

DOMESTIC VIOLENCE : LEGAL AND HEALTH PROBLEMS IN INDIA*By***—Dr. MOHAMMED SAHEB HUSSAIN,**

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*“Nature has blessed women so much power that
the law has given them little” – Anonymous
quotes*

Violence against women is a global pandemic. Without exception, a woman's greatest risk of violence is from someone she knows. Domestic violence is a violation of a woman's right to physical integrity, liberty, and all too often, her right to life itself. When States fail to take the basic steps needed to protect women from domestic violence or allow these crimes to be committed with impunity, states are failing in their obligation to protect women from torture.

Domestic violence is not unique to India, not is it a recent phenomenon. But in India what is unusual is the resistance to its elimination by society at large and society's lack of recognition of it as a serious issue. What is recent is the courage of women to face up to domestic violence—not just women in organized groups but also female victims who are well aware of the adverse consequences that “going public” will have on their lives. With the backdrop of the patriarchal social structure, the tradition of familial piety and the asymmetrical gender expectations in India, this defiant movement to expose domestic violence has created the space for a national debate on the issue¹.

Events of violence take place very often in various sectors of society. The most destructive type of violence is the one resorted

to by the terrorist organizations. Yet another kind of violence which the most usual phenomena in the present day society and in regard to which it is difficult to find sufficient evidence to prosecute and punish the perpetrators of it is the violence called the Domestic Violence.

Domestic violence is a phenomena which occurs in almost all countries irrespective of social, economic, religious or cultural groups. Even in advanced countries like the United Kingdom, United States of America, Brazil, Nicaragua *etc.* there occur also cases of domestic violence. Thus, almost every society in the world today is facing the problem of domestic violence and is adopting various measures to tackle the problem. The legal sanctions against the vice of domestic violence are relevant as far as the question of punishing the perpetrator of this violence is concerned. But what one has to note is the impact which such disturbing events have on the health of the people, and on account of which the medical services of the State have to bear an extra burden for dealing with the cases of this kind of violence.

This article has the object of analyzing the types of injuries which the victims of domestic violence suffer in the domestic sector on account of which they have to face health problems. First an explanation is given herein of the concept of violence, types of violence, concept of domestic violence, forms of domestic violence, health problems especially women, children *etc* subsequently a reference has been made to

1. <http://vaw.sagepub.com/cgi/reprint/10/1/94>

the measures that have been adopted by the national and international organizations with few conclusion and recommendations at the end.

I. The Concept of Violence :—Violence is defined as the intentional use of physical force or power, threatened or actual, against oneself, another person or against a group or community that either results in or has a high likelihood of resulting in injury; death, psychological harm, mal-development or deprivation². In its most basic sense, violence means inflicting damage on people by killing, maiming, or hurting them. Its meaning may be extended to cover the threat of such damage to psychological as well as physical harm. Violence may be defined so as to include destruction of property. Some political writers have stretched the concept of violence to embrace an oppressive political, social or economic system that damages the people living under it³.

II. Types of Violence :—The World Heath Organization has in its study found the following typology of violence :

- (i) Self Directed Violence;
- (ii) Inter-personal violence;
- (ii) Collective Violence.

Self Directed violence is sub-divided into suicidal behaviour and self-abuse. Intra-personal violence is divided into two sub-categories: family and intimate partner violence. This kind of violence usually belongs to family members and intimate partners usually taking place in the home. The former group includes the forms of violence such as the child abuse, intimate partner violence and abuse of the elderly.

Collective violence is sub-divided into social, political and economic violence. This kind of violence suggests possible motives for violence committed by larger groups of individual or by the States.

III The Concept of Domestic Violence :—Domestic violence is a kind of violence which refers to any behaviour within a family relationship causing physical or sexual harm to others in that relationship. Such behaviour includes acts of physical aggression, abetting, kicking, hitting, and slapping or forced intercourse.

In its wider sense domestic violence can be violence by intimate partners; sexual violence or self-directed violence. As domestic violence awareness has increased, it has become evident that abuse can occur within a number of relationships. The laws in many states cover incidents of violence occurring between married couples, as well as abuse of elders by family members, abuse between roommates, dating couples and those in lesbian and gay relationships.

In an abusive relationship, the abuser may use a number of tactics other than physical violence in order to maintain power and control over his or her partner.

*Emotional and verbal abuse :—*Survivors of domestic violence recount stories of put-down, public humiliation, name-calling, mind games and manipulation by their partners. Many say that the emotional abuse they have suffered has left the deepest scars.

*Isolation :—*It is common for an abuser to be extremely jealous, and insist that the victim not see her friends or family members. The resulting feeling of isolation may then be increased for the victim if she loses her job as a result of absenteeism or decreased productivity (which are often associated with people who are experiencing domestic violence).

