



## DOMESTIC VIOLENCE AGAINST WOMEN – AVAILABLE REMEDIES

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### Abstract

Violence against women is a universal phenomenon. It may differ in its scope from society to society, but it exists everywhere. India is no exception to this unfortunate incident. This menace is present in rural as well as urban areas. Violence against women can be – physical, sexual, psychological and economic. The most disturbing fact is that all these atrocities are done by those who are supposed to be the protector. The causes of violence against women are many depending upon type of violence. The root cause of violence against women lies in historically unequal power relations between men and women, and perpetual discrimination against women. Patriarchal society, son preference, treating daughters as burden, alcoholism, dowry, objectification of women by print and electronic media are some of the causes which led to domestic violence. Domestic violence affects adversely not only to the victims, but also to the male counterpart, and children. Many initiatives have been taken at international and national level to protect women from this menace. Indian constitution prohibits discrimination based on sex. There are many provisions in IPC to protect women from domestic violence. Domestic Violence Act 2005, and PC&PNDT Act have been passed to protect women from domestic violence. A lot of positive results are being seen because of government initiatives. The need of the hour

is more scientific research and unique initiative to protect half of the population of the world from menace of domestic violence.

**“Violence against women and girls continues unabated in every continent, country and culture. It takes a devastating toll on women’s lives, on their families and on society as a whole. Most societies prohibit such violence – yet the reality is that too often, it is covered up or tacitly condoned.”**

**United Nations Secretary-General Ban Ki-moon**

Violence against women is a universal phenomenon. It may differ in its scope from society to society, but it exists everywhere.

According to UN, across the world up to 7 in 10 women experience physical and/or sexual violence at some point in their lifetime, 603 million women live in countries where domestic violence is not yet considered a crime and as many as 1 in 4 women experience physical or sexual violence during pregnancy.

India is no exception to this unfortunate incident. It is prevalent in both rural and urban areas. 27% of women in India have experienced physical violence since the age of 15 and this is more common in rural areas than in urban areas.<sup>1</sup> Domestic violence cases, where women reported physical abuses were 29 percent in rural areas and 23 percent in urban areas.<sup>2</sup>

<sup>1</sup> National Family Health Survey (NFHS-4) 2015-16.

<sup>2</sup> National Family Health Survey (NFHS-4) 2015-16



Violence against women Women can be – physical, sexual, psychological and economic. Physical violence consists of acts aimed at hurting the victim and include, but are not limited, to pushing, grabbing, twisting the arm, pulling the hair, slapping, kicking, biting or hitting with the fist or an object, to trying to strangle or suffocate, burning or scalding on purpose and attacking with some sort of weapon, a gun or knife.<sup>3</sup>

Sexual violence is defined as any sort of harmful or unwanted sexual behaviour that is imposed on someone. It includes acts of abusive sexual contact, forced engagement in sexual acts, attempted or completed sexual acts with a woman without her consent, sexual harassment, verbal abuse and threats of a sexual nature, exposure, unwanted touching, and incest.<sup>4</sup>

Psychological violence includes a range of behaviours that encompass acts of emotional abuse like insulting or making a woman feel bad about herself, belittling or humiliating her in front of others, deliberately scaring or intimidating her, threatening to hurt her or others she cares about, and controlling behaviour like isolating a woman by preventing her from seeing family or friends, monitoring her whereabouts and social interactions, ignoring her or treating her indifferently, getting angry if she speaks with other men, making unwarranted accusations of infidelity, controlling her

access to health care, education or the labour market. These often coexist with physical and sexual violence.<sup>5</sup>

Economic violence is difficult to define. It varies significantly across the cultural and physical boundaries. Generally economic violence involve denying access to property, durable goods or the labour market; deliberately not complying with economic responsibilities, thereby exposing a woman to poverty and hardship; or denying participation in economic decision-making.<sup>6</sup>

The most common type of women violence is physical violence (27%), followed by emotional violence (13%).<sup>7</sup>

The most disturbing fact is that, domestic violence is caused inside home, which is supposed to be the safest place and at the hands of near ones who are supposed to act as their protector. 31 percent of married women have experienced physical, sexual or emotional violence by their spouses.<sup>8</sup>

#### **Causes which led to Violence against women**

The causes of violence against women are many depending upon type of violence. The root cause of violence against women lies in historically unequal power relations between men and women, and perpetual discrimination against women. Image

<sup>3</sup> United Nations Statistics Division (2010): *The World's Women 2010: Trends and Statistics*, p. 131, United Nations Publication, ISBN 978-92-1-161539-5

<sup>4</sup>United Nations Statistics Division (2015): *The World's Women 2015: Trends and Statistics*, p. 144, United Nations Publication, ISBN 978-92-1-161594-4

