

1.

Domestic Violence and Gender Neutrality

By: Megha Solanki

Pg.: 01-13

Abstract

Domestic violence is an intrinsic part of Indian Society with its roots deeply influenced by social stigma and psychological problems; it is an offense prevailing in human society since the beginning of time with the notion of victimization of females by male counterparts. Yes, it is a matter of fact that females are the majority of victims of domestic violence but the male gender and members representing the LGBT community are no exception to it. In a patriarchal society, a man being subjected to violence by a woman is unthinkable due to extreme gender stereotypes that we inherited from ancient times.

The UN Declaration on Elimination of Violence against Women (1993) defines violence against women as “*any act of gender-specific brutality that results in physical, psychological, sexual harm or suffering through threats, coercion or arbitrary deprivation of liberty, whether occurring in public or private domain*”

The Domestic Violence Act 2005 defines “*domestic violence as an act, omission that threatens health, safety, life and limb recognizing not only physical torment but also implications to mental health and psychological well-being*”. The DV act specially caters to female victims and betrays the spectacular ignorance of the nuts and bolts of access to gender-neutral justice.

The objective of this research is to establish the male gender and members of the LGBT Community as a prominent victim of Domestic violence in Indian society; it aims to decentralize the abuse of domestic violence only to the female gender. It is solely based on research, legislation, programs, policies, and responses to male domestic violence in the Indian Society.

This paper seeks to confine the discussion of domestic violence in Indian society because of the need to shift from patriarchal nature to a more general modern society. It must be noted that gender neutrality is a critical part of violence prevention and hence are considered two sides of the same coin.

Keywords: Intimate Partner Violence, Gender Neutral Law Enforcement, LGBT Community, Male Victims.

Table of Contents

| S.No. | Title | Pg. No. |
|--------------|--------------------------------------------------------------|----------------|
| | <i>Abstract</i> | 2 |
| 1. | Introduction | 4 |
| 2. | Need for Centralized and Unified Law Enforcement | 6 |
| 3. | Critical Analysis of Domestic Violence Laws in India | 8 |
| 4. | Shortcomings in Domestic Violence Legislation | 11 |
| 5. | Relationship between Domestic Violence and Gender Inequality | 12 |
| 6. | Conclusion | 13 |

1. Introduction

“Violence against women is the consequence of the historical division of unequal power between men and women, which has prompted dominance over and discrimination against women by men and has acted as an obstacle to the full development of women...” - The UN Declaration on the Elimination of Violence against Women, General Assembly Resolution, December 1993.

Domestic violence is ancient, the most prevalent yet relatively hidden offense even in modern times. In layman's language, it can be described as abuse at home that not only limits itself to physical harm but also impacts the mental and psychological well-being of a human being. It is evident that home is a place the environment of which has a serious impact in shaping the individual and is a factor that has a considerable effect on the mental stability of human beings. Due to the patriarchal structure of Indian society and socially prescribed gender roles, there is a notion that women are the victims of domestic violence and men are the perpetrators. This is also because in ancient India the role of women was limited to taking care of the household; they were denied basic independence growth and were forced into a subordinate position as compared to men. Since the times have changed and women are stronger than they were before, there is a need to de-generalize the association of crimes with a particular gender and understand that all genders in the world are equally capable of committing breaches of the law. It is evident that gender-based violence is no stranger to the largest democracy in the world, but does domestic violence fall within the ambits of gender-specific brutality?

Domestic violence is a legal, economical, and human rights issue. Domestic violence includes abuse committed by partners and other family members by means of physical maltreatment such as beating, arm twisting, stabbing, slapping, threats with a weapon or an object, and murder. Sexual abuse such as sex through threats, intimidation, or physical force, forcing unwanted sexual acts, or forcing sex with others. Psychological abuse that incorporates threats of abandonment, confinement to the home, threats to take away custody of the children, verbal

humiliation. Economic abuse means refusal to contribute monetarily, denial of food and fundamental requirements, and predominant access to health care, employment, etc.¹

The National Crime Records Bureau of India 2012 report reveals a dowry homicide rate of 0.7 per 100,000 and the rate of domestic violence by a husband or his relatives as 5.9 per 100,000. The 2006 National Family Health Survey reported urban women reporting a 6% rate of domestic violence in their lifetime, while 10% of women in rural areas reported experiencing domestic violence in their lifetime. Sexual violence was revealed to be lowest against women in the 15–19 age groups. The report highlighted the need for education and revealed that women with ten years of education experienced sharply less sexual violence, compared to women with less education.

