

Legal Scenario of Domestic Violence against Women in India

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Abstract

In India, the Constitution grants women equal rights and opportunities with men; and all discrimination against women has been abolished by the Constitution of India, international covenants and declarations have made short shift of it; but despite the constitutional guarantee of equality and protection to women and passing of various legislations towards this end, women are subjected to an unequal status and the gender discrimination from the womb to the tomb continues. A chain of government programs has been launched to increase economic opportunities for women. But there is dearth of programs to address the cultural and traditional discrimination against women that leads to her abject conditions. Some related it to prevailing social conditions like customs, illiteracy, poverty and lack of awareness among women, some attribute it to personal characteristics of women like feeling of helplessness, lack of self-confidence, inferiority complexes and other such second fiddle complexes.

The cultural ideologies in both developed and developing countries do not differ as far as the treatment towards women is concerned. In both types of countries, women are considered to play second fiddle and this ideology puts the man as a 'super' to 'legitimate' for punishing the women – and thus the violence takes place. Experiences during childhood, such as witnessing domestic violence and experiencing physical and sexual abuse have been identified as factors that put children at risk. The isolation of women in their families and communities is known to contribute to increased violence, particularly if those women have little access to family or local organizations. However, it is difficult to measure the actual extent of domestic violence. It may be very much higher than what the reports indicate because many instances of domestic violence against women are not reported. There are numerous factors accountable for the unabated violence against women and they differ man to man, family to family and society to society. Increasingly, research has been focused on the inter-relatedness of various factors that should improve our understanding of the problem within different contexts; factors contributing to these unequal power relations include: socio-economic forces, the family institution where power relations are enforced and control over female sexuality, belief in the inherent superiority of males and legislation and cultural sanctions that have traditionally denied women an independent socio-legal status.

Keywords: Legal Protection, Domestic Violence, Women, Societal Behaviour, CEDAW.

Introduction

In ancient time in India, the women enjoyed equal rights and status with men in all walks of life. Works by ancient Indian grammarians such as Patanjali and Katyayana suggest that women were educated in the early Vedic Period¹. *Rigvedic* verses suggest that the women married at a mature age and were probably free to select their husband. Scriptures such as Rigveda and Upnishads mention several women sages and seers, notably Gargi and Maitreyi².

The status of women in the society depends on the role played by them and how others look at their role. To some, women are the living personifications of the very grace and beauty of creation, while to others they symbolize within themselves the best virtues of the human race. Still others have viewed in women the highest manifestation of tolerance, compassion, service and utmost sacrifice. Social structure, cultural norms and values system are important determinants of womens' roles and their

status in the society³. A daughter was regarded as the pride of the family in cultured circles. The girls were initiated in Vedic studies and entitled to offer sacrifice to God; the son was not supposed to be absolutely necessary for the purpose. *Rigvedic* society was based on monogamy and was patriarchal. Loving care and protection were accorded to that woman, both in her parent's and in husband's home. In the *mantras* chanted during the marriage, the husband welcomes the wife to be the mistress of the house, not just be slave to the whims of the person. The value of women in relieving sufferings is recognized in the Vedas. A woman says a hymn "is more firm and better than a man who is godless and not charitable. She discerns the distressed, needy and the thirsty and is godly herself". There are numerous hymns in the *Rigveda*, indicating the high status accorded to women in the Vedic society⁴. There is mention that the daughter-in-law should be treated in the family as a queen 'Samragini' by all members⁵. Many religious rituals and sacrifices could not be performed without the participation of one's wife. It was considered that women must be educated enough to be able to take part in Vedic ceremonies and the illiterate wife is unworthy of a husband.

But the different literatures available reveal that women were subjected to all kinds of humiliation and indignities in the past. Not much have changed even today-women are not feeling safe and secured in their homes and in the family. The homes where women are living are the dens of terror and horror⁶. Even after 72 years of independence the crimes against women in India are amongst the highest in the world. It is ironical and distressing that life of women in India is still surrounded by violence⁷. In India the common are wife beating, harassment, torture, bride burning, slavery, exploitation, forced prostitution, sexual harassment, female foeticide and infanticide. However, the violence caused to the women in the family is domestic violence⁸.