2. Who Global Consultation on Violence and Health; Violence, a Public Health Priority, World Health Organization publication, Geneva, (1996)

3. Blackwell's Encyclopaedia of Political Thought; (1987) p.541

Threats and Intimidation :—Threats – including threats of violence, suicide, or of taking away the children – are a very common tactic employed by the batterer.

The existence of emotional and verbal abuse, attempts to isolate, and threats and intimidation within a relationship may be an indication that physical abuse is to follow. Even if they are not accompanied by physical abuse, the effect of these incidents must not be minimized. Many of the resources listed in this book have information available for people who are involved with an emotionally abusive intimate partner⁴.

IV. Forms of Domestic Violence :—

One of the most common forms of domestic violence is the violence committed by a husband or intimate male partner. This kind of violence occurs in all societies, irrespective of social, economic, religious or cultural groups. Although some women also have the propensity of being violence to me at times, the overwhelming majority of cases are of those in which women are the victims of husband's violence.

The problem of domestic violence has captured the attention of women organizations and through of the authorities of the State. Even inter-national organizations are showing interest on this problem.

Today the problem of domestic violence is not merely an issue of Criminal Law. It is also an issue of Human Rights involving the dignity of women and the personal liberty and safety of women. Such violence causes physical, psychological or sexual harm to women. The specific acts causing such injuries to women include the acts of beating, kicking, hitting and slapping. There is also intimidation at times preceded by constant humiliation and insults offered to women.

At times domestic violence also takes the form of forced intercourse and other forms of sexual coercion.

Domestic violence resulting in physical harm is referred to as 'wife battering' or 'physical assault'. Sometimes, this kind of violence is associated by psychological abuse and sometimes by sexual abuse.

A study conducted by the International Health Organization has shown how Domestic Violence has become common around the world. It has shown that between 10 per cent to 60 per cent of women were physically assaulted by their husbands. Such a situation existed not only in under-developed countries, but it existed even in advanced countries like United States, Australia, Canada, Nicaragua *etc.* The study has shown the number of cases of domestic violence in Africa, Latin America, North America and Western Pacific. The author made an attempt to enlighten few cases or possible cases of domestic violence.

Definitely domestic violence :—A definitely case of domestic violence is one in which the injury is clearly endorsed to the husband, other family member or a "known" person. Over one in five women (22.4%) fall into this category: 164 women were, assaulted by their, husband, other family, or a "known" person, and three women reported that their husbands had set them on fire.

Possibly domestic violence :—A possible case of domestic violence includes women who refused to report the name of the perpetrator of the incident, whether assault, or burn. They are also classified, as possible cases of domestic violence are women who have resorted to attempted suicide, since much of this relates to harassment and abuse. Almost half of all women (44%) fall into this category. They include (a) 138 women who had suffered assault, but refused to give the name of the perpetrator; (b) 70 women who suffered "accidental" burns, and

4. <http://www.usda.gov/da/shmd/aware.htm#WHAT>.

(c) 122 women who were recorded as having attempted to kill themselves, 112 by consuming poison, six by setting themselves on fire, and 4 by wounding themselves.

Unlikely cases of domestic violence :—

This caption was difficult to classify. All most all were reported as accidental, and hence one can be classified them separately as unlikely cases of domestic violence. A total of 67 women, or 9% of all women who were reported accidentally falling down stairs, tripping, and so on.

Definitely unrelated to domestic violence :—In the final category, traffic and train accidents, accidents occurring in the work place, as well as assaults reported to have been committed by outsiders have been distinguished as clearly lying outside the realm of domestic violence. About one quarter of all women fall into this category: 21% for vehicle and other traffic accidents, and four percent as a result of assault by outsiders⁵.

Domestic violence takes various forms of physical violence only as it is explained above. More than 7,000 women in India will be murdered by their families and in-laws in disputes over dowries. There are also cases reported of the aggravated form of violence that is violence leading to murder of women in countries like Australia, Canada, South Africa, United States of America and India. Women are killed after they are raped. In India, the death by fire is common. A frequent method is to put Kerosene on the body of the women and then to claim that she died in a 'Kitchen Accident'. In the official records therefore the murders of women are reported as 'accidental burns'.

The aforesaid forms of violence results sometimes by a kind of abuse, intimidation, and terrorization and sometimes it results in the sudden act of physical aggression on the part of the male partner.

The factors responsible for domestic violence are the use of alcohol by men; personality disorder, marital conflict or discord in the relationship, a high economic status, that is, women living in poverty are mostly affected by this kind of malady.

