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DOMESTIC VIOLENCE AGAINST WOMEN: CAUSES, IMPACT AND THE ROLE OF JUDICIARY

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ABSTRACT

The domestic violence is one of the most prevalent offences in India which can be often seen. There are several causes for such violence amongst women which leave its impact badly upon woman victims. Earlier, the domestic violence against women was considered as a routine fight between husband and wife with a myth that women are meant to be treated badly by their husband and in-laws. And there was no such women centric statute which could act as safeguard for women. However, crimes against women were addressed in Indian Penal Code (IPC) which is not sufficient enough to prevent grievances against women. Thankfully, the Protection of Women Against Domestic Violence Act (PWDVA) was introduced in 2005 which guarantees safety of women from the perpetrator who was in a domestic relationship with woman living in a shared household. Infact, the PWDVA also gives privilege to women to have a rightful accommodation in her matrimonial home.

Key words: Domestic violence, intimate partner violence (IPV), Protection of Women Against Domestic Violence Act (PWDVA), domestic relationship, shared household.

1.1 INTRODUCTION

Domestic violence is a frequently talked discourse which highlights the sufferings of a woman being victim to such atrocities done by her own family members. Physical, emotional, sexual, economical violence are so interconnected that one could lead to other violence. There is a huge web of reasons for domestic violence and it is unknown which spark of reason could be fire of violence. Violence done by family shakes the confidence of women and destroys her trust. It psychologically effects the life of victim and demolishes her belief upon family. Whom the women thought to be their supporters, becomes the hijackers of their support and leave them ruin. The instant paper is dealing with the concept of Domestic Violence, how it is being defined under Domestic Violence Act, Black's law, by authors; what are the causes for

domestic violence and how does it effect to the life of victims.

1.2 WHAT IS DOMESTIC VIOLENCE?

The term domestic violence has been defined under Black's law Dictionary separately as "Domestic- Pertaining, belonging, or relating to a home, a domicile, or to the place of birth, origin, creation, or transaction"^{1 2 3} and "Violence- Unjust or unwarranted exercise of force, usually with the accompaniment of vehemence, outrage or fury."^{4 5} "Force, physical force, force unlawfully exercised, the abuse of force, that force which is employed against common right, against the laws, and against public liberty."^{6 7}

Section 3 of PWDVA broadly defines the terms Domestic violence, as: *"any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it harms the health and wellbeing by harassing or hurting for dowry, money or property which includes threatening, physical or mental pain."*⁸

*"The term "violence against women" means any act of 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 in private life."*⁹

According to National Coalition Against Domestic Violence (NCADV), *"Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another."*¹⁰

*"Domestic violence also known as domestic abuse, IPV or abuse which may start when one partner feels the need to control and dominate the other."*¹¹

Domestic violence and emotional abuse are behaviors used by one person in a relationship to control the other. Partners may be married or not married; heterosexual, gay, or lesbian; living

¹ Henry Campbell Black, Black's Law Dictionary, Revised Fourth Edition

² See. Catto v. Plant, 106 Conn. 236, 137 A. 764, 765

³ See also. In re Savin's Estate, 131 N.J.Eq. 563, 26 A.2d 270, 273

⁴ Black's Law supra note 1.

⁵ See. People v. McIlvain, 55 Cal. App.2d 322, 130 P.2d 131, 134.

⁶ Black's Law supra note 1.

⁷ See. Merl. Repert; Anderson-Berney Bldg. Co. v. Lowry, Tex.Civ.App., 143 S.W.2d 401, 403".

⁸ Protection of Women from Domestic violence Act, 2005, CHAPTER II, section 3.

⁹ United Nations Declaration on the Elimination of Violence against Women, Article 1, 20 December 1993.

