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## DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA

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**Abstract:-** Women have always been an object of gross and severe violence at the hands of man. The biological weakness of a woman makes her an easy prey particularly to whom it may concern; physical domination. She is often victim of physical and mental violence not only outside her home but also inside the home. Every society accepting the importance of equality of sexes has therefore, made affirmative provisions against gender discrimination<sup>1</sup>. However, in spite of the enactment of these provisions, equality between men and women continues to be an elusive goal. Hence, women are deprived of basic freedom and thereby easily exposed to exploitation. The concept of vulnerability hinges on the idea of agency. Violence is a fundamental aspect of many human rights violations. Many forms of violence do not involve physical harm, such as beating in front of their mothers, torturing pets, hurting insults, withholding funds or refusing to speak to a person. Emotional pressures were worse than the physical violence. Activists working in the field of domestic violence have long emphasized the importance of the psychological, emotional and financial dimensions of violence.

**Keywords:** Social Causes, Human, Constitution of India and Protection for Women etc.

### INTRODUCTION :-

Women have always been an object of gross and severe violence at the hands of man. The biological weakness of a woman makes her an easy prey particularly to whom it may concern; physical domination. She is often victim of physical and mental violence not only outside her home but also inside the home. Every society accepting the importance of equality of sexes has therefore, made affirmative provisions against gender discrimination<sup>1</sup>. However, in spite of the enactment of these provisions, equality between men and women continues to be an elusive goal. Hence, women are deprived of basic freedom and thereby easily exposed to exploitation. The concept of vulnerability hinges on the idea of agency. The vulnerable person is one who has little choice or capacity to escape pain and injury. It is situation where in the victim is helpless, powerless, and unable to make choices for themselves and forced to endure forms of pain and suffering. Vulnerability is central to human rights activism and intervention. The abuse of vulnerability is a situation in which an individual has no acceptable alternative but to submit to the abuse involved.<sup>2</sup>

Violence is a fundamental aspect of many human rights violations. Many forms of violence do not involve physical harm, such as beating in front of their mothers, torturing pets, hurting insults, withholding funds or refusing to speak to a person. Emotional pressures were worse than the physical violence. Activists working in the field of domestic violence have long emphasized the importance of the psychological, emotional and financial dimensions of violence.<sup>6</sup> though violence appears to refer to physical pain and suffering, it clearly has emotional, psychological and financial dimensions as well. Therefore, it is a slippery concept that cannot be understood only in physical terms. It also includes assaults on personhood, dignity, sense of worth and value of a person. Violence cannot be understood in the abstract, apart from its social and cultural meanings. In the field of domestic violence, reference to non-physical forms of abuse such as intimidation, harassment of children and pets, humiliation, financial losses and isolation is necessary to describe a battered woman's experience of violence.

### **The Concept:**

Article 2 of the UN draft Declaration of Violence against women identifies three areas in which violence commonly takes place. They are a) Violence occurring with the family b) violence occurring in the general community and c) violence perpetrated or condoned by the state. Violence occurring within the family, which is referred as Domestic violence, cuts across lines of race, nationality, language, culture, economics, sexual orientation, physical ability and religion to affect people from all walks of life. It is the most pervasive form of gender violence. Although men are victims of street violence, brawls, homicide and crime, violence directed at women is a distinctly different phenomenon. Men tend to be attacked and killed by strangers or casual acquaintances whereas women are most at risk at home from men whom they trust. Violence against them is often grounded in power imbalances between men and women and is caused and perpetuated by factors different than violence against men.

Domestic violence though means violence in the family refers to violence against women in particular, as almost always the victims are women. Domestic violence means physical or mental assault of women by their male partners. The term wife abuse is also often used to mean the same. Masculine behavior-aggression, risk taking, and the consumption of drugs and alcohol- are often believed to underlie male violence against women. Domestic violence is not only on the increase, but is also assuming subtler forms every day. Earlier victims of domestic violence did not lodge complaints, as they feared that such complaints might relate a hostile home environment. Very often, women used to endure the violence towards them in silence for fear of repercussions.

