
DOMESTIC VIOLENCE: THE SHADOW PANDEMIC

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ABSTRACT

Violence against women has been a right that men have exercised with impunity for centuries, seeing it as necessary for women's "well-being". The culture of domestic violence in India is one of shame and silence. It includes any form of violence suffered by a person from a biological relative, but typically is the violence suffered by a woman by male members of her family or relatives.

The socialization of females is such that girls internalise the concept of dependency and that it gives rise to violence in the family, thus the husband feels that wives are subordinates and they start dominating them. Such this type of socialization is directly responsible for this miserable condition of women.

Domestic violence is always discussed about women. Domestic violence is one of the most unreported crimes in the world, both among men and women. Domestic violence not only affects the lives of an individual but also the lives of their innocent children, it doesn't matter, violence is against male or female it's violence and so the law must stringent for both and not only to men, everyone who commits this heinous crime must be punished.

KEYWORDS: Domestic Violence, Women, Impact of COVID-19, Domestic Violence Act, 2005, IPC.

INTRODUCTION

Everyone deserves to feel safe and free from harm. However, home is not always a safe place to be, for some. The strict importance of the word Domestic Violence essentially implies any violent or forceful conduct of any individual inside the home. Violence against women is right men have exercised with impunity for centuries. Men interpret this act as a privilege and this has been articulated in the precepts of religion, philosophy and law throughout the World. Physical violence against women was deemed necessary for the "well-being" of women. It was coached in terms of corrective discipline and chastisement of erring wives.¹

According to the United Nations, domestic violence or intimate partner violence can be defined as a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviours that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone. It can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels.²

The phenomenon of domestic violence is pervasive around the world. Globally, the victims of domestic violence are overwhelmingly women, experienced by someone in three women in their lifetimes. The elimination of such violence has been increasingly recognized as a priority for the international community. Domestic violence is always discussed about women. Man is always considered as the perpetrator.

However, domestic violence is not limited to women only because of the socio-economic changes affecting the family structure in recent times. Men also are abused verbally, physically, emotionally, psychologically, and sexually. Men do not report these abusive behaviours and are silent victims of the consequences. As the laws in our society favour women as victims of violence, these hapless men do not get justice for their pitiable condition in the family and society.³ Due to the social stigma, regarding male victimization, men face an increased likelihood of being overlooked.

¹ State v. Davis, 1972 499 P.2d 663 [Case from the Supreme Court of Hawaii]

² Available at: <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (Last visited on 19 March 2021)

³ Sanjay Deshpande, "Sociocultural and Legal Aspects of Violence Against Men", *Journal of Psychosexual*

Women are more likely to experience intimate partner violence if they have low education, exposure to mothers being abused by a partner, abuse during childhood, and attitudes accepting violence, male privilege, and women's subordinate status. Men are more likely to perpetrate violence if they have low education, a history of child maltreatment, exposure to domestic violence against their mothers, harmful use of alcohol, unequal gender norms including attitudes accepting of violence, and a sense of entitlement over women.⁴ Domestic violence is among the most underreported crimes worldwide for both men and women.

HISTORICAL CONTEXT

Some historians believe that the history of violence against women is tied to the history of women being viewed as property and a gender role assigned to be subservient to men. If we look at the long history of India, hundreds of examples we can get that women are sacrificing everything for men and also tolerance and high qualities of women like for example Sita, Savitri, Kunti, Draupadi, etc.

In ancient times in married life, a wife was not only regarded as her husband's lifelong companion in weal and woe but also a mistress of his household and a real partner in all his activities, including religious sacrifices. In traditional times it was thought that women have evil inclinations and because of these evil inclinations and birth, they should be kept under the control of men at all stages of their lives.

For women, family is very important in their life or other words marriage is the gate to family. Marriage is more essential for a woman than a man because if a man is unmarried then no stigmas are attached to it but when a woman is not married then lots of stigmas are attached to her not being married.

One of the very well known sociologists Neera Desai points out that it was thought since times immemorial that women should be kept in dependency by her husband because by nature they are passionate and disloyal. The ideal women are those who do not strive to break these bonds of control. The salvation and happiness of women revolve around their virtue and chastity as daughters, wives and widows. A man was always known as the provider of the seed of man

Health (2019)

⁴ Available at: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (Last visited on 19 March 2021)

provides the seed and the essence for the creation of the offspring or the seed determines the kind and the child's identity was also derived from the father for the group placement.⁵

A Medieval Christian scholar propagated Rules of Marriage in the late 15th Century. These specified: When you see your wife commit an offence, don't rush at her with insults and violent blows. First scold her sharply, bully and terrify her and if this doesn't work, take up a stick and beat her. Soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body. Then readily beat her, not in rage but out of charity and concern for her soul, so that the beating will redound to your merit and her good.

