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DOMESTIC VIOLENCE AGAINST MEN IN INDIA

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ABSTRACT

The issue of domestic violence in India was always of the core issues often faced by the women in the society after marriage, with the increase in cases of domestic violence and cruelty against women government amended various laws and brought several legislation for protection of women against domestic violence. The acts such as *Protection of Women from Domestic Violence Act, 2005*, *Dowry Prohibition Act, 1961* and several amendments in the Indian Penal Code such as introduction of 498-A has ensured safety and protection of women from domestic violence but has also opened up Pandora's box with regard to misuse and frivolous litigation against men. There has been increase number of cases of cruelty against men and therefore a system check and balance is required to ensure that both women and men are able to secure their rights and are protected against frivolous litigation.

Introduction

Human civilization has been in existence from time immemorial, with the different kind of civilizations different forms of customs and culture developed, the rules and the laws evolved and developed with the advancement of the civilization. The concept of marriage also originated in ancient times and evolved and changed from time to time. Earlier polygamy and polyandry were allowed, later with the passage of time both the polygamy and the polyandry were made punishable, and the laws relating the marriages were made. The people started realizing the importance of codified and written laws and had more acceptability for the written laws. At the same time, the 19th century altogether experienced drastic and pragmatic changes especially for atrocities against women for example abolition of the Sati System and the introduction of the re-marriage of the widow. The laws such as the Hindu Marriage Act, 1955, the Special Marriage

Act, 1954 and the laws relating to the adoption were also introduced. These laws provided for the methods right from consummation of marriage to the dissolution of marriage, clearly stating the rules and the conditions for a valid and a legal marriage. The 20th century has seen a stringent and active enactments and amendments of certain law for the protection of women especially to protect women from cruelty after marriage, the Prohibition of Dowry Act, 1961 and the amendments in the IPC (Indian Penal Code 1860) with regard to cruelty. At the same these laws also protects and safeguards the right of the women in case of domestic violence as well.

Domestic violence or the domestic abuse can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse can be physical, sexual, psychological action or threat of actions that influence another person.¹ The issue of domestic violence is not a new issue, it has been in existence and from time to time it has drawn the attention of the society. With the increase in the new challenges at job and the increasing competition at workplace, there has been increase in case of domestic violence, unfortunately the cases of domestic violence has also been reported in the families which are well to do and economically self sufficient. According to reports family and domestic violence is a common problem in the United States affecting an estimated 10 million people every year; as many as one in every four women and one in every nine men are the victim of domestic violence.² It is also believed that the domestic violence also depends upon the societal behavior and the individual behavior; there can be a number of factors contributing to the increase in the cases of the domestic violence. Although domestic violence has been prevailing in the families and the relationships in the past as well, but now it has become of the issues people are becoming concerned and aware about. Earlier domestic violence was mostly inflicted by the men upon the women but now day's men are also becoming the victim of domestic violence. The legislations and the laws provided by the government are often being misused by the women to meet their own selfish motives. The increase in the number of cases in domestic violence is drastic and there is a need to solve the problem of domestic violence both socially and legally.

Earlier women were considered to be a weaker section of society and in case of domestic violence men were considered to be the culprit of the domestic violence; but today the scenario has changed and men are equally abused and are the victims of the domestic violence. In most of the cases the

¹ www.un.org

² www.ncbi.nih.gov

laws which were made with the internet to protect and safeguards the rights of the women are being misused and used as a weapon for mental harassment and intimidating men. In Europe and the western countries, an increasing trend in the domestic violence has been observed the number of cases of domestic violence increased especially during the times of the pandemic i.e the covid-19. The European countries signed the *Treaty of Istanbul in 2011* also known as **Council of Europe convention on preventing and combating violence against women and domestic violence** order to deal with cases of the domestic violence.³ It is signed by most of the European countries and ratified by 20 countries as of now. The treaty provides for non gender biased mechanism thus considering the domestic violence from the both the aspects of the men and women.

Domestic Violence in India

1. Early period

India is a country of rich culture, traditions, customs and values; it has been ruled by different rulers of different origin and therefore has developed and imbibed mixed culture and values. India has witnessed the time and the situations where it has seen a time period where the women were treated with respect and equal rights were given to women and at the time whereby the women were mere left to animal like existence. The situations of women or the destiny of the women depended upon the dynasty or the kingship of the kings for example during the Mauryan Empire the women were treated with respect and exercised certain rights such as right to profession, education and right to own property. Howsoever situation deteriorated with the passage of time and especially during the invades whereby several restriction were imposed such as the Purdha system, sati system, jowhar etc. It was only during the British rule wherein the conditions of women improved and certain legislations were made by the colonial rule for the protection of the women. Howsoever the issue of domestic violence existed in earlier period as well but as such no laws or the protection were granted to the women as they were considered inferior to men. It was only during the British or the Colonial rule that the status of the women began to improve prior to colonial rule atrocities against women were highest, the selling of minor girls, the devdasi system and the sati system were practiced widely. It was during the 19th Century that the social evil practices were eradicated mainly by the interefernce of the colonial rule and the efforts activists like Raja Mohan Ruoy, Ishwar Chandra Vidyasagar and Maharaja S. Rao.⁴

