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## **DOMESTIC VIOLENCE – LEGAL, SOCIAL & CULTURAL ASPECTS**

### **ABSTRACT’-**

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Domestic violence has emerged as a critical issue in the modern World. The Indian male dominated society is still controlling the social, economic, political and religious affairs and women are neglected from the mainstream society. On one side we are speaking about globalization and on the other side the women in India are oppressed under the social and religious boundaries. The right of women to choose their life partner is under the surveillance of the patriarchal society and marital rape is considered as husband's right and the law remains on paper. Honor killing, forced prostitution and female infanticides are adding to the situation. Women are often treated as the chattel of men and all her rights were violated within the four walls. In order to prevent such grave human rights violation against women The Domestic Violence Act 2005 was enacted. Under this Act any woman or child who is related to the abuser is protected. The Act widened the scope of protection available to the victim. But we should also consider whether such laws or enactments are actually protecting the victims. Domestic violence is downtroddening all forms of human rights and women are victimized.

**KEYWORDS:** Domestic Violence, Women's Right, Physical and Sexual Abuse, Legal aspect

### **INTRODUCTION**

Home is supposed to be a safe place in conventional concept. But in the modern times when people started to talk more about mental health and importance of discussions came up, this conventional notion was completely shattered. In a country like India where patriarchy and religion are so strong women suffered severe discrimination. This discrimination was such that it slowly became a part of life and women accepted this. Women shouldered the responsibility of household job and were subject to believing and living with less interest in achievements. As their voice was very weak they never came out to speak up. So men easily dominated the family space physically and mentally. Even the recent National Family Health Survey reveals that women in large number justify domestic violence and says beating from

husband is fine.<sup>1</sup> As per the Survey Report many women felt it is justified for a man to beat his wife.<sup>2</sup> This means that beating from husband is still common in Indian households.

India has undergone numerous reform measures. First we had the caste reform measures in eighteenth century which eyed at women's freedom as well. Then importance of education came to discussion. Majority of these movements before independence failed to succeed in its full sense. After independence, we got a constitution that ensures equality. Legal protection came up against domestic violence. More and more women became educated. But still the survey above mentioned is an eye opener on how domestic violence has adapted to become a part of Indian culture. Laws set up regarding domestic violence failed even to convey the basic idea on why such act is wrong. In a country where parents beating children is tolerated as a good practice, it is not easy to eradicate domestic violence but that is not an excuse. It is a clear failure of administrative system in spreading education on this topic of domestic violence against women. In twenty first century where people are growing globally, there is a need to make our people aware about how cruel this practice is. Normalizing the idea of domestic violence had lot of negative impact on women over these years. It affected their confidence to strive into new heights. It provided way to this discrimination to be carried forward to workplace and other walks of life. In this article we try to bring down various manifestations of domestic violence with its legal, cultural and social dimensions to understand about the ineffectiveness of the present laws.

### **DIFFERENT MANIFESTATIONS OF DOMESTIC VIOLENCE**

Domestic violence exists as a part of violence against women regardless of their class, race, religion, etc. and includes different forms of family violence. It is not only limited to heterosexual relationships but also occur within same-sex couples and other intimate relationships within the LGBTIQ+ community. Thus, domestic violence include violence committed by the intimate partner and family members and can be manifest through:- physical abuse, psychological abuse, economic abuse, sexual abuse, digital / technology abuse, spiritual / cultural abuse, stalking, dowry related violence, early marriages, **reproductive abuse**, femicide (domestic femicide), female infanticide, honor killing, forced prostitution and sex trafficking, acid attacks acid attacks, etc.

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<sup>1</sup> NFHS-5 (2019-2021); shows that even majority of women are supporting Domestic Violence [Telangana-83.8%; Andhra Pradesh-83.6%; Karnataka-76.9%; Manipur-65.9%; Kerala-52.4%,etc.]

<sup>2</sup> Ibid.

On hearing the word domestic violence, people would first think of physical assault or physical abuse. Physical abuse occurs when physical force is used in a way that injures or endangers the woman. It can be by slapping, stabbing, strangling, beating, kicking, arm twisting, etc. It covers issues like destitution, denial of food, deprivation of sleep.

