

Domestic Violence Against Women and Right to Equality

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Abstract: *Violence against women is an obstacle to the achievement of the objectives of equality, development, and peace. Violence within the family is most degrading to a woman's dignity. In the Indian patriarchal joint family system, it became an established tradition for women to live for and with the approval of men. Independence of India brought about an awareness that human dignity is desired, it can be ensured through gender equality. Indian constitution is a comprehensive document enshrining various principles of justice, liberty, equality, and fraternity. The Indian parliament has often invoked Article 15 of the constitution to pass special legislative and executive measures to protect women. The Dowry Prohibition Act, 1961, and The Protection of Women from Domestic Violence Act, 2005 are legislations to protect women from domestic violence. The Protection of Women from Domestic Violence Act, 2005 expanded the definition of violence. This Act also provides the functions of protection officers who have to ensure that all aggrieved people are provided with assistance. This 2005 Act is to provide effective protection of the rights of women guaranteed under the constitution of India who are the victims of domestic violence. The present paper attempts to examine the causes of domestic violence and also focuses on the laws relating to domestic violence and prevention measures. For the study secondary sources of data were used.*

Keywords: Domestic violence, rights, dignity, gender equality

1. Introduction

The patriarchal setup has been deeply rooted in Indian society since time immemorial. Women are still considered and treated as inferior to men in all walks of life. The low status of women is evident from the very fact that rarely any parents prefer to have a girl child. The struggle for legal equality has been one of the major concerns of the women's movement worldwide. It may be in the internal situation of her position in the parental or matrimonial home or in the external situation of acquiring education, skills, professions, employment, etc. The prevalent gender bias, being offensive to human dignity and human rights, has emerged as a fundamental crisis the world over. Human rights can be taken as those minimal rights which every individual must have by virtue of his being a member of the human society. The human rights of women are therefore an inalienable, integral, and indivisible part of human rights. All forms of discrimination on grounds of gender are, thus, violative of fundamental freedoms and human rights. Violence against women is an obstacle to the achievement of the objectives of equality, development, and peace. Some females fall prey to violence before they are born, when expectant parents abort their unborn daughters, hoping for sons instead. In others, they are compelled to marry at an early age, before they are physically, mentally, or emotionally mature. In the last few decades, there has been an alarming increase in the incidence of violence against women within and outside the family like – wife beating, dowry deaths, sexual crimes, and even reversion to medieval practices like "Sati".

Violence within the family is most degrading to a woman's dignity. But family violence must be publicly acknowledged as a problem. In the patriarchal joint family system, it became an established tradition for women to live for and with the approval of men. Domination or imposition of one's will upon the behaviour of another is usually through social authority or economic force. The male children's subordination to the

father's dominance is temporary; it lasts until they become heads of households. The subordination of female children and wives is lifelong. It was only as recent as the 19th and 20th centuries that some changes began to take place. Independence of India brought about an awareness in many minds that if human dignity is desired, it can be ensured through gender equality. But a wide gap still remains between reality and ideal. Gender equality continues to be an elusive goal for the majority of families in our country.

2. International Perspective

The Universal Declaration of Human Rights, 1948 has unequivocally included many rights as basic rights of human beings. Everyone is entitled to all rights set forth in the Declaration without distinction of any kind such as race, colour, sex, language, religion, political, national or social origin, property, birth, or other status. The human rights of women are therefore an inalienable, integral, and indivisible part of human rights. All forms of discrimination on grounds of gender are, thus, violative of fundamental freedoms and human rights. Gender injustice and insensitiveness manifest themselves in the form of discrimination, crime, and violence against women.

The adoption of the Declaration on the Elimination of Discrimination Against Women in 1967 acted as a catalyst. Some of the important articles are related to equal remuneration, and equal rights in the field of economic and social life. The preamble to the Declaration states that despite various instruments, extensive discrimination against women continues to exist. Discrimination against women violates the principles of equality of rights and respect for human dignity. The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), which is an International Bill of Human Rights for Women has emphasized on elimination of discrimination. Discrimination against women takes three main forms; (I) Discrimination in

economic, political, and social opportunities, (2) inequality in family life including in health care, marriage, and reproductive decision-making, and (3) gender-based violence. Such discrimination has resulted in an obvious denial of a woman's basic human rights.