Due to the nation-wide lockdown that was imposed in order to prevent the spread of Coronavirus,² there has been an alarming rise in cases of domestic violence.³ The data provided by State Legal Service Authorities suggest that Uttarakhand recorded 144 cases of domestic violence, the highest number of domestic violence cases in the two months of lockdown. Haryana with 79 cases ranks on number two and the national capital Delhi with a total of 69 cases on number three. Women in Telangana had to face a spike in domestic violence as 89% of the total number of cases registered was of domestic violence.⁴ In 2020, the year of an unknown pandemic, statistics reveal that between 25th March and 31st May, 1,477 domestic violence complaints were surfaced in India. This 68 days period recorded more complaints than those received between March and May in the last 10 years.

There is a need for the law to evolve into a modernized perspective with the changing needs of society. Recognition of Intimate partner abuse against men is still a debatable topic in Indian society. Most of the Indian laws are established over heterosexual relations that the members of the LGBT Community has felt exclusion. Inequality of law based on sexual orientation is a clear violation of Article 14 of the constitution of India. In 2018, the Supreme Court of India struck down Section 377 of the Indian Penal Code legalizing same-sex marriage, there is a need

¹ United Nations Children’s Fund Innocenti Research Centre, Domestic Violence against Women and Children, June 2002 <https://www.unicef-irc.org/publications/pdf/digest6e.pdf>.

² NDMA, Government of India, Ministry of Home Affairs order, 24th March 2020 https://www.mha.gov.in/sites/default/files/MHAorder%20copy_0.pdf.

³ National Legal Service Authority, <https://www.latestlaws.com/latest-news/nalsa-legal-aid-widened-as-domestic-violence-rises-amid-lockdown>.

⁴ Sakhi one, Stop Centre, Telegana, April Statistics, 13th May 2020

to recognize civil as well as criminal rights that are associated with Marriage. This horrific toll will not be mitigated until families, governments, and institutions address the issue.

2. Need for Centralized and Unified Law Enforcement

In the last few decades, activism, attention, and legislation have solidified domestic violence into an issue of international as well as national concern. Domestic violence against women is termed as the next pandemic as its numbers are increasing at an alarming rate. Various complex and interrelated social and cultural norms have kept women particularly susceptible to violence; all of them are the result of the historical distribution of unequal power between men and women. Elements aiding to these unequal power relations include: socioeconomic forces, household where power relations are compelled, control over female counterparts, belief in the inherent supremacy of males, cultural prohibition that have denied women an independent status.

Systematic discrimination and neglect toward female children is evident in the sex ratio of 108 males per 100 females in India⁵ and 101 males per 100 females across the globe.⁶ Globally there has been considerable research, legislations, identification of domestic violence against women as an offense by international organizations as well as state laws. In the past decades, there has been a noticeable difference in the situation of female counterparts such as emergence into independence, participation into various spheres of the public domain but the irony is the more laws and policies are formulated to achieve Gender Equality, the more and brutalized forms of offense are witnessed against women in the modern era. Laws determine the legal rights of an individual and societal acceptance in the State. In the world's largest democracy there are no specific laws that protect men from domestic violence. It is evident that gender symmetry does not exist in India in form of physical violence and sexual abuse but more in the shape of mental and psychological torment. In a study conducted to research violence against men in Haryana,⁷ it was found that the prevalence of intimate partner violence against men is

⁵ Ministry of Statistics and Program Interpretation, 18 March 2020, Statistics time <http://mospi.nic.in/statistical-year-book-india/2018/171>.

⁶ CIA Fact Book, The Central Intelligence agency of United States <https://www.cia.gov/library/publications/the-world-factbook/geos/xx.html>.

