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# **A CRITICAL ANALYSIS ON DOMESTIC VIOLENCE AGAINST MEN IN INDIA AND THE ROLE OF GENDER BIASED LAWS IN IT**

Authored By- Sakthi Saravanan N

## **ABSTRACT**

Domestic violence is violence or abuse in a domestic setting and the violence is committed by someone in the victim's personal side. It is a life-threatening crime that takes place as physical abuse, emotional or psychological abuse, economic or financial abuse, stalking and harassment and sexual abuse. It is generally thought that women are the victims of domestic violence and men are the perpetrators of violence. But this crime affects people at all levels regardless of gender. Because of the changes in socioeconomic conditions, this affects the traditional structure of the family and has a serious impact in the lives of men. In the absence of unbiased gender laws, with more men coming up and expressing the act of violence faced by them by women, it is very important to understand that men are seriously suffering from domestic violence and it is necessary to explore the issue of violence by women against men and factors associated with it. Men are also abused physically, economically and sexually and they are the silent victims of the violence due to the laws that are in favour of women which frames them as the victims of violence. And men are denied justice due to these types of biased laws. This demands the necessary intervention on gender-based violence against men in India and immediate need for gender neutral laws. This paper critically examines the domestic violence and abuse faced by men and tries to understand the factors that promote violence by women against men. This paper also attempts to examine the extent of this issue and gives focus to its causes. This article attempts to examine the role of gender-biased laws in promoting violence against men by women. Domestic violence shouldn't be considered as a specific gender-based violence. It is a spousal violence.

**KEYWORDS:** Domestic violence, violence against men, gender neutral laws, gender, victims.

## **INTRODUCTION:**

Domestic violence is a worldwide problem. It includes a spacious range of abusive and violent acts committed by one member of a family against another. It includes threats and verbal, psychological and sexual abuse<sup>1</sup>. Famous male personalities have suffered abuse under their female partners. The famous Hollywood Stuntman Eddie Kidd endured abuse for years at the hands of his wife Samantha Kirli. He suffered horrible things and was shamefully humiliated and abused by Samantha<sup>2</sup>. Finally, his estranged wife was arrested for spousal abuse. In recent years, there has been a rise in the number of men who have been abused physically, emotionally and economically by their spouses. In India, the nature of genders is stereotyped as the traits of women are believed to be sweetness, gentleness, modesty and being kind and traits of men are oversimplified as honesty, courage, integrity and competitiveness. Most people refuse the fact that a woman can also inflict violence and harm a man. And there are many fake domestic violence cases filed by women against men due to the gender biased laws. Even Indian courts have called out the issue of false domestic violence cases. A man from Haryana was filed with false cases on him, only to extort maintenance money through different sections of law by his wife. So, the court declared that the wife is not at all entitled to claim any relief and she has failed to establish her case up to the satisfaction of the court. This article attempts to examine the domestic violence and the role of the gender-biased laws in promoting violence against men by women and reasons and effects of underreported violence against them and it also discusses the preventive measures to solve these problems.

## **Statistics On Domestic Violence In India Other Countries:**

A community based cross sectional research study was taken in the state of Haryana in which a total of 1000 married men in the age group of 21-49 years were interviewed. The study was funded by the Indian Council of Medical Research<sup>3</sup>. The results published indicated that over 52.4% of men experienced gender-based violence and 51.5% of males experienced violence at the hands of

<sup>1</sup>Helplinlaw.com. 2022. *Domestic Violence in India*. [online] Available at: <<https://www.helplinlaw.com/family-law/DVLI/domestic-violence-in-india.html>>

<sup>2</sup>BBC News. 2013. *Stuntman Eddie Kidd's wife Samantha jailed for assaulting him*. [online] Available at: <<https://www.bbc.com/news/uk-england-sussex-23535011>>