In some countries, domestic violence is often justified, particularly in cases of actual or suspected infidelity on the part of the woman, and is legally permitted. Research has established that there exists a direct and significant correlation between a country's level of gender equality and rates of domestic violence. In the 1870s, courts in the United States stopped recognizing the common-law principle that a husband had the right to "physically chastise an errant wife". In the UK the traditional right of a husband to inflict moderate corporal punishment on his wife to keep her "within the bounds of duty" was removed in 1891.

Domestic violence is not a new concept or phenomenon which is emerging with more modernization, westernization and globalization. It is something which is there in all the periods. The socialization of Indian females is such that girls internalise the concept of dependency and that itself gives rise to violence in the family, therefore the husband feels that wives are subordinates and they start dominating them. Such this type of socialization is directly responsible for this miserable condition of women.

LEGISLATIVE APPROACH

Legislation that criminalises violence against women codifies the rights of women to live free of violence. Laws can play an important symbolic role, by indicating that such behaviour is socially unacceptable.

In India, domestic violence is shrouded in a culture of shame and silence. It includes any form of violence suffered by a person from a biological relative but typically is the violence suffered by a woman by male members of her family or relatives. According to a National Family and

⁵ Neera Desai, "Women's Studies in Praxis: Dr Neera Desai's Contribution towards Developmental Work for Rural Women in Udwa, South Gujarat", *Indian Journal of Gender Studies* (2018)

Health Survey in 2005, the total lifetime prevalence of domestic violence was 33.5% and 8.5% for sexual violence among women aged 15-49. A 2014 study in The Lancet stated that the reported sexual violence rate in India is among the lowest in the world, the large population of India means that violence affects 27.5 million women over their lifetimes.

There are several domestic violence laws in India. The earliest law was the Dowry Prohibition Act 1961 which made the act of giving and receiving dowry a crime. To bolster the 1961 law two new sections- Section 498A and Section 304B were introduced into the Indian penal code in 1983 and 1986. The most recent legislation is the Protection of Women from Domestic Violence Act 2005.

In India, domestic violence has been covered under both civil and criminal law. In criminal law, it is specified under Sections 354, 509 and 498A in the Indian Penal Code 1860 and civil law, it has been covered under the Protection of Women from Domestic Violence Act 2005. While the Sections of the IPC focus on punishing the accused, the Domestic Violence Act 2005 focuses on providing relief to the aggrieved women.

Section 354 of the IPC: *Assault or criminal force to woman with intent to outrage her modesty* —Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.⁶

Clauses A through D mentions the different types of assault like sexual harassment and punishment for sexual harassment, assault or use of criminal force to women with intent to disrobe, voyeurism and stalking, respectively.

Section 509 of the IPC: *Word, gesture or act intended to insult the modesty of a woman* —Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.⁷

⁶ Indian Penal Code, 1860 (Act 45 of 1860)

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The Indian Penal Code 1860 also explicitly states that domestic violence is a criminal offence, after amending the Code in 1983 and creating a sub-section under Section 498. The new section was called Section 498A and it explained in detail that domestic violence is a criminal offence and particularly covered the cruelty towards wedded ladies by their spouses or their husbands' families.

Section 498A of the IPC: *Husband or relative of husband of a woman subjecting her to cruelty*—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.⁸

Under this section, acts of cruelty include, are not limited to, physical abuse; starving the woman; psychological torture; confinement and; sexual abuse. The convicts charged with imprisonment can be charged up to three years or a fine or both.

The Protection of Women from Domestic Violence Act 2005, provides a definition of domestic violence that is comprehensive and includes all forms of physical, emotional, verbal, sexual and economic violence, and covers both actual acts of such violence and threats of violence. In addition, the act recognizes marital rape and covers harassment in the form of unlawful dowry demands as a form of abuse.

The Protection of Women from Domestic Violence Act, 2005 gives the legal definition of “Domestic Violence” under Section 3. The act is a civil law that centres on the reliefs given to women, who have been a victim of domestic violence, in the form of protection,

⁸ Indian Penal Code, 1860 (Act 45 of 1860)

compensation, right to residence, etc. Under this law, women can seek protection against domestic violence, financial compensation, the right to live in their shared household, and they can get maintenance from their abuser, in case they are living apart.