Present Status of Women in India

In India, the Constitution grants women equal rights and opportunities with men; and all discrimination against women has been abolished by the Constitution of India, international covenants and declarations have made short shift of it; but despite the constitutional guarantee of equality and protection to women and passing of various legislations towards this end, women are subjected to an unequal status and the gender discrimination from the womb to the tomb continues. A chain of government programs has been launched to increase economic opportunities for women. But there is dearth of programs to address the cultural and traditional discrimination against women that leads to her abject conditions.

Some related it to prevailing social conditions like customs, illiteracy, poverty and lack of awareness among women, some attribute it to personal characteristics of women like feeling of helplessness, lack of self-confidence, inferiority complexes and other such second fiddle complexes.

Women still constitute 70 percent of the world's poor and two third of the world's illiterate. They occupy 14 percent of managerial and

administrative jobs, about 11 percent of parliamentary seats. In many legal systems they are still unequal. They often work longer hours than men but much of their work remains unvalued, unrecognized and unappreciated and the threat of violence stalks their lives from cradle to grave.

Violence against women is omnipresent problem; however its intensity may vary from time to time or place to place. It is an established fact that 'home' is supposed to be the most secured for a women. Now a day, it is said that women are often in great danger in the places where they should be safest, within their families. The irony is that for many of them 'home' is the place where they are subjected to untold harassment, violence – physically and at times, sexually by the same male folks who are supposed to protect her honor, dignity. They are unable to take their own decisions, voice their own opinions or protect for fear of further repercussions. Their human rights are denied and their lives are stolen from them by the ever-present threat of violence looming large over their lives.

Research Hypothesis

Hypothesis of the study is related to the ecological model of family as well as society as they assert the impact of social structures and societal behaviors upon the family members. It is said that India's recent domestic violence legislation was less a product of India subscribing to international human rights law than it was of the internal pressure from the domestic activist groups. In other words, India's present domestic violence legislation is in large part an outcome of internal activist groups pressuring the government for comprehensive law on domestic violence. However, a significant intensification of internal domestic violence activism coincided with India's ratification of a major international convention on discrimination against women, the convention on The Elimination of All forms of Discrimination Against Women, CEDAW. This ratification of CEDAW by the government of India in the year 1993 contributed to a strong intensification of the internal activist groups pressuring the government for a comprehensive domestic violence law to protect the human rights of victims and their families in times of violence in the family.

Objectives of the Study

The main objectives of the research paper are as follows:

1. To analyze the status of women in the past and present time.
2. To analyze the nature and extent of domestic violence against women in India;
3. To find out the factors responsible to domestic violence against women in India;
4. To identify the socio-legal reasons to explain the existing crime scenario in India;
5. To find the linkages between domestic violence against women and crime against women;
6. To study the policies, programs and processes adopted to combat domestic violence.

Prevalence and Dimensions of Domestic Violence

However, it is difficult to measure the actual extent of domestic violence. It may be very much

higher than what the reports indicate because many instances of domestic violence against women are not reported. The research studies and surveys conducted by the scholars generally produce higher estimates of violence than official records. However, they are also assumed to underestimate the actual extent of domestic violence. Domestic violence against women is partly a result of dominance factor. Such assumptions are not only a fact in India, but also form a basis in many other countries of the world. Given the subordinate status of women, much of domestic violence is considered normal and enjoys social sanction. With different processes of socialization that man and women undergo, men take up stereotyped gender roles of domination and control, whereas women are forced to take up that of submission, dependence and respect for authority. A female child grows up with a constant sense of being weak and in need of protection, whether physical, psychological, social or economic. This helplessness, forced by the society and its culture, has led to her exploitation at almost every stage of life.

1. Domestic violence is the most prevalent form of discrimination against women. About 45% of women are slapped, kicked or beaten by their husbands⁹.
2. According to statistics available from the world over, around 33.33 percent of the women have experienced violence in one form or the other, at the some point of their life by the intimate relatives. Statistical data available about the actual prevalence of domestic violence against women in India is scant. The only large scale survey conducted by the National Crimes Record Bureau, Ministry of Home Affairs, Government of India relating to crimes against women, reveals a record 71.5 per cent increase in cases of torture and dowry deaths during 2001 to 2015. The studies conducted by the different scholars indicate that physical abuse of Indian Women is quite high, ranging from 22 percent to 80 per cent of women surveyed. It was reported that about 25 per cent of dowry victims in India were driven to suicide.