⁷ Malik, JS Nadda, A Cross Sectional study of Gender Based Violence Against Men in the Haryana State, Indian J Commun Med 2019, 44(1) 35 <http://www.ijcm.org.in/article.asp?issn=0970->

51.5%. In a study report conducted by the Save Family Foundation⁸ in 2005-2006 on domestic violence against men, the review of the study revealed that Indian women were abusive and dominating. International Organizations such as the World Health Organization and UNICEF do recognize domestic violence against men; however, there is less research to determine the magnitude and scope of the offense. Domestic Violence against men is highly unreported worldwide⁹ due to Socio-Cultural factors such as disbelief by authority if reported, question on masculinity, pressure from families, fear of losing social respect and position.

Same-sex Marriage though legalized is still unthinkable in India, same-sex relationships are still considered a concept of the western world which Indians have a hard time accepting into their societal norms. Domestic violence that occurs within same-sex relationships is a problem that largely exists “under the radar” for national governments, domestic violence agencies.¹⁰ There is still a strong belief that same-sex are devoid of intimate violence.

The legal support to members of the LGBT community and the violence they face is considered less serious than heterosexual domestic violence.

There are no laws in India that protect victims of Domestic Violence in same-sex relationships; there is no research and statistics to determine the enormity of the offense.

As revealed by the Centers for Disease Control and Prevention, lesbians, gays, and bisexuals experience sexual savagery at comparative or higher rates than straight individuals. No statistics, literature review, or research solely focuses on domestic violence against transgender. It is because that the entire LGBT community has experienced barriers in recognition by the Indian society for so long that protection from domestic violence hasn't been highlighted as their primary battle.

Understanding intimate partner violence in LGB may be difficult because of the silence that has revolved around violence in the LGB Community. LGBT domestic violence survivors are more susceptible than opposite sex survivors due to homophobia that exists in their societies. It must be understood that domestic violence is not about genders but control dynamics. LGBT

0218%3Byear%3D2019%3Bvolume%3D44%3Bissue%3D1%3Bspage%3D35%3Bepage%3D38%3Baulast%3DMalik.

⁸ Sarkar et al., Domestic violence against men: A study report by save family foundation, New Delhi <https://www.ipc498a.files.wordpress.com/2007/10/domestic-violence-against-men.pdf>.

⁹ Strong et al., Feb 16, 2010, The Marriage and a Family Experience Intimate Relationship in Indian Society.

¹⁰ Kathleen F Duthu, Why doesn't anyone talk about gay & lesbian domestic violence? 18T. JEFFERSON L. REV. 23.29 (1996).

survivors experience the same infringement of human rights, dignity, and body integrity when abused by their accomplices. A discussion of same-sex domestic violence must be included in emerging aspects of law both by international as well as domestic laws.

3. Critical Analysis of Domestic Violence Laws in India

3.1. The Protection of Women from Domestic Violence Act, 2005

Domestic Violence is one of the most reprehensive and condemnable wrongs that has shocked the social conscience and must be eliminated without any waste of time. The Protection of Women from Domestic Violence Act is a progressive enactment aimed to stop the turbulent flow of Violence.

Obtaining legal redress for victims of domestic violence is a serious challenge for women in India, the existing laws were inadequate to protect against many forms of violence against women. Domestic violence legislation in India historically has been focused on combating violence related to dowry demand, thereby excluding the possibilities of Domestic Violence for reasons other than dowry demands. Perpetrators of domestic violence unrelated to dowry demands have escaped conviction, contributing to the tolerance of other forms of violence against women. To combat this issue, the Indian parliament enacted The Protection of Women from Domestic violence act in September 2005.

This milestone legislation is targeted at expanding existing definitions of domestic violence to incorporate verbal, emotional, sexual, and economic abuse, and provides women civil/criminal relief for contravention of the Act. This Act represents a dynamic measure for a nation where patriarchal social structure runs deep and women endure appalling abuse at the hands of their intimate partners.

