

A SOCIO LEGAL STUDY ON DOWRY AND DOMESTIC VIOLENCE IN INDIA

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INTRODUCTION

“Violence against women is a manifestation of historically uneven authority relations between men and women, which have paved ways to superiority and discrimination against women by men and to the prevention of the full growth of women”ⁱ

Domestic violence; social and legal notion that, in the broadest sense, refers to any exploitation - including physical, emotional, sexual or financial - between intimate partners, who often live in the same home. The term is often used precisely to indicate physical assaults on women by their male partners, but, although it's a rare phenomenon, the victims can also be males and so the term domestic violence is used in reference to both males as well as females being assaulted.

In most of the scenarios there is no feasible solution for women sufferers. Many are scared to communicate and describe what happened with them because police fail to provide safety against retaliation. One of the worst-case scenarios is that typical abusers tend to become more aggressive and vengeful specifically towards when women try to separate; many women have been killed by male partners while trying to press charges or obtain protection ordersⁱⁱ.

Women are most of the time under great threat, even in places where they should be the safest, that is, within their families. For many, "home" is that place where they have to go through a practice of terror and physical attacks at the hands of someone close to them, someone who was supposed to protect them instead.ⁱⁱⁱ It is this place that threatens lives and gives birth to some of the most heinous forms of violence committed against women and

girls. The ones who have been exploited suffer aftershocks and physical and psychological trauma. A girl is taught since her birth that she is weak and she continues to feel the constant urge of needing protection, be it physical, social or economic. These senses of incapability among women have led them to be exploited in almost all stages of their lives.^{iv} They don't even have the permission to make their own decisions and enjoy their basic rights or even put forward their ideas and opinions because of the fear of further repercussions. Even fundamental rights such as equality, security, self-esteem and dignity are taken away from them.

This brutality against women has increased, although this violence has been there since ages and is an old practice and exists from the day since family life arose. Women in India have always been a subject to domestic, physical, emotional and mental violence. They do not feel secure anywhere be it their own houses, the roads they take to their offices, public transport, receive medical treatment in hospitals, study in educational institutions and every other place one could think of, this is because they are always regarded as second-class citizens.

The new millennium has put forward with it a greater force towards realizing the incidence of violence against women and an international consensus has developed on the need to look into the matter. The UN General Assembly embrace a convention on the Elimination of All Forms of Discrimination against Women^v around 20 years ago and the Platform for Action adopted at the Fourth International Conference on Women in Beijing in 1995 reflect this unanimity. In addition, the Law for the Protection of Women against Domestic Violence of 2005, the Law of Sexual Offenses of 2003, instituted some policies at the national and local level during the last decade, with the aim of bringing down the incidence of sexual and domestic violence and improve the treatment of victims by the criminal justice system. The Domestic Violence Law, which came into effect on October 26, 2006, is in order with the aforementioned international conventions. The 1994 Act on Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) was also proposed to stop exploitation of diagnostic techniques that result in sex-selection abortion. But progress has not been fast due to deep rooted attitudes.

CAUSES OF DOMESTIC VIOLENCE

Violence against women is not result of a single factor or source. The causes of violence against women have been classified into five categories. They are as follows:

Cultural: The admissibility of cruelty as the only way to solve a dispute is the main cause for violence against women. Victims choose to keep quiet and stay with their loved ones rather than raising voices. Amplified consumption of alcohol has been recognized as the major cause for aggressive behavior and violence male among the women.

Economic: Another reason that contributes to brutality against women is that females are economically and financially relied upon by males. The terror and horror of cruelty halts women from reaching out for employment or are compelled to accept low-paid work. And, on the other side, because of absence of any kind of economic stability women have no strength to escape the clutches of an abusive relationship.

Legal: Deficient laws and the legal status of women is the main reason for domestic violence. In many places, culprits who have committed violent acts or crimes are treated with mercy and compassion. This eventually leads to lower moral and will power among the women. The final nail in the coffins of women is the high illiteracy count among them and comparatively they are less educated than their male counterparts.