### **OBJECTIVE OF THE STUDY:**

- 1) To know the Social causes of domestic violence
- 2) To Study the domestic violence as a human rights issues
- 3) To understand the legal and constitutional safeguards to prevent the domestic violence.

### **SOCIAL CAUSES:**

The Social causes of crimes against women include factors like the inferior status of women due to social conditioning the patriarchal structure of society, unwholesome family atmosphere, lack of proper training, broken homes overcrowding in one room, too much of interference by the parents, too slack a discipline, lack of love and affection of parents, imprisonment, drunkenness, immorality, cruelty, addiction to drugs, sickness and modern permissive atmosphere etc.<sup>3</sup>

In the male dominated Indian society, a woman is never an entity in her own right, she is "first the daughter, next the wife and the last the mother of a man". Men are consciously taught to be aggressive and tough while women are conditioned to be submissive, docile and passive. The constitution and the protective laws assert justice and equality to be the goals but the given concepts of equality and justice result in gross injustice to the women and responsible for the cause of their exploitation and their low status.<sup>4</sup> Sacramental marriage ties and close family ties are weakening today. There has been a virtual disintegration of the joint family structure which provided an emotional safety net and gave physical support to all its members. It had exercised informal control over its members and played an important role in teaching children basic values like truth, honesty, intolerance and concern for others etc., it offered warmth, love, affection and intimacy to its members and provided them with an identity. All these moral ethics melted slowly and changed the values. Economic necessities have made work for both men and women a compelling necessity. Every couple wants more out of life, a flat, a colored T.V., a Maruti car, a set of beautiful furniture etc. More than 50% of the matrimonial advertisements are meant to attract working wives.

In most of the nuclear families the parents are working, so the domestic households are isolated. No one is there to look after the children at home when the wife goes out to work. Consequently there is an intensification of emotional stress between the husband and wife and the parents and children. The result is tension, indiscipline, conflict and frustration<sup>12</sup> which show itself in the behavioral pattern of the members and results in an increase in the rate of crimes, especially against women. Even at schools, there is no inculcation of moral and social values. Most of the teachers are busy with their personal problems and they do not pay individual attention to students. The rapid urbanization has put tremendous pressure on the children. Lack of Parents Company, proper extracurricular activities, easy access to films and programmes full of aggression and romance on the television, availability of some specialist software designs in the high technology world etc have eroded the traditional values.

The status-inferiority theory maintains that the rate of wife beating is greater when the wife has more prestigious job than her husband. Taken all variables of age, education, family composition, occupation, income, religion, geography etc together, it may be noted that wife beating crosses class boundaries. Violence against wives grows out of the nature of the society itself. Marital maladjustment is the main cause of wife beating women who are dependent on their husband for economic, emotional and social support, who do not approve divorce due to its social consequences, women who lack self confidence, and who get satisfaction from self inflicted pain (masochism) are subjected to beating by husband in silence and they vainly hope that husbands would repent after beating.

#### DOMESTIC VIOLENCE AS A HUMAN RIGHTS ISSUES:

Any account of human rights history especially one which at great swathes of modernity must paint with broad strokes. Brian Berry and Amartya Sen expanded the Rawlins theory so as to include the intergenerational question of the notion of justice as impartiality and taking political philosophy beyond the realms to infuse human welfare through the protection of human rights. Martha Nussbaum advocates that the social basics of human capabilities for women and Human Development should form the “central goal” to be constitutionally guaranteed. The human capabilities approach of Martha Nussbaum comes closer in this context to limit the violence against women.

The Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948 articulates the basic urges and aspirations of mankind. This was the first attempt to universalize human rights emphasizing the inherent dignity and inalienable rights of all human beings recognizing them as the foundation of freedom, justice and peace in the world. There are declarations of basic rights in different countries such as the British Bill of Rights (1688), French Declaration of the Rights of the Citizens (1789), Bill of Rights of the United States of America (1791) which is a landmark in the history of human rights. Under the Indian Constitution, the Fundamental Rights in part III and the Directive Principles in part IV taken together incorporated the human rights declared by the General Assembly of United Nations.

