

PROTECTION OF WOMEN AGAINST VOILENCE WITH SPECIAL REFERENCE TO INTERNATIONAL PERSPECTIVE

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Abstract

Violence against women is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. 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. This problem is not only widely dispersed geographically, but its incidence is also extensive, making it a typical and accepted behaviour. Domestic violence is wide spread, deeply ingrained and has serious impacts on women's health and well-being. Its continued existence is morally indefensible. The main aim of present research paper to know about the different international perspective of word Domestic violence against women and protect women through different conventions, declaration etc.

Keywords: Domestic Violence, Women, International, Act of Violence

➤ Introduction

Domestic violence is about one person getting and keeping power and control over another person in an intimate relationship. Domestic violence is a pattern of abusive behaviour in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behaviour that influence another person within an intimate partner relationship. This

includes any behaviours that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.³⁰⁹

Domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, sex, or gender identity. Domestic violence affects people of all socioeconomic backgrounds and education levels. Domestic violence occurs in both opposite-sex and

³⁰⁹ What is Domestic Violence? <https://www.justice.gov/ovw/domestic-violence>.

same-sex relationships and can happen to intimate partners who are married, living together, dating, or share a child. Domestic violence not only affects those who are abused, but also has a substantial effect on family members, friends, co-workers, other witnesses, and the community at large. Children, who grow up witnessing domestic violence, are among those seriously affected by this crime. Frequent exposure to violence in the home not only predisposes children to numerous social and physical problems, but also teaches them that violence is a normal way of life – therefore, increasing their risk of becoming society's next generation of victims and abusers.³¹⁰

➤ **Meaning of Domestic Violence**

Domestic abuse, also called "domestic violence" or "intimate partner violence", can be defined as a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviours that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels.³¹¹ Domestic Violence Act is to provide more effective protection to the constitutional rights of women and to protect them against violence of any kind occurring within the family. It provides civil remedy for enforcement of rights of a woman e.g. Right to residence, Maintenance, Custody, Protection and compensation.³¹²

³¹⁰ What is Domestic abuse, <https://www.un.org/en/coronavirus/what-is-domestic-abuse>

³¹¹ What is Domestic abuse, (Apr. 04, 2023, 10:00AM) <https://www.un.org/en/coronavirus/what-is-domestic-abuse>.

³¹² Domestic Violence, <https://legalservices.maharashtra.gov.in/Site/Upload/Pdf/domestic-violence.pdf>.

➤ **Definition of Domestic Violence**

• **United Nations General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women³¹³**

defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere, and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women

• **The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**

directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life.

• **The Protection of Women from Domestic Violence Act (PWDVA), 2005**

defines the expression "domestic violence" to include actual abuse or threat of abuse—physical, sexual verbal, emotional or economic violence.³¹⁴

➤ **History of Domestic violence Act, 2005**

The term "domestic violence" was not in vogue in those reforms, nevertheless their aim was indirectly responsible for making the women's life more human and protecting her against domestic violence. Violence against wives is a right men exercised with impunity for centuries. This prerogative of men has been articulated in the precepts of religion, philosophy and law throughout the World. Physical violence against wives was deemed necessary for the "well-being" of women. It was coached in terms of corrective discipline and

³¹³ United Nations General Assembly Resolution 48/104 (Mar. 29, 2023, 12:10PM) <http://www.un.org/documents/ga/res/48/a48r104.htm>.

³¹⁴ Anita Thakur, *Crime against women with reference to Sexual Harassment at Workplace*, Volume 5, Issue 3 IJLMH, 132-134, (2023).

chastisement of erring wives. A Medieval Christian scholar propagated Rules of Marriage in the late 15th Century. These specified: When you see your wife commit an offence, don't rush at her with insults and violent blows. First scold her sharply, bully and terrify her and if this doesn't work, take up a stick and beat her.