¹⁰ "what is Domestic Violence?", National Coalition Against Domestic Violence <http://ncadv.org/learn-more/what-is-domestic-violence/abusive-partner-signs>

¹¹ Toby D. Goldsmith, What causes Domestic violence? available at <https://psychcentral.com/lib/what-causes-domestic-violence/>

together, separated or dating.¹²

1.3 TYPES OF DOMESTIC VIOLENCE

Domestic violence includes *physical violence, sexual violence, psychological violence, economical and emotional abuse*.¹³ Domestic violence is of several types such as beating, pushing, assaulting, abusing etc. which broadly falls under the above-named categories given by NCADV and also explained under PWDVA, 2005. The explanation of the types of domestic violence is discussed as follows:

1.3.1 PHYSICAL VIOLENCE

Any act where an individual attempts to harm another through physical means.¹⁴ Under PWDVA physical violence has been named as “physical abuse” which means “any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force”.¹⁵ It could be slapping a wife or throwing something at her that could hurt her, pushing, fist blow, kicking, dragging, beating, choking, burning or threatening through some weapons etc.¹⁶

1.3.2 SEXUAL VIOLENCE

Under PWDVA, “Sexual abuse” includes “any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman”.¹⁷ It is a force imposed upon wife to have sex with the partner even if she does not desire.¹⁸ Compelling to watch pornography when she doesn’t want to or doing unnatural sex with her, are the various form of sexual violence. Even men with their egoistic behavior¹⁹ do marital rape which is also known as “spousal rape” and it is non-consensual. It is physically and emotionally as damaging as rape by a stranger and it is a situation where victim’s voice is often suppressed and she is forced to bear such cruelty by her husband without making any complains to formal and informal

¹² <<http://domesticviolence.org/definition/>>

¹³ NCADV, supra note 10.

¹⁴ <<http://www.igi-global.com/dictionary/physical-violence/22710>>

¹⁵ PWDVA, supra note 8.

¹⁶ UNFPA Study on Intimate Partner Violence and Masculinity in India

<https://themalefactor.com/2014/11/11/unfpa-study-on-intimate-partner-violence-and-masculinity-in-india/>

¹⁷ PWDVA, supra note 8.

¹⁸ UNFPA, supra note 16.

¹⁹ K. Sita Manikyam, Marital Violence: A societal Evil (N.B.Chandrakala, Indira Priyadarshini, et. al, edn, Women Rights And Gender Justice, 2015, Regal Publications)

agencies.

1.3.3 EMOTIONAL/ VERBAL/ PSYCHOLOGICAL VIOLENCE

It includes insults, “humiliation, and name calling or ridicule especially with regard to not having a child or a male child; and repeated threats to cause physical pain to any person in whom the aggrieved person is interested” [section 3, Explanation I (iii)].²⁰

UNFPA under its large survey explained emotional and psychological violence through various examples, such as- insulting wife or making her feel bad about herself; belittle or humiliating wife in front of others; scaring/ intimidating; threatening to hurt a wife of person in interested (of whom she cares about).²¹ In a large multi-site household survey, INCLEN²² had found that about 44% women reported at least one psychologically abusive behavior and 40% reported, experiencing at least one form of physical violence.

1.3.4 ECONOMIC ABUSE/VIOLENCE

It includes- not providing money to wife to run household or for children; not giving/ letting the wife use her “*stridhan*” (wedding gifts); selling or giving away household goods or any other asset in which the wife has an interest; trying to control wife’s money and not letting her live in shared home.²³ However, economic abuse has been fully demystified under section 3, Explanation I (iv), PWDVA, 2005

1.4 CAUSES RESPONSIBLE FOR DOMESTIC VIOLENCE

It is a known fact that there is no single factor abast violence perpetrated against women.²⁴ In fact there are several reasons behind domestic violence and it is unpredictable which act of the victim could result into violence from perpetrator. Violence against women is partly a result of gender relations that assumes men to be superior to women.²⁵ Greed in the form of dowry penetrating in the brain of husband and in-laws changes their attitude towards women and which works as graveyard for emotions. Domestic violence not only hurts the victim but it creates a scar which stays with victim for lifetime compelling them to think twice before taking

²⁰ PWDVA, supra note 8.

²¹ UNFPA, supra, note 16.

²² International Clinical Epidemiologists Network (INCLEN), Domestic Violence in India, A Summary Report of A Multi-Site Household Survey 2000.

