of a traditional wife at home and merge her identity in her man as a river flowing in the ocean. Outside he expects her to act like a modern woman. The problem arises due to the conflicting demands put on her as a good housewife and an efficient employee. One of the most important consequences of domestic violence is the homelessness of the abused women, and the criminal law remedies do not succeed in providing immediate emergency protection that the victim needs.

## Forms of Violence in Family

Moreover, a large proportion of crime against women is in the family lie. Domestic violence manifestation as physical, psychological or verbal, abuse that is further subtle than the violence elsewhere in the society. The violence can be categorized into sexual and domestic violence. Sexual violence is the most brutal form of expression against not only women but against the entire society. The various forms of violence and abuses can be studied in different heads which are elaborated as below:

- 1. Marriage and Dowry issues:** The practice of marriage in Indian society is too rigid. Inter-religions or inter-caste marriages are generally not allowed. Even where marital relations are established within once own caste as religion, the capacity of the girl's family to give dowry counts first. The likes or dislikes of the individuals to be partners is not always given credence. There is, of course a custom of seeing the girl and many a time this occasion becomes a source of severe embarrassment for the girl and his family often only physical and financial capacities are taken account of many marriages are nothing short of business contracts between the two families, in which the girls family has to part with cash, jewelers and such others expensive items. Many suicide and murders are taking place on account of dowry this tendency is increasing day by day with an alarming speed. Dowry deaths among women either by a harassed wife or murder by the greedy husband by way of suicide and in laws have indeed become a serious cause of great anxiety for parents, police, courts, legislators, and society as well whole. Not a single week passes when in any way one does not read about a girl being harassed, tortured, killed or driven to suicide because of dowry system and yet how many of the women or girls are accused or punished? Several killers in bride burning cases are arrested, fewer are prosecuted, and some finally sentenced.
- 2. Wife – battering:** violence towards the women on the basis of marriage becomes more and more significant when a husband who is supposed to love, care and protect his wife beats her. For women being battered by a man whom she trusted most becomes a shattering experience. The violence can range from slaps and kicks to broken bones, torture and attempted murder and even murder itself. Sometimes, the violence may be related to drunkenness but not always. In India culture, mostly a wife rarely thinks in terms of reporting a case of battering to the police, women suffers humiliation, silence and takes it as her destiny. Even if she wants to revolt, she cannot do it because of the fear that has own parents would refuse to keep has in this house permanently after the marital breakdown.
- 3. Traditional practices:** In many countries, women fall victim to traditional practices that violate this human rights. The persistence of the violence problem has much to do with the fact that most of these socially, psychologically and physically harmful customs are deeply rooted in the tradition and culture of Indian society.
- 4. Female genital mutilation:** According to WHO, girls and women in the population of 85 to 115 million have under gone some form of female genital mutilation and suffers from its adverse health effects.

5. **Son preference:** Son preference affects the women in most countries particularly in Asia; its consequences can be anything from female infanticide to abandon of the girl child over brother in terms of such important needs as nutrition, basic health care and education in India, some women decides to terminate their pregnancies to term when expecting sons.

### **Types of Domestic Violence according to the Domestic Violation Act-2006.**

Different types of domestic violence have been discussed below:

1. **Physical violence:** under the law, physical violence includes the following :-
  - a. Beating
  - b. Slapping
  - c. Hitting
  - d. Biting
  - e. Kicking
  - f. Punching
  - g. Pushing
  - h. Showing or causing bodily pain or injury in any other manner
2. **Sexual violence:** Sexual violence encompasses:-
  - a. Forced sexual inter-course
  - b. Forcing a women to look at pornography or any other obscene pictures or material
  - c. Any act sexual nature to abuse, humiliate or degrade a women's integrity and any other unwelcome conduct of sexual nature.
3. **Verbal and Emotional violence:** Verbal and emotional violence comprises :-
  - a. Insults f
  - b. Name calling
  - c. Accusation on women's character and conduct etc.
  - d. Insults for not having a male child
  - e. Insult for not bringing dowry etc.
  - f. Preventing a women or a child in their custody from attending school or college or any other educational institutions.
  - g. Preventing a woman from taking up a job, forcing her to leave her job.
  - h. Preventing a women or a child in her custody from leaving the house.
  - i. Preventing women from meeting any person in the normal course of events.
  - j. Forcing women to get married when she does not want to marry.
  - k. Preventing a woman from marring a person of her own choice.
  - l. Threat to commit suicide.

m. Any other verbal or emotional abuse.

### **Provisions of Domestic Violence Act-2006.**

The term “Domestic Violence” is a buzz word now and the Act against domestic violence has received mixed reactions from different concerns. There has also been a significant number of debate someone say that the women will use the Act as a weapon by which they will blackmail and harass the innocent men. Misuse of the act will try to resort this practice. On the other hand, it is said that the act will be a panacea to the women who very often face harassment, torture, intimidation and other violence from the near and dear ones. The concerted demands from the women’s movement resulted in enactment of domestic violence Act. Domestic violence is one the most pervasive human rights violations and is a serious deterrent to development.

