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Global Trends and Patterns of Domestic Violence against Women

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ABSTRACT

Women's groups and supportive organisations all over the world, during the last few decades have made a numerous attempt to bring a paradigm change in eradicating the violence against the women. Gender-based violence is now on the public agenda, although in the past it was only discussed in private though it caused quiet misery to the women. Domestic violence violates the human rights of women. Rape, for instance, is a grave breach of a woman's bodily integrity, her right to dignity, security, and freedom from discrimination rather than a "affront to a woman's chastity."

Domestic violence against women in considered as one of the serious offense against the women, it includes all type of verbal, physical, and sexual attacks that violate a woman's physical body, sense of self, and sense of trust, regardless of age, colour, culture, or nation. Generally, this is a gender-based violence that result in psychological suffering for women as well. Women and children, as well as their relatives, might suffer severely from mental health problems as a direct consequence of this act of violence. Human rights and public health have been severely compromised for centuries due to this. The World Health Organization reports that between five and twenty percent of women's healthy life years between the ages of fifteen and forty-four are lost due to domestic abuse. The author of this work focused on the effects of domestic violence on women's mental health and conducted a literature assessment on international agreements and laws enacted to combat the problem.

Keywords: *Gender-based violence, breach of women's bodily integrity, psychological suffering, mental health issues, eradication of domestic violence.*

I. INTRODUCTION

Right from the time of inception, women have been subjected to various kinds of social discrimination all around the world irrespective of race, caste, religion or region. Women face such discrimination if every phase of their life as this society is been swayed by the male-dominated and male-oriented social system. Generally, a family which is considered as a social institution always upholds masculine superiority. This institution relegates the women to a

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secondary position. Generally Indian women consider their family is their important form of existence and they find no meaning of their life beyond the family due to lack of education, vocational training facilities as well as scarcity of opportunities for wage employment.²

Progress of women in a country is like the mirror of progress of that country. In India, during Vedic period women enjoyed prestigious position in the society. But her position deteriorated during post-Vedic period. Various social reformers endeavoured to elevate the status of women during medieval period. During British period, various laws were enacted to fulfil this purpose. But unfortunately, these laws could not remove discrimination against women; as personnel laws in India, still, retain discriminatory provisions. Despite constitutional mandate for equality, sex-based and religion-based discrimination continue to exist. The present study provides an interesting insight into various personal laws which deal differently with different religious communities, especially in the area of family law. However, the work is focused on the so called weaker sex or fairer sex or the women in the area of family law. The analytical study has made an exhaustive exercise to focus on divergent areas of discrimination among the Hindus, Muslims, Christian, Parsis and Jews. The study also emphasizes on the need of having universal norms all over the world to eliminate discrimination in the society and uplift the status of women-folk.³

II. UNDERSTANDING THE CONCEPT OF DOMESTIC VIOLENCE AGAINST WOMEN AND ITS TYPES

Domestic abuse, sometimes called domestic violence or intimate partner violence, is a pattern of abusive behaviour in which one partner seeks to dominate or control another. Abusive behaviour includes either actually harming another person or threatening to do so on a physical, sexual, emotional, financial, or psychological level. Abusive actions are those that lead to the victim experiencing feelings of dread, intimidation, terror, manipulation, pain, humiliation, blame, harm, or wound. Domestic abuse may affect people of any age, sexual orientation, religious affiliation, or gender. This problem may emerge in any kind of committed relationship, including marriage, cohabitation, and dating. Everyone, regardless of socioeconomic status or degree of education, is vulnerable to experience domestic violence at some point in their lives. Everyone, regardless of age, race, gender, sexual orientation, religion, or financial status, may be a victim of domestic violence. Domestic violence may affect not just the adult in the

²ARCHANA PARASHAR, *WOMEN AND FAMILY LAW REFORMS IN INDIA: UNIFORM CIVIL CODE AND GENDER EQUALITY*, 17 (1st ed. Sage Publications 1992)

³VIJAY SHARMA, *PROTECTION TO WOMEN IN MATRIMONIAL HOME*, 13 (Deep & Deep Publications 1994)

relationship, but also the child, other family members, or household members.

Abuse in the home may take many forms, but often involves one spouse in a relationship using violence or threats against another. Abuse on any level, whether it be verbal, physical, financial, or sexual, against a spouse or family member is considered domestic violence. Incidents are not isolated occurrences, but rather trends toward more frequent and more severe occurrences. Domestic violence may cause serious health problems and even death.⁴

Forty to eighty percent of Indian women have experienced intimate partner violence, according to research performed in 2013 by the Indian Government's Ministry of Health and Family Welfare⁵ and the country's planning commission. Intimate partner violence affects societies all around the globe. There is zero significance attached to any of these sociodemographic characteristics: age, sex, race, culture, religion, level of education, employment, marital status, or lack thereof.

