



Domestic violence and Human rights

C. Saravanan

Research Scholar,

School of Law, VISTAS

Human rights – Concept Analyzed

The term 'Human Rights' is defined in terms of Natural law according to which every human being is entitled to certain basic rights, which cannot be abrogated by anybody under any circumstance. It also refers to the system of rights guaranteed under the law. The constitution of India has incorporated human rights under chapter III and IV. The protection of human rights Act 1993 defines human right to mean the right to life and liberty, equality and to human dignity. Right to life and liberty has been analyzed by the Supreme Court in various cases to mean not just a living or an existence with food and shelter but a meaningful life of human worth. Human rights by its term signify human values in an absolute sense and they are sign and symbol of human development and peace. Women constitute half of the human population. Human power includes women power too. Human rights would include women's rights.

Human rights of women

All people have right to live free from violence and threat of violence and violence can have no place in a family. Women's right received recognition from 1970s when the UN proclaimed 1975 as international women's year. Many decades and world conferences held since then were very relevant in the development of women's rights movements. Women's as human rights was recognized at the 1993 world conference on human rights. Later international conferences on population, environment or development focused on the role of women and emphasized on women's human rights. The human rights of women are an inalienable, integral and indivisible part of universal human rights. Global discourse on human rights condemned violence against women in private or public.

Domestic violence is undoubtedly a human rights issue. It deprives the women the enjoyment of their human rights and fundamental freedoms. In a violent home, the victim is denied the right to life, liberty and security. She is also denied right to equality within the family, right to personal, physical and mental integrity, right to live without fear and the right to freedom of movement.

Domestic violence defined

Domestic violence can be defined as a conduct or a pattern of destructive behaviour of a person or groups, within a family, which can be physical, psychological, emotional or sexual causing destruction, harm or injury to a person or group of persons in the family. Domestic violence is the use of force by person who are strong by age or gender in a family against the weak.

The protection of domestic violence bill 2002 defines domestic violence as any conduct of the respondent if he habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount physical ill-treatment; or forces the aggrieved person to lead an immoral life; or otherwise injures or harms the aggrieved person. However it would not constitute domestic violence if the respondent was reasonable but injures or harms the aggrieved in the course of his protection or for the protection of his or another's property.

Violence in the family to constitute an offence may be physical, sexual or psychological. The psychological violence will include suppression, harassment, complete domination, humiliation and insult and public embarrassment. Even though victims could be both men as well as women, violence committed by men commits that.

Effects of domestic violence

In violence relationship victims in most of the cases, the wife and children are worst affected. In some cases even the elder are sufferers. Domestic violence is caused for injury and a significant proportion of suicides committed by women. Women who suffer continuously violence at home acquire a negative response towards the society and suffers a battered syndrome, which makes them as murderers. They take a defensive measures of killing their abusers. When they are powerless to stop violence against themselves, they start abusing their power over other family members who weaker than themselves. Incidents of mother-in-law torturing daughter-in-law may be due to this psychological effect at least in some cases if not in all cases. Battered mothers sometimes beat their own children or harass helpless dependent elders to cool down their own pain. Parents who cannot love or be loved by their partners cannot show their children how to love or to be loved in a mature manner. They become the alcoholics, the addicts and criminals of adult society. Women in these situations do not live a life of worth or dignity.

They are denied of equality and equal opportunities in basic necessities such as food, hygiene and health care. They were distained to lead a lie of seclusion and suffer in constant fear. Nothing is to be feared than the ear. More than actual violence, threats o violence and harassment caused devastating effects in the mind and physique o the victim. Ear is a permanent constrain on the mobility of women and limits their access to basic activities. Women in this situation feel helpless and powerless. Women lived with violence experience stress, insecurity, depression and anxiety throughout their life, which results in low self-esteem. They are deprived of the right to live with human dignity. In a marriage relationship, marital violence will include apart from the physical abuse, the paralyzing and destructive use of power through which spouse imposes upon the other his vision of life and forces the wife to renounce any idea, any desire o her own and prevents her from thinking or herself and from being herself.

Worst of all and most subtle of every other kind is the sexual violence. This is the most intolerable and inhuman attack on the self-dignity of the victim. The concept of marital rape is an oxymoron as the sexual assault against women or rape is criminalized as the gravest violation of a person's body when committed by a stranger but the same act is sanctified when it is committed within the framework of marriage. Insisting on perverse sexual conduct and torturing the wife for not submitting to the sexual urge of the husband is worst of all known and unknown physical, mental and emotional assaults committed against women in their homes. The fear of sexual violence has been a powerful factor in restricting women's behaviour and sense of freedom. It affects her integrity, person hood and lowers her self-esteem.

Causes of domestic violence

What is the cause for domestic violence? The social status of women, the traditions and cultural norms that keep the women always under the control and supervision of male members contribute to the low status of women. Devoid of education and economic independence women suffered an inferior status. This unequal power relation led to exploitation, abuses and violence. The concept of male gender and feminist were written in the male language. Men according to their convenience interpreted religious texts and imposed social norms that treated women as just chattels. Therefore women were denied socialization and were kept always under seclusion. They remained ignorant, subservient, and absolutely dependent on others throughout their life.

Until recently incidents of domestic violence were not reported, because treating women badly or abusing her or exploiting her was normal and the resulting conflicts were considered as issues for any remedy. Within four walls of the family, to be violent was accepted as male character and to suffer violence in the silence was female fate. Whenever interpersonal conflicts arose they were settled wear and tear of the family, elders are the most by village elders who where always male members.

Women were also not sensitive to this status and in some cases they considered as pride to be beaten by their husbands. Sometimes local media portrayed such behaviour of husbands as symbol of successful married life of the spouses. It took sufficiently longer period to sensitize women about their equal status and their expected role in the national development.

How to eliminate domestic violence?

Violence cannot be tolerated anywhere. Women are united all over the world over this issue of violence against women whether in public or private. International consensus on the issues of the women's right are very clear in the form of international treaties.¹ And constitutional documents. World forum voice their grievance wherever there is denial of human rights of women. Education has helped women to realize their status. In the present day society even men have started recognizing the new avatar of women.

Women are to be protected against violence of any kind especially that occurring within the family. International conference urged the countries to take full measures to eliminate all forms of exploitation and harassment and violence against women in particular domestic violence and rape.

Remedies

The existing provisions under the civil and criminal laws were insufficient to curb of domestic violence. Violence as cruelty is a ground for divorce, separation, or for enforcing the right to live separately without foregoing the right to maintenance. The matrimonial remedy of divorce can do more harm than good to the victim when cases are taken to the civil courts the parties are faced with no-win position of either getting nothing after a couple of compromise sessions or getting separated leading to breakup of the family to protect the individual parties. The criminal justice system is totally unaware of the crisis that women suffer till the stage it reaches the criminal gravity. The prosecution waits till the completion of the crime and such system is unsuited to prevent domestic crimes. The offence of dowry death under sec 304B² and matrimonial cruelty under section 494 A³ deals with specific cases of domestic violence. Other section viz. dealing with assault, hurt, wrongful restraint or confinement, outraging the modesty of women if committed in a family should constitute domestic violence.

¹ Women's rights are recognized as human rights under the Vienna accord of 1994

² Offender is punishable for 7 years or life under Indian penal code

³ Punished for 3 years under Indian penal code