Emotional, mental, or psychological violence is described as using words to criticize, demean, or otherwise decrease the confidence of the intimate partner victim.<sup>3</sup> Deliberately hurting someone over and over again becomes abusive. It may not hurt the body, but can be just as distressing and painful in other ways. Mocking, name-calling, not listening or responding and twisting the words one said, preventing one to see friends and relatives, threat of abandonment, threat to take away custody of children, etc. are examples for psychological abuse. Social isolation also is part of it.

Abuse can take the form of use of money and monetary things to torture or control someone. Refusing access to money, taking control over someone's bank accounts and financial transactions, accumulating debt in one's name, refusing to contribute financially, denial of food and basic needs, forbid partner from seeking or keeping employment, situation of seeking permission from another person to spend one's own money, etc. are examples of the economic abuses.

Sexual abuse refers to any behavior that uses sex to control or demean the victim, like forcing the victim to participate in unwanted, unsafe, or degrading sexual activity and forcing sex with others. Forced sex, even by a spouse or intimate partner with whom the person also have consensual sex, is an act of aggression and domestic violence and it can be termed as "marital rape". A woman who is raped by a stranger, lives with the memory of the horrible attack but a woman who is raped by her husband has to live with her rapist. As per Medical report it is proved that marital rape has grave and long-lasting consequences on women.

About digital/technological abuse, the abusers may use technology against victims to monitor, threaten, harass, and hurt them. In some cases spyware was installed on victims' phones, impersonate them on social media to humiliate them, or give children electronics that can reveal their location even after kids have fled with an abused parent.<sup>4</sup> This is done to isolate, punish and humiliate domestic violence victims.

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<sup>3</sup> Roxanne Dryden-Edwards, Domestic Violence, MedicineNet

<sup>2</sup> Katherine Kam, The New Domestic Violence: Technology Abuse, WebMD (Nov.30 2020)

In the case of spiritual abuse, the abusers either force the victim to participate in the abuser's religious practices instead of their own or stopping victim from practicing their religious or spiritual beliefs or forcing the victim to raise children according to spiritual beliefs the victim don't agree with.

About stalking, it means a kind of behavior that is harassing or threatening in nature and it includes following the victim through the places she goes by phone calls, messages, letters, E-mails leaving unwanted items, or vandalizing the victim's property.<sup>5</sup> Dowry related violence/abuse arises when the groom or his family seeks more money or valuable goods and the bride's family is unable or unwilling to give. Even though the dowry system is practiced in many countries in the world, dowry related violence is prevalent mostly in South Asian countries like India, Sri Lanka, Bangladesh and Pakistan. Physical abuse, acid attack, marital rape, wife burning, etc. are the common forms of dowry related violence. *Pandurang Shivram Kawathkar v. State of Maharashtra*<sup>6</sup> is an Indian case in which the Supreme Court held that mere demand of dowry without any exchange also amounts to an offence under Sec.4 of the Dowry Prohibition Act.

In the case of early marriage/child marriage, that practice with or without the consent of the girl, robs her of her childhood. Those girls are deprived of their rights to education, safety and health. They are forced into adulthood before they are mentally and physically ready. Early marriage leads to teenage pregnancy and can expose the girl to sexually transmitted diseases. Babies born to teenage mothers face a substantially higher risk of death, with a higher likelihood of lower birth weight, underdevelopment and malnutrition.

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<sup>5</sup> *ibid.* p.1

<sup>6</sup> PANDURANG SHIVRAM KAWATHKAR V. STATE OF MAHARASHTRA; 2001 Cr LJ 2792 (SC)

Reproductive abuse refers to situation in which victim is stopped from making her own choices about her reproductive system which includes parts and functions of the body involved in menstrual cycle, sex, pregnancy and birth. It can be termed as Reproductive coercion and it refers to any deliberate attempt to influence or control a person's reproductive choices<sup>7</sup> or interfere with their reproductive autonomy. It is typically perpetrated against women by male intimate partner<sup>8</sup>, although other family members can also be participants/instigators<sup>9</sup>. Forcing the victim to become pregnant or to have an abortion, forcing to have unprotected sex, knowingly passing on a sexually transmitted infection to the victim, stopping the victim from accessing reproductive healthcare, including screening tests for sexually transmitted infections, breast cancer and cervical cancer, forced menstrual suppression, destroying a partner's oral contraceptives, etc. are some of the reproductive abuses.

