

PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE IN PANDEMIC

*KALYANI ABHYANKAR

Introduction

A woman is a backbone of the family and society as she nurtures and shapes life of many in her own family like children, husband and in laws. She preserves the cultural traditions of the society by following them and transmitting the same through generations after generations. She is a symbol of Lakshmi and Sarasvati in Hindu religion who is widely respected and prayed during Navratri but the same woman faces grave injustice when her partner is violent on her irrespective of her age, caste, and gender. It is a very common fact that women are subjected to various kind of harassments in Indian society and despite facing such grave incidents, they remain silent which empowers men to commit such crimes as matter of their right. One of such harassment and discrimination faced by a woman in her own house is domestic violence. It is a very old phenomenon finding its roots in almost all the civilisations and unfortunately it has been often accepted as a private family matter in the patriarchal society, socially and legally. The biggest problem in our society is that women are considered as "property" due to which they face male dominance since their birth by father at first and by their husband at later. At the same time, they are expected to behave like Godly saints, failure of which makes them vulnerable to discrimination, oppression and other kinds of violence.

Recently after the coronavirus outbreak, the National Commission reported twofold increase in domestic violence cases. The total complaints from women rose from 116 in the first week of March (March 2-8), to 257 in the final week (March 23-April 1)¹ through online modes. It is reported that 81% of women aged between 15-49 face domestic violence in their marriage within first five years of their marriage.² In 2006, Renuka Choudhary, former Union Minister for Women and Child Development, stated that 70% of women in India are victims of domestic violence.³ BBC in 2013 reported that 118866 were alone subjected to domestic violence in India.⁴ But incidence of domestic violence has seen rise not only in India but across different

¹ Dhamini Ratnam, "Domestic Violence during Covid 19" <https://www.hindustantimes.com/india-news/domestic-violence-during-covid-19-lockdown-emerges-as-serious-concern/story-mMRq3NnnFvOehgLOOPpe8J.html> accessed on 30th April 2020.

² "Women's Empowerment in India" (PDF). National Family and Health Survey accessed on 30th April 2013.

³ Chowdhury, Renuka (26 October 2006). "India tackles domestic violence". *BBC*.

⁴ BBC, INCRB. "100 Women 2014: Violence at home is India's 'failing'". Accessed on 30th April 2020

jurisdictions. BBC Britain had reported that the country saw 25% increase in calls relating domestic violence. Singapore has seen increase in 33% this February during lockdown period as compared to last year during same time.

A large misconception has been observed in the world, that domestic violence is only physical abuses hurled at a victim by her partner or any other family member within the house but it also includes, sexual or psychological abuse directed towards one's spouse, partner or other family member with in the household.⁵ Therefore, anyone can be a victim of the domestic violence like mother, wife, children, or any other family member. This is a violence which infringes individual freedom and dignity of a woman and results in blatant violation of her fundamental rights. Women face such unwelcome behaviour by their partners or other family members leading to humiliation and constituting various health and safety problems to them, only because it is considered as accepted norm in the society. Hence it is the need of the hour for women to bring issues of domestic violence out of so called private sphere. The private and public life often overlap with each other and largely affect the performance of an individual in both spheres of life and hence cannot be looked into isolation of each other. Therefore, the offence of domestic violence can no longer be treated as a private family matter and requires serious attention by the citizens of India in order to uplift the younger generations of the society.

History of Domestic Violence Legislation in India

Indian history did not recognise the importance of domestic violence and failed to understand the extent to which, it created dent in the lives of women in India. The reasons for such violence in the domestic sphere were not even considered and thereby issue remained unaddressed for decades. The term "violence" was given a very wide interpretation under section 498A and 304B of IPC and hence domestic violence was also covered by the mentioned sections. Other kinds of violence construed by these two sections are murder of wife, cruelty towards wife, and harassment of wife.

In 1977, the emergence phase was ending and social revolution led by woman was rising across different parts of India. Large number of dowry deaths came to public notice especially in Northern parts of the country. Dowry harassment was earlier treated as a private family matter,

