

Socio - Legal Dimensions on Domestic Violence against Women

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I. Introduction:

What is old in the world is violence and what is new is the growing awareness of the undesirability of violence and the efforts to contain and prevent it.² Crimes against women have been committed since antiquity. Violence to wives, the central concern here, is found in all societies and across all economic and age groups. For centuries, domestic violence has been perceived as a part of the normative structure in patriarchal societies. In most societies women have been victims of abuse by their spouses and often by members of their family. The maltreatment goes unnoticed, unpunished and condoned implicitly. It has been noted that domestic violence cuts across race, culture and society, yet examination of the socio-historical, socio-political and cultural context in which it occurs is legitimised and has been inadequately analysed. No discussion on development is complete without addressing the issue of domestic violence, for, although it occurs in the context of the home and as such, is frequently seen as being in the realm of the “private”, its origins, maintenance, and legitimation are a function of the cultural values and the structural inequities of the patriarchal and hierarchical societies in which we live.³

It is a trite saying that domestic violence has always existed in all societies and that it will continue to exist so long as socio-economic and cultural factors conspire to keep one of the spouses (generally, the wife) subservient to the dominance of the other (generally, the husband). It seems indeed a great pity that despite the proliferation of education, the growing emancipation of women and revolutionary changes in people’s attitude towards the institution of family in this century all over the world, domestic violence persists and is still tolerated.⁴ There is now an increasing concern

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² Louis G.Forer, ‘Protection from and Prevention of Physical Abuse: The Need for New Legal Procedures’, in. Sardoff, Robert L, (ed.), *Violence and Responsibility* (1978), p.108.

³ Dr. Margaret Abraham, ‘Marital Violence in Developing Countries’, in Sharma, O.C. (ed.), *Crime against Women*, (New Delhi: Ashish Publishing House, 1994), p.177.

⁴ Sankaran, M.V., “India- Family Violence and the Law”, (1986) Vol.13 (1) *Ind. Bar. Rev.*, pp 89-90.

all over the world about violence in the family, as a result of the feminist movement. The paper focuses on the socio-legal dimensions of domestic violence - tracing the definition, nature, magnitude, health consequences and further looking into the problem as denial of fundamental human rights and also undermining the human development goals.

II. Definition and Nature of Domestic Violence:

Violence is a complex concept, violent behaviour can be defined and categorised in a variety of ways. Violence has frequently been used interchangeably with the term “aggression” while violence typically refers to a physical act; aggression frequently refers to any malevolent act that is intended to hurt another person. The hurt may not be only physical but may be emotional injury or material deprivation.⁵ Further, there are negative connotations of the term “violence”, some investigators have tried to differentiate between hurtful violence and more permissible acts.⁶ Research on family violence has demonstrated the difficulty in distinguishing between legitimate and illegitimate acts, since offenders, victims, by standards and agents of social control often accept and tolerate many acts that would be considered illegitimate if committed by strangers.⁷

According to few studies domestic violence has been defined as “day today patterned and recurrent use of physical violence like pushing, slapping, punching, knifing, shooting and throwing objects by one member of the family at another.”⁸ Most of the studies on domestic violence have limited their scope to physical violence involving members of the family.⁹

⁵ Amarjit, Mahajan and Madhurima, *Family Violence and Abuse in India*, (New Delhi: Deep and Deep Pub., 1995), pp 16-17.

⁶ Goode, W, “*Force and Violence in the Family*”, (1971) 33 *Journal of Marriage and the Family*, pp 614 -36.

⁷ Gelles, R.J., *The Violent Home: A Study of Physical Aggression between Husbands and Wives*, 2nd ed., (Beverly Hills: Sage., 1974); Steincruz, S.K., *The Cycle of Violence: Assertive, Aggressive and Abusive Family Interaction*, (New York: Praeger., 1977); Straus, M.A., ‘*Stress and Child Abuse*’, in Kempe, C.H., and Heifer, R.E., (eds.) *The Battered Child*, (Chicago: The University of Chicago Press, 1980).

⁸ Gelles, R.J., *The Violent Home: A Study of Physical Aggression between Husbands and Wives* (Beverly Hills: Sage., 1971).

