



DOMESTIC VIOLENCE THROUGH LENSES OF SOCIETY AND LAW

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ABSTRACT

Although few argue that domestic violence is a gender neutral phenomenon, but it cannot be said to be true to the context of patriarchal society that India has. The recent Nation Family Health Survey-5 unveils the most alarming fact that domestic violence is on the rise in every part of our country and most of the men committing these abhorrent acts justify their conduct against women living in their own family for one reason or the other. Most families including women themselves see women only in the role of caretaker of their household and children and this conception has its genesis from our patriarchal set up. This mindset has led women forget their constitutionally guaranteed rights and let alone the exercise of legal remedies available in multitudes of legislations enacted for them. Today, each and every imaginable kind of abuse which women suffer can be addressed through special legislations like the Protection of Women against Domestic Violence Act, 2005, Dowry Prohibition Act, 1961 and ordinary legislation in the form of the Indian Penal Code, 1860. The Protection of Women against Domestic Violence Act, 2005 alone provides numerous reliefs which can be availed by the victims of domestic violence. However, women are ignorant of these legal reliefs available to them which is influenced by multiple set of factors including societal, psychological, financial as well as

educational. Therefore, merely presence of these laws would apparently not serve to be beneficial, if their mode of exercise itself is not known to the beneficiaries of these legislations.

Keywords: Patriarchy, Caretaker, Socio-Economic Factors, Legal Remedies, Beneficiary.

1. Introduction

Among innumerable social problems in our country and numerous atrocities committed against the marginalized sections of our society including women, one can easily identify Domestic Violence as one of them. Although this issue is not something new and it is also not that many research studies has already not been done to resolve this menace, however the prevailing state of affairs in our society mandates us to do something more about the same. There even exists countless ways through which gender based violence is perpetrated against women. In this research paper, the researcher would study the nuances of laws relating to domestic violence, the measures which has been provided by the law to curb the same and the existing situation in our society despite those norms and measures.

The prevalent situation in our society is such that there is even no need to define the term “Domestic Violence”, however for the sake of legal clarity and better understanding of the nuances of this topic, law has provided us a comprehensive definition for the same. It



has been defined as an act, omission, commission or conduct which results into:¹

- a) Physical, mental, sexual, verbal, emotional and economic abuse; or
- b) Harassment or coercion for unlawful demand of dowry or any other property; or
- c) Threatening of aggrieved person or any other person so related to her for the above purpose; or
- d) Any other physical or mental injury or harm.

Further, the Protection of Women from Domestic Violence Act, 2005 extensively defines physical abuse, sexual abuse, verbal and emotional abuse and economic abuse² to extensively protect the rights of a woman living in a domestic relationship with the accused. The scope of 'domestic relationship'³ has further been widened under the Act by including the relationship between the victim and offender to be that of consanguinity, marriage, adoption, relationship in the nature of marriage or even in cases of joint family members.

This offence also cannot be simply included in the group of normal violent criminal offences due to the very fact that the victim was living in a domestic relationship in a shared household with the offender. This aggravates the nature of offence since the violence is committed by such offender who is in a close relationship with the victim and it leaves the victim with not only the physical injuries visible from outside, but, it also leaves a very deep psychological wound.

While law criminalizes and penalizes this kind of human behavior tendered against women, the societal lenses perceive it as a normal human behavior. The society even fails to recognize the women in our society on par with the men in terms of intelligence, dignity and basic rights. This is further worsened due to the fact that practically all the religion in our world establishes a male dominant family arrangement.⁴ Even today, the fight to undo the same in order to provide a better life standards to women has been going on in different aspects of our life.

2. Reasons for Victimization of women

Even when the menace of domestic violence has been in existence as an age old practice, the act was not been criminalized under any specific legislation until 2005. This may be said to be one of the reasons for acceptance of such a norm by the women in our society, even though they were being battered in their own household.

The most common reason for commission of domestic violence against women has been recognized to be male sexual ownership, jealousy, mistrust and suspicion of cheating.⁵ All of the same can be simply said to be an outcome of delusion of masculinity. The society has set a particular hierarchy in our patriarchal social order in which women has always been kept at a lower position than that of a men. This false sense of superiority develops a very negative manhood in men which ultimately results in showing hostility, aggression and violence against women.

¹ The Protection of Women from Domestic Violence Act, 2005, § 3.

² See *id.* Explanation I to § 3.

³ See *id.* § 2(f).