It is an effective legislation as it elaborately deals with all possible spheres of domestic violence; The legislation is sensitive towards the victim of domestic violence, the act directs the judiciary to provide shelter home, medical assistance, protection officers, residential orders, custody orders, compensation orders and monetary relief to the complainant, thereby focusing

on the well-being of the child out of the wedlock. It is a civil law meant for protection orders, not to be enforced criminally.

The new legislation covers all women, regardless of whether the accused is a spouse or someone in a live-in relationship. This Indian legislation for the first time introduced the concept of “shared household” that covers women in Non-Matrimonial relationships.

This act has been criticized for lacking gender neutrality and for merely serving as a civil approach and rather than serving as a criminal law. The Act is ambiguous and lacks clarity. It is appropriate to note that the victim is always a “woman” according to the preamble of the Domestic Violence Act, 2005. ‘Man’ and members of the LGBT Community do not fall within the ambit of such definition.

In the words of the Indian Minister for Women and Child Development, Renuka Chowdhury *“an equal gender law would be ideal but there is too much sustainable evidence to confirm that woman are majority victims who suffer at the hands of man.”*

However, let us not forget, ‘All power tends to corrupt and absolute power corrupts absolutely’. In **Dr. N. G. Dastane V. Mrs. S. Dastane** the Hon’ble Supreme Court of India held that the cruelty can be a sole or a combination of, mental and physical cruelty. Indeed, physical force is generally imposed by the husband being muscularly strong but at the same time, it is not universally applicable. In the majority of lawsuits, it is the wife who causes mental agony to the husband but it can also be vice versa.

3.2. Section 498A Indian Penal Code

The addition of section 498A to the Indian Penal Code has been one of the progressive steps by law-makers. It was enacted in 1983 with the aim to curb matrimonial cruelty towards married women. The enactment of Section 498A IPC as a penalized provision, combined with subsequent provisions in the Code of Civil Procedure is constructed to act as a component of hindrance. Section 498A criminalizes cruelty to a woman by her husband or any relative of her husband, punishable with imprisonment for a term of three years and also with fine. Subsequent changes were also made to cooperate with the amendment in the Code of Criminal Procedure

1973 and the **Indian Evidence Act 1972** to effectively tackle dowry deaths and cruelty to married women by the husband and his relatives.

Section 306 of the Indian Penal Code also plays a crucial role in Section 498A cases. Abetment to commit suicide will be sentenced to imprisonment which may extend to 10 years with a fine.

It has been argued that this law has been used less as a shield and more as a weapon. National Crime Records Bureau Report has revealed that approximately 1, 00,000 cases are filed under section 498a yearly. The rate of conviction where the accusation was proved guilty varied between 20% in 2011 and 14% in 2015. The Supreme Court observing the gap between the cases filed and the conviction rate put an end to automatic arrests and held that no arrest shall be made in cases of Section 498A IPC unless the case is investigated by the Family Welfare Committee. However, this rule is not applicable in case the victim is deceased or suffers injury.

3.3. Section 304B Indian Penal Code

Section 304B of the Indian Penal Code explains dowry death. If a woman is deceased within seven years of marriage due to burns or bodily injury or it was revealed that before her death she was subjected to cruelty or harassment by her husband or any other relative of the spouse in connection to dowry demand then the death of the woman will be considered as a dowry death.

Punishment for dowry death is a sentence of minimum imprisonment for seven years which can extend to imprisonment for life. Section 113B of the Indian Evidence Act provides presumption of judiciary in case of dowry death. The applicability of this section remains in force for 7 years of marriage.

4. Shortcomings in Domestic Violence Legislation

4.1. Lack of Gender Neutrality

There is no protection of men in the Domestic Violence Act 2005; there is no provision which provides a remedy for men as in Section 125A of Code of Criminal Procedure i.e. maintenance of husband under the act, there is no provision like section 498A of the Indian Penal Code. The Indian legislation only comprises of laws that are women-specific and has a clear exclusion of the male section of the country providing legal assent to the assumption that men cannot be victims of domestic violence. Not only in India but the majority of the world does not have domestic violence-specific laws for males. In **Krishan Lal Vs Union of India**,¹¹ the honorable court was of opinion that Article 14 of the Constitution of India accords equal treatment to all persons. It was further held that any invidious discrimination is obnoxious to equality and therefore the Constitutional validity of the Domestic Violence Act has been questioned numerous times.