V. Health Problems Arising From Domestic Violence :—

Domestic violence has a serious impact on the health of the women against whom such violence is exercised. The effect is both short term and long term. The short term effect is the injury which appears to be small, but it increases a woman's risk of future ill health. Women who are victims of domestic violence experience ill-health more frequently than other women. The long term violence is the domestic violence puts women at increased risk of depression, suicide attempts, chronic pain syndromes, physical gastrointestinal disorder, irritable bowel syndrome, and a variety of reproductive health consequences⁶.

Violence against women is both a human rights issue as well as a public health concern as it impacts women's reproductive, sexual and mental health. Evidence reveals that women in India experience violence in various forms throughout their lives, and it cuts across boundaries of caste, class, region and religion. Evidence on the link between the experience of domestic violence and sexual and reproductive health outcomes is limited, and is based on a few case studies and findings, and therefore cannot be generalised.

Violence and pregnancy outcomes :—

Studies suggest that the incidence of domestic violence is high during pregnancy. One study reports, for example, that of the 40 per cent women reporting physical violence, 50 per cent experienced violence during pregnancy, an experience that is uniformly reported by

5. <http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/suchana/0929/rh370.html>

6. World Report on Violence and Health; World Health Organization, 2002 page 207

women across all socio-economic strata. There is evidence of an association between the experience of violence during pregnancy and mortality. For example, a study of maternal mortality that explored, in depth, causes of 121 maternal death reports that the second largest cause of deaths in pregnancy (nearly 16 per cent) resulted from complications associated with the experience of domestic violence. Foetal and infant deaths have also been associated with the experience of domestic violence during pregnancy.

Violence and symptoms of reproductive tract infections or sexually transmitted infections :—The link between perpetration of violence and experience of symptoms of infection has been observed. Studies have hypothesised that women who suffer physical violence are less likely to be in a position to negotiate safe sex or condom use with their husbands. There is also evidence that men who admit perpetrating violence on their wives also admit multiple partner sexual relations and non-use of condoms. Abusive men are more likely to engage in extra-marital sex and have symptoms of STIs, thereby placing their wives at risk of acquiring infection.

Mental health outcomes :—Evidence on the links of violence to mental ill-health in India is limited but studies from other countries suggest that perhaps the most long-lasting and persistent effects of violence are such mental health outcomes as depression and post-traumatic stress disorder, as well as sexual dysfunction and suicidal behaviour⁷.

The World Report on Health points out that the effect of Domestic Violence can persist long after the violence itself has stopped. The mere severe the violence, the great its impact on women's physical and mental health; Women live with violent partners have a difficult time protecting

themselves from unwanted pregnancy or disease. Violence can lead directly to unwanted pregnancy or sexually transmitted infection including AIDS/HIV infection.

When violence occurs during pregnancy it has consequences not only for the women but also the developing foetus. Domestic violence can lead to injuries ranging from cuts and bruises to permanent disability and even to death. Such women suffer from problems of mental health too, if employed; the victims of domestic violence suffer in their capacity of earning for their livelihood. Cases of Domestic Violence can be a burden on the State expenses in providing health services.

A study conducted in Indian States of Tamilnadu and Uttar Pradesh found that women who had been beaten were significantly more likely than non-abused women to have experienced infant death or pregnancy loss⁸.

Women who suffer from domestic violence are a long term users of health services, thereby increasing the health costs. The studies in Nicaragua, United States and Zimbabwe have indicated that women who have experienced physical or sexual assault either in childhood or adult hood use health services more frequently than their non-abused peers⁹.

Children can get affected by domestic violence at home

- 1) Children can themselves get physically abused or hurt.
- 2) Witnessing violence actions can be mentally damaging

Children often try to intervene to protect the adult victim, which puts them in a

7. http://w3.who.sea.org/LinkFiles/Reproductive_Health_Profile_domestic.pdf

8. Jeejeebhoy; Association between wife beating and infant death: Studies in Family Planning, 1998, page 300

9. Psychosomatic Medicine; 1996, page 58.

dangerous situation. Children can copy the violent behaviour they witness, both as children and as adults. They may develop stress-related problems in health. They can lose self-confidence, be afraid/angry, and blame themselves for what is happening or feel guilty¹⁰.

Domestic violence sometimes enhances the cases of child mortality. Research conducted in Nicaragua found that the children of women who were physically and sexually abused by a partner were six times more likely to die before the age of five years than children of women who had not been abused¹¹.

The problem of Domestic violence has its impact also on the children at home. Therefore children who are often present and witnessing the domestic violence are at a higher risk for a wide range of emotionally and behaviourally problems including anxiety, depression, poor school performance; low self-esteem, disobedience nightmares, and physical health complaints¹².

VI. National Response to the Problem of Domestic Violence :-—On the question of the role of law in regard to domestic violence the societies have taken the view that the plight of women and girls today is due to un-protective laws especially the customary laws. Hence they take the view that the laws were in need for reforms so as to protect women and girls adequately.