The protection of women through domestic violence act 2005 came into effect from 26 October, 2006. The Act was passed by the parliament in August 2005 and assented to by the president on 13 September 2005. The N.D.A. government introduced the bill on domestic violence in the 13<sup>th</sup> Lok Sabha on 8 March 2002. The bill was referred by the 13 Lok Sabha to the department related standing committee sort comments and suggestions from individuals and institutions and, on the basis of comments and suggestions, the committee made several recommendations for modification in the bill. The resolution of the 13 Lok Sabha in February 2004 made an incursion for accepting the recommendations of the standing committee and materialized the same as soon as the U.P.A. assumed office, the department of women and child development re-examined the provisions of the said bill under the directions of the Shri Arjun Singh the minister of human resource development and while drafting the bill concerns the women’s rights groups were taken into consideration. The government of India introduced a new bill into the 14 Lok Sabha on 22 August 2005. The bill was passed on 24 August and by Rajya Sabha on 29 August. It received the assent of the president on 13 September. The Act extends to the whole of India except the state of Jammu and Kashmir. The act ensures that the first hearing would be held within 3 days and the case would be disposed of within 60 days. The new act contains 5 chapters and 37 sections.

The Indian Government has taken positive measures to combat domestic violence through legislation enacted in 2005. Domestic violence has been criminalized in India since 1983, when Section 498A to the Indian Penal Code was adopted. Section 498A allows women to file criminal complaints against their husbands and husbands' relatives for the crime of "cruelty." As discussed earlier, complaints filed under Section 498A are compoundable and non-bailable, which means that once filed they cannot be withdrawn and the accused must appear before a judge to receive bail. Section 498A has proved a limited remedy for domestic violence. It only addresses domestic violence faced by married women. Since it is located within the Indian Penal Code, it offers no civil remedies. Thus, prior to 2005, married Indian women could not obtain restraining orders against their husbands unless they filed suit for matrimonial remedies like divorce or judicial separation. Such limitations, allied with a powerful social movement, led the Indian Parliament to enact the

Protection of Women from Domestic Violence Act (PWDVA). In 2005, the Parliament passed the PWDVA, a wide-ranging law that protects women from various types of violence (physical, sexual, verbal, and economic). Unlike Section 498A, which institutes only criminal sanctions against perpetrators of domestic violence, the PWDVA includes both civil and criminal penalties. Victims can seek injunctions and protective orders whose breach can result in criminal punishments such as imprisonment and fines.

The PWDVA also expands the ambit of domestic violence protection to unmarried women. It covers all relationships based on consanguinity, marriage, adoption, and even relationships that are "in the nature of Marriage." Moreover, echoing the Inter-American Commissions' recommendations, the PWDVA imposes positive obligations on the state to protect women from violence, including mandatory police sensitization and awareness training on issues of domestic violence. It also requires state governments to appoint protection officers and service providers to assist victims in obtaining shelter and medical assistance, and in filing domestic incident reports to the local magistrate. Thus, at first glance, both Section 498A and particularly the PWDVA are very progressive pieces of legislation that comport with India's obligations under international human rights law to prevent and prosecute acts of domestic violence. However, as we discussed in Sections II and III, these laws have not been successful. This failure can be attributed to two major negative consequences: (1) the victimization of male partners and their female relatives; and (2) police harassment and rent-seeking. While the first is mostly a consequence of poor drafting, the second reveals a deeply rooted institutional problem that is more difficult to resolve.

## Conclusion

Under Indian law, both criminal and civil, few provisions exist for the married woman to address these issues. The existing personal laws (Hindu, Christian, and Muslim Parses) and few secular ones like the Special Marriage Act deals only with marriage and the breakdown of marriages. None of these offer my safeguard or right for the women to live in a space and harmony in matrimonial home. This omission makes it easy to through a woman out on the street with or without the dowry and to coerce her in to divorce in order to 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 bought 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 the criminal law (Amendment) Act 1986, which criminalize violence in marriage, both physical and mental infliction on women. The second was the new provision of sec. 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 of dowry death. Now section 498A of the Indian Penal Code has not really come to the rescue of women through the police, judiciary and men think otherwise. Section 498A has further limitation and does not take into account the day- to- day violence in the house hold. It is effective for unmarried; windows separated or aged women 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 23<sup>rd</sup> 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 women suffer due to legal, social and cultural traditions. The biggest pitfalls thus are the patriarchal mentality and the ideology that a 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 seeing no life beyond such relationship, a woman limits her cries 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 persons 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. Various social and economic indicators provide the evidence of inequalities and vulnerabilities of women in all sectors- economic, social, demographic, health, nutrition etc. Increasing physical violence against women indicates the powerless position of women in Indian family and society. Women are treated as inferior members in their own family. So government needs to make concerted efforts to contain increasing incidence of violations against women.

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