Femicide means murder of women and girls by intimate partners and family members. The term includes not only female murders committed by partners, but also of girls murdered by their family because they rebel against an obsessive control of their lives, sexual choices or identities because they refuse a marriage imposed to them. Generally, the term has been used to describe gender-related killings in the community.

Female infanticide occurs when baby girls are intentionally killed. It can also be termed as **gendercide**. It can be committed by two ways –

1. Sex selective abortion
2. Killing the female infant upon birth

Some of the root causes of female infanticide is **strong cultural preference for sons, gendered earning power** as males are regarded as having higher earning power and able to provide for the family, regarding daughters as a financial burden on families who are unable to afford a generous dowry which exists as part of tradition, relationship difficulties, low income, impact of lack of support doubled with mental illness such as postpartum depression and high level poverty. Some women allow female infanticide or female abortion in order to maintain the security of their marriage. **In some cases, mothers who are victims of**

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<sup>7</sup> Elizabeth Miller, et al., *Pregnancy coercion, intimate partner violence and unintended pregnancy*, 81 *CONTRACEPTION*.316-22(2010)

<sup>8</sup> Grace KT, Anderson JC, *Reproductive coercion: a systematic review*, 19.TVA. 371–90(2018)

<sup>9</sup> Silverman J, Raj A, *Intimate Partner Violence and Reproductive Coercion: Global Barriers to Women's Reproductive Control*, 11.PLOS MED. 2014

**domestic violence are forced to kill their female infant due to the stress they suffered in their life.**

Forced prostitution and sex trafficking is often an extreme form of domestic violence. There are many cases in which traffickers establish intimate partner relationships with their victims to recruit them to sex trafficking. That is, in some instances, a marriage or intimate relationship may be a fraud instigated by the trafficker from the start so that young victims are lured into marriages or romance where their partners cheat them. Whereas the case of a victim trafficked is different, it is a fraud marriage or relationship which may later lead to human trafficking. Domestic violence and abuse from home also acts as a major factor in human trafficking. Some of the victims are recruited into forced prostitution while they try to escape from domestic violence.<sup>10</sup> Adolescents in the category of LGBTQ are at a high risk for sex trafficking which is a result of the intolerance, marginalization and prejudice that can be experienced by them in their homes, schools, and community. Many LGBTQ youth have been thrown out of their homes by intolerant family members or have run away as a result of abuses perpetrated against them in their homes and being homeless subjects them to physical danger and the exploitation of abusive adults and older adolescents.

In the case of honor killing, it means murder committed by male family members against female family members because who are held to be violated the honor of their family. Cultural practices have helped crimes like honor killing to get escaped from punishment, the practice of killing women for love and marriage has been marked by cultural practices. A woman can be targeted by the family members for a variety of reasons like refraining from forced marriage, getting divorced, having sexual relationships, having sexual relationships, pregnancy outside marriage, being the victim of rape, (allegedly) committing adultery, etc. In some countries, when an unmarried woman or adolescent is raped, she may be forced to marry her attacker by her own family and women who become pregnant before marriage may be murdered by family members, even if the pregnancy is the result of a rape.

Acid attacks also add to physical assaults where an acid or corrosive material is thrown over another individual with the intention to maim, disfigure, torture or kill.<sup>11</sup> It's a heinous form of assault by which the perpetrator of the crime seeks to inflict severe physical and mental

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<sup>10</sup> Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Feb. 29, 2000, U.N. Doc. E/CN.4/2000/68

<sup>11</sup> LEWIS CJ, HODGKINSON EL, ALLISON KP, CORROSIVE ATTACKS IN THE UK – PSYCHOLOGICAL PERSPECTIVES AND DECONTAMINATION STRATEGIES, BURNS. (2019)

suffering on his victim and the victims are most often young women. Acid attacks are often results refused marriage proposals, failed romantic advances, false suspicions on the partner, dowry disputes, excessive drinking, frustration, a wanton act of cruelty or just a bump in the male ego. The brutality and the impact of acid attack cannot be described in words. It destroys identities, permanently scars the body and soul, bankrupts families and ostracizes innocent victims.<sup>12</sup>

