

# THE UNENDING PRACTICE OF DOMESTIC VIOLENCE IN DEMOCRATIC INDIA: A CRITICAL STUDY

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## ABSTRACT

The ill-practice of domestic violence in Indian homes seems to be a never receding phenomenon since ages. According to the latest National Family Health Survey-5 data, one in three married women are subjected to domestic violence. This situation is very serious. Though worldwide, the situation is similar. To contain this menace, the Government of India has passed Protection of Women from Domestic Violence Act, 2005, which envisages that domestic violence includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. The present growth of technology, especially in the fields of electronics such as the Internet and the Computers, has further added a new dimension to domestic violence phenomenon. Here, it is pertinent to note that the said Act comes under civil law with an intent to check the recurrence of domestic violence activities in the future. The Act provides protection from the occurrence of domestic violence in the households.

In this context, it has to be noted that a sizeable number of women defend this ill-practice of their husbands in the light of past traditions. Thus, apart from the legal, there is another angle of sociological change including that of the mindset of the victims of domestic violence. In any case, the phenomenon of domestic violence is a blot on the face of civil society and clearly, is misogynistic in nature. This paper attempts to explore the condition of women affected by domestic violence in the light of the existing law of the land and also, to suggest the possible solutions of the problem.

**Keywords:** Domestic Violence, Protection of Women from Domestic Violence Act, 2005, National Family Health Survey-5, Protection Officers, World Health Organization.

## INTRODUCTION

Domestic violence against women is not a new phenomenon in the Indian scenario. This is continuing from the ages. The basic philosophy behind this custom is misogyny which deliberately highlights the secondary role of women behind the menfolk. The assertion of men's primacy over women in nearly all walks of life is rooted in many explanations and reasons ranging from physical attributes to illiteracy, lack of awareness and others. By practising domestic violence, male ego is satisfied time and again. Though a loser in life, he always yearns to be the ruler at home beyond any shadow of doubt. Any deviation or deterrence from this self-chosen path attracts the male ire which finds an eloquent manifestation in the form of domestic violence. In India, this ill-practice seems to be unending despite several socio-economic changes in the society. According to the latest National Family Health Survey-5 report which appeared this year, nearly one-third of women in India have experienced physical or sexual violence. The survey finds that 32% of married women (18-49 years) have experienced physical, sexual or emotional spousal violence. It further says that the most common type of spousal violence is physical violence (28%), followed by emotional and sexual violence.<sup>i</sup> According to another study conducted by Rakhi Dandona, Aradhita Gupta et al, the rate of reported cases of cruelty by husband or relatives in India was 28.3% (95% CI 28.1-28.5) in 2018, an increase of 53% from 2001.<sup>ii</sup> A Parliamentary Committee headed by Congress M.P. Anand Sharma recommended, in its report tabled before the Parliament in March 2021, "all political leaders" to conduct awareness campaign for crime against women and suggested "blocking" of unauthorised Virtual Private Network (VPN), dark web on the internet. It also urged all political leaders to conduct a campaign to raise awareness among masses about the gender sensitization which will have a deep and lasting impact and change the pattern and attitude of society towards women. Taking cognizance of the rise in domestic violence cases during Covid-19, the Committee opined that "This was mainly due to disruption in economic activities, work from home and family spending more time at home during lockdowns".<sup>iii</sup> Here, it would be worthy of attention as to what is the position globally. According to global estimates published by the World Health Organization in 2019, about 1 in 3 (35%) women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime. Further, as many as 38% of murders of women are committed by a male intimate partner. The intimate partner violence is the highest at 37% in the WHO South-East Asia region, including India. Indeed, the situation is

alarming from the Indian perspective.<sup>iv</sup> In the recent past in 2014, the Istanbul Convention came into existence which is a legally binding instrument to create "a comprehensive legal framework and approach to combat violence against women". However, this treaty is facing resistance in a number of countries with conservative governments. Their contention is that this is a means to undermine traditional values and promote homosexuality due to its principles of gender equality and non-discrimination on the grounds of sexual orientation. Consequently, Turkey has withdrawn from this landmark European treaty protecting women from violence. The Treaty is named after the largest city of Turkey, and it was the first to sign the treaty. Before the withdrawal of Turkey, Slovakia, Poland and Hungary had also announced their decision to opt out of the Treaty in 2020.<sup>v</sup>

However, the situation is not gloomy everywhere. In New Zealand, the Members of Parliament have approved a Bill in July 2018, giving domestic abuse survivors, as well as those caring for young victims, 10 days off from work in addition to their regular paid vacations. This Bill is the outcome of a 2011 UN report which stated that 30% of women in New Zealand had suffered domestic abuse in the previous decade, with 14% experiencing sexual violence. Further, a 2017 report in "The New Zealand Herald" said that the country had "the worst rate of family and intimate-partner violence in the world", estimating that 5,25,000 New Zealanders were harmed every year.<sup>vi</sup>

## **GLOBAL SCENARIO**

The worldwide significance of domestic violence has been aptly illustrated in the "Statement of Objects and Reasons" of the Protection of Women from Domestic Violence Act, 2005, an enactment to deal with this issue in India. It says "Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family".<sup>vii</sup> Thus, it is obvious that domestic violence is a global phenomenon and the world

bodies have taken cognizance of it by passing resolutions and making treaties, covenants and conventions involving the world community at large.

