

## A Comparative Study on Indian and International Prospective of Domestic Violence

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### Abstract:

*In the present modern era the state has undertaken the responsibility for the adequate protection of the individual and to provide the reasonable opportunity to every person for the overall development of the personality of the individual. The concept of "Human rights" was evolved in England when religion and church exercised the considerable influence on the evolution of the "Human Rights". Every women is entitled to have equal rights as that of the men. So many national and international laws have been emerged to protect them.*

**Keywords:** Domestic violence, Convention Of Elimination of all forms of Discrimination Against Women, Women Protection, The Universal Declaration Of Human Rights.

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### I. EXORDIUM

*"From woman, man is born; within woman, man is conceived; To woman he is engaged and married. Woman becomes his friend;*

*Through woman, the future generations come. When his woman dies, he seeks another woman; To woman he is bound. So why call her bad?*

*From her, kings are born. From woman, woman is born; without woman, there would be no one at all"*<sup>1</sup>

Guru Nanak Dev Ji

Domestic Violence is an extremely complex and vicious form of abuse committed most often within the four walls of the family house and/or within the particular deep-rooted power of dynamic and socio-economic structure, which does not allow even the acknowledgement or recognition of the abuse. The act of Domestic Violence takes various forms and therefore is protected by following statutes and law.

According to the epic 'Mahabharata', Draupadi had to married five "Pandavas" brothers. She asked to get marry by her mother-in-law Kunti. Indian great mystic poet 'Tulsidas' wrote this incidence in a coloured way.

*"Dhol, Gawar, Shudra, Pashu, Nari, Ye Sab Tadanke Adhikari"*<sup>2</sup>

(A rustic, uncultured, schedule Caste, animal and women, they all deserve to be beaten regularly).

With the invasion of Muslims in the 11th century the position of women started deteriorating as Muslims started to coerce their norms on the Hindu population, the Hindu society itself became more rigid towards the women's freedom.

The holy book of Islam, 'Quran' says

*"Men are superior to women on account of qualities in which God has given them pre-eminence"*<sup>3</sup>

Though domestic violence takes place in the private sphere and is caused by individuals, the accountability of the state cannot be ceded away stating it to be a private affair. International Obligations places on states the responsibility

to eliminate domestic violence through numerous measures. These include creating legal and policy frameworks for addressing domestic violence (including formulating and implementing laws), ensuring a responsive criminal justice system, providing for social and support services to victims / survivors of domestic violence, and formulating and implementing policies for empowerment of women. The five pillars of the Indian Legislation for the Protection of women from Domestic Violence are-

- i. The Vienna Accord of 1994
- ii. The Beijing Declaration and the Platform for Action (1995)
- iii. The United Nations Committee Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)
- iv. The General Recommendation No. XII of 1989 of United Nations General Assembly.
- v. The Constitution of India, Articles 14, 15 and 21.<sup>4</sup>

In *Denniison Paulraj & others v. Union of India*<sup>5</sup>, it was held-  
*"Domestic violence is worldwide phenomenon and has been discussed at International level, including Vienna Accord of 1994 and Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination against Women (CEDAW) has recommended that States should act to protect women against Violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men therefore is, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring and justifying the protection of parliament."*

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## II. LEGAL FRAMEWORK: INDIAN PERSPECTIVE

The Domestic Violence was the serious problem of the society, that there was no any law on the domestic violence. There was an urgent need to penalize the persons who commit domestic violence in the household, which is considered as the safest place for living.

### ***Before the Protection of Women from domestic Violence Act, 2005***

Before 2005, Victims of Domestic Violence approached the Court under section 498A of the Indian Penal Code. Remedies available to a victim in the civil courts for divorce and criminal courts (498A,IPC) were limits. The remedies were linked to matrimonial proceedings and there was no emergency relief available to victim. The relationships outside the marriage and live in relationship were not recognized. There were lot of circumstances that make the majority of the women to remain silence not by choice but of compulsion. Therefore, it became essential to address their problems and the “The Protection of Women from Domestic Violence Act, 2005” was passed.

The Hon’ble Supreme Court in *Indra Sarmav. V K V Sarma Indra Sarma*<sup>6</sup> held:

*“The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.....”*

In the present case, *V.D. Bhanot v. Savita Bhanot*,<sup>7</sup> Apex court has given the decision

*“After considering the constitutional safeguards under Article 21 of the Constitution vis-à-vis the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the Statement of Objects and Reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force.”*

In the case of *Preetam Singh & Anr*<sup>8</sup> v. State of UP & Anr Allahabad High court held

“Even economic abuse would constitute domestic violence and which would constitute deprivation of all or any economic or financial resources to which aggrieved person is entitled under any law or custom whether payable under any

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

In *Saraswathy v. Babu*<sup>9</sup>

Again Apex Court questioned the issue of whether acts of domestic violence committed prior to coming into force of Prevention of Domestic Violence Act, 2005 would be covered in affirmative holding and the judgment will be given according to the new act of Prevention of Domestic Violence Act, 2005.

