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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DOMESTIC VIOLENCE AGAINST WOMEN: THE NATIONAL AND INTERNATIONAL FRAMEWORKS**

AUTHORED BY - MONIKA<sup>1</sup>

## **Abstract:**

*This research paper is aimed to discuss domestic violence against women which has become a serious threat globally. Domestic violence is now acknowledged as a serious threat to public social health and basic human rights. In India, the Vedas and other historical literature describe the woman as a goddess and is worshipping in the form of 'Devi.' Women are the foundation pillar of a family. Women give birth to live and nurtured it. At the same time, it is equally true that violence against women is not a new thing. Violence against women has been increasing day by day despite the several legislations to protect them from violence. Domestic violence is not just a single act rather it includes many violent acts like sexual, physical, emotional acts that affect the women's dignity. Domestic violence prevails in most countries irrespective of their culture, religion, society, status, and income. Where several national and international treaties, conventions, programs, policies are framed and acts are performed and argued for women empowerment but there is a huge rise in crimes against women irrespective of their nation, age, caste, culture, and status, and most of the crimes against women committed in their matrimonial homes. An attempt has been made by the author to describe causes for increment in domestic violence against women. The national and international framework to protect women from domestic violence is also discussed.*

**Keywords:** convention, domestic violence, legislation, national commission for women, victim

## **1. Introduction:**

Indian society is a patriarchal and man-dominated society. Domestic violence against women is most common not only in India but also worldwide. Domestic violence is presumed to be committed by an intimate partner of a woman. It has become a global problem. Most of the

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violent acts against women are committed within four walls of a house that is the safest place to live by the house members. Domestic violence affects the victim's physical, mental, psychological health. Violence against women deprived them to live their free life with dignity thus violating the basic human right of a woman. It existed in almost every society. The women are discriminated against inferior to men and every act of violence is justified by them as a legal act. The women are silent victims and accept violence as a part of their life. However, the Indian Constitution provides several basic human rights in form of the fundamental right to all citizens including women also. Both men and women have equal rights but, domestic violence against women hampered their rights and stop women to exercise their human rights freely and fully.

Domestic violence is not just a single act of physical violence to a woman rather it includes sexual abuse by the spousal, or non-spousal act, stalking that also includes cyber-stalking, voyeurism, deprivation to live a dignified life, refusal of economic support, harassment, restraint her to exercise her moral and legal rights, mental and psychological torture, etc. These violent acts are only exemplary.

The Covid-19 pandemic increased the cases of domestic violence drastically because of home isolation rules and restrictions. Stay at home measures compel the women to live with the family members so, the chances of being exposed is increased more. During the first four phases of the COVID-19-related lockdown, Indian women filed more domestic violence complaints than recorded in a similar period in the last 10 years. But even this unusual spurt is only the tip of the iceberg as 86% of women who experience domestic violence do not seek help in India.<sup>2</sup> Though there are certain national legislation, international convention, and agreements between the different nations worldwide still, violence against women is a challenging threat before the world.

## **2. Meaning and Definition of violence and Domestic Violence:**

It is quite difficult to state a precise definition of domestic violence. As it is not a single act of violence it includes several crimes that are committed against women in their everyday life

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<sup>2</sup> Vignesh Radhakrishnan and Naresh Singaravelu, "Domestic violence complaints at a 10- year high during Covid-19 lockdown". The Hindu ( June24.2020), available at: <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>, (last visited Feb.28. 2022).

and make them silent victims.

**Meaning of violence-** Generally, the term violence refers to an act by using physical force intended to cause injury, damage, harm, or hurt to any person and property.

The Cambridge Dictionary defines violence as “an action or words that are intended to hurt people.”<sup>3</sup>

**Domestic Violence-** The violence that is committed within the four walls of a house or building.

**Domestic violence against Women-** Generally, an act of violence that is committed within the house boundaries against a woman is considered domestic violence against women. Usually, it is committed by men or the family members of men who reside with her.

