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Domestic Violence against Women in India

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ABSTRACT

Every third woman has suffered from various forms of domestic violence since the age of 15. Domestic violence has been one of the major infringements of women's human rights across India since time immemorial. Post-independence, there have been several movements against the Act of domestic violence. The term 'domestic violence' has gained a wider perspective with the change in time, situation and circumstances. Domestic violence is not just physical, sexual, verbal and psychological abuse but also includes economic, personal, anthropological and human rights perspectives, which have been established through various judgements. Lack of awareness of remedies, low literacy levels, the dominance of the male gender in society, the fear of consequences of raising your voice, irresponsible and unaccountable bureaucracy, and various other causes have led to the problems of domestic violence. Statistics and various reports have shown that 37% of Indian women suffer from physical or sexual abuse in their lifetime, majorly in rural areas. The state or the Government plays an important role in tackling and providing support to women who face domestic violence in any way. As stated by the United Nations Declaration on the Elimination of Violence Against Women, the state shall "pursue by all appropriate means and without delay a policy of eliminating violence against women and to exercise due diligence to prevent, investigate and as per national legislation, punish acts of violence against women, whether the State or by private persons perpetrate those acts". Similarly, India has enacted many legislations to curb the same. Several constitutional provisions such as Article 14 and Article 21 of the Indian Constitution, including the Preamble itself, uphold women's rights.

Keywords: domestic violence, rights, women, abuse

I. INTRODUCTION

Domestic violence as defined under the Protection of Women from Domestic Violence Act (PWDVA), 2005 is the physical, sexual, verbal, emotional and economic abuse against a woman by a partner or a family member residing in a joint family, which plagues the lives of many women in India.² This is a social problem that batters women and is known by other

¹ Author is a student at Christ (deemed to be) University, India.

² Domestic violence against women in India: A systematic review of a decade of quantitative studies; Ameeta Kalokhe, Carlos del Rio, Kristin Dunkle, Rob Stephenson, Nicholas Metheny, d Anuradha Paranjape, e

names such as wife battery, family violence, spouse abuse or wife-beating³. This social evil destroys the woman's life and sabotages the lives of their children and their wider family. Domestic violence is generally understood as a hierarchical situation wherein the women are subordinate to the men. According to the recent statistics, The Hindu reported that there had been an alarming rise in the acts of domestic violence across India in the year 2020. The complaints registered between March and May alone count up to 1,477 cases, more than the number of complaints registered in the last 10 years.⁴ This Act still prevails in our country with strong legislation to curb it. Still, some of the loopholes to it include the lack of awareness amongst women about the laws and remedies that they can avail and another important factor for it to still prevail in our country is the fear of the society that has made room in the minds of people which would give a negative remark on the reputation of the family.

II. ANALYSIS

Crimes against women have been prevailing in this society for ages, and whichever society keeps women in the subordinated position, then that particular society has the potential to turn violent. It has been observed that whenever male authority has been threatened, the lives of women and children become redundant and are considered to be indispensable.⁵ Violence against women is a widespread problem with physical, social, economic, psychological and emotional consequences.⁶ Domestic violence in India has been based on gender roles and certain notions regarding our culture. It prevails amongst the women regardless of their social status, economic condition, age, education, or family arrangement. According to the National Family Health Survey data, over 30% of Indian women have been assaulted either physically, sexually or emotionally by their husbands at least at one point in their life.⁷ There are many crimes against women, such as rape and sexual assault, that make the headlines every day, but this social evil is the one that tops the list.

Living in a patriarchal society, it can be observed that the man enjoys absolute authority in the family as it was a culture that prevailed since time immemorial that the father is the head of the family and has all the power to make decisions. Elevated to a superior position, he is the family's breadwinner and is assumed to be the natural guardian of the children even according

and Seema Sahayf available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4988937/>.