A latest WHO study found that 1 in 3 women (15 and above) had suffered physical or sexual assault at the hands of an intimate partner.⁶ About two-thirds of women in central sub-Saharan Africa experience abuse over their lifetimes. The victim loses control over their own life and is exposed to a society that does not respect even the most basic of human rights.⁷



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⁴Malik, Sana & Khansa Naeem, "Impact of COVID-19 Pandemic on Women: Health, Livelihoods & Domestic Violence" Sustainable Development Policy Institute (2020), available at: <http://www.jstor.org/stable/resrep24350> (last accessed on 13th Aug. 2022)

⁵Harbishettar, V., & Math, S. B. (2014). Violence against women in India: comprehensive care for survivors. *The Indian journal of medical research*, 140(2), 157–159.

⁶Devastatingly pervasive: 1 in 3 women globally experience violence, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>, (accessed on 20-08-2022).

⁷ Women's Health and Rights: 25 Years of Progress?, World Health Organisation (2020) available at: <https://www.who.int/news/item/> (last accessed on 12th Aug 2022)

⁸ Image source: World Health Organization, on behalf of the United Nations Inter-Agency Working Group on

(A) Definition:

The definition of domestic violence offered by Ganley and Schecter includes not only physical, sexual, verbal, and psychological attacks, but also economic coercion, from an adult or teenager against their intimate partner.⁹

As used above, the term "partners" is intended to be inclusive of all couples, domestic or otherwise, whether married, single, heterosexual, gay, lesbian, cohabiting, separated, or in the courting stages.

The Protection of Women from Domestic Violence Act of 2005 defines domestic violence as any act or threat of physical, sexual, verbal, emotional, or monetary abuse or control over a victim. The illegal practise of demanding dowry from a lady or her female relatives is also covered here.¹⁰

III. REASONS BEHIND GENDER-BASED DOMESTIC VIOLENCE AND ITS GLOBAL TRENDS OF PATTERNS

Despite several legislation and initiatives, gender-based violence in India, which includes physical, sexual, and psychological injury, persists as a serious public health concern. Human rights abuses against males are just as common as they are against women. It has been widely acknowledged over the last several decades that gender-based violence is a major obstacle to achieving global goals like gender parity, economic growth, and peaceful coexistence. Across the country, feminist groups have made this an issue of paramount importance. Over the last several years, governments everywhere have started paying more attention to this problem.

Human rights violations and a public health issue, gender-based violence affects almost one in three women worldwide. As an extreme form of gender inequality, it disproportionately affects women and girls because of their lower social standing. Sexual, physical, and psychological violence against women all have the potential to negatively affect a woman's ability to have children.

Every woman, regardless of age, race, religion, or socioeconomic level, is vulnerable to violent threats. A woman's safety is threatened in many different settings, including the street, the job (in the form of sexual harassment), and the home (in which she may be subjected to physical and sexual abuse by her partner, who may also be violent against other members of the

Violence Against Women Estimation and Data (2021)

⁹ Theories of Violence, Domestic Violence: Explore the Issue, Human Rights Library, available at: <http://hrlibrary.umn.edu/svaw/domestic/link/theories.htm> (last accessed on 13th Aug 2022)

¹⁰Supra Note 21

household).

The causes of domestic violence are complex and multifaceted. Perpetration of domestic violence against women is caused by a confluence of several sociological/behavioural, historical, religious, and cultural elements.¹¹

- Sociological/Behavioural Factors: Anger problems, aggressive attitudes, financial difficulties, social status differences, a dominant or domineering personality, substance abuse, upbringing, and psychological instability (bipolar disorder, depression, stress, etc.) are all examples of sociological, behavioural, and cultural influences.
- Another factor that leads to domestic violence is the neglect of conjugal obligations, whether because of extramarital relationships or a lack of trust. The evil of patriarchy and the superiority attitude that has persisted among males for ages is a historical element.
- Religious Considerations: Religious sanctifications represent a subtle type of tyranny over women, if not blatant and apparent domination. Domestic violence against women is exacerbated by this.
- The desire for a son is one cultural factor that contributes to marital violence. This fixation, fuelled by ignorance and a sense of masculine superiority, is a major contributor to the epidemic of domestic violence against women. This is by no means an all-inclusive list, and domestic violence may have many causes.
- Dowry is a cultural norm that reflects the social status of the woman receiving it. However, because to the many instances of domestic violence stemming from the unlawful demand of dowry, it is necessary to bring it up on its own. Parliament came to this conclusion in part because the Domestic Violence Act now treats dowry-related domestic violence as a distinct category of abuse that may lead to domestic violence.¹²