**Domestic Protection Act defined domestic violence as-**

Any act, omission or commission, or conduct of the respondent shall constitute domestic violence in case 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 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.<sup>4</sup>

### 3. Types of Domestic Violence:

The various forms of domestic violence prevail in society. The forms of violence vary with the social, economical, and cultural status of the family. Some most common forms of domestic violence that are also recognised in the protection of women from domestic violence legislation are as follows:

- i. **Physical violence** – The act of harming the physical body of a woman like hitting, pushing, throwing objects on her, slapping or biting, kicking, choking, etc.

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<sup>3</sup> Cambridge Dictionary, available at: <https://dictionary.cambridge.org/dictionary/english/violence>, (last visited on Feb.28.2022).

<sup>4</sup> The Protection of Women from Domestic Violence Act,2005, s. 3, available at: <https://indiankanoon.org/doc/406908/>, (last visited on Feb. 28.2022).

- ii. **Sexual violence-** The act of forceful sex without her consent, criticizing her sexually, unwanted touching, forcing her to dress more sexually, marital rape, etc.
- iii. **Psychological violence-** Psychological violence reflects the behavior of the perpetrator that badly affects the mental health of a victim. The perpetrator threat to act or act in such a manner that alarm the safety and security of a woman for example- threat to abandon her, denial to maintain her and her children, to keep her in destitution, abuse her and her parents, to keep surveillance on her, to keep her children away, humiliate her in public, etc.
- iv. **Economic violence-** The economical violence includes denial of funds for her survival and other household necessities, denial of her from doing her job and other employment, disposal of her property without her consent or with her forceful consent, denial of her property rights, etc.

#### 4. Some major causes for domestic violence:

Several social and economical factors are responsible for the commission of domestic violence against women not only in India but in other nations also. Some exemplary factors out of them are discussed below:

1. **Man-dominated society-** the major cause for violence against women is that society is man-dominated and it considered women inferior to men. Every act of violence is justified by them as a legal act. The unequal power between man and woman makes men superior and society never believes in the independent social or legal status of a woman.
2. **Low literacy rate-** In India the literacy rate among women is still low. Literacy plays a vital role in the social and economical growth of every nation including the growth of its citizens. According to National Statistical Office (NSO) data, the average literacy rate in India as per the 2021 census is 77.70% and the male literacy rate is 84.70% whereas the female literacy rate is 70.30%.<sup>5</sup> It shows a huge gap between male and female literacy.
3. **Lack of awareness about legal rights-** There are several statutes and legal Acts that are framed for the protection, safety, and empowerment of women but women,

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<sup>5</sup> Literacy rate in India 2021, available at: <https://www.findeasy.in/indian-states-by-literacy-rate/>, (last visited Feb. 28. 2022).

especially in Indian society, are not aware of their rights and they are forced to tolerate violence at homes.

- 4. Fear of social stigma and destitution-** Although the technology developed throughout the world and every effort has been made to empower women socially educationally and economically. Societies are still hesitant to allow the individual status of a woman. The fear of societal attitude and stigma that affects women socially and mentally restraint them to come forward and raise voices against violence.
- 5. The parental attitude and approach-** The most prevalent factor for domestic violence is the approach of parents of a victim. The parents of a victim also bear social pressure and the fear of insult among their relatives, village, town, society, etc. In most cases, they are not allowed victims to come back home and raise their voices against violence. Victims are always taught by them to live in their matrimonial home and do the adjustment and bear all such violence. They relate such heinous acts with their destiny and make them a silent victim.
- 6. Non-disclosure of violence-** The victims refrain from disclosing violence against them. The social fear of insult, inferiority is the forcing factor behind keeping silent. Estimates published by WHO indicate that globally about 1 in 3 (30%) of women worldwide have been subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.<sup>6</sup> Most cases of domestic violence remain undisclosed.
- 7. Economic dependency-** The women living in rural and poor urban areas are still dependent on their husbands and other family members for their livelihood. Despite the women's employment program, there is a lack of employment in real life. So, this dependency makes them silent victims.

