

Facets of domestic Violence suffered by women and girls in India and the legislative Framework

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Abstract: ‘Domestic violence’ is multifaceted, an eminent challenge being recognized worldwide as tool for oppression of women and girls. It is the major social and economic issue in the Indian society, being raising concerns for the violation of women and girls right to life, health, development and to live with peace and comfort of house where large numbers of women’s and girls are subjected to cruelty, physical harm and various forms of violence having devastating and ill effect on them emotionally as well psychologically. This research paper aims to significantly contribute to the understanding of the various issues relating to domestic violence on women and girls occurring or alleged to have occurred within family between persons sharing same household, married couples or between intimate partners, its effects and causes. This paper further examines the adequacy of law in India to deal with the Domestic violence.

Key words: Domestic violence; violence against women; intimate violence; rights of women.

Introduction

Today Domestic violence has become the greatest cause of concern worldwide and is considered as one of the tool for oppression of women and is the gravest forms of Human rights abuse especially for women and girls. Article 1 of the Declaration on the Elimination of Violence against Women (DEVAW) declares that the term “*violence against women*” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life[United Nations (2013) <https://www.un.org/documents/>].

The term “domestic violence” is used here in the context to include abusive behaviour and violence against women and girls perpetuated by their married or an intimate, living partner, the cohabiting partners also falls within the scope of this phrase and also all those acts of violence

committed by other family members irrespective of their occurrence in home or any other place. “The family is often equated with sanctuary– a place where individuals seek love, safety, security, and shelter. But the evidence shows that it is also a place that imperils lives, and breeds some of the most drastic forms of violence perpetrated against women and girls” (Hawke, 2000,p.3).

The Global estimates published by World Health Organization (2017) shows that *worldwide one women in three i.e (35%) of the women in their lifetime have faced either physical violence from partner and/or sexual intimate partner violence or have experienced non-partner sexual violence*. However the exact magnitude and extent of violence is not easy to be determined and can only be assumed, the suffered women often finds it difficult to speak about the abuses suffered by her may be due to shame, fear, family bonding, believe in sanctity of marriage. It can happen to any woman or girl regardless of their age, living standards, level of education, income and is prevalent in almost all societies; social classes irrespective of religion, culture or ethnicity but these could be some of the factors among others leading to perpetuation of violence on the women. As per report of Human Rights council (2019) “*At present, at the international normative level, the right of women to be free from violence is recognized as an international human rights standard but, in practice, gender-based violence against women and girls continues to be tolerated and has become normalized in many societies*” (p. 18).

Causes of Domestic violence

The causes and risk factors associated with gender based domestic violence are not consistent but are varied and seems to found its basis in the deep rooted, inherited and interconnected cultural, religious and social beliefs and tolerance that gives unequal opportunities to women to education, work, speak and overall development, making them emotionally and economically dependent and vulnerable to the aggressive behavior of the male partner, other elderly family members. “*The roots of family violence is connected with structural and ideological roles of men and women and their asymmetrical power relationship both inside and outside family, where the family accepts male dominance and female submissiveness as the norm*”(K.Gurmeet, 2004,p.201). The situation gets more aggravated in cases of younger age of girls, women who

have history of violent experiences during childhood, no child bearing capability or repeatedly given birth to girl child. Further Partner's socially structured stress due to illness, low income addiction to drugs or excessive consumption of alcohol, extra-marital relationship of the partner, husbands doubting fidelity of women, are the other causes for perpetuation of domestic violence against women and girls.

Effects of violence on women and girls

The consequences of family violence /intimate partner violence seems to be devastating exerting short term or long-term physical and mental impact on the personal life of the women and girls creating tension in their minds with ever present threat of assault, battery, humiliation and other bodily violence that make them less energetic, numb, socially isolated further disturbing family and social life of their children with more chances of children in violent family to suffers risk of infant child mortality due to negligence, less likelihood of proper vaccination and due care required to be taken care of by parents. The intimate partner violence has severe health effects like HIV and other sexually transmitted infections; Induced abortion; Low birth weight and prematurity; Harmful alcohol use; Depression and suicide; Non-fatal injuries; Fatal injuries (intimate partner homicides); Depression and anxiety; Alcohol use disorders [World Health Organization (2013)]. The violent family background may cause child to have low performance and immature conduct in school with ever haunted fear of left alone. Domestic violence in its long term impact becomes intergenerational with boys leaning to repeat violence on their spouses and girls accepting the violence as the part of their life. Therefore societal and economic cost is associated with domestic violence incidents that include medical services for physical injuries, psychological counseling and loss in work productivity and also litigation cost.