According to Article 1 of CEDAW, the term "discrimination against women" means any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil or any other field.

Declaration on the Elimination of Violence Against Women, 1993

The Preamble to the Declaration on the Elimination of Violence Against Women, 1993 states that the Declaration on the Elimination of Violence Against Women is the first international human rights instrument to exclusively deal with the issue of violence against women. It affirms that violence against women violates, impairs, or nullifies women's human rights and their exercise of fundamental freedoms.

Article 1 of the Declaration on the Elimination of Violence Against Women defines 'violence' as: Any gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Article 3 lays down that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field.

The Fourth World Conference on Women in Beijing in September 1995 very strongly highlighted the fact that throughout the world there has been traditional discrimination both overt and covert, against women. The path to the future must clear this jungle of discrimination and bring about a more fair and just society where women can play more effective roles free from obstructions, bias, and prejudices that prevent their effective participation in public activities. The Beijing Conference laid the foundation in the field of human rights of women. "The Platform for Action" a 362 paragraph document, was the blueprint for women's advancement in countries around the world. It was the main document of the conference. The "Platform for Action" recommended action in twelve "critical areas of concern". These are areas identified as obstacles to the advancement of women. It offers corresponding strategic objectives and actions to be taken by the government, the international community, non-governmental organizations, and the private sector for the removal of the existing obstacles.

3. Indian Perspective

In India almost half of the Indian population is women. They have often been discriminated against and have suffered and are suffering discrimination due to silence on their part in the

civilized as well as primitive society. Even though self-sacrifice and self-denial are their nobility and virtue, they have been made the victims of all inequalities, indignities, and discrimination, from time immemorial. It is true that a generation of great men is incomplete without a generation of empowered women. But women as a gender had rarely gained fair treatment from the pivotal male dominated culture of the country. Even in the present era of human rights women from womb to tomb, suffer a status of submissiveness, a span of second-class citizen, and the injustice flag of the female gender flies high as mothers, wives, and households everywhere lacking facility and opportunity. The women have the right to life in its luminous amplitude, which belongs to every woman.

The Indian constitution is a comprehensive document enshrining various principles of justice, liberty, equality, and fraternity. The fundamental law of the land assures the dignity of individuals irrespective of their sex, community, or place of birth. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as specific provisions for upliftment of the status of women in our constitution. The Constitution contains many negative and positive provisions to secure gender justice. The rights guaranteed to the women are on par with the rights of men and in some cases, the women have been allowed to enjoy the benefit of certain special provisions through state legislation and affirmative action. The concern of social reformers was to ensure that women were better equipped socially to undertake the roles of mothers and wives in the new social conditions that were emerging.

As enshrined in the constitution, all laws get their sanction from the Indian constitution which guarantees justice, liberty, and equality to all citizens of India. The preamble speaks of equality of status of opportunity for all citizens. Article 14 states that "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". It not only prohibits discrimination but makes various provisions for the protection of women. Articles 14,15 specially 15(3), 39 and 51-A(e) mention in this regard. The women have the right to life in its luminous amplitude, which belongs to every woman. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as specific provisions for upliftment of the status of women in our constitution. Unfortunately, there have been relatively few cases in which women have asserted their right to equality by moving to the courts.

4. Domestic Violence against Women in India

Frequently women met violence of one sort or another both in their homes and outside, which is directly linked with their unequal positions in a patriarchal society and cutting across both class and community. The first categories of violence focus on the rape, and murder of young brides for dowry. It was realized that these were the most brutal expressions of a widespread phenomenon of domestic violence which included wife beating, cruelty, torture, and humiliation. This experience made the women's groups demand that wife abuse be treated as an offence. Realizing the gravity of the demand, the parliament responded with the Criminal Law (Second

Amendment) Act, 1983, which for the time gave legal recognition to domestic violence by making cruelty inflicted by the husband or his relatives an offence (Chapter XXA of the Indian Penal Code, Section 498A). Further, the law of Evidence was also amended to provide that if a married woman commits suicide within seven years of her marriage the presumption in law will be that her husband or his relatives abetted the suicide (Section 113A of the Indian Evidence Act, 1872).

