



Domestic Violence and Human Rights

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Abstract

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. Taking serious note of it, countries worldwide, irrespective of their social, economic and political status are formulating legislative solutions to curb the menace. Though domestic violence and human rights are independent topics, they are closely related and impact one another in a very serious manner. Domestic violence, until few years back, was a limited area of study and was seen purely in the light of marital discord between husband and wife in a household. However, with international agencies like UN and State agencies coming into picture, the perception of domestic violence has undergone a change and now it is being widely considered as a serious gender and human rights issue. Sincere effort is needed to build sensitivity and create awareness among individuals and agencies about it. Along with formulating legislations and policies in this regard, nations should pay equal attention towards effective implementation. 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. The paper concludes by discussing briefly the contribution and role played by civil society groups in India towards the issue.

Keywords: Domestic violence, Human rights, Women, Legislation, Human Right Instruments, civil Society Groups.

Introduction

Violence of any nature or form is inhuman. As domestic violence undermines the value of a woman as an individual, it is a serious human right violation. Domestic violence most of the times is equated to physical abuse like beating, hurling of objects or abusing. Though it is most common and most visible variety of domestic violence, domestic violence is much more than just that. Other forms of it like psychological and sexual violence which are generally hidden from the social purview have equal or more implications. These violence need to be given high priority as they deeply impact a woman's psyche and linger on for a longer period of time than most physical scars and pain. If the inflictor of violence is unaware about the serious implication associated with his action, there is a higher chance that he may resort to physical violence. It has also been observed that among educated couples incidence of physical violence is comparatively low but, they tend to resort to psychological and sexual violence to overcome their frustrations and limitations.

Domestic violence has gradually emerged as a global problem. It is present in all countries irrespective of the nation's social, economic and political status. Policy makers and social scientists worldwide have started taking serious note of it and therefore, various legislations and acts are being formulated to

counter domestic violence¹. Surveys have frequently conveyed that many women who undergo this trauma don't bring it to the notice of the state agencies like police or women commissions mainly because of fear, ignorance of law and lack of confidence in these agencies. Therefore, most of the cases related to domestic violence go unreported.

The discussion on domestic violence begins with understanding few important terminologies associated to the topic. American Heritage dictionary defines violence as "Physical force exerted for the purpose of violating, damaging, or abusing". Violence is therefore, an act undertaken by an individual when he/she is unable to control aggression. The intention of violence is to cause physical and psychological trauma to the victim². Domestic violence too has been explained in various ways. The United Nations Declaration on the Elimination of Violence against Women (1993) defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." SVN (Supervised Visitation Network), an American NGO, specializing in providing a violence free atmosphere for children defines domestic violence as "any form of physical, sexual, verbal, emotional, or economic abuse inflicted on any person in a household by a family or household member". Human right

which is a basic right enjoyed by every living human being is the basis of all the other rights available in the world. Human right is natural as it is provided to an individual soon after his birth. It is universal, as it is available to all human beings irrespective of gender or nationality around the globe. It is fundamental as it helps in individual's holistic development and it is necessary as it helps an individual to lead a respectful and dignified life.

Methodology

The paper is an extension of the presentation done by the author at National Seminar on Women: Use, Abuse and Misuse held at Bangalore University, Bangalore, India in 2011. 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.

Forms of Domestic Violence: Domestic violence gets manifested in following four ways: Physical violence, Psychological- emotional violence, Sexual violence and Economic violence.

Physical violence: As mentioned earlier it is the most visible form of domestic violence. It is an act wherein physical force is deliberately used by the inflictor with an intention of causing grave harm to the victim. Physical violence includes actions like pushing, throwing, hair-pulling, slapping, punching, hitting and use of a weapon³. It also includes encouraging other people to do the same.

Psychological and Emotional violence: It has a huge and deep impact on a women's psyche. As the impact of this violence cannot be quantified, it is difficult to recognize its presence and the extent of damage it causes. The Service de police de la Ville de Montréal (SPVM) explains that psychological violence has three aspects to it: Intimidation, Harassment and Threat⁴. Psychological violence leads to social and emotional problems like depression, suicide and suicide attempts.

Sexual violence: It is one of the most invisible forms of domestic violence and can be equated to sexual harassment. Equal Employment Opportunity Commission (EEOC) defines sexual harassment as "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature..."⁵. Sexual violence happens more frequently in marital relationship through marital rape and other forced sexual activities. Many a time, sexual violence goes unnoticed as victims tend to hide it due to fear and belief that marital relationship gives unlimited sexual access to a husband over his

wife. However, various agencies have now realized the serious implications associated with the problem and countries like Australia, Canada, Finland, Poland, Spain, UK, USA have been successful in introducing legislations to counter marital rape and other forms of sexual violence. EEOC also provides a list of acts which can be considered as sexual violence/harassment. These acts include actual or attempted rape or sexual assault, unwanted deliberate touching, leaning over, cornering, or pinching, unwanted sexual looks or gestures, unwanted sexual teasing, jokes, remarks, or questions, personal questions about social or sexual life and making sexual gestures with hands or through body movements.