Thus, we can see different manifestations of Domestic Violence but there is not even a single statute that addresses all those manifestations. Even if there is a law, most of the women are still not considering it as a crime<sup>13</sup> because of their so-called moral thought. For those women who consider it as a wrong, they lack legal awareness to fight against it. Even though there is no particular law containing all these manifestations, we can see that these provisions are scattered in various laws. Not having one and proper law containing all these manifestations of domestic violence make it difficult for advocates too as they have to check on various statutes regarding a case of domestic violence. Also, since we have Protection of Women from Domestic Violence Act,2005, many officers point out provisions of that statute only while giving awareness classes to women on that topic.

## **INDIAN LAWS FOR THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE AND THE INEFFECTIVENESS OF THE LAWS**

Violence against women is not unique to India. Some traditional practices like the preference for male children create gender inequalities in the society and is one of the reasons for violence and discrimination against women. The society's preference for male child has far-reaching implications for female children's health, economic opportunities, education, as well as on their right to choose their partners.

On speaking about the laws, in India, we have Dowry Prohibition Act,1961 which is enacted to prevent giving, receiving or demanding of dowry. However, statistics show that dowry deaths have increased over the years, instead of diminishing. If the dowry payment is not worth enough, the husband and/or his family may start to harass the wife until she decides to commit suicide or is murdered. The campaign to end dowry related domestic violence eventually led to the passage of the Criminal Law (Second Amendment) Act in 1983,

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<sup>12</sup> **Shilpa Dubey**, *Acid Attacks And Domestic Violence Both Root From Gender Inequality*, FEMINA (2020)

<sup>13</sup> NFHS-5 (2019-2021)

which introduced Sec.498A to the Indian Penal Code. As per the section, "whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment which may extend to three years and shall also be liable to fine."<sup>14</sup> However, this section only results in punishment where violence or harassment is likely to drive the woman to commit suicide or to cause grave danger to her life, limb, or health.<sup>15</sup>

Later, in 1986, India introduced the crime of dowry death into the Indian Penal Code under Sec.304B to address societal concerns about the dowry-related death of newly married women and it ensured that if a husband or his family inflict torture or cruelty on a married woman resulting in her death would be punishable by a minimum of seven years imprisonment, with the possibility of a life sentence. Though these efforts intend to reduce dowry-related crimes, a lack of effective enforcement and judicial apathy has resulted in the continued rise of dowry deaths and other dowry-related cases.

Dowry system has led to another social pathology called female-infanticide, which occurs when a woman is pregnant with a female child and she decides to abort it as the rationale is that: "Better to spend 500 rupees now on the test in order to save 50,000 rupees in the future on a daughter's dowry".<sup>16</sup> The 1994 Pre Conception and Pre Natal Diagnostic Techniques Act (PCPNDT Act) and its amendment in 2003 regulates the sex selection before or after conception. Purpose of the Act is to prevent misuse of technologies for gender determination. But, implementation of the Act has been difficult and convictions have been negligible. Several Girl Child Protection Schemes are launched at Central and State level. However, the initiatives have not yielded the possible desired results. Despite the efforts of the government, NGOs, UN agencies, civil society organizations and the media to keep the issue of gender bias sex selection high on the public and policy agenda, the practice continues. A rethinking of the effectiveness of the policies and strategies to solve the issues surrounding the missing girls would be useful.

Under IPC Sections 312, 313, 314, 315 and 316, causing miscarriage, causing miscarriage without woman's consent, death caused by an act done with intent to cause miscarriage; if act was done without woman's consent, act done with intent to prevent child being born alive or to cause it to die after birth and causing death of quick unborn child by act not amounting to

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<sup>14</sup> INDIAN PENAL CODE(1986), S.498A

<sup>15</sup> INDIAN PENAL CODE(1986), S.498A; Kirti Singh, Violence Against Women and the Indian Law, in VIOLENCE, LAW & WOMEN'S RIGHTS 77, 82 (Savitri Gooneskere, ed., 2004).