<sup>3</sup>Malik, J. and Nadda, A., 2019. A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India. *Indian journal of community medicine: official publication of Indian Association of Preventive & Social Medicine*, [online] 44, pp.35-38. Available at: <<https://pubmed.ncbi.nlm.nih.gov/30983711/>>

their intimate partner at least once in their lifetime. The research study specifies that emotional violence precedes physical violence. Physical violence was dreadful in 1/10<sup>th</sup> of the cases. The risk factors that usher the violence are less family income, unemployment, influence of alcohol, uncontrolled anger, ego problems etc... So, the stereotypical gender-specific assumption is not correct. It is very hard to believe that even males can be victims of domestic violence. This assumption is due to the intense patriarchal male dominated nature of Indian society. In the United States 1/9th of men experience domestic violence from their wives<sup>4</sup>. 14% of the men face physical violence by their intimate partner. And in the United Kingdom, 40% of the domestic violence victims are men and most of the violence against men go unreported and unnoticed and the perpetrators of the violence are not sanctioned and penalised by the relevant public authorities. In Australia, 6% of men have been subjected to domestic violence since teen age in form of physical, emotional and sexual torture from their collaborating partners<sup>5</sup>. According to the National Crime Records Bureau report in 2018, about 70% of all suicide victims were men and it is also same as the demographics for married victims<sup>6</sup>. The risk factor for the suicide is family problems. The relevant public authorities don't take any action even if the suicide note of the male victim indicates that he was tortured by his partner. But the husband's family will be taken into custody if the victim's gender is interchanged. The suicide statistics number for of married men and women are 64,791 and 27,742 respectively. And the total suicide counts raise to 92,114 and 42,391 respectively<sup>7</sup>. Surveys like these from various nations give a clear view that men society also suffers from domestic violence but it severely gets underreported. And there should be stringent provisions enacted to deal with the violence cases in a more unbiased manner.

<sup>4</sup>Ncprs.gov. 2000. *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*. [online] Available at: <<https://www.ncjrs.gov/pdffiles1/nij/183781.pdf>>

<sup>5</sup>Australian Institute of Health and Welfare. 2018. *Family, domestic and sexual violence in Australia, 2018, Summary - Australian Institute of Health and Welfare*. [online] Available at: <<https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/summary>>

<sup>6</sup>Ncrb.gov.in. 2018. *Accidental Deaths & Suicides in India 2018*. [online] Available at: <<https://ncrb.gov.in/sites/default/files/ADSI-2018-FULL-REPORT-2018.pdf>>

<sup>7</sup>The Wire. 2017. *Reporter's Diary: Looking At Male Suicides in India*. [online] Available at: <<https://thewire.in/culture/reporters-diary-male-suicides-india>>

## **Reasons For Underreporting Of Domestic Violence Cases Against Men**

There are various grounds on which the violence cases against the men get underreported and even the men who faced brutality and cruelty by their partners don't reveal it for various reasons<sup>8</sup>. Some important reasons for underreporting are general stereotypes against males, fear of fake cases against men, societal and family pressure, victim card denial, social and legal reasons for underreporting etc... Due to the stereotyped nature, men don't feel easy to express their struggle as they will be judged and labelled as feeble and effeminate. Also, laws that deal with domestic violence are gender biased and they may backfire men if they express their faced brutality. Men also don't reveal their faced cruelty inflicted by spouses as fake cases can be filed against them. They are concerned that unwanted nuisance can affect them by revealing their struggle. Gender specific laws play a huge role in this problem. Men feel guilty in revealing their problem due to the societal setup as they don't want family structure to be broken and affected. Intense pressure from the family side also terminates them from taking action. People consider and live-in denial that men cannot be a victim of domestic violence and they don't want to talk about their struggles and issues. And men believe that these issues would get better by itself as time goes on and they don't want to lose social respect and position, many are ashamed of expressing that they are attacked by their female partners. They don't want to get separated from their children and family. They live in a world where they will be blamed as an unmanly man for complaining about their issues. It is deduced as effeminate and womanish behaviour in the patriarchal Indian environment<sup>9</sup>.

### **Role Of Gender Biased Laws In Worsening The Situation Of Men:**

The anti-dowry laws, divorce laws and sexual harassment laws are not gender neutral but works for the welfare of women only as they are victims of the social evils for a longer period of time<sup>10</sup>.