Economic violence: It broadly means denying the available economic opportunities and facilities to women. Olufunmilayo I. Fawole in her paper titled '*Economic Violence To Women and Girls : Is It Receiving the Necessary Attention?*' mentions that economic violence has gross impact on women's health and it leads to gross poverty and other forms of violence⁶. She also explains that economic violence includes exclusion from financial decision making, unequal pay pattern, prohibition on working and denial of property rights.

Domestic violence is generally inflicted by close relatives of the victim. Domestic Violence Act 2005 considers husband, father-in-law, mother-in-law and siblings of the husband as 'respondents' and questions them directly in case of domestic violence complaint. Parents of female child are held responsible in case of sex determination test or female infanticide.

Domestic violence impacts a women's self confidence; an important component of her personality. A women undergoes physical injury, unwanted pregnancies, miscarriage, disability, depression, fear, self injurious behaviors and sexually transmitted diseases⁷. Due to it, women's role in both public and private spheres gets hampered and effects her effective contribution towards the state and society⁸.

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”.

Special Rapporteur on violence against women (1994): According to an International NGO, 'The Advocates for Human Rights', the Special Rapporteur on violence against women, collects and analyzes data on violence against women in order to recommend measures to be taken at the international, regional and national level. The rapporteur works on socio-economic policies and reproductive rights of women along with three important aspects related to violence⁹. They being, violence within the family (domestic violence and marital rape), violence in the community (sexual assault and sexual harassment in the workplace) and violence perpetrated or condoned by the State (custodial violence, violence against refugee women).

Convention on the Elimination of All forms of 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.

Important Legislative Solutions Worldwide: Keeping in terms with these declarations, countries worldwide are formulating legislations to proactively investigate domestic 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 on¹¹. 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.

In United states of America, Violence Against Women Act (VAWA) a federal legislation came into operation in 1994¹². It came into being after series of efforts in early 1990's. It works closely with other state agencies and is a legislation specifically designed to address domestic violence. It tries to coordinate and emphasize upon 'coordinated community response' at both State and local levels. It provides support to 'community based organizations, groups that provide culturally and linguistically specific services and tribal organizations'. The act undergoes regular reauthorization to keep itself well updated.

Another important agency working in the US towards domestic violence is the 'Office on Violence Against Women' (OVW) which was established in 1995. The office aims to “administer financial and technical assistance to communities across the country that are developing programs, policies and practices aimed at ending domestic violence....”. To implement and carry out its objectives, it has launched partnerships with various agencies like police, health care providers, prosecutors, victim advocates and others. The office claims to have awarded \$4 billion in grants as part of its relief work and works closely with the Violence Against Women's Act (VAWA).

In Pakistan, the bill outlawing domestic violence came into being in August 2009¹³. It readily got approval from both the Parliament as well as the President. The guilty are jailed for 6 months and fine of 100,000 is levied. It was a welcome decision and leaders from all political background hailed it as 'milestone' and 'landmark event'.The Act also covers women and children who are adopted, employed and work as domestic helps. In Pakistan, a bill of this nature of was very much needed as women there suffer from discrimination and face horrors like 'honour killing'.

In Ghana, the Parliament passed the Domestic violence bill (DVB) in 2007¹⁴. Demand for such a legislation was being raised since 1997 by various NGO's under the leadership of 'Gender and Human rights documentation centre'. The first significant milestone in this regard was achieved with the establishment of WAJU (Women and juvenile unit) in 1998. After lot of discussion and deliberation, the DVB finally came through. The bill has been divided into three parts. Apart from explaining the nature and meaning of domestic violence, it provides provision of police assistance to the victims. To help the victims facing financial difficulties, a fund has been established by name, 'Victims of Domestic violence Support Fund'. The fund provides material support, rescue, rehabilitation and training to the victims. With the passage of the bill a huge milestone has been achieved in Ghana however, the civil society

recongizes the enormous challenges that lay ahead in translating the law into action.

Civil Society Groups in India: For State machinery to be more effective, it is important that it is sufficiently supported by Civil Society Groups. Civil Society Groups work at grass root level and are more aware about challenges related to the issue. *Centre for Social Research and Women Power Connect* have launched awareness drives across India about the redressal mechanisms available regarding domestic violence. Delhi-based *Action India* regularly conducts signature campaigns, conferences, meetings and rally's to create awareness on Domestic Violence Act. *Bell Bajao!!* is a popular civil society group which has been successful in reaching the youth about the issue. To promote its activities and ideas it makes use of social networking mediums like facebook extensively and also conducts activities like running video vans with distinctive audio-visual screenings. *Bell Bajao!!* also organizes street theatre performances, puppet shows, opinion polls and interactive games to spread its message. *Oxfam India*, through its initiative "SWETCHA" in Andhra Pradesh has been successful in raising awareness and has helped in reducing the social acceptance of violence against women in both private and public sphears. Mumbai based NGO, *Centre for Enquiry into Health and Allied Themes (CEHAT)* and *Point of View* released a short film in February 2011 tracing the life of a victim of domestic violence who ends up in a hospital after repeated instances of abuse¹⁵. A special screening of the film was done for the women of *Dharavi*, many of whom related to the film closely and recounted their horror-filled experiences with domestic violence and surviving it.

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 to 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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