
TITLE-DOWRY DEATHS: ABUSE OF WOMEN'S HUMAN RIGHTS

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Abstract: Women occupy half of the globe, but their survival has been a question, their existence with dignity and honour has been a problem. The Indian society is male dominated and biased against the female gender. The status of Indian women is unjust and inhuman.

At a time, dowry was a means for parents to endow a daughter with material goods because she could not inherit property. The dowry provided the bride with financial security in her marriage into a new family. Dowry is negotiated and is the wealth that the bride's parents must pay the groom and his family as part of the marriage arrangement. The Constitution of India guarantees the equality of rights.

The Indian government has tried to combat the growing incidence of dowry death by enacting various laws to prevent such deaths from occurring and to punish those responsible. By failing prevent dowry deaths, India, as a party to the International Covenant on Civil and Political Rights violates the "right to life" as expressed in Article 6(1) and protected by Article 2.

Keywords: Dowry Rights, Women Rights, ICCPR.

Introduction: Women occupy half of the globe, but their survival has been a question, their existence with dignity and honour has been a problem. The Indian society is quite male dominated and biased against the female gender. The status of Indian women is unjust and inhuman. One such instance of women injustice is where they are frequently tortured for insufficient dowry.

At one time, dowry was a means for parents to endow a daughter with material goods because she could not inherit property. The dowry provided the new bride with financial security in her marriage into a new family. But today, dowry is negotiated and refers to the wealth that the bride's parents must pay the groom and his family as part of the marriage arrangement. The constitution of India guarantees the equality of rights of men and women. However, in the sphere of women's human rights in India, there exists a wide gulf between theory and practice, which can be well witnessed in context of dowry deaths in our country.

The Indian government has tried to combat the growing incidence of dowry death by enacting various laws to prevent such deaths from occurring and to punish those responsible. Despite the Indian government's efforts, India's statutory laws have been ineffective in preventing dowry deaths. Despite of the Dowry prohibition Act, 1961, which has made dowry demands in wedding illegal, the dowry incidents are increasing day by day. By failing to effectively prevent dowry deaths, India, as a party to the International Covenant on Civil and Political Rights violates the "right to life" as expressed in Article 6(1) and protected by Article 2.

The paper discussed the violation of human right of women in context to dowry and dowry deaths, also the strength of the very laws which exists in order to preserve the said human rights Domestic Violence is

a Human Rights issue. It is most commonly applied to an intimate relationship between two adults in which one partner uses a pattern of assault to assert power and control over the other partner. And what gives the push to such sort of abusive behaviour, it may be personality disorder, low self-esteem, lack of assertiveness, stress, violent atmosphere during childhood, dependency etc. It is very recently recognised as major public health issue. It is least reported and most prevalent forms of cruelty in society. Recognition of women's rights is a revolutionary notion. This radical reclamation of humanity and corollary insistence that women's rights are human rights has profound transformative potential. The incorporation of women's perspective and lives into human rights standards and practice forces recognition of dismal failure of countries world-wide to accord women the human dignity and respect that they deserve simply as human being.

In looking at the human rights framework from women's perspective, women have shown how current human definitions and practices fail to account for ways in which already recognised human rights abuses often affects women differently because of their gender. This strategy has been pivotal in efforts to draw attention to human rights that are specific to women that heretofore have been seen as women's rights but not recognised as human rights, for example, the issue of violence against women. The Universal Declaration states, "No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment." This formulation provides a vocabulary for women to define and articulate experiences of violence such as rape, sexual terrorism and domestic violence as violations of the human right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Definitions of domestic violence usually are worded broadly to encompass a pattern of behaviours used by people who abuse their intimate partners, including physical, sexual, and emotional abuse. However, from the criminal justice perspective, domestic abuse is more narrowly defined as "an act by a member of a family or household against another member that is intended to result in physical harm, bodily injury, assault, or a threat that reasonably places the member in fear of imminent physical harm"

Over the past decade, a movement around women's human rights has emerged to challenge limited notions of human rights, and it has focused particularly on violence against women as prime example of the bias against women in human rights practice and theory. The United Nations World Conference on Human Rights held in Vienna in 1993 was the first such meeting since 1968, and it became a natural vehicle to highlight the new visions of human rights thinking and practice being developed by women.

