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BEHIND CLOSED DOORS: UNVEILING THE SOCIO-LEGAL DYNAMICS OF DOMESTIC VIOLENCE IN INDIA

AUTHORED BY - NISHTHA

Status of Women- Historical Perspective

Indian tradition in regard to the treatment of women is very complicated. On the one hand, women has been called *Devi* or Goddess, the abode of Gods and on the other hand, she has been criticized for her unpredictable and impulsive nature and has even been denied the basic right of existence as a human being.¹

Undoubtedly, the position of women during the Vedic period was glorious on account of freedom and equality in all aspects and it was in no way inferior to men. Women were respected and given more importance in almost all the fields of social life. It is believed that there were women warriors who were symbol of bravery and equal to men. Women used to have equal opportunity to educate herself. Women studied in the *Gurukuls* and enjoyed liberty in every sphere of life. In all the rituals and ceremonies, women had equal status. The Vedic term for wife “*dampati*” suggests that the husband and wife were regarded as the joint heads of the households. The wife was considered as *Ardhangini* of the husband, which meant that she constituted half of the personality of her husband.²The man was not religiously competent to perform religious duties without his wife. There was absence of the *purdah* system. There was no prohibition in the remarriage of widow and also there was no discrimination between a boy and a girl. Girls were also permitted to undergo thread ceremony (*Upanayana Sanskara*) Vedic period was considered as a golden period for women.

In the Post-Vedic period, various restrictions were put on women’s rights and privileges by Manu. The birth of girls was treated as a disaster for the family. Girls were totally denied access to education. The marriageable age of girls was lowered to 9 or 10 years. The subservience of women can be precisely summed up by the famous injunction of Manu, where it is stated that a

¹Goswami Sambhoo, Female Infanticide and Child Marriage, 37 (2007).

²Myneni, S.R., Women and Law, 3 (2008)

woman should never be independent. As a daughter, she is under surveillance of her father; as a wife, of her husband; and as a widow, of her son. He equated women with slave and his laws epitomize complete submission of women to men. Manu's Code had the most negative effect on Indian women for countless succeeding generations. Even today, it is his laws which keep millions helpless in the prison of Hindu orthodoxy. In Laws of Manu, woman and low caste *sudras* are bracketed together.

The position of women was further degraded during the medieval period. Social evils like sati, child marriage, female infanticide arose. The evil of dowry had become deep-rooted. Girls were not welcome in this period because of the dowry system. The poor and lower middle-class families were ruined because of this social evil. Polygamy and the devadasi system had already spread. The medieval period saw women being oppressed in the feudal social order and patriarchal families. Indian women were strictly confined to their homes. Girls were altogether deprived of parental affection and love. Her scope of education was also limited. Child marriage restricted her right to proper education. Some girls were dedicated to temples as Devadasis or some took up the profession of prostitution. Sati system was prevalent in India during this period. It was the notion that women who died on the funeral pyre of her husband would enjoy eternal bliss in heaven. Sati system was more prevalent in the royal families than in any other classes of the society.

The attitude, behaviour and living pattern of Hindu society changed drastically during the British regime due to education and Western impact on the socio-cultural life of India.³ Social Reform Movement and the Nationalist Movement raised the question of equal status of women. The concept of equality, liberty and individual secularism, although, arose but limited to ruling class. Many laws were enacted which tried to eradicate certain social evils such as remarriage of widows, child marriage, and right to property of women. An awareness was created during the British rule for the removal of social malaises, while education and organising political participation increased women's mobility.

After Independence, a number of legal measures were taken to improve the standard, equality and life of women. With Independence, women were granted equal status with men. The government made all the efforts to raise the status of women in various fields through legislation.

³V.K. Dewan, Law Relating to Offences against Women (2nd Edn. Orient Law House, 2000) 33.