⁹ Gelles, R.J., and Straus, M.A., ‘*Determinants of Violence in the Family: Toward a Theoretical Integration*’, in Burr, W.R., Hill, R., Nye, F.I., and Reiss, I.L., (eds.) *Contemporary Theories about the Family*, Vol1., (New York: Free Press, 1979), pp 549-89; Downs, D, “*The Language of Violence: Sociological Perspectives on Adolescent Aggression*”, in Marsh, P., and Campbell, A., (ed.) *Aggression and Violence*, (Oxford; Basil Blackwell, 1982); Levinson, D., *Family Violence in Cross Cultural Perspective*, (New Delhi: Sage Pub., 1989).

These studies have overlooked psychological violence like suppression, harassment, domination, humiliation, insult and public embarrassment, all of which are more fully captured under another definition which defines domestic violence as “any act of commission or omission by family members and any condition resulting from such acts and inaction which deprive other family members of equal rights and liberties and / or interfere with their optimal development and freedom of choice”.¹⁰

The United Nations defined the term “violence against women” in a 1993 Declaration as “any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.¹¹ The Declaration further notes that violence against women as encompassing, but not limited to, three areas: violence occurring in the family, within the general community and violence condoned or perpetrated by the state.¹² Having included domestic violence as a form of violence against women, the United Nations further explained that: The term ‘domestic violence’ is used to describe actions and omissions that occur in varying relationships. The term is used narrowly to cover incidents of physical attack, when it may take the form of physical and sexual violations... The result of such physical violence can range from bruising to killing; what may often start out as apparently minor attacks can escalate both in intensity and frequency.... ‘Domestic Violence’ also includes psychological or mental violence, which can consist of repeated verbal abuse, harassment, confinement and deprivation of physical, financial and personal resources.....¹³ Scholars like Johanna Bond and Robin Phillips have confirmed that “gender-based violence, such as... domestic violence, involves some form of physical assault or intrusion. As a result, these forms of violence inherently violate the rights of bodily integrity and security of the person”.¹⁴ However, Ela Grdimc points out that “extensive and continually

¹⁰ Pagelow, M.P., *Family Violence*, (New York: Praeger, 1984).

¹¹ *Declaration on the Elimination of Violence Against Women*, G.A. Res. 48/104, U.N.GAOR, 48th Sess., Art.1, Supp. No.49, U.N.Doc. A/48/49 (1993), p.217

¹² *Ibid.*, Art.2, (Stating violence in the family may include battery sexual abuse, and marital rape while violence in the general community may include rape, sexual harassment at work, and trafficking in women).

¹³ United Nations Office at Vienna, Centre for social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence: A Resource Manual* 6 (1993).

¹⁴ Johanna Bond and Robin Phillips, ‘Violence Against Women as a Human Rights Violation: International Institutional Purposes’, in Renzetti, Claire M., (ed.), *Source Book on Violence Against Women*, (2001), p.485.

expanding research literature supports the assertion that domestic violence is associated with a wide range of traumatic psychological reactions.....”¹⁵

Domestic violence includes violence perpetrated against a woman by her husband and other members of his family and manifested through as below:

- Physical abuse such as slapping, beating, arm-twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder. It also includes wife inheritance (the practice of passing a widow, and her property, to her dead husband’s brother).
- Sexual abuse such as coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts or forcing sex with others.
- Psychological abuse which includes behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.
- Economic abuse includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs and controlling access to health care, employment, etc.
- Acts of omission are also included as a form of domestic violence against women. It should be noted that although the categories above are listed separately, they are not mutually exclusive. Indeed they often go hand in hand.¹⁶

“Domestic Violence” as discussed here is a systematic pattern of abusive behaviour, occurring over a period of time that may become more frequent and severe and are done for the purpose of control, domination, and /or coercion. The abuser frequently accomplishes the abuses in an environment of his own creation that ultimately traps the victim in a state of fear, isolation, deprivation, and confusion. Domestic violence episodes are not random acts of violence or incidents of mere loss of temper. Rather,

¹⁵ Ela Grdimc, “*Application of the Elements of Torture and Other forms of Ill-Treatment, as Defined by the European Court an Commission of Human Rights, to the Incidents of Domestic Violence*” (2000) 23 *Hastings Int’s and Comp.L.Rev.*, pp 217-232.