A particularly significant development was the way in which the platform for Action at the IV World Conference of women in Beijing in 1995 became virtually an agenda about human rights of women. This signalled the successful mainstreaming of women's right as human rights. The agreements that are produced by such conferences are not legally binding; however, they do have ethical and political weight and can be used to pursue regional, national or local objective.

Domestic violence is a form of gender-based violence, intended at subordinating women. The global dimensions of domestic violence are of great concern, both in terms of their scope and extent. Domestic violence is perhaps the most universal, yet one of the most invisible forms of violence against women. No country or society can claim to be free of domestic violence. 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."

In September 2005 the Indian Parliament passed The Protection of Women from Domestic Violence law and on October 26, 2006 this law came into force. The Protection of Women from Domestic Violence Act (also referred as PWDVA) is landmark legislation, as it in some measure, vindicates the constitutional promise of equality, non-discrimination and the right to life and liberty for women. It also marks compliance by the Indian state with its international obligations, specifically under the Convention

Against Elimination of all forms of Discrimination Against Women (CEDAW).

The United Nations defines violence against women 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, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life Domestic violence occurs daily in homes throughout the world. The National Coalition against Domestic Violence reports that 1.3 million women are victims of domestic abuse each year. Violence against women is a serious problem in India. Overall, one-third of women age 15-49 have experienced physical violence and about 1 in 10 has experienced sexual violence. It is very disturbing as well as discouraging to think that a country that praises womanhood through epics and their devotion to goddesses can be so demeaning and indifferent when it comes to the common women living in the country. Although there are laws (civil & criminal) to tackle the issues of domestic violence, it is not implemented effectively.

According to the 2005-2006 National Family Health Survey in India, thirty-seven per cent of married women reported experiencing some form of domestic violence on at least one occasion during their marriage. What is even more disconcerting, however, is the fact that these statistics do not include the vast majority of cases which are unreported. In addition, a large proportion of Indian men and women justify this abuse. According to the survey, fifty-one per cent of seventy five thousand men surveyed believed hitting their wives is acceptable for various reasons including disrespect of their in-laws, refusing sex, and bad cooking, while fifty-five per cent of women believed that spousal abuse at times may be warranted. These pervasive cultural perceptions, partially driven by India's largely patriarchal society, are one of the major obstacles to the successful implementation of the PWDVA.

National and international perspective preserving women rights: The Indian Constitution has a "Fundamental Rights" chapter that guarantees various rights. The rights of special importance to women are Right to Equality in Article 14 and the Express Prohibition Against Discrimination in Article 15. Article 14 mandates that "the state shall not deny to any person equality before the law or the equal protection of the laws within territory of India. Article 15(1) prohibits discrimination against any citizen by the state "on grounds only on religion, race, caste, sex, and place of birth or any of them." Article 15 also allows for special provision for women and children by clarifying that "Nothing in this Article shall prevent the state from making any special provision for women and children." This Article has been used by courts to justify the

reservation in favour of women and to justify a provision Section 497(1) of the unamended Indian Criminal Procedure Code of 1898, which gave treatment to women and children and prescribed leniency in granting them bail.

Article 16 mandates equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. Article 16 clarifies that "No citizen shall, on grounds only on religion, race, caste, sex, and place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state." Article 19 guarantees the basic freedom of speech and expression, movement and peaceable assembly, and the right of form association or union. Another important right is the protection of life and personal liberty provided under Article 21, it further include a right of a individual to live with dignity.

International conventions for protection of women rights:-

- Convention on Elimination of All forms of Discrimination Against Women, 1979.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
- 1st World Conference on Women, Mexico, 1975.
- Special Rapport on Violence Against Women Warns of Threats to Gains on Women's Human Rights, 2004.
- The United Nations Fourth World Conference on Women, Beijing, China.
- Charter of United Nations, 1945.
- Universal Declaration of Human Rights, 1948.
- International Covenant on Civil and Political Rights, 1966.
- United Nations World Conference on Human Rights, 1993.