⁴ AHMAD SIDDIQUE, CRIMINOLOGY, PENOLOGY AND VICTIMOLOGY 235 (7th ed. 2019).

⁵ ANTHONY WALSH, CRIMINOLOGY 255 (2012).



However, we must also not forget that in a shared household, it is not only a male member who commits violence against the female victim, rather, ironically, female relatives in the family which includes the mother-in-law and the sister-in-law who commits violence against the victim in the family for one reason or the other. One of the most prominent reason for commission of such kind of violence has been recognized to be dowry. Nevertheless, taking of dowry is a punishable offence under the Dowry Prohibition Act, 1961, then again, there does not seem to have any effect of the same in our society. What this Act does is that it simply recognizes the fact that taking dowry is a punishable offence, but it lacks the teeth to implement the law in its totality. As the year passes by, along with the rise in inflation, we also see a rise in the demand of dowry and so is the case with the violence committed against a women for the demand of dowry.⁶ Another most common reason can be traced from the inherent nature of the women for whom family, home, emotions, nurturing and caring is of paramount importance, and unfortunately this very inherent nature at times leads to the sufferings of the women in a family.⁷ Feminine gender are often associated with above characteristics and rightly so, however, even in the cases of them being battered by fellow family members, they do not tend to lose above-mentioned features for the sake of saving their family from getting dis-membered.

Additionally, in our society, the status of women is so miserable that it is always in the back of their mind that if they complaint against the abuse committed against them by their own family member, then there will be

no place for them to revert back to. Even, their own biological parents in such cases refuse to take care of them and thereby, victim is left with no other alternative than to suffer the same abuse in the household in which she will have to reside. This may also be linked with the fact that the level of economic or financial independence among women is very limited in our country.

In addition to the above-mentioned factors, we can also notice that there has been a consistent lack of protection provided to women as a class from the law enforcement agencies which also leads to the victimization of women. Police protection for them seems to be a distant dream. It has been seen that in case of commission of any such crime when the victim approaches the law enforcement agencies, they tends to declare the relationship between the victim and the accused to be private in nature and often tries to mediate between them instead of bringing the criminal justice system into motion, or, simply keep themselves away from the same. They seem to reject these kind of offences by considering them trivial in nature. For such women, this ultimately results into the trapping in a cycle of repeated abuse.

3. Effect of Domestic Violence on Women

The continuation of violence committed against the woman may result into the women getting into the state of learned helplessness. Women are thrown into such state by subjection of violence which is continuing in nature which subsequently becomes a part of their life to which victim has no control upon. The victim in such a state feels defenseless

⁶ RAM AHUJA, SOCIAL PROBLEMS IN INDIA 248 (2d. ed. 2012).

⁷ PAMELA DAVIES, GENDER, CRIME AND VICTIMISATION 114 (2011).



and does not see any end or an answer for the same. She is not able to think of any remedy humanly possible which can get her out of this misery. This collective sense of helplessness often leads to development of depression and anxiety in the woman.⁸

Women suffering from domestic violence are also seen to have experienced Post-Traumatic Stress Disorder, i.e., a feeling that is related to undergoing the same sufferings over and over again but psychologically through dreams, recurrences of such memories and development of disturbing thoughts. It ultimately tends to affect their behavioral pattern, personality and identity as a whole. Survivors of such violence has also been seen to be lacking the capability of forming or nurturing new or existing inter-personal relationships.⁹

After becoming victim of such crime, women are more likely to isolate themselves from the community and their social participation also considerably gets affected. These participations in community may range from formal to informal, i.e., from family and neighbors to women's self-help groups and NGOs.¹⁰

Victims also tends to blame themselves only for the violence committed against them by the perpetrators. Their perception of one's self is surrounded with emotions of shame, guilt and self-blame. They tend to vindicate the actions of offender and also withdraw themselves from the society, resulting in disruption of their relationship with the

others. They lose faith in themselves as well as in the criminal justice system in this whole process.¹¹

4. Laws Penalizing Domestic Violence

In order to end the misery of women from domestic violence, there are numerous legislations in place and parliament has enacted even a special legislation in the year 2005 to curb this menace as there was a clear absence of any provision on the given subject-matter.

The Protection of Women from Domestic Violence Act, 2005

Parliament has enacted this law while keeping in mind the commitments made under the Vienna accord of 1994, the Beijing declaration and the platform of Action of 1995 And the United nations committee on convention on elimination of all forms of discrimination against women Which aims at providing better and effective mechanism for protection of women against violence of any kind. The above law also guarantees the fundamental rights enshrined under Articles 14, 15 and 21 of the constitution.