## III. LEGISLATIONS GOVERNING DOMESTIC VIOLENCE

There are various provisions in different laws of India to govern the Domestic Violence.

### ***The Constitution of India, 1950***

Women right from the very beginning are subjected to variety of exploitations at her home. She is discriminated at every step, which in the long run affects her over all physical and mental development. In India “WE THE PEOPLE”, gave Indians a Constitution, which guarantees justice-social, economic and political. In the matter of equality Article 14 confers on men and woman equal rights and opportunities in the political, economic and social spheres<sup>10</sup>. Article 15 prohibits discrimination against any citizen on the ground of religion, race, sex, etc. Article 15(3) makes a special provision enabling the State to make affirmative discrimination in favour of women. Similarly, Article 16 provides for equality for equality of opportunities in matter of public appointments for all citizens. Article 39(a) lays down that the state shall direct its policy towards securing all citizens, men, women equally, the right to means of livelihood<sup>11</sup>, while Article 39(c)<sup>12</sup> ensures equal pay for equal work. Article 42 directs the State to make provisions for ensuring just and humane conditions of work and maternity relief in ensuring just and humane conditions of work and maternity relief in case of women employees<sup>13</sup>. Above all, the Constitution of India imposes a fundamental duty on every citizen through Article 51A (e)<sup>14</sup> to renounce the practice derogatory to the dignity of women.<sup>15</sup>

### ***Under Criminal law***

In India the Criminal Law is substantially based on Indian Penal Code, 1860, however, it is supplemented by the special laws.

### **I. The Indian Penal Code, 1860**

There are certain provisions under the Indian Penal Code, 1860 which deal with offences in the form of domestic violence against women. These are as under:

- (a) Dowry death: According married woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and if it is established that soon before her death she was subjected to cruelty by her husband or his relatives, such death of a married woman is treated as “dowry death”.

- (b) Forceful termination of pregnancy amounts to violence at home: In the view of Sections 313 to 316 of I.P.C. female infanticide or forcing the wife to terminate her pregnancy are also varieties of Domestic violence which is recognised as an offence under the IPC.
- (c) When Woman is driven to commit suicide: On account of domestic violence especially brides are subjected to harassment for demand of dowry and compelled to commit suicide. Abetment of suicide of a disordered mental state of person is an offence punishable with death or 10 years of life imprisonment as provided under Section 305 and 306 of the I.P.C.
- (d) Causing hurt and grievous hurt: It is a common form of domestic violence. Section 319 of the Penal Code defines the expression "hurt", as causing bodily pain, injury, infirmity and disease to any person, however, serious hurt is termed as grievous hurt under Section 320 of the Penal Code.
- (e) Unlawful confinement: it is also one of the forms of domestic violence. When a woman's movement is restrained or confined within four walls of house. It is a common form of domestic violence which is an offence punishable under Section 349 and 340 of the IPC.
- (f) Marital rape—Another Common form of domestic violence is in the form of marital rape. Where wife is living separately under a decree of judicial separation or any custom and the man is having consensual sexual intercourse with his own wife, it amounts to offence under Section 376-A of the Indian Penal Code<sup>16</sup>.
- (h) Matrimonial Cruelty—Under Section 498-A of the Indian Penal Code, 1860 matrimonial cruelty whether it is physical or mental is an offence. The term 'cruelty' under the said section has wide scope to include various kinds of other cruelty.

## II. The Dowry Prohibition Act, 1961

This is a special law enacted to deal with the social evil of dowry (Viz demand for property or valuable security), an inextricable link with the marriage. In such circumstances the woman is often subjected to domestic violence at her matrimonial house. As contemplated in Section 3<sup>17</sup> of the said act the giving and taking of dowry is a criminal offence.

## III. The Commission of Sati Prevention Act, 1987

"Sati" is one of the oldest forms of domestic violence which prevailed in society but curbed in the last century. The expression "Sati" means the burning or burying alive of widow along "with the body of her deceased husband."<sup>18</sup>

### Civil law

In India Civil Law too addresses the problem of domestic violence. The -Victim of domestic violence can seek civil relief under the following Acts:

### I. The Dissolution of Muslim Marriages Act, 1939

According to Section 2 (viii) of the Dissolution of Muslim Marriages Act, 1939 "cruelty" means:

- Habitually offending the wife or ill treating her.
- Forcing wife to lead immoral life.
- Disposing of wife's property without obtaining her consent.
- Not allowing her to observe religious practice.

Under the aforesaid Act the victim of violence at home can seek divorce on the ground of cruelty.