Domestic violence and dowry death in India:

Domestic violence against women occurs in developed and developing countries alike. It had long been considered a private matter by bystanders-including neighbours, the community and government. But such matters have a tendency to become public tragedies. Despite governments' promises to guarantee women's equality and full rights under the constitution, government denied women legal freedom to achieve such rights.

Many governments now recognise the importance of protecting victims of domestic abuse and taking action to punish perpetrators. The establishment of structures allowing officials to deal with cases of domestic violence and its consequence id significant stop toward the elimination of violence against women in family. In many countries, women fall victim to traditional practices that violate their human rights. The persistence of the problem has

much to do with the fact that most of these physically and psychologically harmful customs are deeply rooted in the tradition and culture of society.

Domestic violence exists worldwide, but is difficult to measure. Although there are many reports indicating the extent of domestic violence, the actual figures may be much higher.

This is because many instances of domestic violence do not get reported, as many women feel a sense of shame. They fear that they will not be believed and the violence will escalate if they report the violence and seek intervention. Between 15% and 71% of the women around the world have suffered some form of domestic violence by an intimate male partner. India is no exception. Around 2/3 of all married women in India are victims of domestic violence. 16% of married women have experienced emotional violence by their husband. However, married women are not the only victims of domestic violence. Unmarried, widowed, deserted, separated and divorced women are also subjected to domestic violence, generally by a parent or sibling.

Based on experiences shared by survivors of domestic violence, studies have compiled the nature of domestic violence. Physical violence against women in India includes slaps, beating, pushing, kicking, throwing injurious objects, beating with cane, burning with rod, assault with weapons, sexual abuse and coercion. Domestic violence also includes placing women in fear of imminent serious bodily harm by threat of force. This includes threats of violence or any other conduct that would cause substantial emotional distress. Mental/ emotional violence includes repeated insults in the presence of their children and relatives, blaming the victim for everything that went wrong in the family, compelling the victim to feel guilty without reason, threats of divorce, undignified treatment, strict monitoring of the woman's movements, prohibition from meeting parents, friends and relatives, absence of freedom to express views on family matters, neglect of health needs, suspicion that the woman has extra-marital relations, verbal insults in filthy language, severe criticism of family background and lack of intelligence, threats of suicide by husband and verbal threats to use physical force. Major forms of economic abuse includes preventing a woman from taking a job, forcing her to leave the existing job, collecting the full amount of her salary under force, pressurising her to bring money from her parents' family repeatedly and prohibiting her from making purchases of her choice.

Dowry death in India: The most dramatic form that violence against women has taken is what the Indian media labelled "bride- burning" until 1978 or so, feminists cut out the alternative fuzz by re-designating it quite badly as "dowry murder." During

1980s, urban north India has seen a growing number of murders or bride burnings. The burning of wives is neither an extension nor culturally related to the notorious practice of sati, the voluntary immolation of Bengali widows on the funeral pyres of their husbands. The resonance are startling- the burning of women, the thin line between suicide and murder- but the differences are significant because they point to a serious further devaluation of women in present-day India in spite of a century of progressive legislation on women's rights.

Dowry serves as the foundation on which explanation for discrimination against women have been built; it has the conceptual richness to satisfy a variety of analytical tastes over time. The colonialists stressed its cultural roots in benighted Hinduism; Marxists see it as an economic institution, feminists view it as gender discrimination for daughters did not traditionally inherit land. Today, the dowry system is seen as the prime motive for two other crimes akin to infanticide widely prevalent in the subcontinent. Female infant neglect reflected the worst adverse female to male sex ratios in the world today, and the abortion of female fetuses made possible by abuse of recent advances in fetal diagnostic technology.

The cause of bride burning or dowry death in India was, indeed, dowry and indubitably a cultural problem. This alleged fact has found wide support expressed in both detailed historical and anthropological analysis of female infanticide, the oldest and most widespread form of murder believed to be related, even in other cultures, to the practice of dowry. Dowry, an integral part of Hindu high caste culture, appeared to be a timeless and pernicious custom that constructs women as financial liability to their natal homes as infants and in their marital homes as brides. Its ban, by an act of Indian Parliament in 1961, seems only to have entrenched the custom deeper.

