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Position of women in India: A special reference to domestic violence act

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Abstract

We are daily listening to news, reading newspaper or magazine; we go through incidents and accidents with women in India. The truth is that in the modern India, the woman has always been a second grade citizen, no matter what its esteemed leaders have said or done. Women are always considered as a physically and emotionally weaker than the males, whereas at present women have proved themselves in almost every field of life affirming that they are no less than men due to their hard work whether at home or at working places. Behind closed doors of homes all across our country, women are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolitans as well. The problems such as dowry, domestic violence, sex selective abortion, female infanticide are still prevalent. Now the time has come when effective and preventive measures need to be taken to ensure that women are empowered in India. To fight the evil of domestic violence the battle has to be twofold, at one level women needs to fight to unshackle the rigid norms of patriarchy and on the other hand women also need to balance and smartly deal with the problems of the family discords.

Keywords: Woman, India, Domestic violence, Patriarchy, Family discords.

Introduction

It is said that the position of women in a society is the society's index of cultural and spiritual attainment. Today, women struggle to pursue respectable careers and work to survive like their male counterparts. However, women still have challenges that have led to the emergence of numerous women empowerment groups to fight social injustices that inhibit women prosperity. These campaigns mainly focus on fighting illiteracy, sexual harassment etc. Moreover, there has been a more focused violence against women campaign aimed at educating women to know more about their rights.

We are daily listening to news, reading newspaper or magazine; we go through incidents and accidents with women in India. The truth is that in the modern India, the woman has always been a second grade citizen, no matter what its esteemed leaders have said or done. Women are always considered as a physically and emotionally weaker than the males, whereas at present women have proved themselves in almost every field of life affirming that they are no less than men due to their hard work whether at home or at working places. Behind closed doors of homes all across our country, women are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolitans as well. It is crossing all social classes, genders, racial lines and age groups. It is becoming a legacy being passed on from one generation to another. But offences against women which reflects the pathetic reality that women are just not safe and secure anywhere. A few examples of daily news are worth-mentioning here:

- Former Miss World and actress Yukta Mookhey has lodged an FIR against her husband Prince Tuli for alleged domestic violence.
- Husband chops off wife's fingers in Manipur; absconding.
- Assaulted by 'alcoholic' husband for years, woman sets herself, 2 kids ablaze.
- Daughter-in-law should not be treated as domestic help: Supreme Court.
- The Supreme Court said a bride must be respected in her matrimonial home as it reflects the sensitivity of a civilised society.

So, according to a latest report prepared by India's National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India.

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Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide. The problems such as dowry, domestic violence, sex selective abortion, female infanticide are still prevalent. Now the time has come when effective and preventive measures need to be taken to ensure that women are empowered in India.

Meaning of Domestic Violence

To understand the real meaning of the word domestic violence first of all one should know the meaning of the words domestic and violence separately. The word domestic means "within the realm or the territory of house".¹ And the word violence means "action using physical force and intended to hurt or kill someone to cause damage"². Thus the word domestic violence means "an action or physical force which is being used within the realm or territory of house to intend to hurt or cause damage any particular subject in the domestic household". In other words we can say that it is an unpleasant and destructive natural force against the family member by one another.

Domestic violence is a "pattern of coercive and assaultive behaviours that include physical, sexual, verbal, and psychological attacks and economic coercion that adults or adolescents use against their intimate partner". Domestic violence is not typically a singular event and is not limited to only physical aggression. Rather, it is the pervasive and methodical use of threats, intimidation, manipulation, and physical violence by someone who seeks power and control over their intimate partner.

Why & Where Mostly The Women Are The Victim Of Domestic Violence?

To know the reality of status of women in India, first of all we have to answer the above mentioned questions. The answer of the first question can be:-

- Because the women are susceptible to violence because of their female sexuality (resulting in, inter alia, rape and female genital mutilation);
- Because they are related to a man (domestic violence, dowry deaths, sati) or
- Because they belong to a social group, where violence against women becomes a means of disgrace directed at the group (rape in times of armed conflict or ethnic strife).
- Because when a man hits her wife for first time, he feels guilty but subsequently his confession changes into habit. So, women's silence and his permission for her husband to do so, is real cause for her victimization.
- Another cause is that a father feels that he 'sells' her daughter to her husband during marriage, which implies that now position of her daughter is not the concern of his father. Consequently, if the girl complains of abuses at in-laws place after marriage, she is advised to bear with it, rather than supporting her to take the cause forward. So, insecurity of women is another reason for her silent sufferings.

