
Human rights and domestic Violence against women in 21 st century : An Unfinished Agenda

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Abstract

Violence against women is the key topic of this paper. Domestic violence is a global problem. It undermines the value of a woman as an individual and denies her the dignity of a human being. It, therefore, is a serious human rights violation. Domestic violence is a series of repeated abusive behavior which affects women's participation in public and private spheres. It also harms a woman's physical, mental, psychological and sexual well being..The questions are here two: what the basic reasons are there behind violence against women and how to check this tendency ?. We can try to analyze this whole issue from a different perspective and that is sexuality. We will also bring in points like mode of production, young generation, institution of education, present day politics and role of religion behind such type of psychic problem and criminal offence The paper is based on theoretical research and begins by introducing the concepts of human rights, domestic violence and important players involved in it. The paper mainly focuses on various facets of domestic violence, human rights instruments made available by United Nations and on legislative measures developed by select countries to counter domestic violence.

Keywords:- Domestic violence, Human rights, Women, Legislation, Human Right Instruments.

Introduction

Domestic violence is a pattern of abusive and threatening behaviors that may include physical, emotional, economic and sexual violence as well as intimidation, isolation and coercion. The purpose of domestic violence is to establish and exert power and control over another; men most often use it against their intimate partners, which can include current or former spouses, girlfriends, or dating partners. “Domestic violence is a burden on numerous sectors of the social system and quietly, yet dramatically, affects the development of a nation batterers cost nations fortunes in terms of law enforcement, health care, lost labor and general progress in development. These costs do not only affect the present generation; what begins as an assault by one person on another, reverberates through the family and the community into the future”

Domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. This problem is not only widely dispersed geographically, but its incidence is also extensive, making it a typical and accepted behavior. Domestic violence is wide spread, deeply ingrained and has serious impacts on women's health and well-being. Its continued existence is morally indefensible. Its cost to individuals, to health systems and to society is enormous. Yet no other major problem of public health has been so widely ignored and so little understood. The most pervasive form of human rights abuse is violence against women. This violence includes domestic violence, sexual abuse, rape, forced prostitution, female genital mutilation, and murder. It cuts across socioeconomic lines and is so deeply embedded in tradition. Violence against women violates fundamental human rights and is an affront to women's inherent human dignity. Physical, psychological, and sexual violence against women and girls, public and private, plagues all societies and classes and poses tremendous obstacles to the achievement of equality, development and peace. Governments have the obligation not to engage in any form of violence against women and to prevent violence against women wherever it occurs.

What Leads to Domestic Violence?

Domestic violence against women is an age old phenomenon. Women were always considered weak, vulnerable and in a position to be exploited. Violence has long been accepted as something that happens to women. Cultural mores, religious practices, economic and political conditions may set the precedence for initiating and perpetuating domestic violence, but ultimately committing an act of violence is a choice that the individual makes out of a range of options. Although one cannot underestimate the importance of macro system-level forces (such as cultural and social norms) in the etiology of gender-based violence within any country, including India, individual-level variables (such as observing violence between one's parents while growing up, absent or rejecting father, delinquent peer associations) also play important roles in the development of such violence. The gender imbalance in domestic violence is partly related to differences in physical strength and size. Moreover, women are socialized into their gender roles in different societies throughout the world. In societies with a patriarchal power structure and with rigid gender roles, women are often poorly equipped to protect themselves if their partners become violent. However, much of the disparity relates to how men-dependence and fearfulness amount to a cultural disarmament. Husbands who batter wives typically feel that they are exercising a right, maintaining good order in the family and punishing their wives' delinquency - especially the wives' failure to keep their proper place.

Methodology:- Theoretical research methodology has been adopted in the preparation of the paper. With the help of primary sources and published records like books, journals, magazines, newspaper articles, reports along with internet resources, important terms and concepts related to domestic violence has been examined. As domestic violence is an important socio-legal issue concerning women, study has been done to understand the terms and related issues from human rights perspective. The role of State and civil society too has been highlighted in the study.

Sexual violence is widespread and systemic worldwide:- Most women experience violence in their homes, and as many as 20% of women worldwide have been raped (most know their attacker). More than half of all sexual assaults target girls aged 15 years and younger, and armies continue to use rape as a weapon of war. In recent years Scholars and advocates have criticized human rights law for its failure to accord protection to women facing gender-based violence. Although physical abuse of women is pervasive cutting across cultural class and economic lines, traditional concepts of human rights have developed within a public male dominated framework, which does not recognize the experiences of women as a “woman”. Since the mid-1990s, when the international community began acknowledging violence against women as a global social problem, increasing international attention has been paid to the issue of violence against women. However, there is still no explicit international human rights treaty prohibition on violence against women and the issue remains poorly defined and understood under international human rights law.

Types of Domestic Violence:

A. Battering

Woman battering is the most common form of domestic violence, characterized by the use of physical or psychological force, or the threat of such force, by the domestic partner. Women victims who survived battering report that such violence often includes kicking, punching, biting, slapping, burning, throwing acid, beating with fists or objects, strangling, stabbing and shooting. Perpetrators often use a debilitating combination of physical and psychological violence in a process of domination and exertion of control, meant to destabilize, victimize and render the woman powerless⁴.

B. Threat

Threat can also be considered an act of domestic violence against women. Threat means to intimidate a person by words, writing or gestures or by any other method to cause that person harm. The penalty is as follows: 1-6 years imprisonment. And this is considered a crime of Public Penal Action, which means the victim, does not need to be directly represented by a solicitor.