## **5. National Frameworks for Protection of Women from Domestic Violence:**

The national frameworks include relevant national legislations, laws and policies, statutory bodies, NGOs, and helpline numbers that are working in a supporting and helping manners to help, advice, empower, assist and redress women from domestic as well as other forms of violence and also helping in building of a strong nation.

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<sup>6</sup> Violence against Women, available at: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>, (last visited on Feb.28.2022).

**National legislations:**

- 1) **Constitution of India** – Indian Constitution is the supreme law of the land. It provides basic human rights to all its citizens including women like the right to life and personal liberty<sup>7</sup>, freedom to speech and expression<sup>8</sup>, right to equality<sup>9</sup>, right against exploitation<sup>10</sup>, right to civil remedies<sup>11</sup>, right to property<sup>12</sup>. Everyone is free to exercise their rights freely subject to some exceptions that can be imposed by the state in the public interest. The Constitution also provides Directive Principles for the harmony and the social, economic, and political welfare of the citizens.
- 2) **Indian Penal Code, 1860 (IPC)** - IPC is a part of criminal law. It provides punishment for different acts that are committed against society, nation, and its citizens. It also provides punishment for the offences committed against women like the crime of assault, using criminal force, sexual harassment, stalking, voyeurism, dowry deaths, cruelty against women, rape, rape during separation, murder, abetment to commit suicide, throwing acid, molestation, etc. and the 2018 amendment in IPC makes it more punitive in respect of crimes against women.
- 3) **Code of Criminal Procedure, 1973 (CrPc)** – CrPc is also a part of criminal law that provides the procedure to get redress and make guilty the criminals. It gives the right to all its citizens including women. Some of the provisions that are provided regarding the crime against women are - to file FIR against any of the crime that is committed against them, making investigation and examination by a woman officer, treatment of the victim of rape and other sexual offence by a lady doctor, making a dying declaration or other statements before Magistrate, no arrest of women except a lady officer, no arrest before sunrise and after sunset, awarding compensation and other medical expenses at the cost of the state, etc.
- 4) **Dowry Prohibition Act, 1961** – Dowry Prohibition Act is social legislation that prohibits and punished the taking and giving dowry. But this legislation seems only in acts and books not fully achieved its goal. Every year several cases and deaths are recorded due to dowry. It is the most prevalent social evil in society that is also responsible for domestic violence largely.

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<sup>7</sup> The Constitution of India, Art-21.

<sup>8</sup> *Ibid*, Art-19(1)(a).

<sup>9</sup> *Ibid*, Art-14.

<sup>10</sup> *Ibid*, Art-24.

<sup>11</sup> *Ibid*, Art-32.

<sup>12</sup> *Ibid*, Art-300-A.

- 5) **Family law** – The Family Law contains several acts like Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Succession Act, all acts are provided several and different legal rights to the women. For example- right to divorce on the ground of cruelty, adultery, refusal to maintenance, etc., right to get maintenance during a divorce proceeding and after getting a divorce, right to property like a son in ancestral property, etc.
- 6) **Legal Service Authority Act, (LSAA) 1987** – The LSAA provides free legal aid to all including women based on the principle of equal opportunity to justice. No one is denied his or her legal rights. They are set up at the state, district level and provide free legal helps and make aware the peoples about their rights.
- 7) **Protection of Women from Domestic Violence Act, 2005-** This act was particularly framed by the Indian Parliament to protect women from domestic violence. It defines the several forms of domestic violence against women within families and homes. It is social and civil legislation that is enacted to protect the victim not to penalize the perpetrator. A protection officer that would be a woman appointed to hear, file complaint and submitted to Magistrate, help in providing health and other medical assistance, to help in providing shelter and enforce other orders of Magistrate.
- 8) **Protection of Child from Sexual Offences** – This act is aim to protect children from sexual assault, harassment, pornography, and other sexual act that is committed against children. Special courts are established by the Govt. to try these offences. This act is applicable irrespective of the sex or gender of children.