³ www.europarl.europa.eu

⁴ www.indiastudychannel.com

2. After independence

After independence several efforts are being made to improve the plight and condition of women in India, the legislation made various laws for the upliftment and protection of women. The constitutional framers ensured that the women of the country should not be ignored and given more of privileges and opportunities, as the nations progress now also depends upon the gender equality, “The best thermometer to the progress of the nation is its treatment of its women.”⁵ The preamble of the constitution and several of its articles also provides equal rights and special treatment of women, Article 14, 15 and 16 talks about the equality of status and opportunities for all irrespective of any kind of discrimination. Moreover Article 15 (3) provides for making special provisions for protecting the interest of the women and children. Similarly 73rd Amendment of the constitution also played a key role for the upliftment of the status of the society and women by adding the provisions of the Panchayati Raj system and providing for the reservation of the 1/3rd seats for the women in the elections in addition to the seats reserved for the scheduled caste and the schedule tribes. ⁶ In today’s era women are given equal opportunities both economically and socially and can be seen working shoulder to shoulder with men. With the laws in action for the protection of women, the women in India have come a long distance the laws not only provide protection at the workplace but also at homes and society. The laws like Prohibition of Dowry Act, 1961, The protection of women from Domestic Violence Act, 2005 and Section 498 A of the IPC ensure the protection of women after marriage and in society. But as we say “Absolute power corrupts absolutely” the plight and condition of men have worsened as the laws meant for the protection of women are being misused by women for their own personal vendetta and selfish motives.

The domestic violence in India has been existing from the past as the plight of the women in the society was not very good, therefore the issue of domestic violence was considered to be a common story of the house. But today domestic violence is considered to be a crime and has serious consequences, the state governments have separate set-up of women cell in police to deal with the issues of domestic violence. The cases of domestic violence are increasing day by day over 2300 domestic violence were reported with National Commission for Women between January and May in 2021 the highest for any years since 2000.⁷ There is no iota of doubt that pandemic Covid-19 also lead to the increase in cases because of the changing environment and

⁵ Swami vivekanand

⁶ Constitution of India J.N Pandey

⁷ Thehindu.com

the frustration, but at the same time the cases of domestic violence are often filed with the malafide intention. The laws are often being misused by the women for their own personal gains and motives. In most of the divorce cases, we often get to see that a counter suit against husband and his relatives is filed under the Prohibition of Dowry Act 1961, Or 498-A IPC or both. As a result the husband and the family members of the husband has to go through mental agony and the long process of litigation just to satisfy the claims and settlement of the wife and to ensure the final decree of divorce or the unfavorable settlement outside the court.

One of the other most misused laws is the Hindu Adoptions and Maintenance Act, 1956 and section 125 of the crPc whereby the husband is bound to provide for the maintenance of the wife and the children. Section 3 (b) provides with the definition of the term “maintenance” includes- (i) In all cases provision for food, clothing, residence, education and medical attendance and treatment. Section 18 of the act specifically talks about the maintenance of the wife thereby making it obligatory for the husband to provide with the expenditures for the livelihood of the wife. The act however does not leave any room for the consideration of the fact as to what is the financial conditions and the obligations of the husband except for the maintenance to the wife. It often seen that the wife is well-qualified or is in a condition to earn better than her spouse but still the burden for maintenance of the wife and the children lies on the husband. Once the order of maintenance is decreed by the trial court, husband often has to undergo imprisonment due to non compliance of order, thereby causing the mental trauma to the husband and the family members. It is only recently after observing the increase in the misuse of these women centric law, the Hon’ble Supreme court in the matter of Sanjay Bhardwaj & Ors Vs. The Sate & Ors observed that the husband cant be forced to beg and steal in order to maintain his equally qualified wife who refused to live with him coupled with the fact that earning status of the husband is not proved.⁸ Now it’s the era of gender equality where both men and women are working shoulder to shoulder and in certain cases even competing with each other, therefore it would be wrong to presume that its only the women who are the victim of the domestic violence. The men often fall prey to these draconian women centric law whereby even the investigation into the cases are also biased to an extent in certain cases.

⁸ www.hellocounsel.com

Conclusion

Its high time that people should try to look at the issue of domestic violence with a broader perspective. In most of the cases it always assumed that it's the men who is the villain behind the game of the domestic violence because of the age long perception of the people. But today tables have turned and it's the other way around where the women are misusing the laws for personal vendetta not only in domestic life but also in professional life. The Hon'ble Supreme court has also recognized the fact of the misuse of laws and several judgements have been passed to keep check and control the misuse of the laws. In *Savitri Devi V. Ramesh chand & Ors (II (203) DMC 328)*, the judge has stated that the women centric laws are created for the benefit of the women, but these laws have been misused for dragging the relatives of the husband whereas the cruelty has been committed by the husband only.⁹ Even the courts nowadays recognize the concept of gender equality and emphasizes that it is not only the men who can commit the act of cruelty but the women also. The term cruelty is a wide term which can be interpreted in different manner depending upon the facts of the cases. In case of *Narayan Ganesh Dastane V. Sucheta Naryan Dastane 1975 AIR 1534*, the court held the respondent guilty iterating that it is not the men who always inflict cruelty but women can also commit cruelty physically and mentally. The laws for the protection of women today seems to be gender biased and should be amended by the legislature in order to ensure fair trial, these laws seems to be obsolete with regard to the changing situation and circumstances. The women in the society are much more educated and independent as compared to the older times, these women centric laws seems to a new weapon or a tool for terrorizing the men in the society. Moreover these laws at the same time seems to negate the concept of equality as enshrined and adopted in our constitution by the framers of the constitution.

⁹ (II (203) DMC 328)