Political: The segregation of females from communities and lesser involvement in politics also add up to the enlarged violence against women. Thus, the above are the reasons that cause domestic violence and maltreatment among women. But now the entire scenario is converting with time. Women are becoming financially more stable than they were in the past; they go for their higher education and even raise their opinion loudly against their male companion. Now domestic violence is taken as a grave offence.

LEGISLATIVE PROVISIONS RELATED TO DOMESTIC VIOLENCE IN INDIA

The issues of violence against women are emerging at an increasing rate day by day. Both literate and illiterate women have faced such kind of violence at some time in their life. To stand with women and to cater the growing needs of the society, the parliament enacted the Protection of Women from Domestic Violence Act, 2005. Before the parliament passed this act, certain laws like section 304B^{vi} and 498A^{vii} of the Indian Penal Code, section 125^{viii} of the Criminal procedure code, sections 112^{ix} and 113B^x of the Indian Evidence Act, the Dowry Prohibition Act, the Muslim Women (protection of rights on divorce) Act, Hindu Marriage Act, Immoral Traffic (Prevention) Act, and many more, but none of these exactly dealt with the issue of domestic violence. This created a need for a specific law which dealt only with the problem of domestic violence. Hence, this act was passed. Since the enactment of this Act, no amendments were made and women are still tormented physically and also mentally and even killed or compelled to suicide by them in laws. Section 498A^{xi} was introduced in the Indian Penal Code, also, the Dowry Prohibition Act was amended 3 times in 1984, 1985 and again in 1986 but so far, nothing has been done other than enacting the Protection of Women from Domestic Violence Act.

Under this act, no provision has been made for the protection of the person making the complaint. There is one limitation of this law considering its usage in putting a stop on the unhealthy practices is that it recognizes civil offences, whereas, the unhealthy and harmful practices require a response in criminal laws. Also, this act applies to only practices which take place in domestic relationships, whereas on the other hand, other individuals might also be involved in committing these unhealthy practices. Hence, strong voices should be raised so that more clarity and transparency can be brought in the act. Amendments should be introduced in this particular act to make the law more effective for the victims who are continuously oppressed. More and more women should be educated so that they adopt necessary methods for the implementation of the law.

COVID- 19 LOCKDOWN AND DOMESTIC VIOLENCE

Picture a situation where you are trapped inside a room with a venomous snake feeding on you. You're helpless and cannot do anything to save you. It is similar to the condition of thousands of women who face domestic violence. They are locked inside their own houses with a poisonous snake in the disguise of their father and husband.

The lockdown has witnessed many economic changes^{xii} including retrenchment by employers, decreasing of employees by companies, and excessive rules to be followed while operating companies. Day laborers and people with incomes below average face a great deal of crisis. Some suffer it in human terms, while others fall back to cruel conduct with their family.

Financial restrictions have blocked these people's income and because of this, their anger is unfortunately released through domestic violence. All the frustration of unemployment is released by the husbands/males on their wives/ females of the family. Due to lack of availability of alcohol, restricted resources, and bounded social life, these men are becoming more brutal.

Another big problem in terms of home abuse or family brutality is the growing threat of aggressive behavior in home-related crimes. This domestic violence is nothing new for these women, nor for us, but the distinction this self - restrain has made is that now these poor souls are unable to figure out any other shelter to hide from these demons. Before they had the protection of the government and NGOs, but now they are all alone.

Society and government have become helpless at this very moment since all resources and funds are utilized in saving the lives of COVID-19 patients and the number of volunteers who can assist in this has also declined.

Recently, newspapers were overwhelmed with articles related to the VAT applied to the purchase of liquor in 13 states to protect the income generated by the government^{xiii}. Like these alcoholic abusers they have another reason to get frustrated. But it's not that the government is watching this silently, NCW's National Commission for Women has posted a

WhatsApp helpline number for those sufferers to seek help^{xiv}.