⁵ Protection of Women from Domestic Violence Act, 2005

so dowry deaths were not held accountable. Women formed groups and started spreading awareness campaigns to address the issue.⁶ It took fourteen years after Independence for Indian Parliament to enact a law relating violence against woman and the then existing The Dowry Prohibition Act, 1961 was very biased and had many loopholes leading to inadequate protection of women. One of the biggest loophole was that it did not deal with the gifts and money received by a bride in her marriage and post her marriage. Further, it considered both the giving and taking of dowry as an offence, so the party giving dowry against their wishes was vulnerable to punishment under the Act. The campaign to end the dowry related harassment brought in 1980 and subsequently in 1986, the changes within the Act like making the offence non-bailable and increasing the quantum of fine to Rs15000/-.⁷ The women got assurance for some time from the judicial system that they could invoke law to access justice but sooner to only realise that there was large misinterpretation and misuse of the provisions happening by the executive authorities.⁸ The woman's movement again gained momentum and various other issues of women like violence faced by them at their matrimonial homes and others forms of abuse and harassment came to fore and were actively discussed. The public eventually realised that there was certain violence committed against women independently of dowry. Offences like "wife battering" gained significance as serious offence. The campaign in 1980's brought out various offences against women irrespective of their status in the family.

Till 1983, there was no specific provision relating to violence within the four corners of the wall by family members against their women members. Due to the women's constant campaigning and public pressure the Government of India, introduced Section 498A and 304B of IPC amending the provisions of IPC. Hence, the FIR for any violence occurring within the domestic family matters were filed under these two provisions of IPC.

⁶ See Madhu Purnima Kishwar, *Laws Against Domestic Violence: Underused or Abused?* MANUSHI, Sept.-Oct. 2000 available at <http://www.indiatogether.org/manushi/issue120/domestic.html> accessed on 1st May 2020.

⁷ See, lawyer's collective—women's rights initiative, staying alive—5th monitoring & evaluation 2012 on the protection of women from domestic violence act, 2005, xii (2012) [hereinafter lawyer's collective report] (noting that article 15 is largely resorted to for the protection of women and children).

⁸ Gandhi, Nandita and Nandita Shah. 1993. *The issues at stake: Theory and practice in the contemporary women's movement in India*. New Delhi: Kali for

- **Section 498A and 304B of IPC**

This provision punishes husband with imprisonment for upto 3 years and fine if he is proved to have inflicted 'cruelty' on his wife.⁹ It is a cognizable and non-bailable offence. Cruelty is defined as any wilful conduct that "is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical)," or harassment that involves "coercing [the woman] or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."¹⁰ The positive aspect of Section 498A was that it did not use the term dowry explicitly but only made an indirect reference to it which further gave opportunity for judiciary to include mental cruelty in it. This made easy for women to file suits for domestic violence under the Section 498A of IPC. On the other hand, the term 'grave injury' indicated the extent of gravity of violence.

Section 304B focussed on dowry death. This section holds a woman's husband and in-laws criminally responsible for death resulting from any burns or other injury she incurs under suspicious circumstances within seven years of marriage. There must be a demonstration, however, that the husband or his relatives subjected the woman to "cruelty" in relation to the demand for dowry.¹¹ The offence is punishable with minimum seven years of imprisonment which can be extended up to life imprisonment. One of the loopholes under the sections were that only married woman could claim relief under this section and hence woman in live in relationships or non-matrimonial relationships were not included. The woman were also not provided with civil remedies like injunction, protective orders, and other support services such as shelter and maintenance. A very famous case *Waghmare v State of Maharashtra*¹² had proved the failure of implementation of Section 498A and did not provide adequate protection to woman. In this case, the woman was subjected to mental and emotional abuse by her husband and in laws, which eventually led to her to commit suicide. The husband used to regularly lay his hand on her for a motorcycle and after few months, the relative of her husband's family burnt her alive. When a petition was filed alleging cruelty under Section 498A IPC, the Bombay High Court held

⁹ See The Criminal Law (Second Amendment) Act, No. 46 of 1983.

¹⁰ Section 498 The Indian Penal Code, 1861

¹¹ Section 304B, The Indian Penal Code, 1861

¹² See *Waghmare v. Maharashtra*, (1990) Crim.L.J. 407

that these circumstances were not horrific enough for a victim to commit a crime. Hence, the victim did not get any relief because the Court took the view that a husband’s harassment should be with the pure view of driving her to commit suicide. The decision was criticised widely across the nation for such a narrow point of view. Thus the existing laws failed to curb the domestic violence incidents effectively. Since, there was no clear definition of domestic violence, the term was subjectively interpreted by the judges which often led to irregularities in their judgement.