Serious limitations in extending human rights guarantees to women exist despite their being framed and available without any discrimination on the basis of sex. Violence against women and girls is the most pervasive violation of human rights in the world today. Its forms are both subtle and blatant and its impact on development profound. But it is so deeply embedded in cultures around the world that it is almost invisible.<sup>5</sup> During the last 50 years awareness of human rights has increased, but violation of human rights continues to be unabated. The primary focus has been on the public sphere and far from the private space where women’s lives are circumscribed. Domestic violence thus contravenes the Universal Declaration of Human Rights as per Article 3.6 every one has right to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by the courts in India.

The most pathetic aspect of disrespect for human rights is domestic violence. John’s Hopkins Schools of Public Health and Center for Health and Gender Equity records that one woman in every three throughout the globe has been beaten, coerced into sex or otherwise abused in her lifetime.<sup>7</sup> The National Records Bureau reveals that almost in every six hours a young married woman is being burnt alive or beaten to death or abetted to commit suicide. The stories may vary but what remains constant is the sordid story of inhuman torture and brutality. The available data points to the fact that a large proportion of violence against women in the country is located in the family.<sup>8</sup>

The human rights for women including girl child are inalienable. Integral and indivisible part of universal human rights. The full development of personality, fundamental freedoms, and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights. In fact, this discrimination de-empowers the women. The common observance is that such abusive relationships often result in unwanted sex, sexually transmitted diseases. It is heartening to note that many women feel wife beating as justified correcting an erring wife. This idea still persists in countries like Bangladesh, India, Mexico, Zimbabwe, Cambodia.<sup>9</sup> It is to be noted that more than 70% of women conceal this fact and suffer silently.

#### CONSTITUTION OF INDIA AND PROTECTION FOR WOMEN IN INDIA:

Women constitute about one half of the global population. Women have always been discriminated, suffered and are suffering discrimination in silence. As Justice Rama Swamy K has remarked “Self-sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination”.<sup>11</sup> the concept of equality between male and female was almost unknown to us before the enactment of the Constitution of India.<sup>12</sup> the Constitution is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity.<sup>13</sup> These objectives specified in to preamble and elsewhere form part of the basic structure of the Indian constitution. While incorporating these provisions, the frames of the Constitution were well conscious of the unequal treatment meted out to the fair sex from times immemorial. The history of suppression of women in India is very pathetic and the same has been responsible for including certain general as well as specific provision for the upliftment of the status of women.<sup>14</sup>

#### DOMESTIC VIOLENCE AND CRIMINAL LAW IN INDIA:

**a)Female Foeticide:** Domestic Violence is perpetrated in the form of forced termination of female fetuses otherwise known as female foeticide. According to 1991 census the sex ration of females is 927 in 1000 males which is a decline census of 1951 and 1901.<sup>18</sup> the decline of sex ratio is an indicator of the low status of women. Female



infanticide, pre-natal sex selections are considered as contributory factors. This is symbolic of male preference. This dwindling sex ration bears eloquent testimony to violence against women even in the mother's womb. With the dramatic advancement of technology the sex determination of foetus 'amniocentesis' is done at mass scale, not for diagnosis of sex-linked genetic disorder of the foetus, but for abortion of selective female foetus.

**b)Dowry Death:** Murder and Suicide: it is very pathetic paradox of contemporary time that on the one end, marriage is a very cherished and fond dream for young persons, yet the cruelest and heinous crime, the brutal death of, or not less the brutal suicide by the wife occurs within the four walls of the matrimonial home. Every marriage ordinarily involves a transplant.<sup>20</sup> when a bride is transplanted from her natural setting into an alien family; some care has to be taken of her. When the bride is received in the new family she must have a feeling of welcome and she has to get used to a new set of relationship-one with the husband another with the parents-in-law. For this she would require loving guidance. The elders in the family especially the mother-in-law are expected to show her the way. The husband has to stand as a mountain of support ready to protect her. Yet this does not happen and violence against married women takes many forms.