²³ <http://nyaaya.in/law/557/the-protection-of-women-from-domestic-violence-act-2005/#section-1>

²⁴ Urmila Bhardwaj, Domestic Violence Against Women; Causes And Cure, (2014), (May 9, 2017) <https://www.legalservicesindia.com/article/1709/Domestic-Violence-Against-Women-Causes-And-Cure.html>

²⁵ Id., at 11.

any decision. Moreover, it breaks the belief system of victim, who often starts disbelieving people who come in contact with her. Child maltreatment; low education, or exposure to violence in the family, deleterious use of alcohol, gender inequality and attitudes accepting violence are the factors fraternized with increased risk of perpetration of violence.²⁶ Evidences from High-income setting claims that among young people, relationship violence (or dating violence) may be prevented effectively through school-based programmes.²⁷

Following are the some of the causes of Domestic Violence discussed as under:

1.4.1 DOWRY

Oxford dictionary defines dowry as “*the amount of property or money brought by a bride to her husband on their marriage*”²⁸ It is the wedding gift to a bride from her family (parents) and was first originated among upper caste families.²⁹ In Indian marriages, along with the giving away of the bride (called *Kanyadaan*) dowry is paid in cash or/and kind by the bride's family to the bridegroom's family.³⁰ India having literacy rate of 74.04%, and it is quite rational to consider literacy as the primary cause for different social evils.³¹ Among the causes listed for wife-beating or spousal abuse, today the disputes related to dowry forms a constituent part.³² Huge amount of Dowry is also referred as social status for the bride's family and tremendous efforts are made to pay as much as they can. Losing a marriage proposal is often a threatening picture for girl's family as their status in the society descends. It is being demanded to compensate the costs of the groom's education and other liabilities.³³

The endless greed of members of matrimonial home and their desire to fulfill their needs from the dowry force the women to bring as much money as she can from her parents. For this the women are maltreated, tortured to dire consequences, beaten, and sometimes burnt to death (bride burning). The incessant torture and harassment by husband and in-laws to extort huge sum, women are often abetted to commit suicide.

²⁶ Violence Against Women, World Health Organization (April 4,2017) <http://www.who.int/mediacentre/factsheets/fs239/en/>

²⁷ Id.

²⁸ Oxford Dictionary

²⁹ Urmila Bhardwaj, supra note 24.

³⁰ Id.

³¹ Dowry System: Causes, Effects, Solution (2016), category- social issues in India, Important India <http://www.importantindia.com/23872/dowry-system-causes-effects-solution/>

³² Urmila Bhardwaj, supra note 24.

³³ Dowry System, supra note 31.

In Most of the dowry deaths occur the young woman are harassed to its utmost level. When the women finds such harassment and torture unbearable, commits suicide and among these most of suicides are by hanging or by fire.³⁴ It has always been a common perception in the society that a woman is a liability and has to be married off someday, with a huge dowry debt at disposal, therefore it shall not be wrong to consider dowry as a catalyst for the issue of domestic violence.³⁵ Dowry is claimed as one of the causes for domestic violence.³⁶ It starts from verbal abuse, battering, torture, ultimately ends into death and has become one of the major factors for violence against women.³⁷ In a case study of Lakshipur district published in the “Daily Prothom Alo” in April 2008, a poor farmer killed his two daughters as he failed to pay the promised dowry to his son-in-law.³⁸

In the year 2014 there had been 8,455 cases of dowry deaths and, it's a good news that there is a marked decline in the cases of dowry deaths by 9.7% during the year 2015(7,634 cases) over the previous year.³⁹

1.4.2 LACK OF EDUCATION

Lack of education decides the vulnerability of women. The greater the years of schooling, the greater opportunity will be there for women to gain knowledge and information which would make them less vulnerable.⁴⁰ Although education does not provide the power to change the traditional perception of labour within household, but it is seen that well educated women still equal power is bourne in relationship with their husband and are less dependent upon their husband's approval.⁴¹

The S.C. observed an alarming increase in cases relating lack of education and economic

³⁴ Urmila Bhardwaj, supra note 24.

³⁵ Dowry System, supra note 31.

³⁶ Hossain A, The Impact of Domestic Violence on Women: A Case Study of Rural Bangladesh, Research Article, 4: 135, Sociology and Criminology- Open Access, 2-8 (2016). Available at <https://www.esciencecentral.org/journals/the-impact-of-domestic-violence-on-women-a-case-study-of-ruralbangladesh-2375-4435-1000135.php?aid=75937>

³⁷ Begum A, Shiplu KD, Domestic Violence against Women in Bangladesh: A Critical Overview The Chittagong University Journal of Law7, 105-129 (2013).

³⁸ Third Eye: Case Studies on Women Violence: Dowry, available at <http://sajalkroy.blogspot.in/2011/01/case-studies-on-women-violence-dowry.html>

³⁹ Crime in India- 2015 Compendium, NCRB Report p.89, April 26, 2017 <http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>.