There were glaring contradictions in the explanations. Culture was blamed on one hand, but so were westernization, which brought in gross materialism, greed and a desire for consumer good and modernisation, which put a cash value on everything and commercialised human relationship. Statistical evidence on sex ratios in subcontinent points to a serious anomaly in the logic, that underpinned the colonial verdict on the dowry system and made their figures suspect. Several families from Hindu lower castes and religions, such as Islam and Sikhism, which did not follow the practice of dowry, and even received bride price, were found guilty of committing infanticide, so it was awkward to insist on either dowry or upper caste pride to be the cultural justification of so heinous a crime.

The convenient lie of branding dowry as the motivating culprit, of finding barbaric practices particularly among the upper caste Hindus, has begun by colonial bureaucrats in the mid nineteenth century. It was expedient to lay the blame on culturally sanctioned "improvidence" and wasteful ceremonies and rituals, chiefly marriage celebrations and dowry, than to reverse the colonial land revenue policies that had uprooted the old system and transformed the basic relationship between peasants and their land. Dowry in its menacing form for some women, as we know today, was patiently the artefact not of an organically unchangeable and permanently constituted Hindu or Sikh culture but of acculturation in colonial time and space. This change did not occur evenly across castes and classes, and today, the majority of Hindu families practice what might be seen as pre-colonial form of dowry.

After observing and reading the colonial sources, dowry could be called on of the few indigenous feminist institutions in an overwhelmingly patriarchal and agrarian society. In the late 19th and early 20th century, dowry was not the enemy but an ally of women, acting as an economic safety net in setting where women always married out of their natal villages and where they did not normally inherit land. This institution was invented by women for women and the resources that were given to women were substantially under their control. Items for a daughter's dowry were accumulated gradually for each daughter not just by her immediate family, but by entire village, which shared in an intricate web of reciprocal obligations; very few items were purchased, since most of them were produced at home, bartered or received as part of reciprocal gift exchange among village families. Nor were daughters perceived as economic burden. The dowry was the only independent material resource over which women had partial control. It was viewed by women's natal family not only as a matter of pride but as a means of securing her the best possible match, while providing her with recourse in an emergency.

Dowry can be reckoned not only as an index of the appreciation bestowed upon daughters in their natal villages and the measure of their status in here conjugal village, but the practical concern of families to secure for their daughters a husband from a comparable family in which her children would be raised.

The records that indicate the custom of dowry as the cause for killing female infants are littered with clues that lead to the history of changing custom rather than the characterisation of it as a practice frozen in time and supported by the ruinous extravagance and the tradition bound behaviour of caste society. The gradual but radical transformation in the meaning, practice, and effects of dowry system in Punjab was

triggered by colonial political economy and the extension of political and social control in areas where the practice existed. When the British encounter the practice of dowry in Punjab, they collected opinions on the nature of custom. None of the reports described dowry as a gift that could be demanded by the groom's family. They found it to be the collection of voluntary gifts, of cloths, jewellery, household goods and cash bestowed on the bride by family and friends at time of wedding. Nowhere was it treated as prerogative of the groom and his family to demand specific consumer goods and large sums of cash for groom's business, education or mobility; it was voluntary and depended on the pecuniary circumstances of bride's parents. The British charge of "improvidence" was not based on the expense of dowry but on the wedding celebrations.

It took more than a decade of struggle at various levels to make dowry death a specific crime and to provide direct penal action for such deaths. In 1986 "Dowry Death" was incorporated in the Penal Code. A new section 304-B was added to IPC. Taking a cue from past experience, this section provides for tiding over various difficulties that were faced by the prosecution for proving this crime and getting the culprits punished. This section is attracted 'when the death of women is caused by burn or bodily injury or occurs otherwise than under normal circumstances and this occurrence is preceded by cruelty or harassment by the in-laws in connection with a demand for dowry.

According to these amendments whenever a woman dies within 7 years of her marriage under suspicious circumstances and it is proved that she was harassed for dowry then it shall be presumed that the in-laws or the husband are responsible for dowry death.

The new Section 498-A of Indian Penal Code is expected to strengthen the hands of judiciary in getting the culprits of this heinous crime punished.