<sup>16</sup> Mishra, J., Woman and Human rights p. 85(2000)

culpable homicide, are offences and are punishable.

Beti Bachao Beti Padhao Andolan is a Government initiative towards tackling son preference and girl child discrimination. But the usual response from the state has been to run schemes which involve conditional cash transfers to deal with individual girl children, case by case.

In the dowry system, even prostitution is a practice that permits a man to extract economic advantages from woman. Selling wife into prostitution by husband is not unusual one. While this is clearly not the normal practice, the majority of women that enter into prostitution are initially victims of their husbands: they were either sold or abandoned.<sup>17</sup> In addition other relatives, even fathers, might force woman to become a prostitute and force them to bring back money for the family.

In 2005, the Protection of Women from Domestic Violence Act (PWDVA) was enacted and that provide civil remedies including monetary compensation and access to justice for victims of domestic violence cases. Under the Act, domestic violence includes a threat to abuse or actual abuse which could be physical abuse or sexual abuse. The definition of domestic violence under PWDVA recognizes marital rape; acknowledges the importance of collaboration between the government and external organizations in protecting women; requires the appointment of protection officers to assist victims. Under the Act, a new procedure is created in which victims are not required to hire a lawyer or go to a court; instead, victims can file a domestic violence complaint with the assistance of a protection officer or a service provider. But Indian women still lack awareness of the Act and often meet delays in case depositions due to lack of affordable and adequate legal services. For the effective implementation of the Act's provisions, the Lawyers Collective Women's Rights Initiative (LCWRI) trained criminal justice professionals, raised awareness among Indian women, and offered legal aid to those women who are facing domestic violence. The United Nations Women's Organization has recently reviewed the PWDVA and concluded that as a result of LCWRI's efforts, married women have increasingly utilize legal routes to justice and are more aware of various forms of domestic violence including psychological, verbal, emotional, and sexual violence. However, UN report also found judicial prejudice against female victims with many victims still not receiving needed relief and protection orders.<sup>18</sup> In 1992, India

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<sup>17</sup>Jacob, E. Abraham S. et al. A community health program in rural Tamil Nadu, India: the need for gender justice for women, pp. 101-108 (2006)

<sup>18</sup> **Sesha Kethineni, Violence Against Women in India: Legislative and Policy Reforms,**

established the National Commission for Women (NCW) to examine the provisions protecting women's rights in the Constitution and existing laws, and to provide recommendations to address gaps in these statutes. NCW funded and organized an alternative justice delivery system called *Parivarik Mahila Lok Adalat (People's Courts for Women)*. The initiatives addressing violence against Indian women have not come solely from the government. One of the most successful grassroots efforts to address domestic violence is the village-level collectives- Nari Adalats and Mahila Panchs. These women's courts are established in selected districts over ten states and they function outside the formal legal system and use conflict resolution, community pressure, counseling, and statutes to bring perpetrators to justice and to restore equal status of women in their society.

The Commission of Sati (prevention) Act, 1987 was enacted to ban the practice of sati. In order to eradicate the practice completely, Art.5 provides punishment for glorification of sati. The Act was enacted based upon a case of Sati that was registered in Rajasthan where a 17 year old girl committed sati on the funeral of her husband. But, the Supreme Court in 2004 acquitted eleven people previously convicted with the charge of this Sati incident in Rajasthan on the basis of a lack of evidence.

For the effective enforcement of the laws for the protection of women, it is necessary that the women became aware of the various rights provided to them under the above-mentioned Acts. Some literate women also are not aware of the rights available to them. Our law-enforcement agencies sometimes fail to assist and help victims throughout the procedure and so the victims are ultimately forced to go for a secret settlement with opposite parties and keep them away from accessing justice. So, the authorities should show some sensitivity towards the victims and help them in every possible ways even if it means taking extra efforts for them and provide other kinds of assistance like psychiatric treatment and medical treatment. The government in every state should encourage various social groups and NGOs in every district to extend their cooperation and support for the care and protection of victims of violence especially the illiterate women who are unaware of their rights and have no one in their family could support them. The problem lies not only in the enforcement of laws for the protection of women but also the thinking of the society needs to be changed to make society a better as well as safer place for women to be self-sufficient.