DOWRY

The threat of dowry has become a social problem in modern India which is leading to suppression of women, bodily violence to the bride, and cause for economic and emotional stress on the parents of the bride, conflicts between husband and wife, and many more. It is a deep-rooted evil practice that has been persisting since centuries now. In recent times, the occurrence of deaths by dowry and brides burning has begun to be noticeable while some years earlier, the cases of bride burning and dowry deaths were manipulated by the police as accidents or suicides. It was around 1977-78 that it was figured out that most of the deaths recorded of married women who were recorded as accidents or suicides were actually murdered or convinced to suicide. It took more than a decade for the parliament to recognize dowry death as a crime under the Indian Penal Code and to pass a ruling for the offenders^{xv}.

The Dowry Prohibition Act of India (1961) defines dowry as "any property or valuable security given or agreed to be given, directly or indirectly:

- By one party to a marriage to the other party, or
- By the parents of either party to a marriage or by any other person to either party to the marriage or to any other person, at or before or after the marriage as consideration for the marriage of the said parties, but does not include "dower" or "mihr" in the case of persons to whom the Muslim Personal Law (Shariat) applies"^{xvi}

In **Rajeev v. Ram Kishan Jaiswal**,^{xvii} the court ruled that any property given by the bride's parents need not be in concern of the marriage, it can even be in association with the marriage and still constitute dowry.

LEGAL FRAMEWORK IN INDIA FOR PROHIBITION OF DOWRY

Dowry Prohibition Act, 1961:

According to Section 3^{xviii} of this Act, dowry is an offence which includes both give and take of dowry, it also provides penalty for giving and taking dowry. Any offender who disobeys this section shall be punished for a minimum imprisonment of 5 years and fine of 15 thousand rupees or the amount of the value of dowry whichever is more.

Section 4^{xix} deals with the penalty for demanding dowry, directly or indirectly from the parents, relative or guardians of the Bride or the Bridegroom.

Case: The Supreme Court has in **Pandurang Shivram Kawathkar v. State of Maharashtra**^{xx} observed that the mere demand of dowry before marriage shall be covered under the definition of dowry and shall amount to an offense.

Indian Penal Code, 1860:

Under IPC Sec 304 B^{xxi} defines dowry death and states the punishment for the same. Case: In **Vemuri Venkateshwara Rao v. State of Andhra Pradesh**^{xxii}, the court has ruled out the following guidelines to institute an offence under section 304(B). The guidelines are-

1. That there is a demand of dowry and harassment done by the accused,
2. That the victim is no more,
3. That the death has not occurred due to any natural phenomenon circumstances.

Sec 498A^{xxiii} states the punishment awarded to Husband or relative of husband who has subjected a woman to cruelty.

In the case of **Bhoora Singh v. State**^{xxiv}, it was observed by the court that the husband and in-laws exposed the wife to cruelty because she brought inadequate dowry along with her and then eventually burnt her down. They were sentenced for three years of rigorous imprisonment and a fine of Rs.500/-.

Indian Evidence Act, 1872

Sec 113B^{xxv} of The Indian Evidence Act deals with the presumption as to dowry death.

SOCIAL EVILS OF PRACTICE OF DOWRY

Practicing Dowry causes many ill effects on the society and also disintegrates the beautiful knot of marriage to a bare contract of giving and taking of valuable assets and money in return of marriage. The author has mentioned a few social evils which come along with the practice of dowry in the society.

- Some girls are often exposed to mental trauma just because they have a different skin tone or a darker complexion, are fat or lack stereotypical features. The girls are constantly humiliated and statements are put forward by their parents, relatives and the society which brings inferiority complex in them.
- People usually have this mindset of not providing their daughters with proper education, so that they can save the money and use it for the purpose of dowry.
- It is also seen that when the parents are not able to get their daughters married because of dowry demand made by the groom and his family since they are incapable of arranging the amount this causes the young girls to commit suicide just to stop themselves from becoming a burden on their family.
- The fear among families to pay dowry at the time of marriage has resulted in a higher number of female foeticide cases. Even though there are many laws which prevent female foeticide from taking place still the count is more than one could expect.