¹⁶ UNICEF, 2000, *Innocenti Digest* no.6, Florence, Italy,: Unicef, Innoceti Research Centre.

such episodes are part of a complex, continuing pattern of behaviour; of which the violence is but one dynamic.¹⁷

The term “domestic violence” is commonly used in the United States to refer to “violence occurring in relationships between current or former spouses and current or former intimate partners who have not been married”.¹⁸ However, in this paper “domestic violence” includes violence against women within the institution of marriage. In India the perpetrator of violence against a woman is frequently not only her spouse but also her in-laws or her relatives through marriage.

Domestic violence, a social problem is also known by other names like wife battery, family violence, spouse abuse, wife beating or the more discreet phrase, silent crime. It is a term that applies to a miscellany of harm but by using a single term of ‘domestic violence’. Within the women’s movement, it was realised that the operative term domestic violence failed to describe the gamut of physical, psychological, non physical, social and cultural abuse of women. A comprehensive word is yet to be scripted. Until then the simplistic term is continued to be used for an extremely complex global problem.¹⁹

III. Magnitude of the Problem in India:

In India domestic violence is the most endemic and widespread form of violence. Despite its prevalence, it is only recently, as a result of relentless effort by women’s organisations, that violence against women in the home has received any public attention. Domestic violence cuts across education and income levels occur in both joint and nuclear families. It is not necessarily related to alcohol abuse. A very little research has been done on this subject and this is largely because, like in the rest of the world, in India too, there is a tendency to overlook the incidence of the phenomenon with only the few heinous cases attracting media and public attention.

Not much research has been done in India for variety of reasons. Firstly, the semi sacred nature of the family in Indian society makes research into family violence a taboo. Secondly, research into the family has been largely devoted to the study of joint family which diverted attention from family conflicts in general and physical violence in particular. Thirdly, paucity of research on family violence can be attributed to the apathetic

¹⁷ Sherri L. Schornstein, *Domestic Violence and Health Care*, (London, New Delhi: Sage Pub, 1997), p.1.

¹⁸ Brooks Holland, “Using Excited Utterances to Prosecute Domestic Violence in New York: *The Door Opens Wide*”, (2002)8 *Cardozo Women’s L.J.*, p.171.

¹⁹ Rinki Bhattacharya, ‘Introduction’, in Bhattacharya Rinki (ed.) *Behind Closed Doors*, (New Delhi: Sage Pub, 2004), p.18.

attitude of society which has relegated intra-family violence to a form of individual pathology and has led members of the family to believe that physical conflicts in the family do not constitute violence.²⁰

The age old phenomenon of wife-beating has unique manifestation in India. In most Indian homes, wife-beating is in fact one of the most accepted crimes committed against women. This problem is not confined to one particular strata of society alone. It exists everywhere though in different forms.²¹ In India, the wife-beating seems to get camouflaged under the term dowry-deaths. The death which occurs within the home is the ultimate manifestation of the violence suffered by most Indian women in varying degrees.²²

If statistics are to be believed, almost every six hours, somewhere in India, a young married woman is burnt alive, beaten to death or forced to commit suicide. At least 20% married women aged between 15 to 49 years experience marital violence at some point in their lives, many on an almost continual basis.²³ In one study of battered women it was found that the percentage distribution of causes of violence against married women were dowry demands, extra marital affairs and bigamy, alcohol and gambling were the highest. The analysis revealed that for more than 50 percent of the cases, regular beating was a fact of life. Besides manual beating, 10 percent of the women were assaulted with instruments. Another study of dowry victims shows that one in every four was murdered or driven to commit suicide and more than half (61.3 percent) were thrown out of their husbands house after a long drawn out period of harassment and torture. According to another study the victims were mostly young (18-30 years), less educated than their spouses, dependent on husbands on in-laws for their living and mostly died from burn injuries.²⁴ It has also been argued that it is not only a woman's dependence which makes her vulnerable; a wife in a high status job may also be subjected to violence.²⁵

²⁰ Subadra, "Violence against Women: Wife Battering in Chennai", *Economic & Political Weekly*, April 17, 1999, p.ws-30.