The most important event after the Independence has been the drafting of the Constitution. The framers of the Constitution were aware about the low status of women in India and realised that equality was important for the development of the nation. It became the objective of the State to promote education and economic interests of women and to protect women from exploitation and provide social justice. Articles 14, 15 and 16 of the Indian Constitution ensure equality and prohibit discrimination of people on the basis, inter alia, of sex. Fundamental duties, too, recognise upholding the dignity of women as one of the duties.

Domestic Violence In India

Violence against women is a manifestation of the historically existing unequal power relations between men and women, which have led to domination over women and discrimination against women by men and to the prevention of women's full advancement. Domestic violence against women has always been an obstacle to the achievement of the objectives of equality, development and peace. Domestic violence both violates and impairs the enjoyment by women of their human rights and fundamental freedoms.

Violence against women is not a new phenomenon. It is the ugliest attitude towards women in India. Violence perpetrated by partners and close family members on women within the four walls of the home has been a matter of silent suffering from a very long time. Women have been the victims of humiliation, torture and exploitation in our society from time immemorial. Violence affects the lives of millions of women in all spheres of their life. Violence can be both physical and psychological. It is an attack on not only her physical being but also towards her self-respect and self-confidence. According to a National Family Health Survey, it is reported that 42% of Indian men see no wrong in hitting their wives. Thus, violence against women in the confines of their home is very much acceptable in the society.

Despite the development in the legal sphere and judicial activism to protect women's rights, the laws dealing with evil social practices that are against women, have proved to be ineffective. Neither the woman is capable to reach the law nor the law can break the barriers and reach her behind the closed doors of her home. The dependence of women on the perpetrators of such violence worsens their situation.

Innumerable crimes are committed on the woman in the confines of her home. Some of the forms

of such violence are given below-

- **Female Foeticide and Infanticide**

A girl child is in a disadvantageous position in the Indian society, from the womb till her death. A girl is not allowed to be born or is aborted for the sole reason that she is a girl. This contributes as the most serious human rights violation of the rights of a female. Forced termination of female foetus aka Female Foeticide is a form of Domestic violence during the present time. In unlucky situations when an unwanted female child is born, she is done away with by poisoning or choking.

- **Incest**

Incest refers to the sexual intercourse between close relatives who fall within prohibited degrees of relationship. Incest is a very serious form of abuse against girls and it often goes unreported due to pressure from the perpetrator or shame or embarrassment in disclosing such acts.

- **Marital Rape**

Marital Rape is also a form of Domestic Violence. Marital Rape occurs when a man forcibly or without her consent has sexual intercourse with her or coerces her into indulging in sexual acts with another person. Marital rape has not been penalised in India.

- **Violence against Elderly Women**

Elderly abuse is also a form of Domestic Violence. Caregiver or any other person who stands in a trust relationship to the elder intentionally causes harm or creates a serious risk of harm to such vulnerable women. Elderly abuse can be- (a) Physical- Inflicting or threatening to inflict harm or injury; (b) Emotional Abuse- Mental pain, anguish or distress; (c) Sexual Abuse- Non-consensual and forceful sexual contact of any kind; (d) Exploitation; (e) Neglect; (f) Abandonment.

- **Dowry Death**

Dowry Death is one of the worst crimes that occurs with a woman within the matrimonial homes. The women are burnt alive in the fire of greed of dowry. Women are tortured and beaten for dowry demands, which either leads to their suicide or murder.

- **Violence against Widows**

Widows are made to face sexual violence at the hands of her brothers-in-law, fathers-in-law and in some situations their own fathers and brothers.

There are many factors, which cause domestic violence against women. They are discussed below-

1. Conservative Thinking-

The mindset our society is very orthodox in the sense that women are considered to be physically and emotionally weaker than men. It is socially accepted that if a woman tries to escape from violence within her home or is thrown out of her by the perpetrators of violence, then only she is to be blamed for her misery.