¹ <http://www.legalserviceindia.com/article/I263-Domestic-Violence-in-Marriage.html>

² Little Oxford English Dictionary, 6th impression 2007, Oxford university press, p.785.

The second one can be answered like this

Women are subject

- To violence in the family (battering, sexual abuse of female children, dowry related violence, incest, deprivation of food, marital rape, female genital mutilation),
- To violence in the community (rape, sexual abuse, sexual harassment, trafficking in women, forced prostitution) and
- Violence by the State (women in detention and rape during times of armed conflict).

How Does Society Propagate Domestic Violence?

Society perpetuates domestic violence by not taking it seriously enough and treating it as expected, normal, or deserved. Specifically, society propagates domestic violence in the following ways:-

- Police may not treat domestic abuse as a crime, but, rather, as a "domestic dispute".
- Courts may not award severe consequences, such as imprisonment or economic sanctions.
- Clergy or counsellors may have the attitude that the relationship needs to be improved and that the relationship can work, given more time and effort.
- People may have the attitude that the abuse is the fault of the victim, or that abuse is normal part of a marriage or domestic partnerships.
- Gender- role socialization and stereotypes condone abusive behaviour by men.

Scope of Protection of Women by Domestic Violence Act 2005

It is a central acts extending to the whole of India except Jammu & Kashmir. It came into force on 26th October 2006. The offences under this are cognizable and non-bailable³. The Act covers those women who are in relationship with the abuser or where both parties have lived together by consanguinity or by marriage, are entitled to legal protection under this Act⁴.

Special Features of This Act

- It provides for the appointment of protection officer who can provide the aggrieved person with legal aid, medical examination and safe shelter.
- The Act stipulates that the magistrate shall look on the application within 60 days from the first day of hearing.
- It provides for rights of women to secure and reside in her matrimonial house or shared household whether she has a title by the order of the magistrate.

Poorly Drafted Law Promotes Domestic Violence rather than curb it

The domestic violence and dowry laws perpetuate domestic violence, rather than curb it. The Domestic Violence Act, 2005 as been drafted poorly. It lacks provisions for men to complain against a woman for harassment. Moreover, female from the side of husband could not be prosecuted under this act. According to me the society is actually within us and each one of us comprises it. Society is basic to civilization and family is the unit of society, for which marriage forms the basis. But, the way the government has formulated the marital laws, heavily unbalanced to one particular gender

³ Domestic Violence Act, 2005.

⁴ *Ibid.*

(the female gender), the institution of marriage is sure to break down to an unnatural death sooner or later. The Indian Penal Code (IPC) 498A (cruelty by husbands and relatives on married woman); Domestic Violence Act 2005, have though been conceived with an intention to provide protection to women, have been drafted and implemented so badly, that they have become handy tools in the hands of unscrupulous women and their parents to harass their husbands and in-laws. Then there comes Domestic Violence Act, of 2010.

Scope of Domestic Violence Act, 2010

Preamble

An Act to provide for the protection and relief of victims of domestic violence to provide for the punishment of preparators of domestic violence; to provide for the procedure and guidelines to be followed by the court in relation to protection and compensation of victims of domestic violence; to provide for the jurisdiction of court; to provide for the enforcement of orders made by the court; to empower the family and children court to handle cases of domestic violence and for related matters⁵.

Effect of Domestic Violence Act 2010

Now, a woman can be prosecuted under the Domestic Violence Act as failure to bring charges against women involved could encourage the men to instigate the female members of a family to commit violence, the Delhi High Court has ruled. It is common knowledge that in case a wife is harassed by the husband, other family members may also join him in treating the wife cruelly and such family members would invariably include female relatives as well. "If restricted interpretation is given...the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members," a Bench comprising Justices A.K.Sikri and Ajit Bharioke said. While interpreting the provisions of the Act, the court said that 'relatives' included not only male but also female members of a family. "Various provisions in the DV Act provide for clinching circumstances indicating that female relative was clearly in the mind of the legislature when it comes to filing of the complaint/application by a wife or a female living in a relationship in the nature of marriage," the Bench said. The judgement was passed on the plea of a woman challenging order of a trial court initiating proceedings against her in a case of alleged domestic violence. Turning down the plea of accused that female members of a family cannot be charged under the Act, the bench said though the provisions are not clearly drafted it did not stop the court from arriving at interpretation. No doubt, the provision is not very satisfactorily worded and there appears to be some ambiguity in the definition of 'respondent' as contained in the Act. "But then, courts are not supposed to throw their hands up in the air expressing their helplessness. We, thus, hold that the expression 'a relative' in the Act includes female relative as well," the Bench said.