## II. The Hindu Marriage Act, 1955

According to Section 13 (1) (a)<sup>19</sup> of the Act, 1955, cruelty is a legal ground for divorce. Though the term "cruelty" has not been defined under the said Act but it is taken to mean acts of physical as well as mental cruelty. Section 10<sup>20</sup> of the Act provides relief as to judicial separation, so the wife can get rid of her husband's abuses by living separately under the order of the court.

### International Perspective

The international instruments reflect the norms of NON-DISCRIMINATION on the basis of sex and the goal of equality between men and women especially covering subjects like violence against women, slave trade, traffic in women, marriage, education and other areas related with human rights etc. Some main international instruments are mentioned below. *U.N. Charter*

At the international level prohibition against Sex-Discrimination was for the first time stated in the United Nation Charter of 1945. Which is the first most important document related with Human Rights and has the objective of and basic principle of equality of rights for the human being and especially for the women. The UNITED NATION in its Charter in 1945 made a declaration in its PREAMBLE that people of United Nation reaffirm their "faith in fundamental human rights, in the dignity and worth of human persons and in the equal rights of men and women and of nation large and small".<sup>21</sup>

### *The Universal Declaration of Human Rights 1948*

In the preamble of UDHR it has been declared that "Whereas the people of United Nations have in the Charter reaffirmed their faith in the fundamental human rights, in the dignity and worth of human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom"<sup>22</sup>

### *Convention of elimination of all forms of discrimination against women (CEDAW)*

As one of the major instrument, the convention on Elimination of all forms of Discrimination Against Women was adopted by the U.N. General Assembly in 1979 and came into force on 3rd September, 1981. CEDAW is in conformity with the provisions of Indian Constitution and India has ratified the convention, CEDAW defines 'Violence against women as --- "any act of gender based violence that results in the physical, sexual or psychological harm to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public and private life" India is a party to the UN Convention on Elimination of Discrimination against Women 1979 (CEDAW), often referred to as the Women's Bill of Rights. CEDAW imposes an

- obligation on states to eliminate discrimination against women;<sup>23</sup>
- elimination of prejudices and practices, based on the stereotyped roles of men and women;<sup>24</sup>
- elimination of discrimination against women in marriage and family relations;<sup>25</sup>

#### IV. CONCLUSION

At the last we conclude that by becoming a party to CEDAW, as a part of its commitment to eliminate all forms of discrimination against women, the Indian government has not only recognized the need to address domestic violence through legal and other measures, but is also duty-bound to do so. India has realised the need to penalize the persons who commit domestic violence in the household by enacting the special legislation on domestic violence i.e. The Protection of Women from Domestic Violence Act, 2005.

#### V. REFERENCES

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3. Harold J. Leavitt, Louis R. Pondy, and David M. Boje, "Reading in Managerial Psychology", (ed. 4th), The university of Chicago Press, p. 184
4. State of A.P. v. Nallamili Rami Reddi(2001) 7 SCC 708; Basheer v. State of Kerala (2004) 3 SCC 609
5. *Denniison Paulraj & others v. Mayawinola*, 2008 (3) LRC 248 (Mad).
6. *Indra Sarma v. V K V Sarma Indra Sarma* 2013 STPL (Web) 944 SC 1
7. *V.D. Bhanot v. Savita Bhanot* (2012) 3 SCC 183
8. *Preetam Singh & Anr v. State of UP & Anr* 2013 (1) HLR 394.
9. *Saraswathy v. Babu* AIR 2014 SC 857
10. Article 14 of The Constitution of India, 1950: "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."
11. *Id.* Art 39: "Certain principles of policy to be followed by the State- The State shall, in particular, direct its policy towards securing (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;"
12. *Id.* Art 39: "Certain principles of policy to be followed by the State- The State shall, in particular, direct its policy towards securing (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"
13. *Id.* Art 42: "Provision 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."
14. *Id.* Art 51A (e): "To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;"
15. Justice A.S.Anand, *Justice for Women*, Universal Law Publishing Co. 2008, p.44-45.
16. Section 376 A of the Indian penal code, 1860: "Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years."
17. *The dowry prohibition Act, 1961*, Section 3: "Penalty for giving or taking dowry-(1)If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable 2[with imprisonment for a term which shall not be less than 3[five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]"
18. *The Commission of Sati Prevention Act, 1987*, Section 2(c): "sati" means the act of burning or burying alive of— (i)any 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 such relative; or (ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise;"
19. Section 13(1)(a) *The Hindu marriage Act 1955*: "Divorce: (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—[(i)has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or] ; (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or]"
20. Section 10, *Id.*: "Judicial separation: (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented. (2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so."
21. S.R Bhansali, "Law relating to Human Rights", Universal Law Publishing, 2013, p. 547
22. *Ibid* at p.547
23. Article 2 of the CEDAW
24. Article 5 of the CEDAW
25. Article 16 of the CEDAW