Violence within the family is most degrading to a woman's dignity. Most times she feels that for the sake of the reputation of the family, she should remain silent. Fear and insecurity lead to submission to the will of the husband. She has no choices. Society looks down upon a divorced and abandoned woman. All these shortcomings in our society can be laid directly to the system of patriarchy which has not allowed women to reach their highest potential. The Indian girls are taught to remain faithful to their husbands and take their husbands as gods to them. The patriarchal setup has been deeply rooted in Indian society since time immemorial. It may be believed that this system laid the foundation stone for the abuse of women. Domestic violence affects women from every social background irrespective of their age, religion, caste, or class. Domestic violence is one of the gravest and the most pervasive human rights violations. For too long now, women have accepted it as their destiny or have just suppressed their right to raise their voices. There is also a widespread belief that a woman is her father's and later her husband's property. This is illustrated by the traditional dowry system in which a bride's family must provide cash, property, or gifts to her bridegroom's family as part of the wedding. Against this backdrop, it is no surprise that Indian women suffer from a high incidence of domestic violence. Indian women also have lower life expectancies and less access to education, healthcare, and employment opportunities than Indian men. Additionally, domestic violence cases are the least reported and discussed.

5. Indian Legislations Against Domestic Violence

Part III of the Indian Constitution protects fundamental rights, including the right to life under Article 21, which has been interpreted to mean the right to live with dignity and free from violence. The Indian parliament has often invoked Article 15 to pass special legislative or executive measures to protect women, which have generally been upheld by the courts. The Dowry Prohibition Act, 1961 was the first law to criminalise the giving and receiving of dowries. This Act was amended in 1984 and again in 1986 to make the provisions of this law more stringent and to plug the loopholes that had made it ineffective. This Act prohibits the request, payment, or acceptance of dowry. The Period of limitation for filing complaints was removed. The court now has powers to act on its own knowledge or on a complaint by a recognized welfare organization. The offence has been made cognizable for the purpose of investigation. However, there has been no significant reversal of the trend nor any visible change in attitudes even among the educated urban elite where we hear of dowry deaths violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. Violence against women in the family occurs in

developed and developing countries alike. Domestic violence is the violent victimization of women, within the boundaries of the family; usually by men or their family to whom they are married or with whom they have a marriage-like relationship. Violence can be both physical and psychological.

The Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act) is a laudable piece of legislation to tackle domestic violence problems. Women could earlier approach the courts under the Indian Penal Code in cases of domestic violence. However, the kinds of domestic violence contemplated by this Act and the victims recognized by it, make it more expansive in scope than the Indian Penal Code. The Act gives a very expansive definition to the term domestic violence. Under Section 3 of the Act domestic violence is defined—comprising physical, mental, verbal, emotional, sexual, and economic abuse, harassment for dowry, and acts of threatening to abuse the victim or any other person related to her. This Act also will cover those women who are or have been in a relationship where both parties have lived together in a shared household and are related by marriage or adoption. One of the most important features of the Act is that a woman has a right to reside in the matrimonial and shared household, whether or not she has any title in the household under Section 17. Therefore, the magistrate or the court would have wide powers to pass interim orders to protect the women. All these are discretionary powers given to the judicial officers and therefore, the role of the magistrate becomes very important and the judiciary is made the custodian of the protection of the rights of the women. For the first time Domestic Violence Act, expanded the definition of violence to include sexual, verbal, and economic violence. Sexual violence will include forced sexual encounters, forcing a woman to look at pornography or any obscene pictures. While verbal violence is often treated as unimportant it can damage a woman's self-esteem. The Act defines verbal violence as name-calling, any kind of accusation of a woman's character or conduct, insults for not bringing dowry, etc. Another significant step has been to recognize economic violence such as not providing money, food, clothes, and medicines, causing hindrance to employment opportunities, forcing a woman to vacate her house, not paying rent, etc. The Act also identifies emotional abuse as a form of domestic violence such as insults not having children or male children.