³ RINKI BHATTACHARYA, BEHIND CLOSED DOORS: DOMESTIC VIOLENCE IN INDIA, 18 (2004)

⁴ Vignesh Radhakrishnan, *Domestic violence complaints at a 10-year high during Covid-19 lockdown*, THE HINDU, June 22, 2020

⁵ RINKI BHATTACHARYA, BEHIND CLOSED DOORS: DOMESTIC VIOLENCE IN INDIA, 14 (2004)

⁶ Dr. S. Prescila Sharon, *Domestic Violence Against Women in India: A Family Menace*, 4 INDIAN JOURNAL OF APPLIED RESEARCH 147, 147 (2014)

⁷ Sreeparna Chattopadhyay and Suraj Jacob *Victims of Domestic Violence in India Rarely Come Forward or Seek Help*, available at: <https://thewire.in/women/domestic-violence-india-reporting>

to the law, and official documents endorse the father's name. This culture passed on to generations has made room for an inferior mindset amongst the women. The culture and other factors have also contributed to the commission of domestic violence. Domestic violence occurs due to many factors, including a patriarchal mindset, alcoholic husbands, refusal to give dowry, and most importantly, the lack of education provided to the girls who are married by their parents at a tender age because they think of her as a burden. The women are made to suffer through simple suppression to abuse, aggression, exploitation and even oppression.⁸ Identifying the cause of this social evil can help us find a solution to curb the same and prevent it from occurring. The Act of domestic violence is intentional and is committed out of the individual's choice, which indicates that there cannot be just one reason why domestic violence occurs. A sense of entitlement within the abuser and the fact that it is easy to get away with push the abuser from harassing their counterpart through any violence. The fear of ruining the so-called 'family reputation' makes the victim more vulnerable not to come out and raise a voice against it. More than the commission of domestic violence, the victims' silence has led to this Act still prevailing in society even in the 20th century. However, there exists specific legislation for the prohibition of the same. The imbalance of power and control between the spouses makes one feel superior over the other.

As we live in the 21st century, the women's movement has led to many changes and brought about a revolution in the lives of women. It guarantees equal rights to women under the Constitution and lays down provisions under various legislations to empower them. Section 498A of the Indian Penal Code states that if the husband or any relative of the husband subjects a woman to cruelty shall be sanctioned with punishment, imprisonment and a fine which is cognizable, non-bailable and non-compoundable.⁹ Apart from this, there is specific legislation to prohibit and punish the offenders of this domestic violence act, popularly known as the Protection of Women from Domestic Violence Act, 2005 or the PWDVA, 2005. This Act mainly aims to provide effective protection of women's rights, which is guaranteed under the Constitution of India who ends up being victims of violence that occurs within the family or any matters connected with it.¹⁰ The definition of domestic violence has been given a broader meaning that not only includes physical violence, but is an umbrella term constituting physical, sexual, verbal and emotional abuse. The definition has a broader meaning, but the recent amendments have included live-in relationships also to be governed by the Act. This was decided in the case of *D. Veluswamy v. D. Patchaiammal*, giving out a judgment protecting

⁸ RINKI BHATTACHARYA, BEHIND CLOSED DOORS: DOMESTIC VIOLENCE IN INDIA, 14 (2004)

⁹ Section 498A, Indian Penal Code, 1860

¹⁰ Protection of Women from Domestic Violence Act, 2005

women in live-in relationships against domestic violence and providing a wider meaning to an "aggrieved person".¹¹ Also, in the case of *Lalita Toppo v. State of Jharkhand and Anr*, the court has held that maintenance can be claimed under the Domestic Violence Act, 2005, even if not legally wedded.¹²

Besides the landmark Court decisions on live-in relationships, the judiciary has played an important role in protecting women against domestic violence, establishing novel principles in their judgements. For example, in the case of *Sandhya Wankhede v. Manoj Bhimrao Wankhede*, Section 2(q) of the PWDVA was questioned as to who constitutes the term 'respondent'. The term 'respondent' included only the husband, but the female relatives of the husband or the in-laws are also included.¹³ One of the judgements that are *V. D. Bhanot v. Savita Bhanot*, is a retrospective application of the Domestic Violence Act, which ensures that the aggrieved person is entitled to file an application under this legislation even when the Act was not in existence or the Act took place before the commencement of this legislation.¹⁴ Therefore, it can be said through time; the judiciary has played an important role in the implementation of the Protection of Women from Domestic Violence Act, 2005. It has opened the doors for amendments or new principles because we live in a dynamic society that changes from time to time and place to place. This Act is a comprehensive legal framework and was the first to throw light on marital relationships and govern all domestic relationships. The expansion of the term domestic violence and the provisions incorporated to safeguard women's rights brought out a balance between the reconciliation and a deterrent pro-arrest policy.¹⁵