- **Pre-Domestic Violence Regime Era:**

Tulsidas in Ramcharitmanas has said "Dhol, Ganwar, Shudra, Pashu, Nari Sakal Taadana Ke Adhikari" which can be interpreted as "Drums, Morons, Untouchables, Beasts and Women all are meant for beating up hard". Although, the historians claim that women have had a life of respect in ancient India, instances like these, require the assessment of position of Indian women through the ages.

- **Vedic Era:**

The status of women was based on equality, liberty and cooperation during the Vedic period. The Vedic period is termed as a golden period in case of women wherein women could freely participate in all spheres of human life. Women were allowed to study in Gurukuls and they enjoyed learning not only Holy Scriptures from the vedas and the upnishads but they were also allowed to learn the art of warfare along with their male counterparts. Men regarded women as their equal in managing the affairs during Grihastashram, Vanaprasthashram and Sanyasashram. The wife of a husband was considered as a queen of the house of her husband. The highest social ends in ancient Indian society were four – Dharma, Artha, Kama and Moksha. Woman along with man participated in all the activities equally and hence she was considered as "Saha Dharma Charini".³¹⁵

- **Post Vedic Era:**

Post Vedic period saw a drastic deterioration in the status of women as compared to the Vedic period. With the introduction of the Hindu Code by Manu, women suffered great set back

and were demoted to a subordinate position. Manu's code depicted a change in the prominence of women which is characterized as "obedience to her husband in the beginning, and the middle, and the end of female duty". He considered women to be slaves and his laws spoke about complete submission of women to men. He bound the women in the boundaries of the four walls of the house by fixing her duties – to serve like a dasi to feed like a mother and give conjugal satisfaction like Rambha.³¹⁶

. Even during the colonial period there were provisions under the IPC and CRPC that aimed at providing protection to women against violence. Resistance to domestic violence is a recent phenomenon. In the modern age voices have been raised against these inhuman practices and efforts made to bring about change by creating awareness, by educating people and of course, through legal actions/reforms.³¹⁷

In India, it is Raja Ram Mohan Roy who can be called the pioneer of the movement for women's rights. He was to a great extent responsible for bringing about socio-legal changes pertaining to the de-legitimization of child marriage, sati, and legitimization of widow remarriage. Rosy mobilization of Hindu thought against the system of sati created the necessary public opinion to make practice a criminal offence in 1829. Till 1983 there were no specific legal provision pertaining to violence within home. Husbands could be convicted under the general provisions of murder, abetment to suicide, causing hurt and wrongful confinement.³¹⁸

➤ **Indian Laws regarding Protection of women from Domestic violence**

- **Constitutional Provisions**

The enactment in question was adopted by the Parliament based on Article 253³¹⁹ of the Constitution. This law confers on Parliament the

³¹⁵ Ibid.,

³¹⁶ *id.*,

³¹⁷ *Id.*,

³¹⁸ *Id.*,

³¹⁹ Kailash Rai, Constitutional Law of India, 862 (Central law Publications, 11th edn., 2013)

right to pass legislation in compliance with international treaties, conventions, etc. The Domestic Violence Act was introduced in recognition of the recommendations of the UN CEDAW Commission. The Act covers all the provisions of the Specific Recommendations set out in General Recommendation 19, 1992. The Statement of Objects and Reasons states that the Act was enacted in the light of the human rights secured under Articles 14,³²⁰ 15,³²¹ and 21.³²² Article 21 confers the right to life and liberty on a negative basis, stating that it cannot be taken away except by a process formed by law which, as result of judicial decisions, is expected to be fair, just, and rational. The right to life has been held to include, among others, the following rights: Indian Constitution provides the equal protection clause. It affirms equality before the law and the equal protection of the laws. It prohibits class legislation, but permits classification for legislative purposes. A law does not become unconstitutional simply because it applies to one set of persons and not another.