Criminal Law (Amendment) Act, 2013:

On 19 March 2013, the Parliament of India passed a new law with the goal of more effectively protecting women from

sexual violence in India.⁶ It came in the form of the Criminal Law (Amendment) Act, 2013, which further amends the Indian Penal Code, the Code of Criminal Procedure of 1973, the Indian Evidence Act of 1872, and the Protection of Children from Sexual Offences Act, 2012.⁷ The law makes stalking, voyeurism, acid attacks and forcibly disrobing a woman explicit crime for the first time, provides capital punishment for rapes leading to death, and raises to 20 years from 10 the minimum sentence for gang rape and rapes committed by a police officer. The new law doesn't address marital rape committed by the armed forces or rape against men.⁸ Reformist lawmakers have argued that the higher age of consent could result in abuses and wrongful arrests in statutory rape cases. Additionally, critics point out that there is often a disconnection between law and practice in India.⁹ For example, according to a 2012 United Nations report, 47% of Indian women marry younger than 18 whereas the legal marriage age is 21 for men and 18 for women¹⁰.

Reasons and Effects of Under-Enforcement of Domestic Violence Laws in India

India's legislative efforts and related commissions have failed to stem the rising tide of domestic violence.¹¹ As numerous scholars have shown, there are at least four reasons why the Indian government has failed to decrease domestic violence inspite of so many legislation passed by Indian Parliament.

- First, the unwillingness of local police to implement current legislation on domestic violence has played a major role in the inability of the national government to decrease violence against women.¹²
- Second, deep-set cultural presumptions and attitudes regarding the position of women in families have also been impediments to reform.¹³
- A third factor, the economic disempowerment of women, particularly in rural areas, can be termed as one of the reason because its direct impact is on those women who are insufficiently informed about their legal rights or fail to act on them.
- Last but not the least, the violence suffered by women also makes them scared, not knowing what to do. And the police just sit and watch, without much action being taken.

⁶ Gates, Sara. "India Rape Law: Parliament Passes Strict Sexual Violence Legislation." The Huffington Post. The Huffington Post.com, 21 Mar. 2013. Web. 19 Apr. 2013.

⁷ THE CRIMINAL LAW (AMENDMENT) BILL, 2013. Vol. Bill No. 63-C of 2013.

⁸ 21, Mark Magnier March. "India Passes Rape Law That Sets Age of Consent at 18". Los Angeles Times. Los Angeles Times, 21 Mar. 2013. Web. 19 Apr. 2013.

⁹ Magnier, Mark. "Critics Say India Rape Law Opens Way to More Abuse." Los Angeles Times. Los Angeles Times, 21 Mar. 2013. Web. 19 Apr. 2013.

¹⁰ United Nations Population Fund. "Marrying Too Young." United Nations, 2012. Web. 19 Apr. 2013.

¹¹ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹² Melissa Spatz, A "Lesser" Crime: A Comparative Study of Legal Defences for Men Who Kill Their Wives, 24 COLUM. J.L. & SOC. PROBS. 597, 610-11 (1991).

¹³ Vijayashri Sripathi, India's National Human Rights Commission: A Shackled Commission? 18 B.U. INT'L L.J. 1, 12-13 (2000).

⁵ Domestic Violence Act, 2010.

The above mentioned factors play a critical role in the impotency of domestic violence legislation. That is why, every day, at least 10-15 cases of murders, torture and assault on women by their husbands or other family members in some corner of the country are reported in the newspapers. What is more shocking is that 38 percentages of murderers in such cases are their intimate partners and 35 percentages of women are victims of domestic violence each year worldwide as per 2013 survey of domestic violence WHO. Also, reporting of cases of domestic violence follows iceberg phenomenon where hardly 10% of cases are reported. In India, what is more mind boggling is that in spite of increasing awareness of people, legal protection of women by all constitutional safety of women along with enforcement of Protection of women against domestic violence act, 2005, 2010 and criminal law (amendment) act of 2013, cases of dowry deaths are increasing which was 8,391 in 2010 compared to 6995 cases in 1995. According to a survey of national centre of biotechnology done in Uttar Pradesh in 1996, 45 percentage of men had admitted that they have physically abused their wives within last one year and 7.5% of all women admitted that they attempted suicide finding no way to escape from violence by their husbands. According to statistics from the National Crime Record Bureau, gender-based issues are getting worse. Women have been relegated with secondary status within the community and households. Even the literacy level of women is only at 54%, compared to that of men which is at 76%. Crime in any form is one of the main reasons that hinder women empowerment in India.