Section 3 of the Domestic Violence Act, 2005 states: For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

- A. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- B. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- C. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- D. otherwise injures or causes harm, whether physical or mental, to the aggrieved person.⁹

Further, the section also goes into detail to explain the definitions of important terms like physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. In simple words, they can be explained in the following way:

1. *Physical Abuse*: Physical abuse is the most recognizable form of domestic violence. It involves the use of force against the victim, causing injury (a punch or a kick, stabbing, shooting, choking, slapping, forcing you to use drugs, etc.). However, the injury doesn't need to be a major one.

Illustration: The abuser slaps the victim a few times, causing only minor injuries that don't require a visit to the hospital. Although the injury is minimal, the slapping would constitute domestic violence.

⁹ Protection of Women from Domestic Violence Act, 2005

2. *Sexual Abuse*: Sexual abuse is a common form of domestic violence. It includes not only sexual assault and rape but also harassment, such as unwelcome touching and other demeaning behaviours. Many victims don't realize how broadly sexual abuse is interpreted.

Illustration: If a woman is being coerced into not using contraception like taking the pill, using a condom, an IUD, etc. or having an abortion, then this will constitute sexual abuse which comes under domestic violence. This form of abuse is known as reproductive coercion.

3. *Emotional Abuse*: Emotional abuse involves the destruction of the victim's self-worth, and is brought about by persistent insult, humiliation, or criticism. Emotional abuse can be a difficult type of domestic violence for many people to understand, since, on the surface, it appears to be quite common in unhealthy relationships. Typically, evidence of emotional abuse is combined with any other form of abuse.
4. *Economic Abuse*: Of the types of domestic violence, financial abuse is perhaps the least obvious. Financial abuse may take on many forms, such as a husband preventing his wife from obtaining an education or a job outside the home. Financial abuse is extremely common, particularly when families have pooled their money into joint accounts (with one partner controlling) and where there's little or no family support system to help. Financial abuse is simply another form of control, even though it is usually less obvious than physical or sexual abuse. The abusive partner may withhold money for food, clothing, and more. If children are involved, this can overlap with neglect.

JUDICIAL APPROACH

In April 2008, The Delhi high court upheld the constitutionality of the Domestic Violence Act 2005 in a case questioning its validity in light of being a gendered law (an aggrieved person under the law can only be a woman). The court also failed to find any problem with the broad definition of domestic relationship.¹⁰

¹⁰ *Aruna Parmod Shah v. Union Of India*, AIR 2008

The Domestic Violence Act 2005 introduced the concept of a “Shared Household” under Section 2(s). The section states: "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.¹¹

In *S.R. Batra v. Taruna Batra*¹², the Supreme Court considered the question of whether the wife had a right to reside in the premises owned by mother-in-law, where she had stayed with her definition of “shared household”. The court said that for a home to be considered as a “shared household”, the husband must either pay rent on the property, he must own the property, or the property belongs to a joint family in which the husband is a member. Therefore, the court ruled that the property in question does not count as a “shared household”.

The case of *D. Velusamy v. D. Patchaiammal*¹³ introduced the concept of a “live-in relationship.” The verdict of the Supreme Court gave a wider meaning to an “aggrieved person” under Section 2(a) of the Domestic Violence Act 2005. According to Section 2(a), an "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.¹⁴ The Court set forth five ingredients of a live-in relationship:

1. Both the parties must behave like husband and wife and are recognized as husband and wife in front of society.
2. They must be of a valid legal age of marriage.
3. They should qualify to enter into marriage.
4. They must have voluntarily cohabited for a significant period.

¹¹ Protection of Women from Domestic Violence Act, 2005

¹² 2007 SCC 169

¹³ 2010 SCC 469

¹⁴ Protection of Women from Domestic Violence Act, 2005

5. They must have lived together in a shared household.

The court also observed that not all live-in-relationships will amount to a relationship like marriage¹⁵ to get the benefit of Domestic Violence Act 2005, to get such benefit the conditions mentioned above shall be fulfilled and this has to be proved by evidence.

The question of against whom the complaint can be filed under the Domestic Violence Act 2005 has always been a point of contention. Section 2(q) of the Act states: "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.¹⁶

The Supreme Court, in the case of *Sandhya Wankhede v. Manoj Bhimrao Wankhade*¹⁷, put to rest the issue by holding that the provision to Section 2(q) does not exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act. Therefore, complaints are not just maintainable against the adult male person but also the female relative of such adult male.