• Indian Laws

There is an exhaustive list of laws passed by the legislature specifically to protect the women from any violence, discrimination, cruelty, stalking, religious and cultural atrocities. Important legislative enactments which specifically deal with violence against woman are following: Indecent Representation of Women (Prohibition) Act, 1986,³²³ The Immoral Traffic (Prevention) Act 1986,³²⁴ Dowry Prohibition Act, 1961,³²⁵ Commission of Sati (Prevention) Act, 1987,³²⁶ The Protection of Women from Domestic Violence Act, 2005,³²⁷ Pre-Conception & Pre-Natal Diagnostic Techni-

³²⁰ *Ibid.*, right to equality

³²¹ *Id.*, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

³²² *Id.*, right to life and Personal Liberty

³²³ The Indecent Representation of Women (Prohibition) Act, 1986, No. 60, Acts of Parliament, 1986(India).

³²⁴ The Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 No. 44, Acts of Parliament, 1986 (India).

³²⁵ The Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961 (India).

³²⁶ The Commission of Sati (Prevention) Act, 1987, NO. 3, Acts of Parliament, 1988 (India).

³²⁷ The Protection of Women from Domestic Violence Act, 2005, No. 43 Acts of Parliament, 2005(India).

ques Act, 1994,³²⁸ The Medical Termination of Pregnancy Act, 1971, The Prohibition of Child Marriage Act, 2006, The Criminal Amendment Act, 2013, The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Apart from the specific legislation for protection of women in India there a number of other legislations which contains provision for the prohibition and prevention of violation of women rights for e.g. The Indian Penal Code, 1860; the Indian Evidence Act, 1872, Criminal Procedure Code, 1973; The Married Women's Property Act, 1874; The Factories Act, 1948; The Minimum wages Act, 1948; The Hindu Marriage Act, 1955; The Maternity benefit Act, 1961, the Muslim Women Protection of Right on Dowry Act, 1986, National commission of Women Act, 1990, the Protection of Human Rights Act, 1993, Information technology Act, 2000 etc

The Domestic Violence is also known as violence against women. It is common knowledge that a woman has already been subject to atrocities and cruelty. The dowry is allegedly one of the most significant factors responsible for cruelty and ill-treatment of a bride in her matrimonial abode. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in public domain.³²⁹ The Civil Law does not address this phenomenon in its entirety. Presently, where a woman is subject to cruelty by her husband or his relatives, it is an offence u/s. 498-A of IPC.³³⁰

➤ International Milestones Addressing Violence Against Women

International treaties, agreements, and reports have played an important role in this lobbying effort. These include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, the Mexican Plan of Action in 1975, the Nairobi Forward

³²⁸ The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 NO. 57 Acts of Parliament 1994, (India).

³²⁹ Barun Kumar Das, Human Right Law and Domestic Violence, 119 (Central Law publication, 1st edn., 2019)

³³⁰ S N Mishra, Indian Penal Code, 914 (Central Law Publication, 20th edn., 2016)

Looking Strategies in 1985, the Beijing Declaration and Platform for Action in 1995, the Vienna Accord of 1994, and reports by the Special Rapporteur on Violence against Women. In 1992, the Committee on the Elimination of All Forms of Discrimination Against Women³³¹ found that gender-based violence constitutes discrimination against women and impairs or nullifies a range of fundamental rights under international human rights law. The Committee stated that discrimination under the Convention is not restricted to actions by or on behalf of Governments: states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish actors of violence, and for providing compensation. The Committee further noted that states should take comprehensive measures, including the development of a proper legislative framework to deal with domestic violence.

In January 2000, the CEDAW Committee recommended that India pass comprehensive legislative reforms to promote the human rights of women. The women's rights movement in India has drawn from these sources to advocate for gender laws that meet international standards. Researcher here wants to mention important international instruments containing provisions regarding welfare and prevention of crimes against women's which are given under following heads.³³²

- **Provisions of United Nations Charter 1945 concerning Human Rights of women**

The charter of the United Nations represents a significant advancement so far as faith in and respect for human rights is concerned. Human rights are mentioned for the first time in any international treaty.³³³

In the Preamble it is stated "we the people of the United Nations determined to reaffirm faith in

fundamental human right, in the dignity and worth of the human person, in the equal right of men and women and nations large and small".³³⁴