(A) Understanding The Global Patterns of Domestic Violence:

While domestic violence has been an international concern for decades, it has only been in the past two that legislation has been adopted to address the issue, mainly in Singapore and Malaysia.¹³ There are numerous places where domestic abuse is not taken seriously because it

¹¹Gender-Based Violence in India: A Dark and Bitter Reality, Hind Rise, available at: <https://hindrise.org/resources/gender-based-violence-in-india/> (last accessed on 11th Aug 2022)

¹² Christine Arthur & Roger Clark, "Determinants of Domestic Violence: A Cross-National Study" 35(2) International Journal of Sociology of the Family 147-167 (2009)

¹³Controlling or coercive behaviour in an intimate or family relationship statutory guidance framework, UK Home Office (2015) available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf (last accessed on 13th Aug 2022)

is considered a private affair and where family, culture, or religion take precedence over women's concerns. Let's talk about international standards, gender analysis, and transcultural values in the context of legislative change in both the subject area and the region. Both Malaysia and Singapore have recently passed domestic violence legislation. Even while there have been positive changes to the law in both places, these efforts have been hampered by misunderstandings of cultural norms and a lack of understanding of how domestic violence affects women differently than men. Bringing together feminist ideas of domestic abuse and international human rights discourse, this new narrative may help move legislative change forward in the area. The definition of family violence as a gender problem and a human rights issue is a crucial step in the Asian context because it moves the focus of domestic abuse from the private to the public sphere.¹⁴

a. Domestic violence laws in Singapore and Malaysia

It wasn't until the 1980s that women's rights activists in Malaysia and Singapore started organising grassroots movements to combat domestic and familial abuse. Despite the fact that the reformers' goals were not entirely realised via the laws that were passed, the subject of domestic abuse is now front and centre in the public and political discourse.¹⁵

Both nations have made larger investments to prevent domestic abuse after ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) in 1995.¹⁶ The government of Singapore has created a Family Court and a high-tech infrastructure to enable a coordinated and interdisciplinary response to domestic abuse. The majority of family violence victims are female, according to statistics, highlighting the need for a gendered approach in this area. Despite considerable progress, legal change is stymied by the fact that domestic violence is seen largely as a family issue, and hence, policies and laws are drafted with family unity in mind.¹⁷

In societies that condone violence against women to some extent, it is challenging for the government to approach domestic abuse as a private family affair. There are others who believe domestic abuse should be criminalised and subjected to public discussion and inspection, and

¹⁴ Racism, Sexism and Homophobia, available at: <https://www.safeatschool.ca/plm/equity-and-inclusion/racism-sexism-homophobia-social-problems> (last accessed on 11th Aug 2022)

¹⁵the Family Violence Bill, Singapore Parliamentary Debates, Official Reports, Vol. 65, at cols. 94-110 (1 Nov. 1995), Dr

¹⁶Convention on the Elimination of All Forms of Discrimination Against Women, United Nations (1979), available at: <https://www.ohchr.org/sites/default/files/cedaw.pdf>

¹⁷Domestic Violence Act, No. 521 (1994) (Malay.); Women's Charter Act, No. 353, 64 (1961) (Sing.), amended 1996 to insert Part VII dealing with the protection of the family. 2. "Partners" includes a relationship between two people.

that it should be seen as a women's rights problem rather than a family matter.

The changes made by Singapore and Malaysia are positive developments. Strengthening the legislation would only underline the current dedication to justice and human rights, even if the domestic violence situation in these two nations may be compared favourably to those in other Asian jurisdictions. It's important to dispel the notion that feminist and international human rights viewpoints on domestic abuse legislation are inimical to the family or to Asian cultural norms. The concept of women's rights is not unique to the West, but is central to many faiths and civilizations throughout Asia.

b. Women rights and international norms in Asian Context

A system that is obviously patriarchal and a legal culture that is not appropriately exposed to gender concerns contribute to the reluctance toward more progressive changes in Singapore and Malaysia. Through the introduction of international human rights principles and gender views into the local systems, this portion of the study seeks to close the gap that exists in several Asian jurisdictions.¹⁸