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<sup>8</sup>Gupta, S., 2020. *Domestic violence against men in India - iPlaaders*. [online] iPlaaders. Available at: <[https://blog.ipladers.in/domestic-violence-men-india/#Statistics\\_on\\_domestic\\_violence\\_against\\_men\\_in\\_India](https://blog.ipladers.in/domestic-violence-men-india/#Statistics_on_domestic_violence_against_men_in_India)>

<sup>9</sup>Kumar, A., 2012. Domestic Violence against Men in India: A Perspective. *Journal of Human Behavior in the Social Environment*, [online] 22(3), pp.290-296. Available at: <<https://www.tandfonline.com/doi/abs/10.1080/10911359.2012.655988>>

<sup>10</sup>Kumar, H., n.d. *Gender Biased Laws In India*. [online] Legalserviceindia.com. Available at: <<https://www.legalserviceindia.com/legal/article-3358-gender-biased-laws-in-india.html>>

## Anti-Dowry Laws

Dowry is an amount of property or money brought by a bride to her husband on their marriage. In the past, marriages were arranged and women brought a dowry to the marriage. The amount of the dowry is determined through negotiations between the families of the engaged. But this dowry system caused a huge financial burden to the bride's family. Many women committed suicide because of this evil practice as they were forced by the groom's family to bring dowry to their family. So, the practice of claiming, giving and taking of dowry was criminalised first in the year 1961. It was criminalised by the enactment of the Dowry Prohibition Act, 1961. This act was enacted for a proper social issue but it has been criticised due to its negative effects. The men's rights activists claim that the Dowry prohibition laws are continuously misapplied to harass and reduce husbands. They claim that incidence of men committing suicide due to alleged harassment by their spouses is on the rise. In 2014, the president of the Children's Rights Initiative for Shared Parenting, Ponappa said that a married man commits suicide every nine minutes in this nation due to the alleged misuse of dowry laws and Section 498A of the Indian Penal Code against them. It results in rising the suicide toll to a striking 64,000 a year. Until July 2014, the Section 498a of the Indian Penal Code allowed the police to arrest the persons mentioned in the complaint without a warrant or without any investigation and it was a non-bailable crime. Expressing exasperation over rampant misuse of Section 498A, a bench of Justices C K Prasad and P C Ghose said if police arrested the accused, the magistrate should weigh the preliminary evidence against the Section 41 checklist before allowing further detention. The statistics report of National Crime Records Bureau reveal that the men's suicide rate is higher than that of the women. Data from the National Crime Records Bureau shows that on average about 1,00,000 cases are filed under section 498A annually. The rate of conviction, where the accusation was proven, has varied between 20% in 2011 and 14% in 2015. The conviction rate under all IPC sections was 46% in 2015. According to men, this gap in conviction rate is proof that a large number of false cases were being filed under section 498A<sup>11</sup>. Close to 10,000 cases were also registered under the Dowry Prohibition Act in 2016, but conviction rate here too was just over 15%. According to the statistics data released by the National Crime Records Bureau (NCRB), more than 3.3 lakh cases of crimes against women were registered in 2016. Of these, 1.1 lakh cases related to cruelty by husband or his relatives. Cases under Section

<sup>11</sup>Khan, S., 2020. *Misuse of Section 498A under IPC - iPleaders*. [online] iPleaders. Available at: <<https://blog.ipleaders.in/misuse-section-498a-ipc/>>

498A were found to have the lowest conviction rate<sup>12</sup>. It was merely 12.1 per cent. Various courts, including the Supreme Court of India<sup>13</sup>, have over the years called Section 498A as being prone to abuse. In 2014, the SC said that it had a “dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives”. On August 13 2010, the Supreme Court had stated, “Such is the level of exaggeration of cruel behaviour on the part of husbands and their relatives that to find the truth is a Herculean task in a majority of these complaints.”