No Provisions on marital rape in existing laws of India

Since India does not have a law on marital rape, even if a woman's husband has sexual intercourse with her, without her consent, he cannot be prosecuted for rape. However, excessive and unreasonable demands for sex, or demands for unnatural sex have been considered forms of cruelty and may entitle a woman to a divorce. One of the drawbacks of domestic violence laws is that no specific provisions for marital rape are mentioned.

The negative effects of Domestic Violence are as follows

- Women are forced to get married at a tender age.
- They are expected to fend for themselves while taking charge of the domestic chores.
- They become malnourished since they are always expected to serve themselves last, after every member of household has received their portion.
- They suffer from unfair and biased inheritance and divorce laws.
- Women are not able to accumulate any substantial amount of asset, making it pretty difficult for them to establish their own financial security.

Society and traditions, in some cases, sanction abuse by creating conditions for the victims to accept violence as a norm. Countries where domestic violence is most prevalent either lack proper legal frameworks to bar abuse or mechanisms to implement laws against abuse. Male population is generally apathetic to the consequences of this abuse even when many among them would not like to indulge in such a practice. There is no proper education of sexual relations as well as of responsibilities of adults who decide to live in a permanent relationship.

Conclusion

Once, Acting Chief Justice Mansoor Ahmad Mir of Himachal Pradesh High Court said: "Violence against women is of serious concern and the judiciary can play a major role in delivering gender justice". Domestic violence is one of the worst forms of violence against women. It cannot be controlled only by the help of laws. As most of the cases of abuse go unnoticed or unreported. It is running in vicious cycles from generation to generation in our society which says that there are some permanent defects in pattern of our mental set up which is very clear from a survey of UNICEF's report card on adolescents 2012. It says that 53 % of girls and 57% of boys feel that husband is justified in hitting or beating his wife which warns us that definitely this problem would not end so soon. Studies say that boys who witness domestic violence are more likely to become abuser of their partners. Even today, men continue to think beating of their wives as sign of masculinity and their inherited rights, and women would continue to bear it silently, this problem would continue to persist. Moreover, until male dominance of our society would change to equality rather than provision of higher position to female as per law of India, this problem would remain unchanged. To fight the evil of domestic violence the battle has to be twofold, at one level women needs to fight to unshackle the rigid norms of patriarchy and on the other hand women also need to balance and smartly deal with the problems of the family discords. Domestic violence share the menacing element of being hidden crimes, frequently perpetrated by persons in a position of supposed trust or complicated by close relationships¹⁴.

Suggestions

Change must start now. It must start at the highest levels of Government in developing countries and carried through to the grass roots. Major reforms in law are needed to institute a change in attitudes, which will create fairer societies, promoting equality of opportunity as well as allowing people to rise above their circumstances and become socially mobile. The following measures can be suggested to solve the inter-related issues of domestic violence:-

- Good legal framework, sanctioning penalties and providing protection, need to be evolved, where there is none.
- The implementation of good legal framework will enhance the number of reported cases and highlight the gravity of the issue.
- Safety measures for victims should be increased.
- Accountability of the perpetrator should also be increased.
- A culture of prevention and recognition through increased understanding of domestic, sexual and gender-based violence should be promoted.
- An effective and consistent help to the victims should be given.
- An efficient and effective implementation of laws should be ensured.
- A structured and improved planning and monitoring to continued effectiveness should be ensured.
- School children need to be taught about domestic violence.

¹⁴ Outline of National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014

- Human Rights education must be made a compulsory part of curriculum through secondary school.
- Young girls should be empowered to reject violence psychologically.
- Religious scholars may also play an important role in strengthening the perceptiveness against domestic violence.

This can be done through education and training of girls and boys, not merely in formal institutions, but also through domestic training by their mothers, aunts, elder sisters and other older members of family seeking to inculcate the respect of women as a fundamental family value. In other words, we all have a part to play in creating a safer society, through resisting abuse, reporting abuse, and supporting the abused and their rights through our political, judicial and legal systems. Only then we will be able to deliver a strong foundation for an improved system of prevention and can give ourselves: Safer lives at home and in our community.

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