- **Universal Declaration of Human Rights (UDHR) 1948**

Universal Declaration of Human Rights³³⁵ was adopted by the general Assembly. United Nations since the drafting of the Universal Declaration of human rights, has guided the organisation in its activities for the promotion and protection of human rights ever since. The human rights of women are not different from human rights in general. it is necessary to mention all the rights contemplated in the UDHR.³³⁶

- **International Convention for the suppression of the Traffic in person and the exploitation of the prostitution of others, 1949**

This convention was adopted by general Assembly of the U.N. in the year 1949.³³⁷ There are 28 articles and preamble in it. The convention for the suppression of the Traffic in persons and of the Exploitation of the prostitution of others, 1949 calls for the punishment of those procuring other for prostitution.³³⁸

- **Convention on the Political Rights of Women, 1952**

The Convention on the political Rights of women 1952, commits member states to allow women to vote and hold public office on equal terms with men.³³⁹

- **Convention on the Nationality of Married Women, 1957**

The Convention on the Nationality of Married Women 1957 consists of 12 Articles and Preamble in 1949. It provides standards for the protection of the rights of married women to retain her nationality.³⁴⁰

³³¹The Committee on the Elimination of All Forms of Discrimination Against Women, (June. 02, 2023, 10:04Am <https://www.ohchr.org/en/treatybodies/cedaw#:~:text=The%20Committee%20on%20the%20Elimination,rights%20from%20around%20the%20world>

³³² *Ibid.*,

³³³ S.K. Kapoor, Human rights under International Law and Indian Law, 745-46 (2001).

³³⁴ Provisions of United Nations Charter 1945 concerning Human Rights of women.

³³⁵ General Assembly Resolution 217-A(iii) of 10th December, 1948.

³³⁶ Rahul Rai, Human Rights UN Initiatives, 20-21(2001)

³³⁷ General Assembly Resolution, 317(iv) of 2nd December, 1949.

³³⁸ See Supra 1 at 161.

³³⁹ Convention on the Political Rights of Women, 1952, Article 11.

³⁴⁰ N.A. Zuberi "The Protection of Women from Domestic Violence Act & Rules 292(Allahabad Law Agency 1st edn., 2008)

• **International Covenant on Civil and Political Rights, 1966**

This Covenant was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. By May of 2012, the Covenant had been ratified by 167 states.³⁴¹ The Covenant elaborates further the civil and political rights and freedoms listed in the Universal Declaration of Human right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.³⁴²

• **Declaration on the Elimination of Discrimination against women, 1967**

The General Assembly adopts the Declaration on the Elimination of All Forms of Discrimination against Women, 1967 to ensure the universal recognition in law and in fact of the principle of equality for both the sexes.³⁴³

• **First World Conference on Women, Mexico, 1975**

Resolution adopted by the General Assembly of the United Nations concerning the world Conference on International Women's Year. The General Assembly identified three objectives that would become the basis for the work of the United Nations on behalf of women of women in development.

Full gender equality and the elimination of gender discrimination

The integration and full participation of women in development

An increased contribution by women in the strengthening of world piece.³⁴⁴

• **Convention on the Elimination of all forms of Discrimination against women, 1979**

U.N. General Assembly adopted the convention on the elimination of All forms of Discrimination against Women 1979 which defines that discrimination on the ground of sex is a great obstacle in the enjoyment of women's equal fundamental rights.³⁴⁵

³⁴¹ United Nations General Assembly Resolution, 2200A (XXI), dated 16th December, 1966. The authorised signatories of respective governments signed the covenant, opened for signatories at New York on dated 19th December, 1966.

³⁴² *Ibid.*, Article 6

³⁴³ See Supra 6 at 132.