Furthermore, this part argues that Asian values are not incompatible with international standards and that many alleged cultural barriers are fictitious. Domestic violence committed by males against women is a persistent problem throughout human history. This is due in part to a shift from a lax to a more restricted view of sexual behaviour as males have attempted to gain control over women. Some academics have contended that societies that have shifted to more overtly patriarchal models have grown less democratic and more authoritarian as a consequence. Patriarchal legal and societal structures and norms have normalised violence against women.¹⁹ As such, any method, legal or otherwise, must acknowledge that "men who abuse their spouses are really living up to cultural prescriptions that are prized in Western [and any other] society: aggression, male dominance, and female subjugation." An examination of domestic violence from a feminist perspective is not just necessary, but unavoidable.

c. The European Union

The Treaty of Rome is credited as the first international document to embody the idea of equal pay for equal effort. When it comes to compensation, "each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied," as stated in Article 157 of the Treaty on the Functioning of the European Union

¹⁸ Abu Bakar Munir & Nor Aini Abdullah,

¹⁹ Women's Aid Organisation, *Battered Women in Malaysia: Prevalence, Problems and Public Attitudes* (1995) (report available from WAO office, Kuala Lumpur), available at: <https://www.wao.org.my/> (Accessed 15, August, 2022).

(TFEU, formerly Article 119 (1) ECC and Article 141 EC). The European Court of Justice has given a thorough interpretation of the concept of equal pay for equal labour, which it has seen as "part of the foundations of the Community" due to its economic and social significance. As an added bonus, the EU is authorised to "assist and complement" the actions of the Member States in the area of "equality between men and women with respect to labour market opportunities and treatment at work" by virtue of Article 153 TFEU (formerly Article 137 EC). Article 8 of the Treaty on the Functioning of the European Union mandates that "in all its actions, the Union must endeavour to remove disparities and promote equality between men and women." This mandate is the basis for gender mainstreaming.²⁰

To fight discrimination on the basis of gender, race/ethnicity, religion/belief, disability/age, or sexual orientation, after receiving approval from the European Parliament, may take necessary action. Articles 79 and 83 TFEU, the latter of which seeks to adopt minimum rules concerning the definition of criminal offences and sanctions in "the areas of particularly serious crime with a cross-border dimension," serve as the legal basis for EU law combating human trafficking, especially of women and children.

Achieving gender parity is recognised as one of the EU's five defining principles under the Lisbon Treaty (Article 2 of the Treaty on European Union, TEU). Furthermore, promoting equality is one of the EU's stated goals, as stated in Article 3 (3) of the TEU, which states that the EU "should build a particular partnership with neighbouring nations" (Article 8 TEU). The Charter of Fundamental Rights of the EU comprises a whole chapter (III) on equality, and its legal significance has been equivalent to that of the treaties since the Lisbon treaty (Article 6 TEU). Article 23 states, "Equality between men and women must be guaranteed in all sectors," which includes jobs, tasks, and compensation. Keeping or enacting policies that provide unique benefits for the under-represented sex are not prohibited under the concept of equality.

The EU's efforts have focused mostly on ending discrimination against women, which includes working to eradicate violence against women. Declaration 19 of the Final Act of 2007 is the only place in the EU Treaties that addresses violence against women; it refers to Article 8 of the Treaty on the Functioning of the European Union, which states that, as part of its efforts to "eliminate inequalities between women and men," the Union will seek to combat all forms of domestic violence through its various policies.²¹

²⁰Del Martin, *"Domestic Violence: A Sociological Perspectives"* Spring Publishing 8-11 (1985)

²¹R. Emerson Dobash & Russell P. Dobash, *"Violence Against Wives: A Case Against The patriarchy"* 86 New York Free Press 1485 (1981)

d. Japan

As a result of constitutional changes made after World War II, Japanese women no longer faced legal subjection by the patriarchal family (i.e. system) that had previously existed. In 1997, Japan amended the Law for Equal Employment Opportunity of Men and Women in response to the CEDAW Convention, which Japan had accepted in 1985.