In order to enlarge the scope of getting reliefs under this Act it has been provided that this Act is in addition to and not in derogation to any other law Section 36. Moreover, this Act also ensures that any relief under this Act can be prayed along with other reliefs in the matter already pending between the parties under any other laws after informing the

⁸ LENORE E. A. WALKER, THE BATTERED WOMEN SYNDROME 75 (4th ed. 2017).

⁹ ANN WOLBERT BURGESS, CHERYL REGEHR & ALBERT R. ROBERTS, VICTIMOLOGY THEORIES AND APPLICATIONS 205 (2010).

¹⁰ VIJENDER KUMAR, LAW RELATING TO DOMESTIC VIOLENCE 10 (2007).

¹¹ JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY: THE AFTREMATHEM OF VIOLENCE- FROM DOMESTIC ABUSE TO POLITICAL TERROR (2015).



magistrate having jurisdiction under the Act.¹² The constitutional court in plethora of judgments have enlarged the scope of this Act for the benefit of victims of domestic violence.

The Supreme Court has even held petition under this Act to be maintainable in the cases where woman has been victimised of domestic violence before coming into force of this Act.¹³ The honourable Supreme Court has also provided relief to the woman who are living under judicial separation as judicial separation does not result into severance of marriage.¹⁴

Section 2(q) of the Act restricted the right of woman to claim a relief against the respondent by specifying that respondents can only be an adult male, however the court has interpreted otherwise and held that the reliefs which can be claimed cannot be restricted to only adult male persons, rather, a victim can also claim any relief under this Act against a female member also, otherwise, it would defeat the very purpose of the Act, i.e., The legislation would not be able to protect women from domestic violence for which it was enacted.¹⁵

The Act also provides a relief to the woman even when the victim is living in a relationship in the nature of marriage with the

respondent. Such relationship must have some peculiar features of a marriage So that the relief can be granted under this Act. However, the honourable Supreme Court has also held that the same sex relationship would not be covered under this Act.¹⁶

Among various reliefs, this Act provides right to residence to the petitioner in a shared household,¹⁷ and honourable Supreme Court has even held a house belonging to the mother in law in which daughter in law has no right to be a shared household within the meaning of Section 2(s).¹⁸

Under this Act, relief can be claimed by filing an application before the magistrate by an aggrieved person or a protection officer appointed under this Act or any other person on behalf of the aggrieved. The aggrieved may claim reliefs including protection order,¹⁹ residence order,²⁰ monetary relief,²¹ custody order²² or compensation order²³ under this Act. For speedy disposal of the case, our special duty has been imposed upon the magistrate to fix first date of hearing not beyond three days from the date of receipt of application and an additional duty has been imposed to dispose the application within 60 days from the date of first hearing.²⁴

In addition to the above reliefs, in this progressive legislation, Parliament has

¹² The Protection of Women from Domestic Violence Act, 2005, § 26.

¹³ V. D. Bhanot v. Savita Bhanot, Special Leave Petition (Crl.) NO. 3916 OF 2010.

¹⁴ Krishna Bhattacharjee v. Sarathi Chaudhry, (2016)2 SCC 705.

¹⁵ Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165.

¹⁶ Indra Sarma v. V. K. V. Sarma, (2013) 15 SCC 755.

¹⁷ The Protection of Women from Domestic Violence Act, 2005, § 17.

¹⁸ Satish Chander Ahuja v. Sneha Ahuja, AIR 2020 SC 2483.

¹⁹ The Protection of Women from Domestic Violence Act, 2005, § 18.

²⁰ See *id.* § 19.

²¹ See *id.* § 20.

²² See *id.* § 21.

²³ See *id.* § 22.