## **Divorce And Child Custody Laws:**

Divorce is the legal dissolution of the marital union between a man and a woman. Divorce by mutual consent is recognised under Indian personal laws. It is recognised under Hindu Marriage Act 1955, the Special Marriage Act 1954. It is followed by granting alimony, child custody, child visitation and property distribution. The matter of child custody in case of divorce is governed by two laws. They are Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956. Other gender biased laws that play its traits against men are divorce and child custody laws. The main argument of men’s rights activists is that these laws allow divorced women to restrict the men from seeing their children for a longer period of time. The Children’s Rights Initiative for Shared Parenting demanded that there should be rights given to the divorced fathers for immediate and equal access to the children. Divorced Fathers should be allowed to spend some quality time with their children and the children shouldn’t be used as a bargaining tool by women to extort property and money from their husbands. Many family counsellors say that children of divorced parents particularly who are unable to experience the parenting of either father or mother can suffer from depression and are capable of being affected from behavioural disorders. Many family counsellors and advisors advocate that shared parenting should be made mandatory so that the child doesn’t undergo any sort of sufferings. But the above-mentioned child custody related laws don’t have any provisions about shared parenting and joint custody. Many activists claim that alimony should not be provided to the women who earn higher than men and who are the primary earners of the family. The Children’s Rights Initiative for Shared Parenting organisation has said that present custodial laws are gender biased and better child access laws are the need of the hour. Recently the

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<sup>12</sup>Chhetri, S., 2018. *MISUSE OF ANTI-DOWRY LAW BY WOMEN*. [online] Jcil.lsyndicate.com. Available at: <<https://jcil.lsyndicate.com/wp-content/uploads/2018/01/Shreya.pdf>>

<sup>13</sup>Firstpost. 2018. ‘*Misuse*’ of anti-dowry law: Supreme Court modifies earlier order on Section 498A, leaves decision to arrest on police-India News, Firstpost. [online] Available at: <<https://www.firstpost.com/india/supreme-court-takes-note-of-misuse-of-section-498a-says-family-welfare-committees-not-needed-in-dowry-cases-5183621.html>>

central government has invited comments from state governments on whether new legislation is needed to be framed to facilitate joint custody of children in a divorced family. And the Law Commission of India's 257<sup>th</sup> report titled as Reforms in Guardianship and Custody Laws in India, which recommended that amendments should be made to the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956 to upgrade the provisions as to suit with the modern social conditions. The panel also suggested that "there is a broad awareness that the best way to recognise a family after separation involves a consensual and extrajudicial solution that minimises conflict and encourages collaborative parenting. The Law Commission's report made an important comment on the issue of visitation rights. It said, "An order made by the court regarding visitation must ensure that a child has frequent and continuing contact with both parents, when appropriate, and also with extended family and friends and both parents have equal opportunities to spend quality time with the child, including during holidays and vacations<sup>14</sup>."

And there are some notable decisions from the judiciary in solving these problems. In 2008, the Delhi high court ruled that a woman who is earning sufficient income is not entitled to maintenance from an estranged husband. And in 2010, Delhi high court again declared an important ruling that unemployed men cannot be forced to pay alimony. It said an unemployed man cannot be forced to pay maintenance to this estranged wife and it noted that since both are equal footing, one cannot be asked to maintain the other unless one is unemployed and the other is employed and the high court also ruled that the value of a man cannot be taken into account while calculating the quantum of maintenance for his estranged wife under the Domestic violence Act and the court further observed that the husband was not the sole owner of the assets of his family, his parents and brothers also have right in it. The Karnataka High Court in 2021 has upheld the shared parenting order given by family court and said that non-custodial parents are entitled to equal number of days as with the custodial parent during holidays, festivals, birthdays and other important family functions. The court adopted the concept of shared parenting citing the welfare of children as paramount consideration and allowed custody and visitation rights to the father, which is essential for the wellbeing of the children<sup>15</sup>. There are some biggest flaws in maintenance cases. The amount is fixed looking at the husband's income. Facts of the case will be decided later and interim

<sup>14</sup>Lawcommissionofindia.nic.in. 2015. *Reforms in Guardianship and Custody Laws in India*. [online] Available at: <<https://lawcommissionofindia.nic.in/reports/Report%20No.257%20Custody%20Laws.pdf>>

<sup>15</sup>Mens Day Out. 2021. *READ ORDER | Karnataka High Court Upholds Shared Parenting Order By Family Court; Lays Down Guidelines For Non-Custodial Parents*. [online] Available at: <<https://mensdayout.com/read-order-karnataka-high-court-upholds-shared-parenting-order-by-family-court-lays-down-guidelines-for-non-custodial-parents/>>

maintenance in India can drag on for more than a decade. But Wives stop attending court dates once interim maintenance is fixed.