Also, women's opportunities are limited because of the traditional gender roles. To fulfil its legal responsibilities under the CEDAW, Japan has submitted periodic reports to the CEDAW Committee, the most recent of which was released in March 2016. In this chapter, we will only look at two parts of the CEDAW report on Japan: violence against women and trafficking in women.²²

When it comes to VAW, domestic violence in Japan was recognised as a societal problem in the 1990s. Japan's Law for the Prevention of Spousal Violence and the Protection of Victims, first enacted in 2001 and revised in 2004, protects spouses against abuse. The rule only applies to domestic abuse between spouses, not boyfriends or transient roommates. Not only that, but "little attention has been given to the nexus between violence against women and sexual crimes" in the penal law's treatment of sexual offences throughout the previous century. A person who, via violence or intimidation, forcibly conducts sexual intercourse with a girl of not less than 13 years of age commits the crime of rape and must be punished with a definite sentence for not less than 3 years in prison, as stated in Article 177 of the Japanese Penal Code.²³

Anyone engaging in sexual activity with a female minor under the age of thirteen will be subject to the same penalties. Obviously, this rule is biased towards women, and maybe even against males who have been victims of sexual assault. In 1953, the Supreme Court found that the wording did not run afoul of the Constitution's ban on discrimination. Marital rape is not specifically addressed, and neither is rape without harm, which is one of the crimes that cannot be punished in the absence of a complaint from the victim. In its final remarks, the CEDAW Commission lauded the Ministry of Justice for establishing a committee to examine the criminal code, calling it "an important step forward" in the advancement of women's rights. However, the Committee mandated that the State include domestic violence and incest against women as separate crimes in the penal code, amend the penal code to expand the definition of rape and ensure ex officio prosecution of sex crimes, amend the penal code to explicitly criminalise marital rape, speed up the judicial process for issuing emergency protection orders, and

²²CEDAW Committee, CEDAW/C/JPN/CO/7-8, 7 March 2016.

²³Yano (2007, p. 201). Judgment of 24 June 1953, Supreme Court, Supreme Court Judicial Precedent Collection, Vol. 7 no. 6, p. 1366

encourage victims of all forms of violence to reclaim their lives.²⁴

e. Position of Women In America

It's been called a "bill of rights for women on a global scale." It claims to be fighting against violence and prejudice and aiming to achieve equality. Almost all of the 193 UN members have signed on to it. The only exceptions are the Islamic Republic of Iran, Palau, Somalia, South Sudan, Sudan, and Tonga. And the USA too!

In 1979, the United Nations passed a resolution called the Convention on the Elimination of Discrimination against Women, or CEDAW for short.²⁵

It is the most significant convention establishing gender-specific protections for women and girls since 1948, when the United Nations declared that all persons, regardless of sex, "are born free and equal in dignity and rights." By formally adopting CEDAW, 186 countries have pledged to provide women with equal access to healthcare, education, political representation, the workplace, and marriage. This includes a pledge to work together to prevent sex trafficking and other forms of sexual abuse against women. The United States has signed CEDAW, but ratification requires a majority vote in the Senate. However, the Senate has never brought CEDAW up for a vote.²⁶

IV. LAWS RELATING TO DOMESTIC VIOLENCE IN INDIA

For dealing with the many types of violence against women by private actors, the Indian Constitutional, criminal, and civil law has numerous provisions.

The following legal clauses are highlighted:

(A) Constitutional Law

According to the Act's own justifications, it was passed so as to protect the rights guaranteed under Sections 14, 15, and 21. Article 21 bestows a negative right to life and liberty, stipulating that it must not be taken away unless in accordance with the procedure prescribed by law, which should be fair, just, and reasonable in all respects as a result of judicial decisions. The Act recognises several safeguards for human life, some of which are enumerated below.

Articles 14 and 15 of the Constitution protect the rights of women, which are supported by the Domestic Violence Act. This Act strives to protect women from domestic abuse, which is one of several factors that work against women's advancement. The Act does discriminate against

²⁴Japan ratified the Convention and the Protocol on 11 July 2017

²⁵Erlick Robinson G. "Violence against women in North America" 6(3) Arch Womens Ment Health 185-91 (2003)

²⁶Trevillion K et al, "Experiences of domestic violence and mental disorders: A systematic review and meta-analysis" PLOS One (2012)

males in that it solely protects women from domestic abuse, but this discrimination is based on a meaningful distinction—namely, gender—and has a clear connection to the goal of the law. Further, the Act is not capricious, since it is an effort to curb domestic violence and ultimately eradicate it. In the majority of cases, women, not males, are the targets of domestic abuse. Here, it's also important to remember Article 15(3), which allows the State to pass laws like these for the advantage of women, shielding them from the application of Article 15(2)

a. The right to be free of violence:

Art.21: *“No person shall be deprived of his life or personal liberty except according to procedure established by law. Certain principles of policy to be followed by the State:*