<sup>5</sup>United Nations Statistics Division (2015): *The World's Women 2015: Trends and Statistics*, p. 152, United Nations Publication, ISBN 978-92-1-161594-4

<sup>6</sup>United Nations Statistics Division (2015): *The World's Women 2015: Trends and Statistics*, p. 153, United Nations Publication, ISBN 978-92-1-161594-4

<sup>7</sup> National Family Health Survey (NFHS-4) 2015-16

<sup>8</sup> National Family Health Survey (NFHS-4) 2015-16



created by society, portraying a man as strong, educated, creative and clever than women is one of the reason of violence against women. The faulty parenting technique create disparity between boys and girls leading to gender based violence in later life. When a boy grows up in a family, where he is not supposed to wash his own cloths, cook or help in house hold works, if he gets married to a woman who come from a family where house hold duties are equally shared, this may lead to tension and violence later in life.

In Indian patriarchal society women normally do not have control and access over almost all spectrum of resources, which may be physical, financial, intellectual, political, social and technological. The capacity to take decision regarding labour, sexuality and fertility lies with male members of the family. Women are supposed to preserve family honour. There is an established norm that if a man is violent towards his mother, sister or wife, nobody needs to intervene. These ideology is so deeply rooted that women themselves become propagator of patriarchal mind-set. Son preference is a common feature of patriarchal set up in developing world in general and India in particular. Daughters are considered as a burden until she gets married. The problem of dowry is also a reason for violence against women. A notion has been prevalent in Indian society that son will look after the parents in the old age, which led to son preference. Thus such an atmosphere has been created which led to development of an inferiority complex in women. They accept their low status and find nothing wrong in crimes and exploitation committed against them. They

silently bear the tolls of crime and exploitation committed against them. According to Unicef's "Global Report Card on Adolescents 2012", 57% of boys and 53% of girls in India think a husband is justified in hitting or beating his wife.

Parental alcoholism and drug addiction prevalence of violence in family, broken home environment, poverty, low status given to mothers, prostitution, unemployment and association with criminal gangs can also led to domestic violence.

Suspicion about the wife's fidelity, her childlessness or not bearing a son, disputes about household matters, wife's protests about husband's alcoholism, husband's infatuation with another woman etc. are other important reasons which led to domestic violence.

Electronic and print Media has also contributed in increasing domestic violence. Portraying women as an object in movies, TV serials, and advertisement has been increased in recent times. The concept of item numbers has been emerged. It has led to vulgar songs and dances by actor and actress. All this has led to increase in atrocities against women.

Low conviction rate has been a huge contributor in increasing violence against women. The remedies available within law has been ineffective to provide immediate relief to women. Existing loopholes in law, lack of guidance and evidence make legal procedure cumbersome leading to further exploitation of victims. Complaints in these cases are rarely registered; if registered, the culprits are rarely apprehended; if apprehended, they are rarely brought to court; and if brought to court, they are rarely



convicted. The rare cases of the culprits being brought to trial are the result of social action groups and women's groups publicizing the case so that public pressure is exerted.

### **Impact of Violence against women**

Violence against women affects adversely to the victims, her male counterpart, children, family and society as a whole. The impacts may be short term in the form of stress, anxiety, depression, sleep disturbances, physical fatigue, chronic head-ache etc. on the life of the victims, or long term like reduced social contacts, impaired health, mental disturbance and disorganization, loss of mutual trust and finally break up of family.

Children of victimised women are severely impacted. Children who are exposed to violence during their initial growth period, suffer from an extent of emotional disturbances and behavioural problems, which sometimes may lead to perpetrating or being victims of violence later in life. There is a higher probability that the children who have witnessed violence, may believe that violence is a reasonable way to resolve conflict between people. Sometimes boys who learn in their initial growth period that women are not to be valued or respected, are more likely to abuse women when they grow up.

Victims of domestic violence, who continue to live with their perpetrators, due to various social and economical constraints commonly report high scores of fear, stress, and anxiety and depression. Sometimes because of continuous criticism victims may feel guilty and less confident. The victims may go

through depression, and may have high tendency of suicide attempt.

Sometimes domestic violence may lead to chronic health issues, like arthritis, irritable bowel syndrome. Women who went through domestic violence during pregnancy may experience the risk of miscarriage, pre-term labour, and injury or death of the foetus. Disability in new-borns or toddlers are somewhere related with domestic violence. i.e Autism is a mental disorder which we are seeing very common in infants.

Due to financial dependency on perpetrator and lack of specialized skills and training to gain employment, victims go through economic crisis after breaking up relationship with perpetrator and this is also a reason why females do not try to come on front to reveal their pain or whatever torture they face.