**c)Criminal Offence of Cruelty:** Violence against married women continues in larger scale. "Such events show a continuous persecution of the wives and cruel treatment meted out to them by their husbands and in-laws preceding such attempts to commit such suicides or murders while these unfortunate women are living with husbands during the first few years of their married life. The first years are the years of adjustment and therefore, most of the difficulties arise in these years".<sup>15</sup> Such has been the plight of woman, that even the constitutional mandate of equality of sex and protective discrimination in her favour was not able to do much to ameliorate her lot. Violence, hooliganism and wife battering occur all over the world on a significant and disturbing scale.<sup>16</sup> Perhaps family conflict, stress, cultural norms and sexual inequality contribute to such violence.

**d)Marital Rape:** Marital Rape is yet another common form of domestic violence. It occurs when a man has sexual intercourse with his wife forcibly or without her consent. Marital rape is sexual assault. It includes sexual exploitation involving sexual acts with someone else. This is a grey area of law and evidence. While many progressive nations have legislated on marital rape, our law has so far only conferred a limited recognition. Non-consensual sexual intercourse by a man with his wife may be offence if she is living separately under a decree of separation or any custom.<sup>17</sup> in many violent marriages, the spouse subjects the wife to acts of sexual humiliation. Interestingly, the IPC even addresses such forms of violence the provision for unnatural offences.<sup>18</sup>

**e)Dowry Prohibition Law:** It is ironical that a woman's status in the matrimonial home hinges on the goods and financial benefits that she brings in the form of dowry.<sup>19</sup> This practice of dowry has become the root cause of innumerable social evils in the Hindu Society such as economic exploitation of girl's parents, adopting social corruption of foul means of earnings, indebtedness of middle and lower classes, female foeticide, female infanticide, child marriages, unequal marriage's conjugal disharmony<sup>20</sup> etc.

**f)The Protection from Domestic Violence Bill 2011:** The Bill is to protect the rights of women who are victims of violence of any kind occurring within the family. The domestic violence against the women (prevention) bill, 2000<sup>21</sup> is redefined and titled as Protection from Domestic Violence Bill, 2001. The objective of the Bill is to provide a remedy under civil law which is intended to preserve the family and at the same time provide protection to victims of domestic violence. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Innumerable women who silently suffer assaults and abuses every day inside every second home across the country can now perhaps look forward to a remedy that protects their vulnerable position<sup>22</sup>.

#### CONCLUSION:

Domestic violence occurring from times immemorial is a global phenomenon. It is a gender-specific crime, perpetrated by men against women. It is intended to cut off all the victim's support structures. The most obvious way of achieving this aim is to throw the woman out of the household. It is manifested in several forms. Causative factors and compulsions of domestic violence are so many. Domestic violence is based on different theoretical and dialectical foundations. Though, human rights are gender blind, women's rights were treated as human rights by CEDAW. It is submitted that, domestic violence is not regarded as violation of human right by the judiciary. Nevertheless, the Visaka ruling may be extended to the sphere of domestic violence.

Domestic violence is stigma to human society and affront on civilization. In any case domestic violence in its silent and invisible form is taking place behind the close doors thus perpetuating gender injustice. The indoor violence against women does not see the day light. Though, it is a private affair it has got public ramifications and is posing a major public health hazard. How the health hazard of the spouse would cause violence against his or her

counterpart was lucidly demonstrated by the Supreme Court in some cases. The court maintained that public interest and public morality are considered paramount vis-à-vis fundamental rights of the individuals. If it is otherwise, the health of the individual is in jeopardy. Therefore, the marriage of an AIDS patient if permitted with a woman who is otherwise healthy would end up with disastrous and far reaching consequences on future generations.

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