### **Domestic Violence Laws:**

The Protection of Women from Domestic Violence Act was enacted in 2005. This is an Act to provide for more effective protection of the rights of women who are victims of violence of any kind that occurs within the family. This Act covers all women who may be mother, sister, wife, widow or partners living in a shared household. However, no female relative of the husband or the male partner can file a complaint against the wife or the female partner. Swarup Sarkar of Save Indian Family had said that the Domestic Violence Act should be made gender neutral and noted that it only provides protection for women victims and there are no legal provisions for married men facing abuse. He argued that this Act should be made gender neutral<sup>16</sup>. He also commented that this nothing but a legal terrorism. Many men across India have reached out to Save India Family NGO on its helpline number. They alleged that they were subjected to domestic violence by their spouse. This happened during the COVID-19 lockdown in India.

### **Misuse Of Rape Laws:**

The amendment for the Criminal Law Act was introduced in 2013 after the horrific brutal gang-rape case of Nirbhaya in 2012. This amendment's main cause is to provide extremely strict punishments for the rapists. Even the citizens of India urged the government to punish the rapists with hard penalties. And after the criminal law amendment, the amount of false rape cases rose drastically in 2013. According to a report published by Delhi Commission for Women, over 53% cases filed between April 2013 to July 2014 were false<sup>17</sup>. The allegations of rape against Indian men were levelled by avenging women, refuted girlfriends, manipulating colleagues, even families who want to avoid losing face on acts of sexual activities being discovered. And another important category of cases is minor boy raping a minor girl. Even consensual act of sex between two minors

<sup>16</sup>Ians, Men's rights groups ask law comm for legal curbs to Domestic Violence Act abuse by women Home - Legally India - Career Intelligence for Lawyers, Law Students (2015), <https://www.legallyindia.com/the-bench-and-the-bar/law-comm-asked-for-legal-curbs-to-domestic-violence-act-abuse-by-women-20150929-6680>

<sup>17</sup>IndiaToday.in, 53.2 per cent rape cases filed between April 2013-July 2014 false, says DCW India Today (2014), <https://www.indiatoday.in/india/north/story/false-rape-cases-in-delhi-delhi-commission-of-women-233222-2014-12-29>

is also a rape. In these type of cases, the girl's family files a rape case against the boy. A social worker Manasi said even though the girl engaged in sex willingly, the girl's parents file a rape case to save their family honour. These type of act causes disservice to the women who are the real victims affected by rape. And in Haryana, 40.3% rape cases between 2018-2020 has been declared as false cases<sup>18</sup>. The data report was released by the state crime record bureau. Totally 4,093 cases were filed and 1,650 cases were declared as false. 39.6%, 51% and 45.3% of gang rape cases declared as false in the year 2018, 2019 and 2020 respectively. 8.5%, 11% and 12.4% of POSCO cases declared as false in the year 2018, 2019 and 2020 respectively. 37.7%, 32.6% and 44.9% of repeated rape cases filed by same women has been declared as false in the year 2018, 2019 and 2020 respectively. And another suggestion has been kept by the men's rights organisations. NGOs like All India Men's Welfare Association, Save Indian Family Foundation demanded that workplace harassment laws should be made gender neutral and it is outdated to think that only women are victims of sexual harassment. And the need of the hour is gender neutral laws. Domestic violence should be considered as spousal violence and specific laws and provisions are needed to protect both the spouses from domestic violence. Basic rights and equality should be given to both men and women without any restriction.



<sup>18</sup>Ians, Men's rights groups ask law comm for legal curbs to Domestic Violence Act abuse by women Home - Legally India - Career Intelligence for Lawyers, Law Students (2015), <https://www.legallyindia.com/the-bench-and-the-bar/law-comm-asked-for-legal-curbs-to-domestic-violence-act-abuse-by-women-20150929-6680> (last visited May 2, 2022).

## **CONCLUSION**

The present world system has been modified a lot. After the development of modern technologies and the impact of globalisation have modified our daily lifestyle. The western ideas have severely impacted our cultural values and social norms. The preconceived family structures are changing. The protector and saviour of the family role of men is now equally applicable to women in the family. And it is time to recognize the atrocities faced by men in domestic households. Awareness should be created to solve these problems by implementing relevant legal provisions and enacting gender-neutral laws which should offer protection to both spouses from domestic violence.