2. Gender Inequality-

Gender Inequality is one of the main reasons contributing to wife battering, harassment related to dowry and other kinds of cruelty. Inequality of women is maintained and further strengthened by the social conditions prevalent in our patriarchal society. The egocentric attitude of the male members making them consider themselves to have an ever-dominant status as compared to their female counterparts gives rise to violence.

3. Dowry Harassment-

Dowry is wedding gift to a bride from her family. In Indian marriages, along with the giving away of the bride, dowry is paid in cash or in kind by the bride's family to the bridegroom's family. The greed of members of matrimonial home is endless and in order to fulfil their needs, they 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. Persistent demands for dowry are an important cause of domestic violence. It starts from verbal abuse, battering, torture and in extreme cases, it may lead to suicide or dowry death and in others, women are left to suffer constantly at the hands of their in-laws.

4. Alcoholism-

An alcoholic person has less control over his emotions and actions and can thus in a fit of anger take dangerous steps that result in harm or danger to their family members specially spouse.

Studies reveal that men's drinking patterns are linked with domestic violence across all segments of the society.

According to Jacobs (1998) alcohol as the root cause of domestic violence has been

traced in three ways-

“(a) Alcohol as an excuse: Perpetrators are not held responsible for their actions when under the influence of alcohol;

(b) Drinking and violence as manifestation of similar and underlying problems: there is causal link between drinking and domestic abuse, but they are both caused by similar life stressors;

(c) Alcohol use as a means of gaining power and control: Social norms of male violence and need for control and power result in men using alcohol as an additional weapon of domination.”⁴

5. Media

Submissive female roles are glorified in a number of movies and television serials. When the on-screen perpetrator is never punished, it leaves a negative impact on the minds of the viewers. Watching violence on the screens makes people less sensitive to pain and suffering of others.

6. Joint Family

Women who live in joint families are more prone to violence as compared to the women living in nuclear families as the former are expected to be more adjustable. There have been a number of cases where due to the complaints of the other family members, the husband has maltreated his wife.

7. Poverty or Economic Strain

Economic hardship, prolonged unemployment also leads to violence against spouse. There is greater likelihood of poor women being victims of domestic violence than their richer counterparts. Housewives, as opposed to professional women are also more prone to being victims of domestic violence.

8. Lack of Education

Lack of education decides the vulnerability of women. Well educated women do not let themselves be oppressed at the hands of their abusive family members. Well educated men and families also do not subject the women in their lives to violence.

⁴Kannan. B and S Ramdoss, “The Women Victims of Alcohol Induced Domestic Violence and the Role of Community Police in Kerala: An Empirical Study” LXIII *IPJ* 130 (2016)

Uneducated people also expect that their wife or daughter-in-law will only beget a female child. This unacceptability towards female child has resulted into violence in the form of female foeticide, forced abortions, sex determination tests, abandoning women who give birth to girl child.

Constitutional and Legislative Protection against Domestic Violence

- **Protection by Constitution**

For centuries, women have been victims of social discrimination. Independence brought about a sea-change in India. The Chief Architect of the Constitution of India Dr. B.R. Ambedkar not only recognized the unequal position of women, but also made sure that women get equal rights. By enshrining the equality principle in the Constitution, the Constitution has given equal status to women at par with men. Keeping this in view, a number of provisions in the Constitution were written down to help women improve their status and come to par with their male counterparts. The **Preamble** is the key to the Constitution. It does not discriminate between men and women but it treats them alike. The Preamble of the Constitution declares to secure social, economic and political justice to secure equality of status and opportunity in the field of education, public employment and participation in political field.