Since 1980's when the problem of domestic violence became widespread, various States have adopted legislation on domestic violence criminalizing physical, sexual and psychological abuse by the male partners either through new laws on domestic

violence or by amending the existing Penal Codes. Because of such legislation domestic violence has become a crime and is not tolerated by any society. Such legislation also shows that domestic violence is no longer a private matter confined to the domestic arena but is a matter of which the authorities of the State can take cognizance. In India, the Government has established Legal aid Cells, family Courts, Lok Adalats and Mahila Lok Adalats to deal with the problem of domestic violence. Apart from special legislation being adopted to prevent and punish domestic violence, in certain countries rules have been adopted by mandatory arrest of persons who indulge in domestic violence. More communities are trying to find alternatives to arrest by introducing certain other methods of deterring violent behaviour. One civil law approach is to issue Court orders that prohibit a man from contacting or abusing his partner; mandate that he leave the home; order him to pay maintenance or child support or require him to seek counselling or treatment for the violence caused.

The National Commission for Women was established in January 1992 under the 1990 National Commission for Women Act. A statutory body, its aim was to check incidents of violence against women and to promote social, legal and economic equality of women. In addition to the NCW, several States of India have established State Women's Commissions (there is no formal relationship between the State and national bodies). As of March 2001, there were reported to be State Women's Commissions in 17 States.

Attempts by women to seek justice through the criminal justice system are regularly forestalled. Although legislation exists, measures to ensure its full implementation – including communicating provisions to the public, training officials responsible for administering the legislation, providing legal support services

10. http://www.indianchild.com/domestic_violence_in_india.htm

11. Asling Monemi; Violence against women published by the Bulletin of the World Health Organization

12. Child Development; 1995; page 66

to enable beneficiaries to invoke legislation, monitoring implementation and ensuring further development of legislation in response to the reality on the ground – have not been sufficient. Unless supported by male relatives or a strong social group, women victims of crime are at a severe disadvantage within the criminal justice system. Threats and harassment by perpetrators and their communities and social pressures which exist within families and communities force them towards compromise or withdrawal rather than pursuing justice. Gender biases which exist within institutions of redress are often exacerbated by ingrained caste and other biases against members of disadvantaged communities.

As a result of determined campaigning and lobbying by women's organizations, significant amendments were made to the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting wives from marital violence, abuse and extortionist dowry demands. The most notable ones are Sections 304B, 406 and 498A of the Indian Penal Code, and Section 113A of the Indian Evidence Act.

It is the efforts of parliament that the Domestic Violence was criminalized. Recent legal amendments address the problems of dowry harassment and death. Some of these have broader implications, in particular Section 498A (an amendment to the Dowry Act of 1983), which classifies domestic violence as a cognizable offense, recognizes both physical and mental cruelty against women within marriage, and allows for the arrest of an accused person without a warrant. Section 498A has been largely ineffective due to factors such as police reluctance to register cases, high rates of acquittal, and emphasis on reconciliation¹³.

However, the actual implementation of these laws has left a bitter trail of disappointment, anger and resentment in its wake, among the affected families. In spite of that also the law has a strong deterrent value.

On the one hand, many victims of domestic violence, as well as many women's organizations feel that despite the existence of stringent laws, that enshrine the dual objective of helping the woman gain control over her *stridhan* and punishing abusive husbands and in-laws, in reality most victims fail to receive necessary relief. This is due to the unsympathetic attitude of the police, magnified by their propensity to protect the wrong doers, once they are adequately bribed.

Attempts of Radhika Coomaraswamy

—*Asha Rani* was a young bride hailing from a poor family and in her marriage her family gave her a small dowry but after marriage her in laws wanted another Rs.5,000/- or an auto rickshaw. Her father who had seven daughters could not provide the amount. When he refused, her daughter was beaten in front of his eyes. A few weeks later *Asha Rani* was dead “burnt while making tea”. According to her in laws, her synthetic sari caught fire on the stove. But the post-mortem revealed different story. The Supreme Court finally ruled that she did not die of accident nor did she commit suicide. She was murdered. Thus the pages of the newspapers in India are full of tales of domestic violence. 15,000 young brides are burnt to death every year in India, 12 Violence by intimate family members is one of South Asia's darkest legacies. 40% of all sexual abuse cases in India are about incest. In a survey on violence against women in India, 94% of the cases involved an offender who was a member of the family.