C. Attempted Murder

“Try to kill a person”. For instance, a husband tries to kill his wife but she does not. The penalty for attempted murder varies from 6- 20 years imprisonment in the case of *Simple Attempted Murder* and from 12-30 years for *Qualifying Attempted Murder*. This type of criminal injury is tried by a jury. What is more, the victim does not need the assistance of a lawyer for an effective access to court because a State Attorney must deal with the legal procedure against the accused.

D. Marital Rape

Like wife or partner-murder, reliable sources indicate that men who commit marital rape are rarely convicted. This is maybe because the understanding of domestic violence has pre-eminently been limited to physical violence: non-consensual sex aspects have been comparatively neglected or omitted. Rape is broadly defined as involuntary sexual intercourse through the use of physical force, threats or intimidation. Many countries do not recognize rape by a man of his wife either as a criminal offence or as a violation of human rights.

Human Rights Instruments: - United Nations through its various platforms has declared domestic violence to be a serious human rights concern. The organization has come out with important decisions in this regard. Important among them being, Beijing Conference and its '*Platform of Action*' Appointing of Special Rapporteur on violence against women; Universal Declaration of Human rights (UDHR); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Declaration on elimination of violence against Women. The Beijing conference and Platform of action (1995) : It stated that violence against women was a universal issue and around 17-38% of women around the globe suffered physical assault atleast once during their lifetime. Platform of action, therefore, declared that “Violence against women constitutes a violation of basic human right and is an obstacle to the achievement of the objectives of equality, development and peace”.

Convention on the Elimination of all forms of violence:- Discrimination against Women (1979): Popularly known as CEDAW, it has been a landmark event in highlighting the issue of violence¹⁰. CEDAW calls for “right to protection from gender based abuse and neglect” along with highlighting issues related to economic survival, health and education. The Declaration on the Elimination of Violence Against Women (1993): It works closely with CEDAW, UDHR and Vienna declaration and Programme of action. Due to the declaration, 25 November is celebrated as “International day for the Elimination of Violence against Women”. The main aim of the declaration is to create awareness among the States about violence against women being much more than just a private domestic matter.

The declaration, therefore, calls for active State intervention and reiterates United Nation's role in promotion and protection of women's rights around the globe.

Violence cases and do justice to the victims:- In India, Domestic Violence Act came into being in 2005 (DVA-2005). It has been a landmark legislation as it made domestic violence a punishable offense. It covers violence against both women and children. Before the Act came into being, the only options available to victims of domestic violence was to either opt for divorce from spouse or take the support of section 498A of IPC (Indian Penal Code). Due to procedural delays involved in these options, justice got both delayed and denied to the victims. This led to formulation of DVA, 2005. DVA along with providing support to married women also addresses the concerns of women who are in live-in relationships. Even a single act of harassment or violence can be reported under this Act. Thus, DVA, 2005 provides a comprehensive opportunity to all the victims of domestic violence, who otherwise undergo humiliation for longer period of time before reporting. It is a liberal and forward looking Act and gives women the right to continue living in shared household even when the dispute is on. The Act therefore, has tried to protect the physical, psychological as well as financial well being of the women complainant. Legal redressal is ensured to women through this Act and the needy ones are to be provided with medical aid, security as well as shelter facility.

The road from principles to practice: Today's challenges for protecting women in respecting human rights:-

The Universal Declaration of Human Rights, adopted in 1948 by the United Nations, provides the most fundamental international agreement for combating violence against women, as it declares the equal rights of women and men, including the right to personal security (Article 1).

In comparison to International humanitarian law, International Human rights law applies at all times, in peace and in war and it is concerned with the protection of the life, health and dignity of individuals. The Universal Declaration of Human Rights (UDHR), defines universal principles and values. It has had a significant effect on the development of international human rights law, but it's considered aspirational rather than absolute, is open to interpretation, and doesn't create a legal obligation for states to uphold these principles.

Limited protection in scope:- Violence against women is one of the most prevalent human rights abuses at the global level. However, no specific mention of this issue is made in any of the United Nations (UN) treaties. A small and not sufficient number of human rights treaties protect women in specific situations, but even collectively, they're not comprehensive enough to cover all forms of violence against women and girls in all situations. In addition, feminist strategies of inclusion have

been proved to be necessary as well as symbolically powerful for women by supporting the existing human rights norms such as equality norms, the right to life, and the prohibition against torture. As one attempt to response to this problem through the years, was the fact that more than 160 countries have ratified the UN's Convention on the Elimination of All Forms of Violence against Women, and also many countries have included provisions to protect women against violence in their constitutions and criminal codes. Although, only 44 countries worldwide specifically protect women against domestic violence and only 17 countries consider marital rape a crime (12 countries in Latin America excuse a rapist from prosecution if he marries his victim).

Nevertheless, only three regional treaties addressing violence against women have attempted to address what is lacking at the global level: 1. Belém do Pará Convention, 2. Africa's Maputo Protocol and 3. Europe's Istanbul Convention. The US has worked to place women's rights on the human rights agenda by increasing monitoring of women's human rights abuses, supporting national efforts to revise legislation, supporting campaigns to help women reduce their dependency on men and understand their rights, and equating women's rights with human rights.

Conclusion:- We can therefore conclude that domestic violence is indeed a serious human right issue and it can be eradicated from the society only when responsibility towards it is shared by all stakeholders, collectively. States should work towards strict implementation of legislations related to domestic violence and stringent punishment should be attached to any kind of violation. By doing so, women will be assured of effective and immediate remedy. Awareness about domestic violence is gradually increasing among people. Modification in the field of Education, Legal aid, Counseling, Rehabilitation and self regulatory guidelines will help the cause in a big way. By addressing the problem in an efficient manner, it will help in restoring the lost self esteem of women in the society. They can be assured of a more peaceful, successful and empowered life.

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