²¹ Mohd. Umar, *Bride Burning in India: A Socio Legal Study*, (New Delhi: A.P.H. Publishing Corporation, 1998), p.32.

²² Flavia, 'Violence in the Family: Wife Beating', in Ghadially, Rehana (ed.), *Women in Indian Society*, (New Delhi: Sage Publications, 1988), pp 151-152.

²³ www.janmanch.org/Development Laws/development laws, asp? oth id=36 cited in Dipa Dube, "Domestic Violence Bill: a Critique", (2003) 2 & 3, Vol.XXX, *Ind. Bar. Rev.*, pp.441-442.

²⁴ Subhadra, *supra* note 19

²⁵ Pawar, M.S., "Women and Family Violence-Policies and Programmes", cited in Malavika Karlekar, "Domestic Violence", *Eco & Pol Weekly*, July 4, 1998, p.1747.

A study in Karnataka, found that 61 percent of women reported experiences of harassment or violence for various reasons. The greatest number of incidents of abuse occurred within the home at the hands of husband or in-laws.²⁶ According to a study in Gujarat over all 66 percent of the respondent women reported that they were subjected to verbal or physical violence. Nearly 42 percent of all women experienced physical violence. The remaining 23 percent reported verbal abuse by husband.²⁷ A few other studies conducted in India have also reported a similar magnitude of wife beating. In a study of Tamil Nadu and Uttar Pradesh, 36-38 percent of Tamil women and 42-48 percent of women from Uttar Pradesh were reported to have suffered beating by their husbands.²⁸ All the above studies indicate that wife beating is almost ingrained in Indian male behaviour.

In an interesting study of the impact of wife-beating, it was found that in three villages in Karnataka, only 22 percent women claimed to have been abused by their husband. In fact, during fieldwork, two women were hit by their husbands; but, in response to a question, the very same women did not say that they had been abused. The researcher concluded that it was only if the beatings were very severe did women perceive of themselves as being abused: the odd slap or blow was regarded as routine husband — like behaviour. There was wider societal tolerance for wife abuse, which was even considered justifiable under certain circumstance: “disputes over dowries, a wife’s sexual infidelities, her neglect of household duties, and her disobedience of her husband’s dictates are all considered legitimate cause of wife beating”.²⁹ Observations during fieldwork of other studies also confirm a high degree of acceptance of male violence, it was only when the torture became unbearable or death appeared imminent that most women appeared willing to speak out.³⁰

A detailed discussion on wife abuse, has rebutted convincingly, that the popular myths which surround the phenomenon of wife beating in India such as middle class women do not get beaten, the victim of violence is a small, fragile helpless women belonging to the working class, the wife beater

²⁶ Shobhna, Sonpar & Ravi Karpur, “Non-Conventional Indicators: Gender Disparities under Structural Reforms”, *Eco & Pol. Weekly*, July 4, 1998, p.70.

²⁷ Leela Visaria, “Violence Against Women-A Field Study”, *Eco & Pol Weekly*, May 13, 2000, p.1744.

²⁸ Shireen J. Jejeebhoy, “Wife Beating in Rural Indian: A Husband’s Right?” *Eco & Pol weekly*, April.11, 1998.

²⁹ Vijayendra Rao, “Wife-beating in a Rural South Indian Community”, Research Memorandum No.143, Centre for Development Economics, Williams College, Massachusetts, U.S.A. cited in Malvika Karlekar “Domestic Violence”, *Eco & Pol weekly*, July 4, 1998, p.1747.