Domestic violence laws are always seen as biased towards women but the case of *Ashish Dixit v. State of UP & Anr*¹⁸ proved otherwise. In this case, the Supreme Court has held that a wife cannot implicate one and all in a Domestic violence case. In this case, the complainant apart from arraying the husband and in-laws in the complaint had also included all and sundry as parties to the case, of which the complainant didn't even know names.

In the case of *Mohd. Zakir v. Shabana & Ors*,¹⁹ the High Court of Karnataka held that a petition under the Domestic Violence Act 2005 by the husband or an adult male can be entertained. To arrive at its decision, the High Court placed reliance on Supreme Court's judgment wherein the Supreme Court while striking down a portion of Section 2(a) of the Act (defining "aggrieved

¹⁵ *Reshma Begum v. State of Maharashtra*, AIR 2018

¹⁶ Protection of Women from Domestic Violence Act, 2005

¹⁷ 2011 SCC 650

¹⁸ 2013 SCC 176

¹⁹ AIR 2018

person”) on the ground that it is violative of Article 14 of the Constitution of India and the phrase “adult male” as appearing in Section 2(q) of the Act stood deleted.²⁰

THE IMPACT OF COVID-19

The measures implemented to combat the COVID-19 pandemic led populations to confinement at home, with increased risk of domestic violence due to extended shared time between victims and offenders. According to the official data of the National Commission for Women, domestic violence complaints have increased by 2.5 times since the nationwide lockdown began in India. As per the data provided by an NGO named Swayam, there were 22 complaints on average per month before the lockdown, which increased to 57 complaints on average per month through emails and helplines. The situation has become worse during the lockdown.

During the lockdown, this problem is doubled as the victim cannot seek help from friends or family. The lockdown has made the victims more vulnerable and exposed. All the countries are dealing with domestic violence issues in their possible ways. In the case of Italy, an app named ‘YouPol’ was initiated by the government that allowed victims of domestic violence to seek help without talking on the phone.

The app enabled victims to send images and messages in real-time to the state police operators. Women used the code word ‘Mask 19’ if they felt insecure to ask for help openly. In countries like Spain, Portugal and the US, gender-based violence services were declared essential ones. This has gotten exacerbated during the lockdown.

Accredited Social Health Activists or ASHA workers are also involved in frontline Covid prevention work. These women workers play an essential part in the health system of rural India. Sometimes, they are the first ones to come in contact with the victims of domestic violence while accessing health services. They play an important role and even make a life-or-death difference for those vulnerable women who are not able to seek help due to the lack of access to mobile phones.

Women’s mental, physical and reproductive health is negatively affected by domestic violence. Given that the ASHA workers form a major part of the healthcare network at the village level, they can help the victims by responding quickly. Also, when some women who reported

²⁰ *Hiral P. Harsora v. Kusum Narottamdas Harsora*, 2016 SCC 165

through these workers get successful in seeking support, more women will come forward over time to report such cases and the stigma will reduce. Therefore, being a community resource person, the responsibility to help domestic violence victims falls on these workers in some way.

Additionally, the advantage of involving ASHA workers is that they are residents of the village and are familiar with their daily affairs. When ASHA workers are trained in an effective way to identify and communicate with the victims of domestic violence, they can drive the change in society. Therefore, ASHA workers must come forward and focus on women's safety, sensitivity, privacy and confidentiality.

CONCLUSION

Now, society and legislature have to understand that force does mean torture to females, it means any physical, verbal, emotional or the other quiet abuse by one or other within the four walls may be a crime. There is a global consensus about the unacceptability of violence against women. Violence isn't something new or not something which is emerging with modernization or it's not sort of a new technology coming into society, it has always been there. The thing is that as we are developing and violence also developing and popping out with new forms, types, magnitudes etc.

Domestic violence not only affects the lives of a person but also the lives of their innocent children, it doesn't matter violence is against males or females it's violence then the law must be stringent for both and not only to men, everyone who commits this heinous crime must be punished.

Right now, we only have laws protecting women against violence, but we have to understand that they are not the only victims. Almost everyone on the gender spectrum faces this and all of them should come under the ambit of such legislation. This kind of act is wholly biased towards women and men are discriminated against for their fundamental rights that are being violated.

To conclude, much progress has been made in prohibiting violence against women, but there's still far to travel. The commitments made under jurisprudence have to run life and force on the bottom through national laws alongside programs working to induce changes in norms about violence.