Research on indicators for domestic violence in the region highlight issues such as

13. <http://www.cedpa.org/publications/PROWID/AME/mitraindia.pdf>

the fact that children who, themselves are abused or who have witnessed violence in the family are far more likely to beat their wives than other children, in South Asia there is alcohol and drug use that also accentuate domestic violence. Patriarchal societies where men control all decisions result in greater violence when women seem to question or go outside the framework of such decisions. If a society resolves conflict through the use of violence then violence in the home is also on the increase. The lack of economic independence on the part of women and their inability to move out of a violent situation and state inaction against perpetrators of violence perpetuate an ideological belief that violence may even be justified and if it is not, it is not a terrible matter that requires concerted action. The insensitivity of the criminal justice system has also been highlighted in many studies¹⁴.

A survey of cases, in which wives had been murdered or had committed suicide, carried out by *Vimochana*, a Bangalore-based women's organisation, also indicates that the police and other law enforcing agencies are wilfully avoiding use of the stringent laws¹⁵, against domestic violence. In most cases, even where the circumstantial evidence clearly indicates that the wife was killed, the police seemed to go out of their way to convert her death into a case of suicide. In many instances, families of victims found it difficult to register an accurate First Information Report., or have the case properly investigated. There are widespread allegations that the police usually collaborate with the murderers in producing false post-mortem and forensic reports, even

destroying circumstantial evidence so that the accused can easily secure acquittal¹⁶.

Domestic Violence Act, 2005 :—

President *A.P.J. Abdul Kalam* has given assent to the Protection of Women from Domestic Violence Act, 2005, which aims at protecting women from verbal, emotional, economic and sexual abuses and offers free legal service to such victims. India is one of the few countries which prepared the special legislation to prevent and stop the domestic violence¹⁷.

The new Act *i.e.*, Protection of Women from Domestic Violence Act contains five chapters and 37 sections. Its main features are 1. that the term 'domestic violence' has been made wide enough to encompass every possibility as it covers all forms of physical, sexual verbal, emotional and economic abuse that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. (Ch.II, S.3) This is a genuinely wide definition and covers every eventuality. 2. The definition of an 'aggrieved' person is equally wide and covers not just the wife but a woman who is the sexual partner of the male irrespective of whether she is his legal wife or not. The daughter, mother, sister, child (male or female), widowed relative, in fact, any woman residing in the household who is related in some way to the respondent, is also covered by the Act. (Ch.I, S.2(a)). The Domestic Violence Act says that the information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by "any person who has reason to believe that" such an act has been or is being committed. In other words neighbours, social workers, relatives *etc.* can

14. <http://www.unifem.org.in/pdf/Paper%20on%20VAW%20in%20SA%20Dr.%20Radhika%20Coomaraswamy.pdf>

15. The Bill was introduced and whose title is Protection from Domestic Violence Bill 2001, Now the Domestic Violence Act is passed in 2005

16. <http://www.indiatogether.org/manushi/issue120/domestic.htm> and see also: Laws against domestic violence: under used and abused written by *Madhu Kishwar*

17. <http://www.tribuneindia.com/2005/20050917/nation.htm>

all take initiative on behalf of the victim under the Chapter III and Section 4. The respondent under the definition given in the Act is “any male, adult person who is, or has been, in a domestic relationship with the aggrieved person” but so that his mother, sister and other relatives do not go scot free, the case also be filed against relatives of the husband or male partner. However, this Act does ensure that women are not totally at the receiving end but have some weapon to fight back with. As Marx so concisely put it: “You cannot give equal laws to unequal people” This new Act, can now order that she not only reside in the same house but that a part of the house can even be allotted to her for her personal use (Ch.IV, S.17) even if she has no legal claim or share in the property. Section 18 of the same Chapter allows the magistrate to protect the woman from acts of violence or even “acts that are likely to take place” in the future and can prohibit the respondent from dispossessing the aggrieved person or in any other manner disturbing her possessions, entering the aggrieved person’s place of work or, if the aggrieved person is a child, the school. The respondent can also be restrained from attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral, written, electronic or telephonic contact” (S.18d). The respondent can even be prohibited from entering the room/area/house that is allotted to her by the Court.

The Act allows magistrates to impose monetary relief and monthly payments of maintenance. The respondent can also be made to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and can also cover loss of earning, medical expenses, loss or damage to property and can also cover the maintenance of the victim and her children (Ch.IV, S.20). Section 22 allows the magistrate to make the respondent pay

compensation and damages for injuries including mental torture and emotional distress caused by acts of domestic violence. Ch.V. Section 31 gives a penalty upto one year imprisonment and/or a fine upto Rs.20,000/- for an offence. The offence is also considered cognisable and non-bailable (Ch.V, S.32(i) while Section 32(2) goes even further and says that “under the sole testimony of the aggrieved person, the Court may conclude that an offence has been committed by the accused.”