³⁰ Malvika Karlekar, “No Safe Space”, Report on a Workshop on Violence against Women, Centre for Women’s Development Studies, New Delhi.

is a man who is frustrated in his job, an alcoholic, or a paranoid person, aggressive in his relationships. Nor was it true that the so-called loving husbands did not beat their wives or that woman provokes men to beat them. Yet, many of these myths seem to pervade the analysis of wife-beating and feminine expectations in Indian society.³¹

For instance, based on an analysis of cases which had come to the Delhi-based women's organisation, Saheli, it was evident that wife-beating was common among, all social classes as it "is a reflection of the power relationship between a husband and wife", which mirrors a woman's secondary social status.³² However, the pattern of violence differs from one class to another, with the whole neighbourhood being witness when a slum-dweller beats his wife to the extremely private nature of a middle class professional's physical oppression of his spouse.

Another area about which universally little is known and hardly discussed, is that of marital rape: in India, despite some thinking along these lines by feminists and legal experts, there has as yet been no amendment in law to include rape within marriage. The only two exceptions being, firstly, if the wife is below 15 years of age and secondly, if the wife is living separately under a decree of separation. Though figures on marital rape as well as other sexually demeaning and violent acts are difficult to obtain, however, discussions with counsellors working with abused women indicated that a very large percent of their clients were tortured with forced sexual intercourse. Feminine socialisation which stresses docility, compliance and shame predisposes a wife to accept a range of physical behaviour from her spouse. It would not be too extreme to hypothesise that much male physical violence in marriage is related to sexual activity: detailed interviews and discussions at the women's shelter of battered women quite often led to admission of sexual excess; when a woman resisted, she was beaten, or if she did not satisfy her husband's demands (which could quite often be perverse in nature) the outcome was physical abuse.³³

It is indeed ironical that for long, the family, viewed as individuals ballast against the world becomes the arena for legitimate physical and mental oppression of women; while the legal and police systems have, after 1975 become more receptive to certain excesses, yet much remains unstated,

³¹ Flavia, *supra* note 21

³² Saheli, "Wife Battering: Creating Choices for Individual Women, the Role of Government and Issues Facing the Women's Movement", Paper presented at the National Worksop on Family Violence Against Females, New Delhi, February 15-18.

³³ Malvika Karlekar, "Domestic Violence", *Economic & Political Weekly*, July 4, 1998, p.1747.

invisible and repressed.³⁴ Domestic violence against women is a difficult and intractable health and social problem in India. The overwhelming conclusion is that wife-beating is not only deeply entrenched, but also that attitudes uniformly justify wife-beating, and few women would opt out of an abusive marriage.

IV. Health Consequences of Domestic Violence:

Domestic violence against women leads to far-reaching physical and psychological consequences, some with fatal outcomes (see Table 1). While physical injury represents only a part of the negative health impacts on women, it is among the more visible forms of violence. Assaults result in injuries ranging from bruises and fractures to chronic disabilities such as partial or total loss of hearing or vision, and burns may lead to disfigurement. The medical complications can range from haemorrhage and sterility to severe psychological trauma. Studies in many countries and also in India have shown high levels of violence during pregnancy resulting in risk to the health of both the mother and the unborn foetus. In the worst cases, all of these examples of domestic violence can result in the death of the woman — murdered by her partner.³⁵

Non-Fatal Outcomes:

Physical Health outcomes

- Injury (from lacerations to fractures and internal organs injury)
- Unwanted pregnancy
- Gynaecological problems
- STDs including HIV/AIDS
- Miscarriage
- Pelvic inflammatory disease
- Chronic pelvic pain
- Headaches
- Permanent disabilities
- Asthma
- Self-injurious behaviours (smoking, unprotected sex)

Mental health outcomes:

- Depression

³⁴ *Ibid.*, p.1748.

³⁵ *Ibid.*, p.9; Sriranjana Chaudri, “Study Shows Women are Battered and Assaulted”, *The Times of India*, Feb 2, 2000, p.2.

<ul style="list-style-type: none"> • Fear • Anxiety • Low self-esteem • Sexual dysfunction • Eating problems • Obsessive-compulsive disorder • Post traumatic stress disorder <p>Fatal outcomes:</p> <ul style="list-style-type: none"> • Suicide • Homicide • Maternal mortality • HIV/AIDS

Table 1 - Health Consequences of Violence against Women³⁶.