### **Global initiative to protect women from violence**

Domestic violence has been recognized in international law as a violation of human rights. Pre 1990's international treaties provided protection against domestic violence only implicitly, but from 1990's with the passage of the General Comment No. 19 by the Committee on the Elimination of Discrimination Against Women (1992) and the Declaration of Elimination of Violence Against Women (1993) domestic violence began to receive more explicit attention in international treaties. In the last two decades' numerous resolutions have been passed from UN General Assembly on violence against women generally and domestic violence specifically.



Together with the Universal Declaration, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights make up the International Bill of Human Rights.

Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights use the same wording to prohibit discrimination based on, inter alia, sex (art. 2), as well as to ensure the equal right of men and women to the enjoyment of all rights contained in them (art. 3).<sup>9</sup> The International Covenant on Civil and Political Rights guarantees, among other rights, the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups' rights to their culture, religion and language.<sup>10</sup> The International Covenant on Economic, Social and Cultural Rights guarantees, for instance, the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.<sup>11</sup>

The Convention on the Elimination of All Forms of Discrimination against Women articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality.

It also mentions specific obligations to States to eliminate discrimination against women in political, social, economic and cultural fields in 16 substantive articles. The Convention covers both civil and political rights (rights to vote, to participate in public life, to acquire, change or retain one's nationality, equality before the law and freedom of movement) and economic, social and cultural rights (rights to education, work, health and financial credit). The Convention also pays specific attention to particular phenomena such as trafficking, to certain groups of women, for instance rural women, and to specific matters where there are special risks to women's full enjoyment of their human rights, for example marriage and the family.<sup>12</sup>

i. The Convention also specifies the different ways in which State parties are to eliminate discrimination, such as through appropriate legislation prohibiting discrimination, ensuring the legal protection of women's rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provisions.

<sup>9</sup>Women's Rights are Human Rights, United Nation publication, p.4, ISBN 978-92-1-154206-6

<sup>10</sup>Women's Rights are Human Rights, United Nation publication, p.4, ISBN 978-92-1-154206-6

<sup>11</sup>Women's Rights are Human Rights, United Nation publication, p.5, ISBN 978-92-1-154206-6

<sup>12</sup>Women's Rights are Human Rights, United Nation publication, p.5, ISBN 978-92-1-154206-6



### Provision in India to protect women from violence

Government of India has taken various measures to address domestic violence and curb the societal pressures which subsequently result in violence against women. Some major provisions are:

#### Constitutional Provisions<sup>13</sup>

1. Article -15(3) empower states to make special provisions for women and children.
2. Article 23 prohibits traffic in human being.
3. Article 39 directs state not to discriminate on the ground of sex, also state should direct its policy towards securing equal pay for equal work irrespective of sex.
4. Article 42 make provisions for securing maternity benefit, justice and better condition of work.
5. Article 51 declares it a fundamental duty of every Indian citizen to renounce practices derogatory to dignity of women.
6. Article 243 added by the 73<sup>rd</sup> & 74<sup>th</sup> amendment, in 1992; provide reservation of 33 percent seats for women in the direct elections to every panchayats and municipalities.

#### Provisions Under Civil Laws

1. The Hindu Marriage Act, 1955.
2. The Indian divorce Act, 1869.
3. The Dissolution of Muslim Marriage Act, 1930.

4. The parsi Marriage and Divorce Act, 1939.
5. The special Marriage Act (1954).
6. The Muslim women (protection or divorce) Act, 1986.
7. The Hindu Adaptation and maintenance Act, 1956.

#### Provision under IPC<sup>14</sup>

1. The victimised wife can file a suit against her husband if the husband fails to maintain her under section 125.
2. There is provision for punishment of rape under Sections 375 and 376.
3. Kidnapping of women is punishable offence under section 359-396.
4. Homicide for dowry, dowry death, or their attempts is punishable under section 302/304B.
5. Causing miscarriage is punishable under section 312 – 314.
6. Under section 494 bigamy is an offence which may be punishable with imprisonment for a term extending 7 years or with fine.
7. Under section 498 enticing or taking away or detaining a married woman with criminal intent is also punishable.
8. Under section 498A FIR can be lodged at any police station or a women cell for torture, both mental and physical by the husband or the in-laws. The offense is cognizable, non-boilable non compoundable.
9. Under section 366B importation of girl up to 21 years of age from a

<sup>13</sup>The Constitution Of India, Bare Act.

<sup>14</sup> The Indian penal code 1860, Bare Act.



foreign country shall be punishable.

10. Section 354 deals with outraging modesty of women. Any act of molestation with intent to outrage the modesty of a women is punishable.
11. Section 509 is related to the insult of modesty of a woman (sexual harassment) such an act shall be punishable with imprisonment may extend up to 10 years and also give.

**Provision under The Domestic Violence Act 2005<sup>15</sup>**

This act has widened the definition of Domestic violence. According to this act Domestic Violence include an act or conduct which harms injures or endanger the health safety and life or well-being mentally or physically. It may be in the form of physical, sexual, verbal, emotional and economic abuse.