Domestic Violence in India

In India, Domestic violence against women and girls is seen as the wide spread problem causing various physical (bodily injury, hurt, assault,), psychological and emotional harm (insults, humiliation, verbal and non-verbal abuse, blame/fault finding for every act,) or the threat of such violence/harm to the victim. This makes the victim to live under fear of not allowing meeting with her children, anxiety, insomnia, low self esteem and feeling of isolation causing degradation of her mental, cognitive functions, sexual and reproductive health. It may

lead to stress related immune system problems, high blood pressure, cardiovascular problem and in some cases nervous shock.

The sufferings may get demonstrated in varied forms due to social evils and practices like allegation of witchery; dowry demand; forced marriage; female feticide; induced abortions; oppression of women; incest; molestation; battering; sexual assault; resistance to sexual abuse harassment; rape; stalking, forced prostitution. Besides this the girls were forced to face discrimination and violence in their childhood, insufficient food to eat, minimal or no medical /health care, lack of education, female genital mutilation, economic abuse by not providing sufficient money for household expenses, controlling her decision to work out of home or spend money making it a great concern and matter of violation of human dignity, liberty, principle of equality and a person's self pride/respect.

Legal remedies for the victims of domestic violence in India

The earlier legislative social welfare measures/laws were more focused on need to preserve the sanctity of family and marriage and till 2005 there was no law in India that explicitly spells out the definition of domestic violence that often happens in the private sphere though the acts of violence enumerated against women and girls are not only violative of the international conventions/covenants on the Elimination of all forms of discrimination against Women; civil and political rights; Economic, Social and cultural rights but are also in violation of one's Nation/ State's obligations. The fundamental rights guaranteed under articles 14, 15, 16, 21 and 23 in part III of the constitution mandates equality before law, right to live in healthy environment, life and liberty with equal opportunities to jobs, education with no discrimination on the basis of gender, right to be protected against exploitation:- trafficking, commercial exploitation and forced labour and also cast obligations on state to protect individual's rights in the form of Directive principle of state in part IV of the constitution.

In context of domestic violence that occurs in family, any act that tend to cause direct harm or injuries to a person(women/girls) can be considered as civil wrongs resultant of any violent act that is actionable under law of torts:- (i)Trespass to person that includes action for unlawful bodily restraint, assault, battery may not be excessively violent like slapping, spitting, pushing, pinching etc. (ii) Negligence in performing lawful duty by inmate partner or family elders to provide food, shelter and proper medical care to women and girls.(iii) loss of consortium and

emotional distress to women.(iv)defamation by way of making false allegations ,remarks harming women's reputation. The remedies in tort action is in the form of damages to compensate monetarily, injunction and restraining orders relating to certain acts committed towards women to be applied in three years from the date of cause of action.

In India it has been seen that initially the law focuses on providing reliefs to women victims in cases of domestic violence that falls within categories of crimes or criminal offences posing a danger to her life, limb and health for example relevant sections of *Indian penal code (IPC)* are :Murder (S.302 IPC); Culpable homicide not amounting to murder (S.304);Causing dowry death (S.304B, IPC);Abetment of suicide (S.304B, IPC); Hurt and grievous hurt (Ss 323-338, IPC). It also provide punishment for wrongful restraint and wrongful confinement (Ss 341to 348,IPC); cruelty by husband or his relative either physical or mental (S 498A,IPC) and for sexual offences: Assault with the intent to outrage modesty of women (S 354 of IPC);Sexual intercourse with judicially separated woman (S 376A, IPC); Rape (Ss 376,376B, 376C,376D IPC); Bigamy (S 494, IPC); Fraudulent marriage ceremony (Section 496,IPC); deceiving the women to believe that marriage is lawfully (Section 493,IPC); Intended insult to modesty of woman by means of any picture/ word/ gesture or act or sound (S 509, IPC);