⁴⁰ Hossain A., supra note 36.

⁴¹ Khan ME, Aeron A, Prevalence, Nature, and Determinants of Violence against Women in Bangladesh, 52 The Journal of Family Welfare, 33-51 (2006).

dependence of women torture, harassment, abetment to suicide and dowry death have encouraged the greedy perpetrators of the crime.⁴² Therefore, it is prudent to say that education does play a vital role on women's power and autonomy.

1.4.3 SHARE IN THE ANCESTRAL/ FATHER'S PROPERTY

Women are often forced by their husband and in-laws to ask for share in the ancestral family or from father's property which they would use to fulfill their desires and have a luxurious life. Widows are also tortured by their in-laws and threatened to abandon their share of the property upon which she has legal right after her husband and are also compelled to live in rags. They also forcefully take away the property rights by adopting wrongful means leaving behind no option for her to lead a dignified life.

1.4.4 EXPECTING MALE CHILD/ REPETITIVELY GIVING BIRTH TO GIRL CHILD

It is the most prevalent form of domestic violence occurring in the Indian society where girl child is not acceptable with open hearts. Female feticides, amniocentesis (sex determination test), abandoning women because of giving birth to girl child repetitively, sex selective abortion practice are the common incidences happening in families creating stress in the life of women. Female infanticide too is a noxious epitome of an ideology that devalues a girl child.⁴³ The heinous acts against girls shows that the impending social and financial burden of girl (for education and marriage) in later years, conquers the joy of the birth of the girl child and constrains the parents and the family to commit such atrocities on the innocent female child⁴⁴ which is an emotional violence for the mother of that girl.

1.4.5 TALKING TO PARENTS/ RELATIVES/ FRIENDS/ NEIGHBOURS

In a male dominating society, the word tolerance is losing its relevance in today's world. Women are not anymore allowed to afore men because of the stronger belief that one who cannot control woman would not regard be a man in real sense.⁴⁵ And the controlling power begins from preventing women to talk to her parents, friends, relatives etc. Husbands or in-laws use abusive language and other restricting measures such as confiscating mobile phone or other communicating objects, locking wife, beatings, prohibiting phone calls and visits of

⁴² Kundula Balasubramanyam v. State of Andhra Pradesh, (1993) 2 SCC 684.

⁴³ Urmila Bhardwaj, supra note 24, at 10.

⁴⁴ Urmila Bhardwaj, supra note 24, at 10.

⁴⁵ Id. at 15.

woman to her parents and woman's parents at her matrimonial place etc.

1.4.6 EXTRA-MARITAL RELATION

These are frequent factors for marital conflicts. Incestuous relation upon partner of having extra-marital relation is one of the reasons lead to disputes between partners which further leads to physical abuse, beatings, verbal abuse, restrictions upon wife, seizing of mobile phone and other communicating means. An extra-marital affair diverts the people from fulfilling their responsibilities towards their family which emerges quarrel between the spouses and sometimes the stage of divorce arises and for this, children suffer the most in this tug of war between parents.

1.4.7 DRUG/ALCOHOL ADDICTION

A drug addicted or alcoholic person has less likely control over his emotions and actions and in a fit of anger they take serious steps against their spouse resulting in harm or danger to her. Alcohol and other chemical substances contribute to violent behavior and also lead to broken homes.

Alcohol addiction and multiple sex partner of the husband are the leading causes behind domestic violence.⁴⁶

1.4.8 ECONOMIC STRESS

Economic hardship, prolonged unemployment also leads to violence against spouse as husband's joblessness and inability to earn daily bread for life creates stress between partners creating quarrelsome atmosphere at home from both the sides and sometimes out of frustration husband puts the entire blame upon wife for his failure to find job. It is one of the reasons for domestic violence posing direct impact upon women victims. During the study, it was observed that there were lower rates of domestic violence among women with property, higher per capita income and social support, whereas domestic violence was highly prevalent among slum population.⁴⁷

⁴⁶ Sinha A, Mallik S, et. al, Domestic Violence Among Ever Married Women of Reproductive Age Group in A Slum Area of Kolkata, 56:1, Indian J Public Health 31-36 (2012) available at

<<http://www.ijph.in/article.asp?issn=0019-557X;year=2012;volume=56;issue=1;spage=31;epage=36;aulast=Sinha>>

⁴⁷ Sinha A., supra note 46.