According to this act

- Physical Violence - Includes use of physical force against women such as pushing throwing, kicking, slapping, biting, beating assault, burning and murder etc.
- Sexual Violence - Includes sexual assault, harassment and exploitation.
- Verbal or nonverbal Violence - may be subtler in action or behaviour than physical abuse. Score of this abuse may not be visible but can be felt and proves to be more emotionally damaging. It may be in the form of isolation, excessive possessiveness and trusting, screaming, embarrassing, making fun for or mocking.
- Economic Violence - includes withholding

economic resources defrauding of money exploitation or women resources, with holding physical resources such as food clothes, shatter preventing the women from working.

- ii. Any women who is or has been in a domestic or family relationship, if is subjected to any act of domestic violence can complain under this Act.

Other provisions of the act-

- Any aggrieved women can approach to the concerned protection officer, police officer service provider or magistrate under section 5.
- there provision of shatter home and medical facilities can to aggrieved woman under section 7.
- An aggrieved woman has right to reside in shared household under section 17.
- The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person under section 18.
- The Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence under section 20.
- Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent under section 22.

<sup>15</sup> The Domestic Violence Act 2005, Bare Act.



- There is provision of imprisonment up to 1 year a fine up to 20,000 or both for breach of protection order by respondent under section 30.
- There is a provision of up to 1 year of imprisonment or with a fine up to Rs. 20,000 or both of protection officer, under section 33.

Recently Honourable Supreme Court ordered that The Domestic Violence Act — meant to punish men who abuse women in a relationship — extends to all man-woman relationships, and also protects divorced women from their former husbands.<sup>16</sup>

#### **Provision under The pre-conception and pre-natal Diagnostic Techniques (prohibition of sex selection) act 1994.<sup>17</sup>**

This Act provide provision for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide.

#### **National Policy for Empowerment of Women 2001<sup>18</sup>**

This policy envisage to bring about the advancement, development and empowerment of women and to eliminate all forms of discrimination against women. The policies/programmes of the Government are all directed towards achieving inclusive growth with special focus on women in line with the objective of the National Policy for Empowerment of Women.

Recently government came out with Draft National Policy for Women 2017. This Draft envisage a society in which women can attain their full potential and are able to participate as equal partners in all spheres of life. The draft policy identified priority areas like Health including food security and nutrition, Education, Economy (including agriculture, industry, labour, employment, NRI women, soft power, service sector, science and technology), Violence against women, Governance and decision making, Violence Against Women, enabling environment (including housing, shelter and infrastructure, drinking water and sanitation, media and culture, sports and social security), and Environment and climate change. This draft policy addresses the diverse needs of women.<sup>19</sup>

India has experimented with many innovative models of community dispute

<sup>16</sup> Krishnadas Rajagopal, *Domestic Violence Act for divorced women too: Supreme Court*, The Hindu (may 2018), <https://www.thehindu.com/news/national/domestic-violence-act-for-divorced-women-too-supreme-court/article23874365.ece>.

<sup>17</sup> The pre-conception and pre-natal Diagnostic Techniques (prohibition of sex selection) act 1994, Bare Act.

<sup>18</sup> **National Policy for Empowerment of Women 2001**, Ministry of women And Child Development, <http://wcd.nic.in/womendevlopment/national-policy-women-empowerment>

<sup>19</sup> Draft National Policy for Women 2017, Ministry of women And Child Development, (march 2018), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=177238>.



resolution mechanisms — the Nari Adalats (women courts) in various States, Women’s Resource Centres (Rajasthan), Shalishi (West Bengal), and Mahila Panchayats (Delhi).<sup>20</sup> But these mechanisms have not seen much success. The biggest drawback of these mechanisms are that they see domestic violence as a public issue rather than a personal problem. Many NGOs have used these models to resolve cases of domestic violence without getting entangled in tedious legal processes.

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Many innovative and unique campaigns like Bell Bajao (ring the bell) campaign has been started to call on men and boys across India to take a stand against domestic violence. In this campaign people are supposed to ring the doorbell when they witnessed domestic violence taking place. The campaign seeks to reduce domestic violence and to highlight the role that men and boys can play in reducing violence.

Women is around 50 percent of the world population. They have every right to be treated equally with men in every sphere of life. The inclusion of “gender equality” as one of the goals in Sustainable Development Goals underscores the relevance of this fact. Swami Vivekananda’s quote that “there is no chance for welfare of the world unless the condition of women is improved. It is not possible for a world to fly on only one wing” beautifully sums up the essence of the power of women in leading not just their families but also the nation and the world.

<sup>20</sup>Tara Nair & Nandita Bhatla, *Power of the collective: on intimate partner violence*, The Hindu (dec. 2017), <https://www.thehindu.com/opinion/op-ed/power-of-the-collective/article22277355.ece>.