- a) that the citizens, men and women equally, have the right to an adequate means of livelihood;*
- b) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment”;*

In **Francis Coralie Mullin v. Union Territory Delhi, Administrator**²⁷, In a recent case, the Supreme Court ruled that any conduct that temporarily or permanently hinders a person's use of any limb or capacity is prohibited under Article 21. This protection is included in the Act since physical abuse encompasses domestic violence (and is hence punishable under the Act). When someone is physically abused, they suffer injury to their health, safety, or development. The definition of domestic abuse under the Act also includes various forms of physical assault that are also illegal under the Indian Penal Code. The Act safeguards women's rights by adopting a broad definition of domestic abuse.

b. The right to dignity

In **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan**²⁸, the Supreme Court the fact that the right to life encompassed the right to live with dignity, basing this conclusion on a large number of cases where this thesis had been upheld. The prohibition against being subjected to degrading sexual activities would fall under the category of the right to dignity. The right not to be offended would also be included. Under the definitions of sexual abuse and emotional abuse, respectively, these two aspects of the right to life are mentioned. The legislation's recognition of emotional abuse as a kind of domestic violence is an admirable feature. Given that such sexual assault is not considered an offence by the IPC, the husband's acknowledgment of it as a type of human rights violation is commendable. Although the concept would not be restricted to domestic violence, these actions would fall within the parameters of

²⁷ 1981 AIR 746

²⁸ (1997) 11 SCC 123

domestic violence as defined by the Act.

c. The right to shelter:

Unlike the case at hand, **Gauri Shankar v. Union of India**²⁹, which dealt with the statutory eviction of a tenant, **Chameli Singh v. State of U.P**³⁰. found that the right to life would include the right to shelter. This is a right that is bolstered by the Domestic Violence Act, namely sections 6 and 17. If the aggrieved party does not have a place to stay, the Protection Officer must provide one for them under S.6, whether they specifically ask for it or not. The right to remain a resident of the joint home is safeguarded by Section 17. Because of these safeguards, women may exercise their legal rights without worrying about losing their housing.³¹.

d. Right against exploitation:

The protection against exploitation is guaranteed under Article 23 of the Constitution. The Constitution expressly prohibits the practise of trafficking in human beings. When it comes to the exploitation of women, our country has a serious problem with trafficking. In 1956, parliament passed the Immoral Traffic (Prevention) Act to crack down on prostitution and other forms of human trafficking.

Let's talk about some real-world applications of such liberties.

A woman's right to own property - To wit: "**MadhuKishwar&Ors v. State of Bihar &Ors**"³². Legal safeguards for property were established in the Chota Nagpur Tenancy Act of 1908 for the city's people. However, the law makes it clear that indigenous women have no legal rights to inherit property.

This meant that only the men in the family could inherit anything. A petition was filed arguing that laws favouring property transmission solely through male heirs violate the equality clause (Article14) of the Constitution because they are discriminatory, unfair to women, and outside the Constitution's authority to enact. The case was heard by a panel of three judges, and two of them ruled in favour of the defendants, saying that the personal laws that grant inheritance rights shouldn't be applied to the relevant tribes.

Nonetheless, the dissenting Justice Ramaswamy, K., deemed the restrictions to be so discriminatory as to violate Article 14's right to equality. As far as he is concerned, if this sort of thing can win out, then injustice will rule the day in the country. However, since the majority

²⁹1995 AIR 55

³⁰AIR 2013 SC 1420

³¹Erez, Edna, (January 31, 2002). "Domestic Violence and the Criminal Justice System: An Overview" *Online Journal of Issues in Nursing*. Vol. 7 No. 1, Manuscript 3

³² 1996 AIR 1864

approved, the action stood.

(B) Criminal Laws:

Sections 498A and 304B of the Indian Penal Code and related sections in the Indian Evidence Act, 1872, which criminalised dowry deaths and domestic violence.

At the time of their passage, these changes to the penal code carried enormous promise. Secs. 498A and 304B (dowry death), which made domestic abuse a crime, aimed to make legal punishments more definite and severe while redressing historical, ethical, and legal inequalities in the protections given to abused women. It aimed to make domestic or family violence a public problem in India for the first time, taking it out of the family's safe, private space.

a. Section 498A & its challenges:

Understanding India's history of criminal law reform is essential to any serious evaluation of Sec. 498A. The increasing number of women who were passing away in their marital houses as a result of dowry-related harassment led to the call for criminal law reform. Consequently, the first desire was for a legislation to merely prohibit violence linked to dowries. Thus, Sec. 498A was added to the Sec. 304B of the IPC from 1986 defined the specific offence of dowry-related death of a woman in 1983., and the associated revisions to the Indian Evidence Act 1872 came shortly after. Given that Sec 304B addressed the specific offence of dowry death and Sec 498A attempted to address the widespread violence against married women for dowry, it is thought that Sec 498A and Sec 304B were designed to complement one another and be a part of a plan.