Domestic Violence –A Human Rights Issue

Violence is not only a blot on a civilized society; it also is an undoubtedly serious deterrent to development of society in particular and nation as a whole. Because any type of violence is a violation of human rights, especially the domestic violence is a serious violation of human rights because 'domestic' is the primary basic unit of any society and if its human rights are violated in any manner, the society as a whole is directly affected by it and so it is a serious deterrent to the development. These deliberations have been discussed at length and acknowledged at various International forums such as The Vienna Accord of 1994, the Beijing Declaration and the Platform for Action, 1995. Some human rights activists prefer a broad-based meaning that includes "structural violence" such as poverty and unequal access to health and education. Others have argued for a more limited definition in order not to lose the actual descriptive power of the term. In any case, the

need to develop the specific operational definitions has been acknowledged so that research and monitoring can become more specific, effective and have greater cross-cultural applicability.

Domestic violence that is any act of physical, sexual or psychological abuse or the threat of such abuse, inflicted against a woman by a person intimately connected to her through marriage, family relation or acquaintanceship is universal and has its root in the socio-cultural set up of the society. The perpetrators of domestic violence have often been found to be the males and the victims, their sexual partners. Internationally, one in three women have been beaten, coerced into sex or abused in their lifetime by a member of her own family¹⁰. Starting from childhood to the end of her life she has to be under the control of father or husband or the son. The subordinate status of women combined with socio cultural norms that are inclined towards patriarchy and masculinity can be considered as an important factor determining the domestic violence.

Domestic violence has been defined, as any act occurring between two individuals who live or have lived together that is perceived to be intended to cause physical or psychological harm. The UN special Rapporteur on Violence against women defines domestic violence as "violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law"¹¹. Domestic violence encompasses, but is not limited to "physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation"¹². Violence can also be perpetuated by creating complete dependence of the women on the male head of the family for meeting personal needs such as purchase of basic requirements like food and clothing, mobility and for all dealings in the public sphere.

The Protection of Women from Domestic Violence Act, 2005 defines that for the purpose of this Act, any act, omission or conduct of the respondent shall constitute domestic violence in case it –

1. harms or injures or endangers the health, safety, life, limb or well-being whether mental or physical of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
2. harasses, harms, injuries or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
4. otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The definition refers to the gender-based roots of violence, recognizing that "violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." It broadens the definition of violence by including both the physical and psychological harm done towards women, and it includes acts in both private and public life.

Types of Domestic Violence

Domestic violence includes violence perpetrated by intimate partners & other family members, and manifested through:

Physical Abuse

Physical abuse includes the intentional use of physical force with the potential for causing death, disability, injury or harm. Physical abuse is not limited to scratching, pushing, shoving, throwing, grabbing, biting, choking, shaking, poking, hair pulling, slapping, punching, hitting, burning, use of a weapon (a gun, knife, or any other object), and the use of restraints on one's body, size or strength against another person only. Coercing or forcing other people to perform any of the above actions has also been classified as physical abuse.

Sexual Abuse

Sexual abuse can be divided into three categories :

1. Use of physical force to compel a person to engage in a sexual act against her will, whether or not the act is completed.
2. An attempted or completed sexual act involving a person who is unable to understand the nature or condition of the act, to decline participation, or to communicate unwillingness to engage in the sexual act (for example, because of illness, disability or the influence of alcohol or other drugs or due to intimidation or pressure).
3. Abusive sexual contact that includes intentional touching directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person against her will, or of any person who is unable to understand the nature or the condition of the act, to decline participation or to communicate unwillingness to be touched (e.g. because of illness, disability, or the influence of alcohol or other drugs or due to intimidation or pressure).

Psychological or Emotional Abuse

Emotional abuse includes trauma to the victim caused by acts, threats of acts, or coercive tactics, such as those given in the list below:

Humiliating the victim; controlling what the victim is able and is not able to do; withholding information from the victim; getting annoyed if the victim disagrees; deliberately doing something to make the victim feel diminished (e.g., less smart, less attractive); deliberately doing something that makes the victim feel embarrassed; using the victim's money; taking advantage of the victim; disregarding what the victim wants; isolating the victim from friends and family; prohibiting access to transportation or telephone; Getting the victim to engage in illegal sexual activity. However, it has been felt that this list is not exhaustive and can be extended to include

many other types of behaviour that could be considered as emotionally abusive by the victim. When psychological or emotional abuse is accompanied by physical and/or sexual abuse, this is classified as psychological violence¹³.

Economic Abuse

Economic abuse is another category of violence identified by the UN Special Rapporteur on Violence Against Women. 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 violence against women and girls; gender bias that discriminates in terms of nutrition, education and access to health care amounts to a violation of women's rights.