Article 14 of the Constitution of India lays down the general principle of Right to Equality and it prohibits the State from denying to any person, “equality before the law or the equal protection of the laws”.⁵ The aim of this Article is to establish “the equality of status”. “Status” here refers to a woman’s position and rights in different fields of Hindu Law, namely property, succession, matrimonial relief, guardianship right, will making power, power of adoption. Status of woman is now being elevated because she can exercise her rights as equally as a man. Article 14 of the Constitution firstly, confers on women the equality of Status and secondly, protects against any violation of this principle. The Supreme Court of India acts as the protector and guardian of the fundamental rights and has always maintained and elaborated the concept of “equality of status”. In the case of *Air-India v. Nergesh Mirza*⁶, the air hostesses of the Air India International Corporation had approached the Supreme Court against the discriminatory service conditions in the regulation of Air India. The regulations provided that an air hostess could not get married

⁵The Constitution of India, Art. 14

⁶(1981) 4 SCC 335

before completing four years of service. If after reaching 23 years of age she got married, she could continue as a married woman but had to resign on becoming pregnant. If an air hostess survived both these filters, she continued to serve until she reached the age of 35 years. It was alleged on behalf of the air hostesses that those provisions were discriminatory on the ground of sex, as similar provisions did not apply to male employees doing similar work. The Supreme Court in this case struck down the Air India regulations relating to retirement and the pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. Both the regulations were struck down as violative of Article 14, which prohibits unreasonableness and arbitrariness.

Article 15 of the Constitution prohibits the state from making discrimination “against any citizen on grounds only of religion, race, sex, place of birth or any of them”.⁷ To bring equality between men and women the Constitution of India has prohibited the State from making any kind of discrimination on the basis of sex specifically. The Constitution has gone further and empowered the state to do a positive act to give “preferential treatment” in favour of women in Article 15(3). Special laws can be made in favour of women and children.

The case of *C.B. Muthamma v. Union of India*⁸ is of the petitioner who qualified for the Union Public Services and at the time of her interview, the Chairman of the U.P.S.C. tried to dissuade her from joining the Foreign Service. At the time of entry into the Foreign Service, she also had to give an undertaking that if she were to get married, she would have to resign from the service. On numerous occasions, the petitioner had to face the consequences of being a woman and thus suffered discrimination even though the Constitution specifically under Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth and Article 14 of the Constitution provides the principle of equality before law. The Court observed that discrimination against women, in traumatic transparency, is found in the discriminatory rules of service. Thus, the Court struck down the rules as violating the principle of equality.

In another case of *Govt. of A.P. v. P.B. Vijay Kumar*⁹ the Supreme Court held that the reservation to extent of 30 percent made in the state services by Andhra Pradesh Government to women candidates is valid. The Division Bench of Supreme Court emphatically declared that the power

⁷The Constitution of India, Art. 15

⁸(1979) 4 SCC 260

⁹(1995) 4 SCC 520

conferred upon the State by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State. Thus, making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3).

Article 16(1) of the Constitution of India provides equality of opportunity in matters relating to employment or appointment to any office under the State.¹⁰ This right to equality in matters relating to employment or appointment is only in employment or appointment under “the State” that is in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, gratuity, pension, age of superannuation.

Article 21 of the Constitution of India provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹¹ The Right to Life under Article 21 would necessarily imply the right to live with human dignity and would include those aspects of life that makes life meaningful, complete and worth living. Gender discrimination has been recognized as an obstacle to the full realization of the right to life under Article 21.

In *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*¹² the Court held that equality, dignity of person and the right to development are inherent rights in every human being. For the meaningful enjoyment of the right to life under Article 21, every woman is entitled to the elimination of obstacles and of discrimination based on gender. The Court reiterated that the State has an obligation to eliminate gender-based discrimination and to create conditions and facilities conducive for women to realize the right to economic development, including social and cultural rights.

The Supreme Court in *Vishakha v. State of Rajasthan*¹³ held that each incident of sexual harassment of women at the workplace is a violation of right to life under Article 21, which implies the right to dignity. According to the Court, the principle of gender equality includes protection from sexual harassment and the right to work with dignity which had been reflected in international conventions and norms.