#### **National policies:**

- 1) **National Population Policy (NPP), 2000-** This national policy empowered women to take decisions over the matter of family planning, reproductive choice.
- 2) **National Policy on the Empowerment of Women, 2001-** This policy is framed to keep in view the full empowerment of women. It aims to empower women and give them equal access and participation in all fields like health, education, political, social, economic and eliminate all forms of discrimination and violence against women.

#### **Statutory Bodies:**

- 1) **Ministry of Women and Child Development-** It is a statutory body that has been enacted in 1985. It is a branch of the Union Government. It works for the social and economic development and empowerment of women and children. Its main functions

are to frame and implement policies, enact and amend legislation related to women and children. The ministry also initiates certain programs for social welfare, income generation, employment training, and coordinates with government and non-government organizations which work for the welfare and empowerment of children and women.

- 2) **National Commission for Women-** NCW is an autonomous body that works under the Ministry of Child and Women Development. It is enacted in 1992. It provides a mechanism to protect women. It has all the power like a civil court. It provides advice to the government in enacting laws and framing policies related to the welfare of women. It presents its annual report to the central government.
- 3) **National Human Rights Commission-** NHRC is a result of international awareness about human rights. It was created in 1993. It provides safeguard basic human rights that are given by the Indian Constitution like the right to life, liberty, equality, etc. It receives complaints against human right violation and makes recommendations to protect and preserve them.

#### **Helpline Numbers:**

Police – 100

Women helpline All India- 1091

Women helpline domestic abuse- 181

NHRC- 011-23385368<sup>13</sup>

#### **NGOs:**

Certain non-governmental organizations work for the promotion of women's rights and provide safeguards for them. Some popular NGOs are- Gurai India, Action aid India, Majlis Manch, Sayodha Home for Women, Shikshan Ane Samaj Kalyan Kendra, International Foundation for Crime Prevention and Victim Care.<sup>14</sup>

## **6. International Framework for Protection of Women from Domestic Violence:**

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<sup>13</sup> Women helpline numbers, available at: <https://indianhelpline.com/WOMEN-HELPLINE/>, (last visited Feb. 28.2022).

<sup>14</sup> Devyani R, 10 NGOs Helping Women to Fight for their Rights in India, available at: <https://www.giveindia.org/blog/10-ngos-for-women-you-should-support-for-women-rights/#:~:text=Shikshan%20Ane%20Samaj%20Kalyan%20Kendra&text=Shikshan%20Ane%20Samaj%20Kalyan%20Kendra%20is%20dedicated%20to%20helping%20women.education%2C%20women%20empowerment%2C%20etc>, (last visited March 1.2022).

India is a signatory of many international conventions, agreements, and treaties that work for the protection of women's fundamental and human rights. Some areas follow:

- i. Convention on the Elimination of All Forms of Discrimination against Women, 1979.
- ii. Convention of the Rights of the Child, 1989.
- iii. International Covenant on Economic, Social and Cultural Rights, 1966
- iv. United Nations Convention on the Rights of Persons with Disabilities, 2006
- v. International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- vi. Sustainable Development Goals with targets Addressing the Public Safety of Girls and Women, 2015.

## 7. Conclusion:

Violation against women is now getting recognition of violence of basic human rights globally. Domestic violence is a matter of high concern throughout the world. Through several legislations, policies, and international organisations like UNO, ILO, are independent statutory bodies to provide protection and safeguards for women's rights, still, the issue is in the pipeline and not resolved fully. As per the report of the present National Family Health Survey, the number of married women, who experienced spousal violence between the age of 18-49 now has increased more than doubled from 20.6 % in 2014-15 to 44.5%.<sup>15</sup> These are very frightening data. If this social evil that is based on gender or called gender-based violence will not prevent timely then it could be a life threat for women all around the world.

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<sup>15</sup> Domestic Sexual Violence Rising in State: NFHS data, The Hindustan Times (March 2, 2022), available at: <https://www.hindustantimes.com/india-news/domestic-sexual-violence-rising-in-state-nfhs-data-101637781327387.html>, (last visited on March 2, 2022).