Some of the judicially recognized kinds of domestic violence are:

Dowry Death

Dowry death is the worst form of the domestic violence. Dowry related violence is a unique problem in India. It cuts across all background be it social, cultural, economic or religious. It cuts across class, caste and ethnicity. It is considered as a greatest social evil¹⁴. Dowry has been referred to as a social cancer, a cruel custom and an insult to the dignity of women¹⁵. Dowry harassment cases that erode the entire base of womanhood in India, in several cases culminating in suicide or homicide, are part of tragic drama of domestic violence being enacted everyday in some part of the country. There cannot be any second thought that brides being harassed for dowry are a blot on our society that must be erased-the sooner, the better¹⁶.

Cruelty

Cruelty in the form of domestic violence may be physical or mental cruelty. It is not possible to give any precise definition of cruelty. Any conduct of the spouse which causes pain and injury to the mind and consequent detriment to health of other spouse may amount to cruelty¹⁷.

Female Foeticide

Though the gender inequality has its roots in the Patriarchal system the society professes but the misuse of modern technology had added in following the practices of eliminating the female foetus after undergoing sex determination tests. The female children are killed even before they acquire the age of viability in mothers womb. Female foeticide is increasing throughout India. Female foeticide is an extreme manifestation of gender violence against women where women is deemed her most basic and fundamental right—the right to life.

Female Infanticide

The traditional method of getting rid of the unwanted girl was female infanticide where the female baby was done away with after birth in various ways by either poisoning, suffocating the infant under the mother after birth. Female infanticide, a most inhuman, uncivilized event is taking place silently. The entire society should fight to stop the murder of the female child.

Incest

Incest is one of the most ghastly crimes. The crime of incest has become rampant in Indian society. The incidence of sexual abuse of girl children is a very common affair. Incest means the sexual violation of the girl child in the family by her own relatives. Such crime threatens the fabric of family life and is always kept in dark¹⁸.

So among the many manifestations of the violations of the fundamental rights of women, domestic violence is one of the most vicious. Domestic violence is undoubtedly a human right issue and serious deterrent to development.

Causes of Domestic Violence

The true meaning of women's right is lost in the distinction in the public and private legal system. Although, the law-abiding agencies of the states appear to be engaged in protecting the rights of women in connection with the offences committed within the premises of the homes, yet they are of little help practically.

There are numerous factors accountable for the unabated violence against women and they differ man to man, family to family and society to society. Increasingly, research has been focused on the inter-relatedness of various factors that should improve our understanding of the problem within different contexts; factors contributing to these unequal power relations include: socio-economic forces, the family institution where power relations are enforced and control over female sexuality, belief in the inherent superiority of males and legislation and cultural sanctions that have traditionally denied women an independent socio-legal status.

The cultural ideologies in both developed and developing countries do not differ as far as the treatment towards women is concerned. In both types of countries, women are considered to play second fiddle and this ideology puts the man as a 'super' to 'legitimate' for punishing the women – and thus the violence takes place.

Experiences during childhood, such as witnessing domestic violence and experiencing physical and sexual abuse have been identified as factors that put children at risk. The isolation of women in their families and communities is known to contribute to increased violence, particularly if those women have little access to family or local organizations. On the other hand, women's participation in social networks has been noted as a critical factor in lessening their vulnerability to violence and in their ability to resolve domestic violence. These networks could be informal (family and neighbours) or formal (community organizations, women's self-help groups, or affiliated to political parties)¹⁹.

A strong factor in perpetuating violence against women is because the women are not legally protected within the sanctity of the home, thinking that 'home' itself the ultimate protection and it needs no further protection whatsoever it may be.

Factors Responsible for Domestic Violence²⁰

The following factors perpetuating domestic violence in India:

Cultural

1. Gender-specific socialization.
2. Cultural definitions of appropriate sex roles.
3. Expectations of roles within relationships.
4. Belief in the inherent superiority of males.
5. Values that give men proprietary rights over women and girls.
6. Notion of the family as the private sphere and under male control.
7. Customs of marriage (bride price/dowry).
8. Acceptability of violence as a means to resolve conflict.

Economic

1. Women's economic dependence on men.
2. Limited access to cash and credit.
3. Discriminatory laws regarding inheritance, property rights, use of communal lands, and maintenance after divorce or widowhood.
4. Limited access to employment in formal and informal sectors.
5. Limited access to education and training for women.