³⁴⁴ See Supra 8 at 303

³⁴⁵ Kalpana Roy, Women Oppression and Protective Law,90 (1999)

• **The Second World Conference on women in 1980**

It was held at Copenhagen to review progress made in the first half of the decade on women. It also adopted a programme of action. The Third World Conference on women 1985, held in Nairobi, Kenya at the end of United Nations Decade for Women which emphasized women's equal participation in all political, social and economic fields including education and training.³⁴⁶

• **Declaration on Elimination of Violence against women, 1993**

The Declaration on the Elimination of Violence against Women 1993 adopted by the general assembly, which defines violence against women.³⁴⁷

• **Vienna Declaration and Human Rights of Women, 1993**

This declaration was adopted by the world conference on Human Rights on 25th June 1993. The world conference on human rights urges the full and equal enjoyment by women of all human rights and that this be a priority for governments and for the United Nations.³⁴⁸

• **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984**

The principle proclaimed in the charter of the United Nations, recognition of the equal and alienation rights of all members of the human family is the foundation of freedom, justice and peace in the world.³⁴⁹ Convention define tern "Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.³⁵⁰ Each state party shall take such ensure that all acts of torture are offences under the criminal law.³⁵¹

³⁴⁶The Second World Conference on women in 1980, (March20,2023, 14:00PM

<https://www.un.org/en/conferences/women/copenhagen1980#:~:text=The%20second%20world%20conference%20on%20women&text=Participants%20identified%20three%20spheres%20in,to%20adequate%20health%20care%20services.>

³⁴⁷ Declaration on Elimination of Violence against women, 1993 General Assembly Resolution 48/104,1994.

³⁴⁸ Murlidhar C Bhandare, the world of Gender Justice,257-259 (1999)

³⁴⁹ United Nations General Assembly Resolution 39/46, dated 10th December, 1984 and entered into force on 26.06.1987

³⁵⁰ *Ibid.*, Article 1

³⁵¹ *Id.*, Article 4

- **The United Nations Fourth world conference on Women, 1995**

The Fourth World Conference on Women in Beijing, China was the most important of the four conferences on women held between 1975–1995, because it built on political agreements that had been reached at the three previous global conferences on women, and it consolidated five decades of legal advances aimed at securing the equality of women with men in law and in practice.³⁵² The conference marked a significant turning point for the global agenda for gender equality. The Beijing Declaration and Platform for Action, adopted unanimously by 189 countries, was an agenda for women’s empowerment that is now considered the key global policy document on gender equality.³⁵³

- **Rapporteur on Violence Against Women warns of threats to gains on Women’s Human Rights, 2004**

The Special Rapporteur on violence against women this morning addressed the Commission on Human Rights, warning against alarming trends toward political conservatism and backlash which threatened the gains made thus far in the global women’s human rights agenda. Special Rapporteur on Violence against Women, stressed that her report emphasized the universality of violence against women, the multiplicity of its forms and the intersectionality of diverse kinds of discrimination against women rooted in other systems of subordination and inequality.³⁵⁴ She had also expanded upon the concept of violence against women to capture that wide spectrum of acts manifested “from the domicile to the transnational arena”³⁵⁵

Conclusion

Lastly concluded that the according to WHO indicate that globally about 1 in 3 of women worldwide have been subjected to either physical or sexual intimate partner violence or non-partner sexual violence in their lifetime. There are many conventions & Declarations like convention on the Elimination of all forms of discrimination against women & UN declaration on the Elimination of violence against women etc to protect women against domestic violence. Now International; Legal instrument and policy statements make clear that states have a duty under international Law to prevent Domestic violence against women.

³⁵²The United Nations Fourth world conference on Women, 1995
<https://www.un.org/en/conferences/women/beijing1995>

³⁵³ See Supra 12 at 318-319

³⁵⁴Rapporteur on Violence Against Women warns of threats to gains on Women’s Human Rights, 2004, (May, 20, 2023,11:05:AM)
<https://www.ohchr.org/en/press-releases/2009/10/special-rapporteur-violence-against-women-warns-threats-gains-womens-human>

³⁵⁵ P.K. Das, Protection of women from Domestic Violence, 295(Universal Law Publishing Co. Ltd)

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