Dowry and domestic violence (social and economic factors) - The majority of marriages contracted in India today are arranged marriages where parents ensure a suitable match for their daughter and son with considerations to class and caste. Even if dowry is legally prohibited by the government under the Indian penal code act of 1961, dowry practices are vastly socially and culturally approved. In fact, dowry practices seem to be socially and culturally embedded in the Indian society, to such an extent that even women have become strongly associated with the material things which she brings with her into the home of her husband and in-laws before, under and after marriage. This gift-giving is not one time occurrence but a continuing process during which the parents of the bride are expected to give gifts to the family of the groom before and under the marriage ceremonies and after when the families

are visiting each other. During festivals and different life-stage rituals, such as at the time of child-birth, the family is also supposed to provide other gifts.

The practice of dowry and dowry-related violence are intimately connected with patriarchal values and views of women's status in the Indian society. When a woman is married off and moves into the home of her in-laws she usually has no control over her property and the cash she brings with her. In many cases of dowry-related crime the husband and the in-laws misuse the money or property given by the bride's side and demand for more. Women in the dowry system can be seen as 'vehicles of property transmission' and not as inheritors.

Several scholarly studies have paid attention to the social and economic factors behind women abuses and observed a correlation between dowry practices and women's low economic status. Gender inequalities and the woman's economic dependence on her husband and in-laws may lead to spouse abuse. Women are in this context considered to be unproductive human beings for whom the dowry is a cost and compensation. These studies also claim that dowry demands in cash are increasing and dowry is for some men and their kinfolk seen as a legitimate means for acquiring luxury items, clearing family debts and moving upwards on the social ladder.

The causes for violence against women and wife abuse in the domestic sphere have been described from different perspectives. The first and perhaps foundational base is patriarchal social structures and a cultural environment that conditions certain ideological roles of men and women in the home and in the society.

Scholars have pointed out that stress and violence exposure at home and during childhood as well as cultural attitudes and norms about violence and gender relations in the society at large may be some causes behind women abuse, for example, the underlying factors of dowry-related violence are childhood abuse, low social and economic status, social stress and personality problem. A woman is from this perspective seen by the husband and the in-laws as an object or vehicle for pursuing more money by using violence. In more extreme cases this may lead to killing of the wife if the woman's family is unable to meet the husband's and in-laws' demands. The bride's parents have for long stressed that a married daughter should refrain from returning home as she is considered to belong to the new family.

The patriarchal foundation presupposes that a woman is not considered an equal in relation to men and needs to be protected, firstly by her father and later by her husband, who has the power to take decision and control her social space. Because of the

dowry system girls are considered a parental burden and that has also resulted in the rise of female infanticide/foeticide in Indian society. In cases when dowry abuses and violence are involved the in-marriage, woman is often seen as merely a means for financial gains by the grooms' side. The use of violence against the woman becomes a means for emotional and social blackmail of the bride's family. Paradoxically the women exposed to violence can get support from the society and authorities.

Scholars have also observed that dowry-related violence is connected with increasing consumption culture in the broader society and increasing demands of especially the urban lower and middle class. This, it has been argued, has lowered the level of tolerance for violence against women and encouraged the groom and his family to take advantage of the woman's inferior situation by demanding dowry from her natal parents. Modernization process in the Indian society has increased the desire for consumption and led to demands for dowry as a means to obtain goods. The girl's parents give dowry to the in-laws to ensure that their daughter is treated well and, at the same time, display one's social status in the society. Violence can from this perspective be seen as a product of different socially and economically constructed factors in the society, such as unemployment, social class and financial deprivation and is not merely the result of some pathological problems on the individual level.

Role of State: In 1992, the Committee on Elimination of Discrimination Against Women (CEDAW) formulated a broad recommendation that defined gender based violence as a form of discrimination, placing it squarely within the rubric of human rights and fundamental freedoms and making clear that states are obligated to eliminate violence perpetrated by authorities and private persons. The doctrine asserts state responsibility for failures to protect women from violence, the obligation to protect being an internationally recognised human right. In 1990, the Economic and Social Council adopted a resolution recommended by the Commission on the Status of Women recognising that violence against women in family and society derives from their unequal status in society and recommending that governments take immediate measures to establish appropriate penalties for violence against women as well as developing policies to prevent and control violence against women in the family, work place and society.