The Act also ensures speedy justice as the Court has to start proceedings and have the first hearing within 3 days of the complaint being filed in Court and every case must be disposed of within a period of sixty days of the first hearing (Ch.IV, S.12(a) (4) and (5)). It makes provisions for the state to provide for Protection Officers and the whole machinery by which to implement the Act. After going through the Act with a fine-tooth comb, the only major change to the Act is in S.16 of Chapter IV which allows the magistrate to hold proceedings in camera “if either party to the proceedings so desires”. Now, new experience proven that sometimes in camera proceedings can protect the aggrieved woman from a lot of humiliation and shame especially in cases where explicit acts of sexual abuse and violence are being discussed in an open Court and it allows for her dignity and privacy to be maintained. BUT, there is also seen trials where the in camera proceedings only intimidated the aggrieved in favour of the respondent. This is especially so when the aggrieved is the only woman in Court facing a completely male phalanx of hostile, sneering magistrates, lawyers, officials, police, male respondent *etc.* The solution is to change this section to only allow for in camera proceedings NOT when EITHER party so desires but only if the aggrieved party so desires. Also, the aggrieved party should be allowed to be accompanied by any relative/woman social worker *etc.* of her

choice for moral support. This Act should also put an end to many of the misuses of the Anti Dowry Act. (4) But when one sees the dismal record of implementation of Acts related to giving relief to the oppressed, one cannot but be sceptical. For instance, the Rape Act brings only 5% of all rapes committed to Court and of those only 5% get convictions!¹⁸.

A notable aspect of the Domestic Violence Act, which is vastly different from bills on domestic violence that have been circulated in the past, is that it provides a clear definition of domestic violence. The Act aims at protecting women from verbal, emotional, economic and sexual abuse and offers free legal service to such victims. The Act allows for the issue of civil order that in the first instance allows for the husband or man to improve his conduct in accordance with the norms outlined in the Act. If the orders are violated his act will be considered a criminal act.

Under the Act, the victim can approach a police officer, protection officer, service provider or magistrate for relief by way of a protection order. The victim also has a right to file a complaint under Section 498A of the Indian Penal Code, wherever relevant. In addition, the aggrieved person is also entitled to shelter, if needed, in the shelter home. A key aspect is that the Act imposes on the State the duty to create awareness on the issue of violence, not just on civil bodies or women's groups¹⁹.

VII. International Action against the Problem of Domestic Violence :—From the time the problem of domestic violence raised its head, the International Organizations have started showing their concern towards it. In 1980's the United Nations noted with

serious concern, the dramatic increase of violence in various countries all over the world especially affecting the peoples of all ages of both sexes especially the women and children. The United Nations has then adopted a Declaration on the Elimination of Violence against Women. Taking note of the developments, the World Summit for Social Development at its meeting called for the introduction and implementation of specific policies and programmes on Public Health and Social Services to prevent violence in Society and mitigate its effects.

Amnesty International (AI) has expressed concern for many years about the torture and ill-treatment of women in custody in India. In 1992 the organization's campaign against torture in India highlighted the problem of rape in custody. There was the third international Campaign against Torture which focuses on three major areas: preventing torture, confronting discrimination and overcoming impunity, AI published a series of detailed recommendations for the prevention of torture in India focusing on custodial situations including the particular problems of women in custody and their vulnerability to torture and ill-treatment including rape. (1) In that report Amnesty International commented on its concern at a widespread tolerance and social acceptance of forms of torture and ill-treatment in India. It also pointed out that publicised cases of torture and ill-treatment of domestic employees, the routine use of violence by political groups against one another's cadres, the beating and stripping of dalits (2) and other vulnerable groups as a method of community punishment, as well as the widespread use of violence against women in the home and community underline the urgent need for steps to be taken to end torture and ill-treatment prevalent throughout society²⁰.

18. On the protection of Women from Domestic Violence Act – Srilatha Swaminathan

19. <http://www.hindu.com/2005/10/09/stories/2005100904060400.htm>

20. <http://web.amnesty.org/library/Index/engASA200162001?OpenDocument&of=COUNTRIES%5CINDIA>

The International Conference on Population and Development held at Cairo in the year 1994 and the Fourth World Conference on Women held at Beijing in 1995 recommended urgent measures to tackle the problem of violence against women and girls.

In its 1995 Country Report for the Fourth World Conference on Women in Beijing, the Indian Government changed its official views by recognizing Violence Against Women (VAW) as a critical issue. For many decades, the magnitude of the problem has been hidden behind a cultural emphasis on the privacy and sanctity of the family and on self-sacrificing womanhood, as well as a generally conservative and insensitive judiciary.

The Scientific community of the world at its meeting held at Melbourne in 1996 adopted a Declaration on the Injury Prevention and Control and for increased co-operation in securing the safety of the citizens of the world. The Melbourne Declaration urged upon the States to enhance the spirit of international co-operation in ensuring the safety of the citizens of the world. The International Organizations recognized the growing consequences of violence for health services everywhere and its detrimental effect on the scarce health resources of the countries.