Sexual assaults and rape can lead to unwanted pregnancies, and the dangerous complications that follow from resorting to illegal abortions. Women in violent situation are less able to use contraception or negotiate safer sex, and therefore run high risk of contracting sexually transmitted diseases and HIV/AIDs.³⁷ The impact of violence on women’s mental health leads to severe and fatal consequences. Battered women have a high incidence of stress and stress-related illness such as post-traumatic stress syndrome, panic attacks, depression, sleeping and eating disturbances, elevated blood pressure, alcoholism, drug abuse, and low self-esteem. For some women, fatally depressed and demeaned by their abuses, there seems to be no escape from a violent relationship except suicide.³⁸

Children, who have witnessed domestic violence or have themselves been abused, exhibit health and behaviour problems.³⁹ They may have difficulty at school and find it hard to develop close and positive friendships. They may try to run away or even display suicidal tendencies. Witnessing and experiencing violence as a child can also result in internalising violence as a form of conflict resolution. Girls who witness their mother being abused may be more likely to accept violence as the norm in a marriage than those who come from non-violent homes. While many children from violent

³⁶ “Violence against Women” WHO Consultation, 1996.

³⁷ Heise L.L., Pitanguy J. P. Germain, A., (1994) *Violence against Women: The Hidden Health Burden*. Discussion Paper No. 225 Washington DC: International Bank for Reconstruction and Development / World Bank, p.46

³⁸ *Innocenti Digest*, supra note 17, p.9.

³⁹ Jaffe, P.G., Wolfe, A.D., Wilson, S.K., ‘*Children of Battered Women*’, *Developmental Clinical Psychology and Psychiatry*, Vol. 21, Sage Publications, California cited in *Innocenti Digest* supra note 17, p.9.

homes do not grow up to be violent, those who have witnessed violence in childhood are more likely to become adults who engage in violent behaviour both inside and outside the home.⁴⁰

A study reports that violence in the home undermines child survival i.e. children of women who were physically and sexually abused by their partner were six times more likely than other children to die before the age of five.⁴¹ A study in the Indian states of Tamil Nadu and Uttar Pradesh also found that women who had been beaten were significantly more likely than non-abused women to have had a pregnancy loss from abortion, miscarriage, or stillbirth, or to have lost an infant.⁴² In rural Karnataka a study found that children of mother who were beaten received less food than other children did, suggesting that these women could not bargain with their husbands on their children's behalf.⁴³

While the exact manner in which violence against women affects child survival is not known, one possible explanation is that children of mothers who are abused are more likely to be born under weight, and thus carry a higher risk factor of dying in infancy or childhood. Another explanation is that women in abusive relationships suffer from lower self-esteem, weaker bargaining position, less access to food and resources, and are therefore less able to care for their children.⁴⁴

V. Denial of Fundamental Human Rights:

Perhaps the most crucial consequence of domestic violence against women is the denial of fundamental human rights to them. International human rights instruments such as the Universal Declaration of Human Rights (UDHR), adopted in 1948, the Convention on the Elimination of all form of Discrimination against Women (CEDAW), adopted in 1979, and the Convention on the Rights of the Child (CRC) adopted in 1989, affirm the principles of fundamental rights and freedoms of every human being. Both

⁴⁰ *Innocenti Digest*, *supra* note 17, p.12.

⁴¹ 'Violence Against Women Increases the Risk of Infant and Child Mortality. A Case Study in Nicaragua, 1999', cited in *Population Reports* 1999, Series L, No.11 Baltimore: John Hopkins University.

⁴² S.J. Jeejabhoy, 'Association Between Wife –beating and Foetal and Infant Death, Impressions from a survey in rural India, *Studies in Family Planning* 29 (3), pp 300-308, cited in *Population Reports*, 1999, *ibid*.

⁴³ Ganatra B.R., *Too Far, Too little, Too Late*. A community based case controlled study of maternal mortality in rural Karnataka, India. *Bulletin of the World Health Organisation*, (1998), 76(6), pp 591-598 cited in *Population Reports*, 1999, *ibid*.