¹⁰The Constitution of India, Art. 16

¹¹The Constitution of India, Art. 21

¹²(1996) 8 SCC 525

¹³(1997) 6 SCC 241

This was reiterated in *Bodhisattwa v. Subhra Chakraborty*¹⁴. The Supreme Court stated that women have the right to life and liberty under Article 21; similarly, they also have the right to be respected and treated as equal citizens. The Court held that offences of rape were acts of aggression aimed at degrading and humiliating women. Such offences are crimes against basic human rights and are also violative of the fundamental right to life under Article 21.

Article 39 provides that all the citizens, men and women, have the equal right to an adequate means of livelihood.¹⁵ An obligation has been put on the State through this Article that it should direct its policy towards securing equal pay for equal work for both men and women and that the health and strength of workers, is maintained by the State. The main principle behind this provision is “equal wages for equal work irrespective of sex”. The Equal Remuneration Act, 1976, the Bonded Labour System (Abolition) Act, 1976, the Factories Act, 1948, the Mines Act, 1952, the Workman’s Compensation Act, 1923, the Plantation Labour (Amendment) Act, 1981 and several other statutes have been enacted to further the objectives laid down in this Article.

Article 42 provides that the State shall make provision for securing just and humane conditions of work and maternity relief.¹⁶ The Maternity Benefit Act, 1961 was passed to provide 12 weeks maternity leave with wages to women workers and other benefits.

- **Protection by Legislation**

- A. **Indian Penal Code, 1860**

The Law Commission of India after taking into consideration the problems in existing laws for securing evidence to prove dowry deaths, had inserted Section 113B of Indian Penal Code which relates to presumptions regarding dowry death.¹⁷

Section 304B was introduced in the IPC to deal with dowry death to take control of increased cases of dowry related cruelty resulting into deaths. According to Section 304B, if death of the married woman occurs within seven years of her marriage in unnatural circumstances, it shall be considered as dowry death.¹⁸

Section 498A of IPC deals with Cruelty against women. The section addressed cruelty by a husband and his family towards a married woman in particular. Cruelty under this section can be defined as the intentional infliction of severe pain or suffering whether

¹⁴(1996) 1 SCC 490

¹⁵The Constitution of India, Art. 39

¹⁶The Constitution of India, Art. 42

¹⁷The Indian Penal Code, Section 113B

¹⁸The Indian Penal Code, Section 304B

physical or mental.¹⁹

B. Protection of Women from Domestic Violence Act, 2005

Very few provisions existed in India on the issue of violence before the enactment of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act). Women were not aware about any of their rights that existed in their matrimonial home. They were often thrown out of their homes because of insufficient dowry, harassment and cruelty. Women had to rely only on the Indian Penal Code to get any relief. In the 1980s, two very important provisions were enacted to bring the issue of domestic violence out of the four walls of homes. The first one was Section 498A which made violence in marriage a criminal offence. The second one was the insertion of Section 304B of Indian Penal Code which introduced the offence of dowry death.

In 2001, the Government of India circulated the “Domestic Violence against Women Prevention Bill, 2001” which provided a mechanism to protect women who have become victims of domestic violence and to let them approach the court. It also provided for the provisions of protection order and protection officers. The Bill had a long journey from 2001 when it was introduced in the Parliament, to 2005, when finally, the Act was passed. The Protection of Women from Domestic Violence Act was brought into force from October 2006. The Act was formulated to implement Recommendation No. 12 of UN Committee on CEDAW which was ratified by India in June, 1993.

The salient features of the Act are:

- The Act is the first attempt to recognise domestic abuse as punishable and to provide emergency relief to the victims. Prime beneficiaries of the Act are women and children.
- Domestic relationship is defined in the Act as any relationship between two persons who live or have, at any point of time, lived together in the shared household.²⁰
- The Act has taken into consideration all the forms of abuse such as physical, sexual, emotional, verbal, psychological and economic abuse or threats of the same through its definition provided in Section 3 of the Act.
- The Act ensures the woman’s right to secure housing. The Act provides for the woman’s right to reside in matrimonial or shared household, whether or

¹⁹The Indian Penal Code, Section 498A

²⁰The Protection of Women from Domestic Violence Act, Section 2(s).

not she has any title or rights in the household. This right is secured by Residence Order.²¹ The woman is also entitled the right to an alternate accommodation if required.