Protection only for married women?

All violence experienced by women in their homes was blamed on dowry by activists and the government since dowry-related harassment was a key campaign topic for feminist groups. As a consequence, they stated that only married women should be covered by domestic abuse laws. Sec. 498A was inserted to the IPC as a result of this 1983 amendment.

The *2005 Protection from Violence Bill* tried to remedy this. The penal code lacks a remedy for this type of assault committed by family members of the victim. If such acts of aggression constitute additional IPC offences like rape, assault, or breaches of female modesty, the sole legal recourse is criminal law.

Cruelty definition – Is the definition clear or vague?

Another key issue with Sec. 498A is that it has a narrow definition of cruelty that excludes domestic abuse against women. Although Section 498A's wording includes a section that directly refers to cruelty as dowry harassment, the section's scope is far broader because it aims

to address all types of cruelty that endanger life, limb, or health or inflict grave harm.

Violence against women in the home can take many different forms, not only physical or emotional abuse. Women encounter physical, emotional, verbal, psychological, sexual, and economic assault in real life, according to research.

Due to the significant frequency of sexual violence in marriage and the fact that marital rape is notably not included in the definition of rape under Section 376 of the Indian Penal Code, sexual violence in particular has to be recognised as a form of cruelty.

These many types of violence are not directly addressed by Section 498A, which instead defines "cruelty" broadly as any action that is likely to result in serious harm or imminent threat to the woman's life. Because of this, it is frequently up to the police officer to decide whether or not a woman's husband or in-laws' sexual, verbal, or psychological abuse constitutes cruelty under Section 498A.

It is for this reason that the Protection from Domestic Abuse Bill, 2005, now in the legislative proposal stage, has a section that tries to provide a comprehensive definition of what constitutes domestic violence by recognising these many types of violence. The UN Framework for Model Legislation on Domestic Violence⁸ is used as the basis for the Bill since it requires a comprehensive definition of domestic abuse and includes the following provisions:

b. 304B and Domestic violence are they interlinked?

Domestic abuse is not always tied to dowry, it is unlikely that this Section would help women cope with domestic violence. The phrase "short before her death" suggests that it does not consider the violence that had occurred before or that which had been ongoing from the very beginning as a genuine factor that may have led to her suicide. Therefore, aiding a person in committing suicide is beyond the scope of this Section. To be convicted under this Section, the prosecution must show that the husband or his family engaged in harassing behaviour against the wife because of her dowry. Section 498A, on the other hand, has fewer prerequisites since the seven-year marriage restriction is eliminated and because the harassment that culminates in mental cruelty that ultimately leads to suicide is not limited to the time immediately before the death.

Although they were originally intended to address dowry-related violence and homicide, Sections 498A and 304B of the IPC are now often used to address other forms of abuse against women as well. However, these Chapters do not address violence between partners in sexual relationships. As a result, they can only define the breadth of domestic violence so far.

Cruelty which is one form of Domestic violence was never considered a reason for divorce under the Hindu Marriage Act, 1955; rather, it was only utilised in circumstances of judicial separation. In this case, the petitioner or aggrieved party must provide evidence that the cruelty is intolerable and making it impossible to continue living with the spouse (the defender).

(C) The Protection of Women from Domestic Violence Act, 2005

In India domestic violence is governed by the Protection of Women from Domestic Violence Act, 2005 and it is defined under Section 3, which states that any act, commission, omission or conduct of a person harms or injures or endangers the health or safety of an individual whether mentally or physically it amounts to domestic violence. It further includes any harm, harassment or injury caused to an individual or any person related to that individual to meet any unlawful demand would also amount to domestic violence.

The Act was created to prevent violence against women, but its primary drawback is that victims of domestic abuse do not receive a permanent solution; rather, they are given only "interim relief." The right to a shared household, for instance, is extended to women, but this does not guarantee that they would be safe from abuse at home. The Act grants the abused the right to live with their abuser and prohibits the abuser from having any contact with them.