Section 8 of the Act provides for the setting up and functions of Protection officers appointed by the state government. The Protection officers assist the court in making a domestic incident report on an application for a protection order on behalf of the aggrieved woman or child. Protection officers will ensure that aggrieved people are provided legal aid, medical services, safe shelter, and other required assistance including monetary relief. The Protection officer can be penalized for failing or refusing to discharge his duties. However, prior sanction of the state is required.

Section 31 prescribes a penalty for breach of order by the respondent. The most important factor is that the punishment prescribed would be treated to be an offence as per section 31 and would be non-bailable, giving sole powers to the aggrieved persons.

First time by this legislation, the legislator has accepted a live-in relationship by giving those females who are not formally married but are living with a male person in a relationship which is in the nature of marriage, though not equivalent to a wife.

It is mostly known that in case a wife is harassed by her husband, other family members may also join the husband in treating the wife with cruelty, and such family members would invariably include female relatives as well. In *Sandhya Wankhede Vs Manoj Bhimrao Wankhede* (2011)3 SCC 650 Supreme Court held that the stipulation to Section 2(q) does not prohibit female family members of the spouse or male accomplice from the ambit of an objection that can be made under the arrangement of the domestic violence. In this way, objections are not only viable against the grown-up male individual but additionally the female relative of such grown-up male.

Mental and physical health is of prime importance in a marriage. The legislative intent of enacting The Protection of Women from Domestic Violence Act, 2005 is to safeguard women from facing violence within the four walls of their homes.

6. Conclusion

The Protection of Women from Domestic Violence Act, 2005 is to provide more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith. As it is well-known reporting of such cases is very poor, generally for fear of social stigma, poverty of parents, lack of evidence, and so on. The girl being alone in the new family, it became easy to subject her to various atrocities. The victims' inability to access the law makes legal remedies ineffective. Many of the victims of domestic violence are at risk of further violence or even death when they attempt to leave abusive relationships. All these factors render the issue of domestic violence very different from other forms of violence, because of the women's weak and vulnerable position inside their home. The long-standing basic social structure in India is the patriarchal structure in which we can see a male-dominated society. There is an uneven distribution of the power ratio which is the main cause of violent attacks. Traditional attitudes and customs however die hard. Despite laws and liberal interpretations of these laws, women continue to suffer from serious family and social handicaps. A change of attitude is a prerequisite between men and women to avoid domestic violence.

In India, the rate of literacy for women is much lower than that of men. The picture in rural India clearly shows that families are not interested in sending their daughters beyond the primary education level. Lack of education definitely contributes to the prevention of women's empowerment and self-esteem as well as the respect from the family. Education for women is regarded as a means to improve their status within the family and in society. Only enacting laws cannot protect women from domestic violence. Emphasis should be given to education to equip women to carry out their multiple roles in the family. It will help to retain the dignity of women. Dignity is more important than wealth. Effective efforts to create violence-free families require a partnership between

men and women with all social sectors participating in the endeavour. Violence-free families can help to bring full enjoyment of the right to equality. What happens in the family happens in the society.

References

- [1] Sita Ram Naik, *Women Laws of India*, Anjali Publishers and Distributors, Darya Ganj, New Delhi (2018).
- [2] Dr. Mamta Rao, *Law Relating to Women and Children*, Eastern Book Company(P)Ltd. Lucknow (2018).
- [3] P.K. Das, *Protection of Women from Domestic Violence Acts and Rules*, Universal Law Publishing Co. Pvt. Ltd, Delhi (2009).
- [4] Om Prakash Tewari, *Women's Rights in India*, Sri Sri Publications, Faridabad, Haryana.(2002).
- [5] Kalpana Roy, *Women and Their Environment*(Vol.II), Rajat Publications (1999).
- [6] blog.ipleaders.in/the-protection-of-women-from-domestic-violence-act-2005
- [7] www.legalserviceindia.com/legal/article-9749-domestic-violence-against-Women-the-issue-the-law-and-the-current-scenario-in-india.html

Author Profile



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