Further many special legislation have been passed to protect women and girl from specific offences like The dowry prohibition Act, 1961 that makes dowry demand an criminal offence; Immoral Traffic (prevention) Act,1956 to fight against menace of trafficking of women and girl for the purpose of Labour and sexual exploitation; The pre-natal diagnosis techniques (Prohibition of Sex Selection) Act, 1994 against female foeticide; Protection of Children from Sexual Offences Act, (POSCO), 2012 for protecting victims of sexual abuse;

As to civil law the women can resort to matrimonial reliefs such as divorce and judicial separation in cases of cruelty and domestic violence and as an incidental/ancillary proceedings Injunction can be granted to the married women forbidding abuser to exclude from shared room or make any contact with the women. In the year 2005, The Protection of Women from Domestic Violence Act (PWDVA) with rationale to provide adequate remedy and easy access to justice to women in cases of family violence was passed. The Act was framed in conformity with the UN Model Legislation on Domestic Violence and is a civil law that aims to provide

monitory compensation with provisions to support the woman and is not intended to make perpetrator to undergo penal punishment at the first instance.

The Protection of Women from Domestic Violence Act, 2005

The PWDVA defines ‘*Domestic violence*’ as any conduct or any omission or commission on the part of respondent (against whom relief is sought) that has caused or alleged to have caused the violence against the aggrieved person, a woman, being in domestic relationship with him in any of the following manner:-

- *Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, including causing abuses in forms:-physical, sexual, verbal, emotional and economic.*
- *Harass, harms, injures or endangers the women aggrieved with a view to coerce her or any other person related to her to meet any unlawful demand of dowry, any other property or valuable security.*
- *The conduct or any omission or commission by the respondent has the effect of threatening the women or any person related to her by any conduct as mentioned above or*
- *In any other respect injures or causes harm (physical or mental) to her.*

[See Ss 2 and 3 of PWDVA, <https://indiacode.nic.in/>].

The term domestic relationships recognizes rights of wives and also rights of mothers, sisters, daughters related by blood or adoption, live in partners who lived in shared household at any stage with respondent/ perpetrator of domestic violence. The Act secures the women right of residence in matrimonial home or shared household by way of residence order; right to prevent further acts of violence by prohibiting entry of abuser/violent spouse / living partner at her workplace or any other place through protection order passed by the magistrate; get temporary custody of children. The magistrate can also order monetary relief aiming to compensate losses and damages suffered by women or girl victim of domestic violence.

The PWDVA recognizes role of government in every state to appoint ‘protection officer’ who should inform the women suffered their right to legal aid and seeking relief by way of protection order as to monetary relief, compensation order, a custody order or a residence order or more than one such order in favor of aggrieved women. They shall also assist the Magistrate,

submit Domestic Incident Report (DIR) to the Magistrate and make necessary provisions for the victims of family or domestic violence and abuse, facilitating them access to various support services like shelter, safe place, medical facilities, legal aid and counseling.

The Act seeks to empower the protection officers and service providers registered with the state government to act within lawful means for the protection of interests of women. They in good faith, can act and initiate legal process on behalf of the aggrieved women for prevention of domestic /family/inmate partner violence.

The act also specify provisions for wide publicity of provisions of this act; sensitization of the government including police and judicial officers at regular intervals.

The Act does not bar the right of aggrieved women to file any other civil, matrimonial or criminal case against the male respondent in domestic relationship with her liable for violence in the forms of harms/wrongs/crimes committed on her.