Temporary protections like this do not provide the victim with the full measure of safety intended by the Act, which is to reduce the incidence of domestic violence. Potentially written to protect women from abuse, the Act may have failed in part owing of a lack of public knowledge. The primary reason why women are struggling is due to a lack of knowledge.

Despite the fact that the government is required to actively promote knowledge of the Act through print media or any other form, the women of places without access to such information are still at a standstill. If protection officers and magistrate judges are not given enough training by the government, the Act would fail to be implemented.

V. CONCLUSION AND SUGGESTIONS

“Domestic violence is a violation of human rights” -Many Asian nations' pushback against gender analysis and international human rights is rooted in a fear of foreign interference in domestic politics and values. This thesis avoids this debate by arguing that feminism and neo-colonialism are not necessary to realise human rights. Instead, what is presented here is an argument for adopting a new, and maybe more accurate, way of looking at domestic violence. The hidden truth must be revealed for policymakers to make more educated and effective decisions. Gender analysis sheds light on the underlying, systemic factors that contribute to

domestic violence, and it helps debunk cultural relativist claims by showing that patriarchal understandings of cultural norms are a major contributor to violence against women.

It is important to uphold both universal principles and long-standing cultural norms. Relying on international human rights rules and conventions helps strike a fair balance between respect for cultural variations and adherence to universal ideals. Allowing violence against women is not the same as accepting traditional gender norms. While the latter may be up for argument, it should be beyond question that violence against any person is unacceptable. Misguided thinking holds that some degree of violence towards women is necessary to preserve the institution of the family. The Asian ideal of collectivism over individuality may be a good thing since it emphasises qualities like helping others, being generous, and sticking together. In truth, feminists hold and advocate for these principles. It's hard to believe that people who hold these beliefs can condone violence against women.

(A) Suggestions

Whether in India or the United States, violence against women at home is given little attention. To stop this kind of violence, we need governmental policies and rules that are firm and well-enforced. However, a change in global and individual perspectives is what is needed to bring about a satisfactory resolution. In addition to the above-mentioned International Legal Standards, the following are some actions and proposals in the context of India that, if fully implemented, may calm and curtail the issue of Domestic Violence in India. Listed below are

1. Educating people through agencies and cells:

In situations of domestic abuse, victims may seek assistance from a broad range of institutions, including the family court, the Vanitha cell, the police station, the Family Counselling Centre, the Women's Commission, the People's Council for Social Justice, and religious organisations. To put an end to the violence, it is essential that friends, family, and members of the community step in. Educating as many people as we can about domestic violence, its effects, and safe ways to intervene is a smart first step in eliminating the problem entirely from your town or neighbourhood.

2. Counselling & health support:

Medical and psychological aid are often required throughout the healing process for victims of violence and those enduring the effects of trauma. Essential health benefits, such as mental health care, must be made available to survivors without exception for pre-existing conditions. Even if domestic violence is not addressed directly in their health history, survivors typically

have post-traumatic stress, injuries, emergency department visits, and other chronic disorders connected to the abuse, which need to be taken care of by giving prompt counselling therapies.

3. Creating Employment Opportunities:

Women from the upper middle class and the middle class who have the necessary knowledge and information have an advantage over the impoverished, uneducated, and disadvantaged women who are trying to start their own businesses.. Among the various options, self-employment is seen as the most effective since it not only improves women's personal sense of self-worth, but also increases their chances of advancing in society.

4. Law's, Government & Police:

The tragedy of independent India is that we have not yet learned to discriminate between reasonable and unreasonable laws, between implementable and un-implementable laws, and that we have not built a law-enforcement apparatus that can provide real redress to everyone whose rights have been infringed.

- A common universal norm is very difficult to be implemented due to different culture and ethno-centric mind-sets of people.
- Strict rules should be enacted to combat societal ills like the dowry system and vices like drunkenness and drug addiction.

To effectively provide justice to victims of domestic violence, the following measures should be taken:

- Each district should have a special court with a woman judge and magistrate to handle domestic violence cases;
- only women magistrates should try cases of violence against women;
- mobile courts should be introduced as a strategy;
- law enforcement should be carried out through the coordinated efforts of police and the court system.

5. Media Can Help!

The media's purpose is to shine a light on social problems and rally people to take action, hence they should be even more successful at doing so. The press has to take the issue of violence against women more seriously. Some victims of sexual assaults have even said that the media's insensitive use of images, publication of names, and other invasions of privacy made it seem

like they were being assaulted again.

Hence, media need to publish only the content that helps in curbing DV.