Report of the Special Rapporteur on violence against women including domestic violence, its causes and consequences, Ms. *Radhika Coomaraswamy*, submitted in accordance with Commission resolution 1997/44. The Commission on Human Rights, at its fifty third session, in its resolution 1997/44, welcomed the report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1997/47 and Add.1-4) and commended the Special Rapporteur for her analysis of violence in the family and violence

in the community. In the same resolution, the Commission decided that the mandate of the Special Rapporteur should be renewed for a period of three years and requested the Special Rapporteur to report annually to the Commission on Human Rights, beginning at its fifty-fourth session, on activities relating to her mandate.

In follow-up to her previous reports on violence against women in the family and in the community, the present report analyses various forms of violence against women as perpetrated and/or condoned by the State. The first chapter addresses violence against women in armed conflict. In Chapter II, the Special Rapporteur looks at custodial violence against women. In Chapter III, she examines violence against refugee and internally displaced women²¹.

Apart from these organizations the World Health Organization has been playing a major role in regard to the prevention of violence in the matter of dealing with the problems of violence. The World Health Organization is the major agency for co-ordination of international work in public health; It has the responsibility of providing leadership and guidance to Member States in developing the Public Health Programmes.

VIII. Conclusion and Recommendations

—One of the tragedies of independent India is that this country not yet learnt to distinguish between reasonable and unreasonable laws, between implementable and unimplementable laws, just as this country failed to create a law-enforcement machinery capable of providing genuine recourse to all those whose rights have been violated.

Mitra (2000), in her exhaustive report on domestic violence in India conducted by the Tata Institute of Social Sciences, concluded

21. <http://www.hri.ca/fortherecord1998/documentation/commission/e-cn4-1998-54.htm#Introduction>

that as long as there is tolerance of domestic violence toward women in cultural, legal, and political institutions, laws in themselves will not change the situation. She continued that what is required is “appropriate behavioral and social changes” along with efficient enforcement of laws. If laws are created to “protect” women, they are done “within” the system. This, in turn, reinforces culturally legitimized social hierarchies²². Many women do not perceive domestic violence as a human rights issue. The merit of a rights approach is that it identifies the different protagonists who are involved in the violation of the right. By branding it a social problem or a criminal offence, the focus is on punishing the offender²³.

Many women’s efforts to escape domestic violence are hampered by a lack of information on available services. Generating public awareness of domestic violence as an abrogation of universal human rights is critical. Results clearly suggest domestic violence is a serious but still invisible public health threat.

By a great deal of struggle and hard work, women’s organizations have won a measure of social legitimacy in persuading our society, especially lawmakers, to recognize the serious threat to women’s lives due to domestic violence. However, if instances of manipulation of such laws become common, the people will get less and less sympathy for the plight of women in our society, even for those women who are facing threats to their lives. It is the need to sift the grain from the chaff and check out whether the allegations of abuse are indeed genuine, or they are exaggerated and altogether *mala fide*. The people who are concerned about expanding the horizons of women’s freedom and strengthening their rights, both within the family and in the public

domain, ought to be taking note of these developments as they arise.

The reality of the situation about women and members of vulnerable groups continues to be extremely harsh despite the Constitutional, legislative and administrative framework in place in India. The failure to implement protective provisions and continuing gender, caste and class biases within society ensures that Constitutional and legal safeguards are rendered meaningless to many.

Neither the state nor the NGO sector has adequately addressed the need for immediate, effective medical care for survivors of domestic violence. For example, state-run shelters require only an initial, mandatory health check to rule out disease and for the gynecological and “moral health” of the residents. Women are not allowed to visit hospitals during their shelter stay unless an emergency occurs. Services for the mentally ill and staff training to handle special cases are insufficient.

Preventive services have enormous potential for becoming more prevalent and effective, for example in the area of legal literacy. In general, state outreach to communities is limited and many women remain unaware of their rights or existing services. NGO prevention activities have promoted outreach to diverse socioeconomic groups and innovative methods to build community awareness of domestic violence, including street plays, music, exhibitions, committees to welcome new brides to a village, and mock funeral processions that illustrate the potential outcomes of violence.

Police stations rarely respond though with the new police women desks this situation is marginally better. According to the UN standards it requires domestic violence legislation that combines civil and criminal remedies. This requires ensuring certain civil rights of the woman such as the right to live

22. <http://vaw.sagepub.com/cgi/reprint/10/1/94>

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in the matrimonial home, the right to be protected from an abusive husband and live separately from him and the right to compensation and maintenance. In addition the law should provide for prosecution of punishment for cruelty, grievous hurt and wrongful confinement. In addition the legislation should provide for social support for women survivors while they negotiate their future. India's recent legislation on domestic violence, written in consultation with NGOs has many of these necessary provisions as does the Sri Lankan draft domestic violence Act.