- **Protection of Women from Domestic Violence Act, 2005**

This Act came into force though demands’ of women’s group, further led by Women’s Right Initiative, which is a part of famous group called The Lawyers Collective led by Supreme Court Advocate Indira Jaisingh in 1992. The Lawyers Collective drafted Domestic Violence Bill in 1993 but after constant negotiation and lobbying by the woman groups for almost a decade The Domestic Violence Act, was passed in 2005.¹³ International treaty Convention on Elimination of All Forms of Discrimination Against Women 1979 played an important role to pushed the state to enact a law on domestic violence. A committee on Elimination of All Forms of Discrimination Against Women formed in 1992 found that gender-based violence constitutes discrimination against women and impairs or nullifies a range of fundamental rights under international human rights law.¹⁴ The Committee further directed the states to take comprehensive measures and form a proper legislative framework with respect to domestic violence. In 2000 January, CEDAW Committee suggested India to legislate some comprehensive legislative reforms to protect fundamental rights of the women.¹⁵ After five years of negotiation and discussion and protests across the country by women to enact a law, Protection of Women from Domestic Violence Act 2005(hereafter Domestic Violence Act, 2005) came into force. The Domestic Violence Act, 2005 explains the term ‘domestic violence’ in detail. ‘It states that an act or omission will qualify as domestic violence if it:¹⁶

¹³ See Amy Hornbeck et al., *The Protection of Women from Domestic Violence Act: Solution or Mere Paper Tiger?*, 4 LOY. U. CHI. INT’L L. REV. 273, 275 (2007) (detailing the importance of dowry as a tool for social mobility, especially because a woman becomes part of her husband’s family rather than her natal family upon marriage).

¹⁴ General Recommendation 19, U.N. Committee on Elimination of Discrimination Against Women, 6-7, 1992, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> accessed on 1st May 2020.

¹⁵ See *Observations on State Report*, Committee on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/IND/2-3, ¶ 13, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx> accessed on 2ⁿ May, 2020

¹⁶ Section 3, Protection of Women from Domestic Violence Act, 2005

- Harms or injures health, safety, limbs (body organs), life or/and mental and physical wellbeing of a woman. Such abuse can be physical, sexual, economic, verbal and emotional.
- Harms, harasses, injures or endangers the aggrieved person to coerce her or any of her family members to meet unlawful demands like dowry.
- Causes any other physical and mental injury to the aggrieved person.’

The definition of domestic violence is very broad and wide in ambit as it helps to cover an emotional abuse, physical abuse, sexual abuse and economic abuse. The legislature has given extensive definition for the offence so that Indian judiciary could use the scope to interpret and incorporate as to what all can be included with changing times. The Protection of Women from Domestic Violence Act, 2005 provides relief to women in both civil and criminal recourse. If the accused violates civil rights of a woman, or breaks the civil order, he is liable for fine and punished with imprisonment by the court¹⁷ and a woman is entitled to protective orders and injunctions.

One of the significant aspect of the Act is that it does not limit its protection to women only in marital relationship but extends to all the domestic relationships i.e inclusive of “all relationships based on consanguinity, marriage, adoption and even relationships which were ‘in the nature of marriage.’ So, widely it covers all women in abusive relationship irrespective of their status in the family. Another, important provision which largely protects an aggrieved woman is power of the magistrate to grant monetary relief to the victim.¹⁸ This disabled the family of the woman to throw her out of the marital house and further ensure their protection. According to this law, a woman has right to residence in her marital home equally as her husband. The Act has appointed two institutions to implement its provisions and they are Protection Officer¹⁹ and Service Provider. The duty of the Protection Officer is to help an aggrieved woman to seek medical assistance and further help her according to the instructions of magistrate and Service Provider gives legal assistance like filing domestic violence report before the local magistrate. Section 14 of the Act, magistrate can also use his other powers if he thinks appropriate like advising the aggrieved and respondent to undergo a counselling session with service provider. The

¹⁷ See LAWYER’S COLLECTIVE REPORT, at xiii (recognizing domestic violence as both a criminal and civil issue); *see also* HANDBOOK OF DOMESTIC VIOLENCE, , at xviii (elaborating on the protections of the PWDVA).

¹⁸ Section 20(1), Protection of Women from Domestic Violence Act, 2005

¹⁹ Section 8, Protection of Women from Domestic Violence Act, 2005

Magistrate can also direct the respondent to give monetary relief to aggrieved woman for expenses incurred and losses suffered. Such relief may include, loss of earnings, medical expenses, maintenance of victim and her children etc.²⁰ The Act has a very wide scope and covers large number of woman but the attitude of them not reporting encourages such incidences in the society. It is the least reported form of cruelty against women which shows how seriously the matter is taken by the aggrieved themselves.

Domestic Violence in Pandemic

Recently, it has been reported by various news agencies and NGO's for women that incidents of domestic violence have increased across the world and the same has been noted for India also. Hence, the author lays down the reasons for incidents of abuse by men which have been reported after extensive research carried out by government organisations, non-profit organisations and some scholars.