Although individuals are not legally liable under international human rights law, states are responsible for their failures to meet international obligations, even for the fact by private persons if they fail to make an effort to eliminate or mitigate the act.

Within national legal systems, assault and murder are universally considered crimes, but wife beating is shielded by its location in legally and culturally constructed private sphere.

India's Criminal Procedure Code requires police to make an investigation wherever information is received that "a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence" (Article 174). The investigating officer is to write a report on the cause of death, describing injuries found on the body and what weapon or instrument may have been used to inflict such wounds. Article 174(3) requires the police officer to send the body to a qualified medical person for examination where:

1. *the case involves suicide by a woman within seven years of her marriage; or*
2. *the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or*
3. *the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or*
4. *there is any doubt regarding the cause of death; or*
5. *the police officer for any other reason considers it expedient so to do..."*

- Law requires police to transfer the bodies of apparent suicides for examination should not limit the number of years by which the suicide must occur. Laws also mandate officers to transfer these bodies when there is evidence of a history of dowry demands from the spouse or spouse's relatives.

- Legislation requires the police to give domestic and dowry-related violence requests for help the same priority as other calls involving violence.

Legislation requires the police to perform certain duties as part of the investigative process in requests for help in domestic or dowry-related violence cases, including interviewing parties separately, recording the complaint, filing a report, advising the complainant/survivor of her rights, and determining the existence and pattern of dowry demands and gift giving to the parties from their relatives. Laws should not assign police the role of mediation or counselling, but authorize them to make referrals to qualified advocates and service providers.

Need of protection of women from domestic violence act, 2005: In the 1980s the women's movements in India foregrounded the issue of violence against women with a special emphasis on dowry related violence suffered by married women. Consequently criminal law was amended, to create

offences criminalizing conduct of cruelty to a married woman both in terms of domestic violence, and dowry-related harassment or deaths. Matrimonial laws provide for cruelty as a ground for divorce. Lawyers working on behalf of women have been able to successfully obtain injunction orders preventing a woman from being dispossessed from her matrimonial home, or from violence being inflicted upon her. Despite these success stories, the laws existing prior to PWDVA were inadequate to counter domestic violence, for the following reasons:

- Most of these provisions could only be used by women in legally valid marriages;
- Under the provisions of criminal law, while the perpetrator of domestic violence could be prosecuted and punished, women's need for shelter, maintenance, custody of children and compensation remained unaddressed;
- Criminal law did not allow space for any negotiation of rights;
- The use of matrimonial law involved prolonged legal proceedings;
- There was no explicit law enabling courts to issue orders and injunctions restraining domestic violence or to give monetary relief when the aggrieved women approached the court complaining of domestic violence;
- Women had to approach different courts for different remedies (family courts / district courts / criminal courts), leading to multiple litigations in multiple courts, causing considerable hardship to women; and
- There was no explicit recognition, in law, of women's right to residence in their matrimonial homes.

The Statement of Objects and Reasons of the PWDVA states that because criminal law does not deal with the issue of domestic violence in a holistic manner, a separate legislation needed to be enacted "to provide for more effective protection of rights of women, guaranteed under the constitution, who are victims of violence of any kind occurring within the family". The recognition of domestic violence as an issue warranting a separate legislation has broadened the understanding of what amounts to domestic violence, who can seek remedies under the law and what types of protection can be sought.

The main features of this law are as follows:

- The law clearly states its basic objective - preventing domestic violence.
- The right of women to be free from domestic violence has been recognized.
- Domestic violence has been explicitly recognized as a violation of women's human rights.
- It gives a definition of domestic violence that is broad and covers various aspects of domestic

violence - physical, mental, emotional, economic and sexual - based on women's experience of domestic violence.

- It recognizes, in clear terms, a woman's right to reside in the matrimonial home ('shared household') and protects her from being dispossessed and becoming a destitute.
- The law provides a 'single window clearance system' / 'one stop remedies' for women - multiple needs of the woman can be addressed through a single litigation in one court, thereby drastically reducing the time and money spent by aggrieved women on legal intervention.
- The law recognizes that legal remedies alone would be inadequate to help the victim of domestic violence live her life with dignity. Hence, multiple support structures have been created, to holistically address women's need for shelter, counselling and medical support.
- The law complements existing matrimonial and criminal law on domestic violence, so that women have a wider option in legal provisions that can be applied. They would exercise this option by assessing as to which law would most effectively address their specific situation and need.