²⁴ See *id.* § (5).



imposed special duties upon police officers, service providers, shelter homes, medical facilities and protection officers. If a victim of domestic violence does not have any shelter, the shelter homes as notified by the state government shall provide shelter to the victim.²⁵ If due to the domestic violence inflicted upon the victim, the victim has suffered physical injuries then person in charge of a medical facility is duty bound to provide medical aid to her in the medical facility.²⁶

To ensure the strictness under this Act, the offence of breach of protection order as provided to the respondent by the magistrate has been made a cognizable and non-bailable offence, i.e., Arrest can be made by the police officer without warrant and bail is not the matter of right but discretion of magistrate.²⁷ In order to ensure the stringent nature of this Act, this Act also penalises the protection officer if he feels or refuses to discharge his duties.²⁸

The Indian Penal Code, 1860

While committing the act of domestic violence, if it results into any of the offences affecting life of the victim as has been specified under the Chapter XVI of the Code, then the Police Officer has to take action under the Code of Criminal Procedure, 1973 upon receiving such information.²⁹

Section 498-A of the Code specifically punishes the offence of cruelty and the complaint can be simultaneously made under this provision for the act of domestic

violence, and, even of such complaint has not been separately made the Magistrate is duty bound to examine the applicability of this provision in light of the facts and circumstances of the case.³⁰ It covers within its ambit the acts of ill-treatment and harassment in lieu of extorting dowry from the victim.³¹ The act of taking dowry has also been made separately punishable under **the Dowry Prohibition Act, 1961** and a separate liability will also arise for the same under Section 3 of the Act.

Right to Private Defence: Just like any other offence, Right to private defence will also be available to the victim of domestic violence against the perpetrator. However, the problem under this scenario would lie in the fact that normally, the right to private defence applies in the cases of imminent danger and once the danger subsides, the right to private defence also extinguishes with the same.³² But, since domestic violence committed against a victim in a shared household is in continuing nature and it subsists for a considerable amount of time, if the above right to private defence is technically interpreted, this right would extinguish the moment violence concludes at one particular day only to resume at another day. Therefore, there is a dire need to change in the jurisprudence of application of Right to Private Defence in cases of domestic violence which continues for a considerable amount of time with sufficient gaps in between the violence committed upon the victim and where the perpetrator is none

²⁵ See *id.* § Section 6.

²⁶ See *id.* § Section 7.

²⁷ See *id.* § 32.

²⁸ See *id.* § 33.

²⁹ See *id.* Proviso to § 5.

³⁰ INDIRA JAISING, ASMITA BASU & BROTI DUTTA, HANDBOOK ON LAW OF DOMESTIC VIOLENCE 146 (2009).

³¹ State v. Orilal Jaiswal, AIR 1994 SC 1418.

³² The Indian Penal Code, 1860, § 102.



other than a closed family member of the victim living in a shared household.

The Code of Criminal Procedure, 1973

The Court of Session or Court of Magistrate may order any person convicted of committing the offence of criminal intimidation, or assault, or using criminal force against a woman to furnish the security and execute a bond, with or without sureties, for keeping the peace for a prescribed period³³ and if he does not furnish such security, then, the Court may commit such person in prison until he deposits the security to the Court.³⁴ If such person after executing such bond commits or attempts to commit or abets any offence against such woman, then it would result into the breach of the bond and the Magistrate may order for the arrest of such person and detain him until the expiry of the period of bond.

The victim of domestic violence may also file a separate petition for the maintenance which has been guaranteed under Section 125 of the Code of Criminal Procedure, 1973. Such right will be available to the women even when she refuse to live with the husband on the ground of commission of physical and emotional abuse committed by him and even when she has obtained divorce from her husband or has been divorced by her husband, provided she has not re-married and other conditions of Section 125 is fulfilled.

5. Conclusion and Suggestion

Society normalizes domestic violence and law penalizes it. Even certain members of the law enforcement agencies seems to ignore the plight of the women at some occasions. This is the battle which has been fought by

the victims of this heinous offence each and every day in their life. Infliction of such kind of mental and physical abuse and because of lack of support from the society at large, the victims accept these abuse as their destiny and this can only be changed through sensitization of masses and strict implementation of the concerned laws. In light of the same, the researcher would like to put forward few suggestions after the completion of this research:

- The Protection of Women from Domestic Violence Act, 2005 shall also penalize the action of police officers who neglects or refuses to provide help to the victims of domestic violence in line with the liability as imposed upon the Protection Officers under the Act to ensure that the victims are not neglected in our criminal justice system.
- A separate provision for Right to Private Defence shall be inserted under the Protection of Women from Domestic Violence Act, 2005 under which the liability and the burden of proof shall be different from that of the Indian Penal Code, 1860.
- There are many victims who belongs to the rural part of our country who are not aware of the protection given under these beneficiary legislations and therefore, a separate education program for such women shall be run which may be run through anganwadi or any other relevant functionality.

³³ The Code of Criminal Procedure, 1973, § 106.

³⁴ *See id.* § 122(1)(a).