- Gender Subordination – An outburst of violence against women were attributed to some triggers like “mistakes” in the running household. So the reasons are not cooking meals properly (51 percent), not caring for the children properly (48 percent), and economic stress (48 percent). Though marital violence in India is often equated with dowry violence, just one percent stated that inadequate dowry precipitated the abuse. During the in-depth interviews, women stated that while these incidents described above are often the initial catalysts for violence, their husband's anger was aggravated further when the women resisted verbal abuse by defending themselves or using harsh language.²¹ This implies that woman are subordinated in society and wife beating is considered as normal behaviour, a way of exercising control over the partners mostly prompted by the in laws of the woman. Many women grew to tolerate abusive language in the presence of their in-laws, but felt physical beatings in their presence were demeaning and corrosive of their self-worth
- Alcoholism -Alcoholism emerges as an important factor in domestic violence among Indians. Mostly women blame alcohol for violent behaviour of their husbands. It is

²⁰ Diva Rai, *Protection of Women from Domestic Violence Act, 2005* <https://blog.ipleaders.in/protection-of-women-from-domestic-violence-act/> accessed on 3rd May, 2020

²¹ Rao, Vijayendra. 1997. “Wife-beating in rural south India: A qualitative and econometric analysis.” *Social Science and Medicine* 44(8): 1169-1180.

considered as a common phenomenon and men use it as an excuse to vent out their anger on their partners or family members.²²

- Lack of education- It has been observed that incidents of domestic violence are more prominent within the poor families and uneducated families. Generally, men who are less educated have severe self-esteem issues and thus to satisfy their ego, they lay their hand on their partners as it makes them feel superior in society.
- Substance abuse- Often men are found to be addicted to a substance who beat their wives regularly. Due to substance abuse, they are not stable at work and hence do not earn enough for family which results in their wives working hard to earn. But men due to their bad habits demand money from their wives for drugs which turns into ugly fights and domestic violence.

The author highly disagrees to the fact that pandemic or the above reasons to be blamed for an increase in domestic violence cases. One needs to understand that there cannot be any other reason for the domestic violence but the mind-set of the accused himself. Each and every human being is responsible for his own actions and therefore external circumstances cannot be the reason for their unacceptable behaviour. If external circumstances are reasons to be held responsible for someone's actions, then all the human beings would have responded to same situation in similar manner but factually it is not possible because everyone reacts differently.

Loopholes of the Protection of Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 was enforced by the legislature to protect the women from any kind of harassment within the domestic premises but unfortunately men were not given any consideration for the same. In the modern times, it has been found that men are also being victims for the domestic violence and hence the general perception "men cannot be victims of violence" has to be abrogated. Often, women higher goons or ask their relatives to hit their husbands and if the man approaches police to file a case of domestic violence against his wife, police authorities ridicule the victim which leads to harsh steps like

²² Government of India. National Family Health Survey. Final Report NFHS-III. New Delhi: Ministry of Health and Family Welfare; 2006.

victims committing suicide.²³ The Preamble of the Act speaks only about the rights of a woman which shows narrow and limited scope and extent of the Act. Section 3, Explanation I used the term "jibes" and "insult" under the definition of 'emotional and verbal abuse'.²⁴ These words have been largely misinterpreted by some woman for day to day quarrels and they file suit in civil court for trivial matters which not only wastes the resources and time of the court but also leads to dilution of the objective of the Act. The term "respondent" in the Act has been defined as "any adult person" which means a complaint can only be filed against a male and not a female and hence there are many cases reported where mother in law hits the woman for failure of her duties. It is not right to assume that the respondent will always be a man within the four corners of the wall. Further there is lot of confusion with respect to responsibility of Protection Officer and Service provider. It has been found that most of the protection officers are not at all specialised in their work which makes them incapable to help the aggrieved woman in agony.²⁵ Police officers and magistrates lack training in dealing with such sensitive issues which leads to victimisation of woman again and again within the judicial system because police officers ask for physical evidence of cruelty, or do not respond to their cry for help and send back the woman merely calling their ugly fights as mere domestic disputes.²⁶ The legal proceedings are very tedious in nature which give heavy stress for woman as they have to face the trauma again and again in the courts. There are major disparities in implementation of the law in various states. For instance, while Maharashtra appointed 3,687 protection officers, Assam had only 27 on its rolls, and Gujarat 25. Andhra Pradesh had an allocation of Rs 100 million for implementation of the PWDVA, while other states like Orissa lagged far behind. Not surprisingly, states that invested in implementation of the Act in terms of funds and personnel also reported the highest number of cases filed. Maharashtra filed 2,751 cases between July 2007 and August 2008 while Orissa could only manage 64 cases between October 2006 and August 2008.²⁷ The Act is by and large useful for only those victims who can afford the quality legal aid but these cases are reported