- Section 8 of the Act provides for the setting up and functions of Protection Officers. These officers are appointed by the State Governments and they come under the jurisdiction and control of the Court and are responsible for monitoring the cases of domestic abuse. Protection Officers ensure that aggrieved people are provided legal aid, medical services, safe shelter and any other assistance. The duties of a Protection Officer are given under Section 9 of the Act.
- The Central Government has the duty under the Act to give Publicity to the provisions of this Act, sensitize and make people aware on the issues addressed by this Act.
- The various remedies available to an aggrieved person under the Act are-
 - Protection Orders under Section 18
 - Residence Order under Section 19
 - Monetary Relief under Section 20
 - Custody Orders under Section 21
 - Compensation Orders under Section 22
 - The Magistrate's power to grant interim and ex parte orders under Section 23.
- Under Section 18 of the Act, a Protection Order can be granted prohibiting the respondent from committing any act of violence or alienating any asset belong to the women, causing violence to the dependents of the aggrieved person or committing any other act specified in the protection order.
- The woman under the Act has to be given monetary relief for meeting the expenses incurred and losses suffered including loss of earning, medical expenses, etc.
- Under Section 21 of the Act, Magistrate may grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf.

²¹The Protection of Women from Domestic Violence Act, Section 17.

C. The Dowry Prohibition Act, 1961

Under this Act, both the giving and receiving of dowry is prohibited. Dowry demands have been one of the prime causes of violence against women, especially domestic violence which further leads to female infanticide, female foeticide, dowry deaths, child marriages, non-compatible marriages. The Act has been amended in 1984 and further amended in 1986 to make the act stricter. The main feature of the Amending Act is that minimum and maximum punishment has been given for the offence of giving and taking dowry.

D. Hindu Marriage Act, 1955

Section 13 of Hindu Marriage Act, 1955 deals with the grounds of Divorce. Cruelty has been laid down in the act as a ground for divorce. In civil law, it is the only legal instance of recognition of 'domestic violence'. Cruelty is not limited to physical violence but it may extend to behaviour towards spouse which may cause mental pain or injury to mind as well.

E. Right to Maintenance

Section 125 CrPC has been enacted with the object to compel a man to take care of his wife and children and make sure they are not neglected or left in a state of beggary and destitution. If a wife is a victim of violence or cruelty by her husband, she can seek maintenance from her husband. Even a single incident of wife beating is sufficient for her to live separately and claim maintenance.

Section 24 of the Hindu Marriage Act provides for maintenance pendente lite for either parties who are seeking a divorce or judicial separation on the ground of cruelty or any other ground.

The Hindu Adoption and Maintenance Act provides for maintenance to be provided by a Hindu husband to his wife in cases of desertion, cruelty, etc.

Conclusion

In conclusion, the socio-legal position of domestic violence in India remains a complex and pressing issue that demands urgent attention and action. While significant strides have been made in terms of legal frameworks and awareness campaigns, challenges persist in effectively addressing the root causes and providing comprehensive support to survivors.

Despite the existence of laws such as the Protection of Women from Domestic Violence Act, 2005, implementation and enforcement remain inconsistent, leaving many vulnerable individuals without adequate protection or recourse. Moreover, deeply ingrained cultural norms and societal attitudes often perpetuate a cycle of silence and stigma surrounding domestic violence, hindering survivors from seeking help and accessing support services.

Ultimately, addressing domestic violence requires a multifaceted approach that tackles its socio-cultural roots while also ensuring robust legal protections and support mechanisms for survivors. By working together to confront this pervasive issue, we can strive towards a society where every individual can live free from fear and violence in their own homes.