Legal

1. Lesser legal status of women either by written law and/or by practice.
2. Laws regarding divorce, child custody, maintenance and inheritance.
3. Legal definitions of rape and domestic abuse.
4. Low levels of legal literacy among women.
5. Insensitive treatment of women and girls by police and judiciary.

Political

1. Under-representation of women in power, politics, the media and in the legal and medical professions.
2. Domestic violence not taken seriously.
3. Notions of family being private and beyond control of the state.
4. Risk of challenge to status quo/religious laws.
5. Limited organization of women as a political force.
6. Limited participation of women in organized political system.

Legal Protection of Domestic Violence

The criminal procedure code in India divides all the crimes into two categories-cognizable crime and non-cognizable crime. While cognizable crimes reported are dealt by the police, non-cognizable crimes are generally left to be pursued by the affected parties themselves in the courts. Women like men may be victims of any of the crimes such as murder, robbery, cheating etc., but the crimes which are directed specifically against women are characterized as 'crimes against women' and these are broadly classified under two categories:

1. the crimes under the Indian Penal Code (IPC) and
2. the crimes under special laws (SLL)

The Crimes under the Indian Penal Code include,

1. Rape (Section 375 IPC)
2. Kidnapping and abduction for different purposes (Section 363-373 IPC)
3. Homicide for dowry, Dowry deaths or their attempts (Section 302/304-B IPC)

4. Torture both mental and physical (Section 498-A IPC)
5. Molestation (Section 354 IPC)
6. Sexual Harassment (Section 509 IPC)
7. Importation of Girls (up to 21 years of age) (Section 366-B IPC)

The Crimes under the Special Laws include:

1. Immoral Traffic (Prevention) Act, 1956.
2. Dowry Prohibition Act, 1961.
3. The Child Marriage Restraint (Amendment) Act, 1979.
4. Indecent Representation of Women (Prohibition) Act, 1986.
5. Commission of Sati (Prevention) Act, 1987.
6. The Muslim Personal Law (Shariat) Application Act, 1937.
7. The Cinematography Act, 1952.
8. The Special Marriage Act, 1954.
9. The Hindu Marriage Act, 1955.
10. The Hindu Adoption & Maintenance Act, 1956.
11. The Hindu Minority & Guardianship Act, 1956.
12. The Maternity Benefit Act, 1961.
13. The Foreign Marriage Act, 1969.
14. The Indian Divorce Act, 1969.
15. The Medical Termination of Pregnancy Act, 1971.
16. The Equal Remuneration Act, 1978.
17. The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994.
18. Protection of Women from Domestic Violence Act, 2005.
19. Protection of Women against Sexual Harassment at Workplace Bill, 2010.

The existing legislative measures to protect the women from domestic violence prior to the passing of the act of Prevention of Women from the Domestic Violence Act 2005 is to be understood as to analyze and differentiate the limitations felt and the need to establish a new system or law on this issue. Several enactments that originated during the British colonial rule are also to be discussed and the broad framework of civil and criminal remedies that existed prior to 2005 in India is the subject matter of this study.

Findings of the Study

1. Domestic violence against women is more prevalent among the lower socio-economic classes or families. Also physical family violence against women is more prevalent among the lower socio-economic classes and among families in which women are socially isolated (low social support). Psychological family violence against women is more prevalent among the middle and higher socio-economic classes.
2. Violence against women (sexual, physical and psychological violence) is more prevalent among families in which the husband uses alcohol or other substances. It is more prevalent among women who witnessed their father beat their mothers during their childhood, than among women who did not witness this parental behavior.
3. Human rights violence against women is more prevalent among educationally backward areas. And physical and sexual violence is more

prevalent in society, in which the individual have aggressive, violent and low mentality.

Conclusion

It is said that India's recent domestic violence legislation was less a product of India subscribing to international human rights law than it was of the internal pressure from the domestic activist groups. In other words, India's present domestic violence legislation is in large part an outcome of internal activist groups pressuring the government for comprehensive law on domestic violence. However, a significant intensification of internal domestic violence activism coincided with India's ratification of a major international convention on discrimination against women, the convention on The Elimination of All forms of Discrimination Against Women, CEDAW. This ratification of CEDAW by the government of India in the year 1993 contributed to a strong intensification of the internal activist groups pressuring the government for a comprehensive domestic violence law to protect the human rights of victims and their families in times of violence in the family.

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