Domestic violence has been defined in a broad way, based on the experiences of ordinary women and the acts that affect their physical and well-being. Under the PWDVA, the following acts amount to domestic violence:

- Mental / physical harm, injury or endangerment: Causing mental or physical harm, injury or danger to the physical/ mental health, safety, life or well-being of the aggrieved person. It includes physical, sexual, verbal, emotional and economic abuse;
- Dowry-related harassment: Harassing, harming, injuring or causing danger to the aggrieved person in order to coerce her or any other person to meet an unlawful demand of dowry / property / valuable security;
- Threat: Act that has the effect of threatening the aggrieved person or person related to her by conduct mentioned; and
- Other injuries or harm: Act that otherwise injures or causes physical / mental harm to the aggrieved person.

In the landmark case of *Andhra Pradesh High Court v. Punniiah*, the Indian Supreme Court supported the purpose of the Dowry Death Act under I.P.C. 304B, declaring that when an abused woman commits suicide, there is a presumption that it is a dowry death. However, the language of what is considered dowry within the Dowry Death Act and the Dowry Prohibition Act, which is the language used in the PWDVA, remains vague and can be considered to only cover expected gifts and collective gifts to the

groom's family. Thus, a legal loophole exists still allowing for dowries to be extracted from women's families in India

In *Abdur Rahim Undre vs. Padma Abdur Rahim Undre*, the marriage between the parties subsisted in law but had broken down beyond repair. The husband filed a suit for an injunction restraining the wife from entering the matrimonial home. Since the flat was big enough to allow the parties to live separately, the Bombay High Court earmarked separate portions of the flat for the spouses to live separately. This judgment was quoted with approval by the Supreme Court in *B.P. Achala Anand vs. S. Appi Reddy & Another*.

The PWDVA is still a nascent legislation, judgments from Courts are interpreting this law. The constitutional validity of the PWDVA, which was challenged on the ground that it is gender-specific, has been upheld, and is perhaps conclusively decided, through the 2009 judgment of High Court of Chennai in *Dennison Paulraj's case*. An analysis of judgments indicates, however, that on the issue of whether or not the term 'Respondent includes female relatives of the husband / male partner, the judicial verdict is divided. The 2007 Supreme Court judgment in *Batra vs. Batra*, which narrowly interpreted the term 'shared household' to deny a woman a right to residence in her in-laws' house which was her matrimonial home, has unfortunately failed to interpret the PWDVA in accordance with its objective of preventing the dispossession of a woman challenging domestic violence. This has impacted subsequent High Court judgments in varied ways. While some High Courts have followed the judgment to restrict the right to residence, others have distinguished on the basis of facts of the case before them, to grant residence rights in favour of the aggrieved woman. Courts have also been proactive in ensuring implementation of the PWDVA. The Bombay High Court judgment in *Ratnabai Patil* is a case in point. As per the monitoring and evaluation reports of LCWRI, judgments of various High Courts have acknowledged that violence in intimate relationships is located within the broader situation of systematic and historical subordination of women. These and other judicial trends reiterate the need for a constant engagement and dialogue among the various stakeholders including members of the judiciary, lawyers, POs, service providers, activists and the women's movement, to ensure that future judgments are in consonance with the gender sensitive vision, objective and spirit of the PWDVA. Domestic violence against women is widespread and systematic in India and in this context the relevance of the PWDVA cannot be overemphasized. Experience with social legislations has shown that the enactment of a

law is only the first significant step in the realization of a right.

Conclusion: India faces a very ironical situation when it comes to the status that women enjoy in our society. Indian mythology places women on a very high pedestal and they are worshipped and honoured like- Saraswati is a goddess of learning; wealth is Lakshmi; power is Parvati, but when it comes to the protection of their domestic rights the situation is totally different. Now they are facing all forms of domestic violence from physical to psychological which has various dimensions like female foeticide, selective abortion, dowry harassment, dowry deaths, physical abuse, mental violence, human trafficking and social humiliation. While the impact of physical abuse may be more 'visible' than psychological scarring, repeated humiliation and insults, forced isolation, limitations on social mobility, constant threats of violence and injury, and denial of economic resources are more subtle and insidious forms of violence. The intangible nature of psychological abuse makes it harder to define and report, leaving the woman in a situation where she is often made to feel mentally destabilized and powerless.