²³ Dhvani Desai "when husbands are victims of domestic violence" <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/when-husbands-are-victims-of-domestic-violence/articleshow/26031858.cms> accessed on 6th May 2020

²⁴ Ghosh & Choudhuri, pg. 323

²⁵ Pin-Hsien Wu, Reviewing the Implementation of Domestic Violence Act, Report based on interviews of women who had suffered from domestic violence, 2009/3/11

²⁶ Rakhi Lahiri, "The Protection of Women from Domestic Violence Act: The Current Situation", HRLN, 2009

²⁷ Report on India's domestic violence law highlights major loopholes", <http://www.lawyerscollective.org/wri/publications/stayingalive>

highly amongst poor people and it is a known reality that quality of state services is poor in India.

Conclusion

The issue raised in this article is to examine the domestic violence legislation in India and if the pandemic is really the reason for increase in cases. The Protection of Women from Domestic Violence Act, 2005 should be lauded for its efforts to attempt to curb the domestic violence in mornings of the families. The definition of the domestic violence in the Act is very wide and has brought out the true ambit of domestic violence. Henceforth the legislation covers all women in abusive relationships, regardless of whether the person responsible for is a spouse, domestic partner, or someone in a live-in relationship. It also protects unmarried women, siblings, and other women living with the alleged perpetrator. Conceptually, the Act has been successfully laid down but its implementation is contestable in nature. In some cases, the implementation is not adequately followed, like breach of protection orders, lack of sensitivity with respect to filing of complaints, lack of training of police officers and service providers to deal with such sensitive issues etc. These issues lead to dilution of the objective of the Act and largely misuse of the legislative intent. Thus, at first glance, Protection of Women from Domestic Violence Act, 2005 gives us an impression that legislation is very progressive in nature just like a society is. But as one reads through the legislation with respect to implementation, we realise that it is not a very successful legislation. The failure can be attributed to one and the only reason is deeply rooted institutional problem in the society which is very difficult to resolve. A cultural belief is assumed that police shall not investigate and further not take a note of domestic violence crime but only treat it as a family matter.²⁸ The notion of women being man's property is still prevalent in Indian society and therefore they do not assert their rights against woman. Recently, it has been reported that domestic violence has increased in pandemic and author strongly condemns such incidences against women. Pandemic and lockdowns cannot be the reason for an increase in domestic violence cases and it is high time that men realise that they do not own women and do not have any right to lay their hands on woman. Hence, it is deeply rooted affair of the society and not a physical or mental abuse which has to be rectified from the childhood itself.

²⁸ See Purna Manchandia, Practical Steps Toward Eliminating Dowry and BrideBurning in India, 13 TUL. J. INT'L & COMP. L. 305, 319 (2005)

Suggestions

1. It has been observed that many police officials are not taking the domestic complaints seriously since patriarchy is ingrained in the mind-set of Indian citizens. In order to provide relief to women and make police stations approachable, sufficient number of All Woman Police Stations should be established across all the states. The women will deal with such issues in sensitive manner and state shall provide them adequate training.
2. Shelters and short stay homes could be established by NOG and CSR of corporates with the help of governmental grants. Such shelters will be an alternative to women when they are unable to return to their families.
3. Village Sanghas- Women collectives can be formed at the village levels to tackle domestic violence cases locally. This shall also help them to gain political and economic power at local level. So it can be seen as preventive as well as reactive response to domestic violence cases.
4. Public awareness programs should be designed and conducted frequently in villages so as to raise gender sensitive issues amongst the people in rural areas. Such programs should also be conducted at school levels in rural as well as urban areas so that mind-set can be shifted from childhood itself.
5. All the education fields should introduce human rights and gender sensitive issues in their courses as it is important to raise the seriousness of physical and emotional trauma against any human.

The Domestic Violence is one of the crimes committed against women by men due to their advantageous position in the society. And after thorough analysis, author states that the only reason for such heinous crime is infectious mind-set of both men and women in the society. So, the raise in incidents of abuse during pandemic are not due to external circumstances like alcoholism, lack of education or any other but mainly due to the strong paradigms of both the genders in the society which need to be corrected by wiser people through education and promoting awareness regarding the same. The shift in paradigms can only be initiated by a woman from her family and herself and therefore it shall be a great move if all the women in their house could unite and resolve to bring this revolutionary change in their family to curb all the types of violence against women.