III. LACUNA IN THE LAW

Although this legislation has empowered women to a great extent and served its purpose to a certain extent, certain loopholes or lacunae exist in the law itself. According to the law, one of them which can be observed very evidently is that the 'aggrieved person' includes only women neglecting same-sex relationships and making it gender-specific. *Araa v. Mirjaa* is one of the judgements given by the Supreme Court wherein the aunt-nephew relationship was not considered to be a domestic relationship under the purview of this Act.¹⁶ Section 19 of this Act restricts the abuser from visiting the places frequently visited by the aggrieved, curbing his right to freedom of movement under Article 19 of the Indian Constitution. There are chances

¹¹ *D. Veluswamy v. D. Patchaimmal* (2010) SCC 469

¹² *Lalita Toppo v. State of Jharkhand and Anr*, CRIMINAL APPEAL 1656, 2015

¹³ *Sandhya Wankhede v. Manoj Bhimrao Wankhede*, CRIMINAL APPEAL 271, 2011

¹⁴ *V. D. Bhanot v. Savita Bhanot* (2012) 3 SCC 183

¹⁵ ARATRIKA CHOUDHURI, *Protection of Women from Domestic Violence Act: A Critical Exegesis*, LEXQUEST FOUNDATION (2015)

¹⁶ *Rafat Araa v. Kamar Mirja*, CRIMINAL MISC. APPLICATION 482 (2011)

of certain women filing fraud or false cases against their husbands. Based on the aggrieved person's testimony, according to this legislation, the court may restrain the respondent from entering his own house and accessing his bank accounts. Such court judgements may turn out to be very dangerous, encouraging misuse of the law. In addition to the lacunae of the Act itself, other factors have led to domestic violence still prevailing in India. These include a lack of awareness about the laws and legislations amongst women, which results in them not approaching the court to fight for their rights, and this can also be the result of a lack of education amongst women and girls. Another factor being, women not raising their voice against domestic violence because of the fear that their family reputation will be at stake if they raise their voice. The Government has failed to appoint an appropriate number of Protection Officers across the country, and poor coordination amongst them leads to delay in procedures, leading to a delay in delivering justice. Immediate relief for the survivors and insensitive towards the aggrieved person has also led to the failure on the part of the institutional actors towards a domestic violence-free society.

IV. RECOMMENDATIONS

There are certain additional efforts that we as citizens, the Government, and the judiciary needs to put in to curb domestic violence or at least come to a position wherein the objectives of the legislation are fulfilled. The biggest contribution by the educated citizens, the Government, the media, and the lawyers and judges could be awareness drives that will help all the citizens of this country be aware of such violence and the place where they can avail remedies for the same. Free legal aid services to those who cannot afford them would also be of great help as it is also a government duty to provide for the same. Training should be provided to the Protection Officers about the sensitivity of the issue, and an appropriate number of such Officers should be appointed, which is proportionate to the population of that particular district. The court procedures should be made simpler to avoid complications, which incentivizes the aggrieved person to approach the court to guarantee that they will be given justice in the end without any delays or hardships.

V. CONCLUSION

In conclusion, domestic violence against women in India still prevails, even though specific legislation and other laws exist to protect them against the same. The PWDVA is a laudable effort with certain loopholes. Still, a few more efforts by the citizens, media, Government, judiciary and other institutional actors may help in the complete and effective implementation of the law. Therefore, quoting Kofi Annan, the seventh-Secretary General of the United

Nations, Violence against women is the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace".