In the present study, five most common reasons have been interviewed by respondents which are already explained i.e. dowry/ insufficient dowry, share in the ancestral/ father's property, expecting male child/ giving birth to girl child repetitively, talking to parents/ relatives/ friends/ neighbors, extra-marital relation.

1.4.9 LAXITY IN IMPLEMENTATION OF THE EXISTING ACTS⁴⁸

No or meager efforts are made to increase awareness amongst the women by the authorities posted to implement the Act.

1.5 IMPACTS OF DOMESTIC VIOLENCE ON WOMEN

As the causes for domestic violence are numerous, the impacts of domestic violence are multifarious and devastating too for women. It BREAKS homes and trust of the women into pieces. Abused women live in extreme fear and it is difficult for them to predict which act would raise the next attack to her. Actions of husband or in-laws against women will bring problems to her life.

We have already discussed about sexual abuse that victims are generally discouraged to file complaint about marital rape and therefore the spousal/ domestic relationship deteriorates. It gives bruises to the soul of victim whose dignity has been ruined by her spouse. Sodomy or cruelty while consummation beget injuries to private part which is frequently ignored, taken less seriously and hardly to be discussed about.

Economic abuse increases the dependency of women upon her husband and is often forced suppress their needs and desires. For petty things women have to ask for permission of her husband or in-laws to spend. Sometimes inadequate food is supplied to women leaving them malnourished.

Physical violence leads to psychological abuse and it often pushes the victim towards depression, sleeplessness, stress, anxiety, frustration, mental agony, lack of trust on others, menstruation imbalances, miscarriage, feeling of abandonment, rejection, suicidal tendencies, fear, chronic health issues, anger, don't feel to work, tiredness, hardship in recalling and many

⁴⁸ Sunil S. Kadam, Vinod A. Chaudhari, Domestic Violence against Woman: Past, Present, Future, Vol. 33, No. 3, J Indian Acad Forensic Med., 261-266 (2011).

other problems which is been discussed in the later chapter 5 with the help of conducting interviews of the women being victim of domestic violence.

1.6 ROLE OF JUDICIARY IN ADDRESSING THE DOMESTIC VIOLENCE AGAINST WOMEN

Even though women rights have been protected by the Constitution of India but the offences which is happening against women in most of the homes have been addressed by the hon'ble Supreme court and pronounced judgements favouring women. The word 'adult male' under section 2(q) of PWDVA has been deleted by S.C. as a *16- or 17-year-old can also cause domestic violence* (Hiralal P. Harsora and Ors v. Kusum Narottamdas Harsora and Ors).

Though live-in relationship has not been yet recognised in other laws, s.2(f) of PWDVA 2005 includes live-in relationship as "domestic relationship". In fact, children born from live-in relationships are entitled to property which ensures women and her child cannot be threatened from economic abuse (*Bharata Matha & Others v. R. Vijaya Renganathan & Others*). It was held in *Badshah v. Urmila Badshah Godse & Another* that a husband cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong.

In re Krishna Bhattacharjee v. Sarathi Choudhury, it was ruled by S.C. that a wife is entitled to the return of her *stridhan* from an estranged husband u/s 12 PWDVA, 2005. The court has doubled the amount of maintenance to victim (wife) and her two sons in the matter of domestic violence. The Supreme Court ordered monetary relief u/ sec. 20 as well as right to residence at the petitioner's (husband) accommodation (u/ss. 18 and 19 in *V.D. Bhanot v. Savita Bhanot*).

CONCLUSION

Domestic violence has been one of the major problems in society but it was addressed late as previously it was nothing more than a routine quarrel in families. The booming of bride burning, dowry death cases, caught the eyes of state to issue a statute and so "The Protection of Women from Domestic Violence Act, 2005" was introduced. Now, the women who were once hesitant in raising complaints against such atrocities got courage in doing so.

It should be remembered that domestic violence is not limited to physical or emotional torture. Its scar may go with time but the humiliation, the grief a woman goes through every day is far

deep to get erased which shakes the confidence of victim. Monetary relief could reduce the pain but cannot be erased. It is the legal as well as moral duty of everyone to conserve the rights of women. Domestic violence can be prevented when women are seen through same lens as men and are given equal treatment at home and outside. *“Their work should be acknowledged and efforts should be appreciated.”*