However the laws and remedies available to the victims are still not adequate and as effective to uproot and eliminate domestic violence from the private sphere. According to NCRB report 2016, the number of cases reported under Protection of Women from Domestic Violence Act,2005 are 426 in 2014; 461 in 2015 and 437 in 2016.This is in addition to the total crimes reported under Indian Penal Code under the head :Cruelty by husband and his relatives (S 498 A, IPC), Dowry deaths (S 304 B, IPC) and Abetment of suicide (S 306,IPC) and Incidents reported under Special laws. Majority of cases of crimes against women as reported in 2016 were 1, 10,378 on cruelty by husband or his relatives followed by 84,746 cases pertaining to assault on women with intent to outrage her modesty. Further cases of Kidnapping & Abduction as reported were 64,519 and 38947 cases of Rape ; 36,022 cases under Protection of Children from Sexual Offences Act, 2012 in the year 2016. There are also cases dealing with maintenance, civil protection from husband and relatives that are directly filed in the court with no recording of data by the NCRB (see <http://ncrb.gov.in>). Further total crimes incidence against Women in 2016 as per NCRB report 2016 has shown an increase from the year 2014 that too in the circumstances when most of the cases in India still remained un reported and are resolved within the family and four walls of the household considering them as petty issues in day to day married life of couples.

Strategies /suggestions to reduce the extent and magnitude of the problem

Domestic Violence is a complex issues, a vicious, intergenerational form of abuse and therefore should be focal point for growth of the contemporary women's movement inspiring diverse mode of activism in India not limited to raising voice against dowry demand, physical cruelty or other forms of sexual harassment but be treated as violation of basic human right of women and girl to live healthy life without torture or degrading treatment.

- There is need for more effective and coordinated measures by government, police NGO's, Service providers and judiciary to deal with the menace of violence against women, make women aware of their rights, take necessary steps for refraining public humiliation and violence on women happening in streets and in domestic life, strike to provide enabling and friendly environment for the redress of grievances and prevention of violence, timely help and facilities to women and girls to achieve justice.
- More stringent action and strategies is required at multiple levels on part of state to effectively implement various women welfare laws and policies taking in to account psychological and mental impact of domestic violence on the immediate and future health of the women with adequate means of enhancing safety and financial security reflected in various medical facilities to women, home loan and income generating schemes.

Various programmes and campaigns shall be organised in School and colleges with the prime objectives of creating protective environment making youth learn social, emotional and economical consequences of domestic /intimate violence and teach them safe, healthy and family oriented relationship skills. Public awareness and sensitization on the issue and what amounts to domestic violence should be made at massive level using multiple medium to reduce extent of domestic violence in household and day to day life.

Any relief given to victim of family violence should be accompanied with counseling with the aim to make women capable of taking decision and be empowered by making them learn vocational skills, providing them means to make them self-dependent.

The NGO's, Service providers, protection officers must also organise sensitization programme and counseling sessions for perpetrator of violence making them aware of the rights of women

building understanding on the impact of domestic violence on the whole family including future of their children.

The women and girls are seen as the victim, objects of crime and various wrongs, they are subjected to suffer death, poor health, bodily injury, mental torture or harm to property due to cruel, adverse and oppressive treatment from the perpetrator of violence. The state and law should ensure that mechanism established for redress of women and girls are fair, reasonable, expeditious, less expensive, accessible to them maintaining the privacy and dignity inside and outside the court room.

In school, colleges, curricula should mandatorily include minimum legal education focusing on human rights, societal issues, violence against women aiming to build up children's and youngsters personality and intellectual development to understand gender based violations and make them more responsive towards society and protection of human rights of individuals.

Domestic violence shatters peace and safety in a family have many facets that affects infirm, elderly ill persons, women domestic servant, young girls and children besides existing between married couples or cohabiting partners. It is necessary to consider it as a public health problem for the effective solution responding to intimate partner violence that requires specialized National surveys incorporating questions on women's exposure to partner violence with specially trained interviewers so that existing data gaps in India in relation to violence suffered by women through cohabiting partner not married legally and the overall impact of exposure to various forms of violence on the women health and economic cost for the suffering could be filled up and outcomes can be measured to improving the justice system in India.

Conclusion

There is need to address the fundamental underlying causes and risk associated with abusive behaviour at home concentrating on eliminating child's exposure to violence and intimate partner violence and abusive behaviour suffered by women in a family. Domestic violence is ought to be treated as a public health problem that requires preventive mechanisms to be tried and scaled up at different levels challenging social norms that approves violence against women and girls in the family and bolster male domination and command over women and to accomplish this government should work in the direction reforming gender based

discriminatory family laws, create opportunities for strengthening the economic and financial status of women.

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