## SUGGESTIONS FOR IMPROVEMENT

The existing laws must be changed for the betterment of women and to reduce domestic violence. With the change in law and increased legal awareness, the attitude of the society towards domestic violence can also be changed to some extent. A law against domestic violence must be able to bring at least some social change for its proper implementation. Some of the recommendations for reducing domestic violence are as follows:

- Under personal laws, some changes need to be made. That is, under Hindu law, provisions relating to restitution of conjugal rights under various statutes should be deleted. Also, irretrievable breakdown of marriage (IBM) should not be a ground for divorce at present. Under Muslim law, there should be a complete ban on the oral, unilateral and triple divorce (talaq) as such things make wives extremely vulnerable and insecure regarding their marital status. In Christian law, to ensure consistency amongst all laws relating to marriage and divorce, the period of two years prescribed for mutual consent divorce under the Divorce Act, 1869 should be amended to one year. Under Special Marriage Act, 1954 the notice of intended marriage to be displayed at some conspicuous place in the registrar's office should be deleted and the notice period must be reduced to 7 days.
- There should be uniformity in laws regarding the age of marriage and a Central law for registration of marriages should be passed which is applicable to all religious groups.
- Sec.125 of Code of Criminal Procedure should be amended so as to include maintenance for women in live-in relationships which are in the nature of marriage and for unmarried dependent daughters.
- In IPC, definition of "cruelty" under Sec.498A should be reviewed to include the various forms of violence against women within the home, so it is in line with the definition of "domestic violence" as defined in the PWDV Act, 2005. Marital rape should be made an offence irrespective of the age of wife.
- Widen the definition of dowry to include property/ valuable security demanded even much after marriage and ensure that independent protection officers and dowry prohibition officers are appointed under the PWDVA and the DPA.

- In the case of acid attack, sale of acid and similar corrosive substances should be effectively regulated and stringent penalty should be imposed on violators of such provisions. Immediate and effective disbursement of monetary relief to the victim or family of acid attack should be institutionalized.
- There must be a proper and separate legislation to address honor crimes.
- All police stations must have a woman and child protection desk, staffed as far as possible by a woman police officer.
- Make legal protection mandatory for couples, women, children who approach any institution with the apprehension of harm at the hands of their family members.

## **CONCLUSION**

We have seen the incapability of administrative mechanism in ensuring effective implementation of law for women. It is true that you cannot change things by a mere statement in law. So the problem before us is clear. We have to propagate the idea of modern vision in this. Laws can do very less and people can do much more by understanding problems in full sense. That will help them from going down in terms of conventional ideas and focus on humanity and only humanity. Equality should cover all the aspects of human life and any sort of delay in it would cause severe trouble in society. Rights and privileges are equally entitled to all regardless of discriminations. Intentional and unintentional disadvantage of that falls on people of nation. Laws should prevent the Indian Society from being seen as awkward at international spheres Human Rights and Fundamental Rights can be restored only when people fully understand that.

Elimination of discrimination is the first way to overcome those problems, so let us work towards achieving that. Domestic violence is an offence against human dignity. Laws, customs, traditions and regulations which give sanction to this primitive process should be brought down and viewed in the exact sense. Abolishing things like this would definitely help in making the process very smooth. Still, it is not a complete solution. Different reasons are behind domestic violence and always the marginalized groups become victim for this. Their problem with fighting domestic violence is that often it affects balance of the family system. Indian traditions view divorce as a crime. They have a set of family values which they worship and follow like religion. Now the people who speak about problems inside a house become outcasts in this religion. When we talk about the failure of laws we are actually miscalculating because laws have never taken a view to face this problem practically. Also, as above said in the NHFS-5 Report, some women still consider beating by husband is fine.

So, instead of focusing on a set of rules for punishments, we must work towards a collective societal change. Our fight should be for bringing that sense of freedom and awareness in their minds.