The Indian laws are clear abuse and discrimination against men who can also be victims of domestic violence but have been bluntly eliminated from the purview of the Act. In **Vijaylakshmi V. Panjab University**¹² it was held that as a result of association of Article 15(1) and (3), the State may discriminate (Doctrine of reasonability) in favor of women against men but it may not discriminate in favor of men against women. The protection against domestic violence is a civil right, the misuse of which must be rigorously punished.

While the Domestic violence Act is well known as an umbrella legislation that has achieved its purpose of providing justice to helpless female victims, unfortunately, it still fails to recognize that there is no hard and fast rule as to who is the victim and the perpetrator.

International organizations such as UNICEF as well as the judicial system in India have started to comprehend the impact of Domestic violence on Children. However, at the hotline, it is

¹¹ 1994 Cr LJ 3472: ILR 1994 2 P&H 422.

¹² AIR 2003 SC 3331.

evident that Domestic Violence can affect anyone- including men. All violence matters, and where men are the victims of Domestic Violence they should be heard and supported.

4.2. Ambiguities

The Definition of “Abuse” Under the Domestic Violence Act, 2005 is too detailed leaving opportunities for manipulation and misuse of the statute. The authorities that are constituted under the Act such as the Family Welfare Committee are not outlined in a certain manner leaving scope for technical glitches.

The statute includes terms "insults" and "jibes" under the definition of "verbal and emotional abuse" in Section 3 of the Act, without providing a legal definition to these terms. The terms "mental and verbal abuse" have the potential to be misinterpreted and thus these ambiguities must be resolved by the judiciary. In some cases, the term “mental and verbal abuse” can be extended to mere domestic quarrels that were not intended to fall under the definition. The courts must interpret the statute in order to remove ambiguities and reveal the true intention of the legislature.

5. Relationship between Domestic Violence and Gender Inequality

Domestic violence and gender inequality are correlated to one another. The incidents of domestic violence are higher in communities that have a negative correlation with socio-economic and cultural inequalities between the genders. Communities that have progressive levels of gender equality have low rates of Domestic Violence.

Gender is seen as the basic organizing principle for relationships, institutions, cultures in human societies. Human beings are socialized according to the array of gendered expectations and roles, which not only create and maintain differences between women and men but also tend to assign unequal value and privilege to men and women. Cultural traditions have provided

superior status to masculinity, and have developed gender orders which legitimize male authority and control over females and other subordinates.

The role that families associate with a particular gender, the rights that the legislature recognizes towards a gender has a severe impact on the levels of domestic violence. A dominant cultural attitude that Indian society has towards females having low social value and being less deserving as compared to men are the bedrock of gender-biased behavior in India.

The norms and notions, rigid gender stereotypes are factors of gender inequality which has encouraged violence against women. Gender disparity in India renders women susceptible to high risks of domestic violence. Gender inequality between men and women in a country can be demonstrated by the severity of the consequences of domestic violence experience. Women are more likely to experience innumerable episodes of domestic violence from the same perpetrator; the use of physical violence by women to men is less likely to cause severe injuries than the violence committed by a man. Men experience a majority of domestic violence in form of mental torment than physical force. The ancient culture of manliness and femininity ensures that the definition of brutality will differ when used by women against men. Studies reveal that women are more likely to experience violence from a known person, mostly an intimate partner.

While all the genders have different roles to play in a community, they should be subjected to the same level of independence, rights, and respect. Gender baseness is an inevitable evil that must be eradicated by formulating laws and policies that provide an equal platform to all the genders.

6. Conclusion

Domestic violence is a gender-inclusive conception. There is substantial evidence pointing towards shortcomings in research, law, and policy directed towards domestic violence against men and the LGBT Community. The task of addressing intra-gender violence is the need of the hour. Gender-inclusive approach towards domestic violence shall retain values of fairness and social justice ensuring victim safety and perpetrator accountability. A pondered gender-neutral methodology can provide the frame for progressive reformation.