The legal aid system in India is entirely inadequate to deal with the number of people who require legal aid. This is particularly the case for women victims of crime. In three years of sitting on the district legal aid board, one lawyer that Amnesty International spoke to in Uttar Pradesh said that she was aware of legal aid being given in only two cases of violence against women. Under the Legal Services Authorities Act 1987, a wide range of groups including members of scheduled castes or schedule tribes, women and children are all entitled to legal services. It is common knowledge that legal aid cases are given the worst lawyers and even if not taking legal aid, poor victims are at the mercy of unscrupulous lawyers who exploit their lack of knowledge of the legal system.

Communities in society also can Prevent Domestic Violence by the following ways :

Expand education and awareness efforts to increase positive attitudes toward nonviolence and encourage individuals to report family violence; Form or task forces to assess the problem, develop an action plan, and monitor progress; Mandate training in domestic violence for all social services and criminal justice professionals; Advocate laws and judicial procedures at the state and local levels that support and protect battered women; Establish centers where visits between

batterers and their children may be supervised, for the children's safety; Fund shelters adequately; Recruit and train volunteers to staff hotlines, accompany victims to Court, and provide administrative support to shelters and victim services; Improve collection of child support; Establish medical protocols to help physicians and other health care personnel identify and help victims of domestic abuse; Provide legal representation for victims of domestic violence and Advocate for the accessibility of services for all population groups, especially underserved populations which include immigrants and refugees, gays and lesbians, racial and ethnic minorities and the disabled.

Attempts to improve access to the police and to legal services have included the establishment of Legal Aid Cells, Family Courts, and Women's Courts. Some of these interventions are constrained by a lack of associated punitive power. As a result, these bodies function primarily as conciliatory mechanisms and rely exclusively on mediation counselling to help parties reach an understanding. Informants have indicated that the limited number of such entities, as well as poor infrastructures and a lack of support by key departments, hampers their effectiveness.

There should be the Psychological counselling which focus on practical rather than emotional aspects, an approach that was observed to ignore factors such as fears of further abuse, dilemmas about staying with an abuser, concern for children, and negative self-identity. Opportunities to upgrade the skills of counsellors through regular training and contact with other professionals are limited. Further, social work curricula and training programs do not necessarily integrate gender – specific information and perspectives.

Strengthen the National Commission for Women and take steps to ensure that State Women's Commissions are established in all

those states who have not yet established one. Commissions should be established in line with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles) and be granted adequate resources. Staff should be given adequate training to ensure relevant professional expertise.

Courts, including municipal magistrates' Courts, should identify specialized prosecutors to handle cases of sexual abuse and rape, who should receive additional training in the issues surrounding gender violence. A forum for complaints against prosecutors should be available to victims who are concerned about their failure to obtain a fair representation.

One option is to get the woman's husband to execute a "bond to keep peace", or a "bond of good behaviour" through the Executive, Magistrate who can order the husband to put a stop to domestic violence. The husband can also be asked to deposit securities (*i.e.* money or property) that will be forfeited if he continues to act violently.

It must be mandatory for all public officials, medical practitioners and social workers not only to be familiar with provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Rules, but also how and where to apply them²⁴.

Provide mandatory training to all judges, magistrates, lawyers and public prosecutors to enhance their understanding of violence

against women, its causes and consequences. Programs of gendersensitization and awareness-raising should be integrated and made mandatory through continuing legal education seminars or workshops for judges.

The most successful models for domestic violence intervention combine both state and NGO strategies and provide a diversity of services. The best approach integrates *preventive strategies* involving the community; *remedial strategies* that empower women to seek legal recourse and help rebuild their self-confidence; and *recuperative services* that help women find long-term, viable livelihood options. In practice, this could entail education and legal literacy programs, combined with the enforcement of legislation on minimum age at marriage and inheritance of property²⁵.

Domestic Violence against women is a violation of human rights that cannot be justified by any political, religious, or cultural claim. A global culture of discrimination against women allows domestic violence to occur daily and with impunity. Amnesty International calls on you to help us eradicate violence against women and help women to achieve lives of equality and human dignity. Let the author conclude with this statement – *Next to Almighty we are indebted to woman, first for life itself, and then for making it worth having her company* and hence violence against woman has to be stopped completely to provide her equality and human dignity.

24. <http://web/amnesty.org/library/Index/engASA200162001?OpenDocument&of=COUNTRIES%2FCNDIA>

25. <http://www.cedpa.org/publications/PROWID/AME/mitraindia.pdf>