CONCLUSION

Marriage is a sacred bond shared between husband and wife. It is considered to be made in heaven, the basis of marriage lies upon tolerance, compromise, love, affection, and respect for

one another. Minor misunderstandings and disputes must not be heightened so that the bond which is made in heaven does not get destroyed. The above-mentioned article is concerned with domestic violence happening against women and insufficient dowry being one of the causes for it. Domestic violence is a human right issue and it can become a way of depriving the woman of the necessities of her life.

Thus, it can be clearly observed that brutality against women is prevalent in every other nation irrespective of culture, class, income, age, and education. Basically, any action taken against women which affects her physically or mentally, amounts to domestic violence. It should not be tolerated by women at any costs as it can become a serious obstacle in marital harmony. There is an immediate need to ensure that every woman gets proper respect and honor, both at home as well as outside.

No woman should be treated as an object or a source of money in case of dowry. Dowry has rooted itself deep in the Indian society and it has become impossible to eliminate it completely. The major reason behind this is the mindset of the Indian families as they portray boys to be highly superior as compared to the girls and as a result, the girl's family does not hesitate before offering dowry and slowly it is taking the shape of a custom. The only way to uproot this evil is to bring a change in the mentality of the people and stop treating daughters and sons as a selling commodity. Also, it should also be kept in mind that the women do not misuse the special laws which have been enacted for their good and to prevent them from being oppressed.

ENDNOTES

ⁱ The United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution, December 1993

ⁱⁱ *Ibid*

ⁱⁱⁱ Innocent Digest, No.6, June 2000, "Domestic Violence against Women and Girls." Unicef, United Nations Children's Fund Innocenti Research Centre Florence, Italy

^{iv} Lawyers' Collective (Women's Rights Initiatives); Staying Alive: 1st Monitoring and Evaluation Report, 2007 on the Protection of Women from Domestic Violence Act, 2005, New Delhi 2007

^v The United Nations Convention on Elimination of all forms of Discrimination Against Women defines discrimination against women as, ".....any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

^{vi} Section 304B in The Indian Penal Code states that- Dowry death. —

1. Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
2. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

^{vii} Section 498A of the Indian Penal code states that- 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.

^{viii} Section 125 of Cr.P.C states, "Order for Maintenance of Wives, Children, and Parents

^{ix} Section 112 of Indian Evidence Act, 1872 states, "Birth during marriage, conclusive proof of legitimacy". It states that the fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the other remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage has no access to each other at any time when he could have been begotten

^x Section 113B of the Indian Evidence Act, 1872 states, "Presumption as to dowry death." It states that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person has caused the dowry death. Explanation - For the purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code

^{xi} *Supra* note 7

^{xii} The Economic Times May 01, 2020, <https://economictimes.indiatimes.com/news/economy/indicators/period-of-lockdown-global-recession-changes-in-consumer-behaviour-to-shape-economic-activity-db/articleshow/75486283.cms?from=mdr>, visited on 30th May, 2021

^{xiii} The Financial Express May 6, 2020, <https://www.financialexpress.com/economy/coronavirus-lockdown-3-0-states-up-taxes-on-auto-fuels-liquor-for-income/1949300/>, visited on 30th May, 2021

^{xiv} <http://www.legalserviceindia.com/legal/article-3391-socio-legal-aspect-involved-in-rise-of-domestic-violence-against-women-amid-lockdown.html>, visited on 30th May, 2021

^{xv} Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/305573/7/07_chapter%201.pdf, visited on 30th May, 2021

^{xvi} Section 2 of The Dowry Prohibition Act, 1961

^{xvii} 1994 Cri LJ NOC 255 (All)

^{xviii} Section 3 of the Dowry Prohibition Act, 1961, states the penalty for giving or taking dowry

^{xix} Section 4 of the Dowry Prohibition Act, 1961, Penalty for demanding dowry - If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

^{xx} 2001 Cr LJ 2792 (SC)

^{xxi} Supra note 6

^{xxii} 1992 Cri. LJ. 563 A.P

^{xxiii} Supra notes 7

^{xxiv} 1993 Cri. LJ 2636 All

^{xxv} Supra note 10