⁴⁴ Heise, L., Eilserg, M., and Gottemoeller, M., *Ending Violence Against Women*. *Population Reports*, (1999), *ibid*.

(CEDAW) and the (CRC) are guided by a broad concept of human rights that stretches beyond civil and political rights to the core issues of economic survival, health, and education that affect the quality of daily life for most women and children. The two Conventions call for the right to protection from abuse and neglect.⁴⁵

The strength of these treaties rests on an international consensus, and the assumption that all practices that harm women and children, no matter how deeply they are embedded in culture, must be eradicated. Legally binding under international law for governments that have ratified them, these treaties oblige governments not only to protect women from crimes of violence, but also to investigate violations when they occur and to bring the perpetrators to justice.⁴⁶

VI. Human Development Goals Undermined:

There is a growing recognition that countries cannot reach their full potential as long as women's potential to participate fully in their society is denied. Data on the social, economic and health costs of violence leave no doubt that violence against women undermines progress towards human and economic development. Women's participation has become key in all social development programmes, be the environment, for poverty alleviation, or for good governance. By hampering the full involvement and participation of women, countries are eroding the human capital of half their populations. True indicators of a country's commitment to gender equality lie in its actions to eliminate violence against women in all its forms and in all areas of life.⁴⁷

VII. Protection of Women from Domestic Violence Act, 2005:

The passing of the Protection of Women from Domestic Violence Act 2005 is an important marker in the history of the women's movement in India, which has confronted the problem of domestic violence for well over two decades. This enactment sets free the movement from the malaise that has long plagued it, of attributing all categories of violence suffered by women within their families to 'dowry' and widening the scope of the term 'domestic violence'. It acknowledges that domestic violence is a widely prevalent and universal problem of power relationships, more than the culture specific phenomenon called 'dowry death'. More importantly, it marks a departure from the penal provisions, which hinged on stringent

⁴⁵ *Innocenti Digest*, *supra* note 17, p.8.

⁴⁶ United Nations ECOSOC, *Report of the Special Rapporteur on Violence against Women*, E/CM.4/1996/53 para 33.

⁴⁷ *Innocenti Digest*, *supra* note 17, p.8.

punishments, to positive civil rights of protection and injunction. Prior to the Domestic Violence Act 2005, legal measures available to domestic violence survivors were hampered by a reluctance to enforce domestic violence as a criminal offence. Although criminal proceedings and injunctions were available under the Penal Code and existing legislation, domestic violence was regarded as a private family matter, and police and the courts were generally unwilling to take action against batterers. Furthermore, the legal process was laborious and expensive. Protection injunctions often proved to be little more than pieces of paper which failed to protect women from their abusers. Finally, the implementation of a Domestic Violence Act, 2005 sends out a strong message of the seriousness with which society regards domestic violence.

VIII. Conclusion:

The term ‘domestic violence’ is now part of the vernacular and no longer surprises; it is a commonplace term. And yet, the expression is highly subversive in that it comprises a juxtaposition of words that would once have been regarded as very odd. After all, the domestic sphere has traditionally been regarded as a refuge and a haven, not the site of violence. The broad acceptance of the term means that it is no longer a given that women are safe at home. Rather, this is the place where they are most likely to be hit and to be killed.

Women are often in great danger in the place when they should be safest: within their families. For many ‘home’ is where they face a regime of terror and violence at the hands of those close to them — those they should be able to trust. Those victimized suffer physically and psychologically. They are unable to make their own decisions, voice their own opinions or protect themselves and their children for fear of further repercussions. Their human rights are denied and their lives are stolen from them by the ever-present threat of violence.

Domestic violence is a emotive topic, not just because the injuries which women receive provoke feelings of shock and pity, but also because it takes place in a setting which we perceive as being a safe haven in a heartless world and within a relationship which for many people is a source of happiness and security. The injuries shock and it also shocks that such things could occur in a domestic setting, between two people who have promised to love and cherish each other. The discrepancy between the violence and the setting within which it takes place both make it harder to understand the problem and also makes it harder to help those who are the victims. The Protection of Women from Domestic Violence Act 2005 has surely come as a ray of hope for the victims of domestic violence.