In case of domestic violence laws, till 2005 the only recourse for victims was section-498A of the Indian Penal Code. This only provided for punishments to the abuser but no remedy or relief to the victims. The civil law does not address the problem in its entirety. The laws considered only married women as the subject of the concern and only legally married women could sue under these laws. The law failed to comply with the definition of 'violence against women' in the international treaties like Convention on Elimination of all forms of Discrimination against Women (CEDAW) and Universal Declaration of Human Rights (UDHR), which looks at it as a violation of rights and fundamental freedom of women. To eliminate these loopholes the Protection of Women against Domestic Violence Act, 2005 was enacted. It is a progressive act not only because it recognizes women who are in live-in relationships but also extends protection to all the women in the household, including sisters, mothers, i.e., relations of consanguinity, marriage, or through relationships in nature of marriage, adoption or joint family.

Though there are a lot of positive aspects to this law it has had extreme opposition from a large section of the society. The opposition is that this law is being used by the educated women as a tool against their husband. As is visible in the statistics, since 2006 the cases filed under Domestic Violence have increased tremendously. Thus, this law has been rightly called a draconian law as it is not female-oriented but male bashing law.

References:

1. *St .Maryam Niyyati*, General Security From the Viewpoint of Entrepreneurship and Economic Development; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 72-76
2. General Assembly Resolution 48/104 of 20 December 1993.
3. Amol Deo Chavhan, Health Problems of Village Women's: A Conflict Issues; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 12-14
4. Report of United Nations Population Fund 2005, cited in <http://www.expressindia.com/fullstory.php?newsid=56501>
5. Nisha Amol Chavhan, Crime Against Women: Need to Empowerment; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 9-11
6. International Institute for Population Sciences (IIPS) and Macro International (2007), National Family Health Survey (NFHS-3), 2005-06: India, Mumbai: IIPS.
7. *Mohammad Fahimkohdamany*, Women Empowerment In Afghanistan (Education, Leadership And Challenges) ; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 2 (2015), Pg 117-121
8. A Study of Nature, Extent, Incidence and Impact of Domestic Violence Against Women in the States of Andhra Pradesh, Chhattisgarh, Gujarat, Madhya Pradesh and Maharashtra, by Yugantar Education Society, submitted to the Planning Commission, Government of India
9. Section 304-B IPC, Section 113-A and Section 113-B, Indian Evidence Act.
10. *S.G.Mohiddin, P.V.Lakshmana Rao*, Hypocritical Human Approach; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 2 (2015), Pg 136-138
11. Stone, L and James, C., 'Dowry, Bride-Burning, and Female Power in India', Women's Studies International Forum (1995)
12. Deepti Saxena, Women Empowerment: Be Safe; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 6-8
13. Flavia Agnes, 'Making Laws Work for Women: The Potential of Existing Laws Against Domestic Violence.'
14. *Suchithra.K.P*, A Gyno-Centric Study on Sex Workers In India and their Rights; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 91-93
15. Indira Jaising, Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence, Economic & Political Weekly, October 31, 2009.
16. S. 3 of the PWDVA
17. R.S.Kirloskar, Psychological Problems: With Special Reference to HIV; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 4-5
18. S. 17 & S.19 of the PWDVA
19. The definition of domestic violence is stated in S. 3 of the PWDVA
20. Cr.L.J. 2330 (1989).
21. AIR 1982 Bom 341, (2005) 3 SCC 313
22. (2005) 3 SCC 313
23. *Dr. Suganda Ramamoorthi*, Her Choice Her Voice ; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 2 (2015), Pg 144
24. WP No.1. of 2008, M.P. No of 2008
25. (2007) 3 SCC 169
26. (1986) ACC 143
27. *Dr.Muktha Manoj Jacob*, Women Disunited: Margaret At Wood's the Handmaid's Tale As A Critique of Feminism; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 85-90

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