### **THE PRESENT POSITION IN INDIA: NFHS-5**

The report of the latest survey, National Family Health Survey-5 came out in public domain in May 2022. This survey dealt with women in the 18-49 age bracket instead of the 15-49 age group in the earlier NFHS-4 survey. As per the statistics provided by the survey, domestic violence against women is highest in Karnataka at 48%, followed by Bihar, Telangana, Manipur and Tamil Nadu. Lakshadweep has the least domestic violence in the country. The occurrences are more common among women in rural areas (32%) as compared to their counterparts in urban areas (24%). A woman's experience of violence seems to be declining sharply with enhanced education and money power, both for the female victim, as well as the male offender. According to the survey, 40% women with no schooling are subject to physical violence compared to 18% who completed their schooling. The experience of physical violence ranges between 39% among women in the lowest wealth bracket and 17% in the highest wealth bracket. Also, in over 80% cases of physical violence against women, husband is the offender. Husbands who have completed 12 or more years of schooling are half as likely (21%) to commit physical, sexual, or emotional spousal violence as those with no schooling (43%). The report further says that experience of spousal physical or sexual violence varies greatly with the level of the husband's alcohol consumption. This percentage is 70 as against 23% of those husbands who don't drink. The report further highlights that woman in the 40-49 age bracket experience more violence than those in the 18-19 age category.<sup>viii</sup>

In this context, it is noteworthy that fewer women are reporting domestic violence today than a decade ago. NFHS-4 reported this figure to be 10 percentage points to 14% over the decade ending 2015. Experts say that it is due to a state of "learned helplessness" that keeps most women in abusive relationships. According to Dr. Smitha Deshpande, head of the department of psychiatry at Dr. Ram Manohar Lohia Hospital, New Delhi, "A lack of support from family and society can make a woman feel helpless and feel she has no other choice but to stick to a relationship. Often, the cycle of abuse becomes so permeating that she cannot think of a solution, can't assert her rights or seek help."<sup>ix</sup> Economics, according to Manisha Dalabehera,

(the communications and fund-raising head of Maitri-India, an organisation that supports women facing domestic violence), has a major role to play in preventing women from leaving abusive husbands. There are no decent shelter homes to lodge them, in case they report abuse where they are dependent on their husbands.<sup>x</sup> Further, as per Dr. Smitha Deshpande, "In the short term, women are constantly on the alert, not knowing when to expect the abuse. There is a social aspect too; the woman might feel that she has lost face in her group. Neighbours and peers may comment, which heightens psychological harm". Elaborating on the subject, she adds that "Women are usually the victims because that is the kind of social structure we are brought up in, violence is not condoned in women. It is usually men who are taught to be aggressive, and the women are taught to be docile"<sup>xi</sup> This is a telling commentary on the state of affairs prevailing in the country in regard to domestic violence among women.

## **THE INGREDIENTS OF DOMESTIC ABUSE**

"Abuse is anything", says Dr. Samir Parikh, director of mental health and behavioural sciences, Fortis Healthcare, "that is done without your consent. Abuse is whatever causes distress, discomfort, anguish and pain-physical and emotional". He further adds that "Apart from physical violence, derogatory remarks, dismissing the partner's views, ignoring her, being condescending and abusive in the social circle, commenting on looks or intelligence, withholding money also constitute abuse."<sup>xii</sup> This is indeed, an exhaustive definition, but not the final one. In the age of the internet, new methods are being used through social media to cause mental anguish and social stigma to the targeted women. According to a study conducted a few years ago at Maulana Azad Medical College, Delhi, more than 20% of women face verbal and physical abuse during pregnancy. The abuse increases with the advancement of pregnancy- 28% during the fifth month, 29.1% during the seventh month and 34.34.1% during the ninth month. This increase is due to steadily growing inability to perform "wifely duties" by the women.<sup>xiii</sup>

## DOMESTIC VIOLENCE AND THE LAW

### *Protection of Women from Domestic Violence Act, 2005*

- **Salient Provisions**

- 1) A Civil Law

Domestic Violence Act is enacted to provide remedy in civil law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in society.

- 2) Domestic violence has been defined in the Act in Section 3 as such:

" 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.

**Explanation I.-** For the purposes of this section,-

- (i) "**physical abuse**" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

- (ii) "**sexual abuse**" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

- (iii) "**verbal and emotional abuse**" includes-

- a. insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and

- b. repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

- (iv) "**economic abuse**" includes-

- a. deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- b. disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship, or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
- c. prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

**Explanation II.**- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

This definition of domestic violence is quite exhaustive and covers broadly all the dimensions of it.

### (3) Aggrieved person

The Act covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. Additionally, relationships with family members living together as a joint family are also included. Moreover, those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the legislation. However, whereas the Act enables the wife or the female living in a relationship in the nature of marriage to lodge a complaint, it does not permit any female relative of the husband or the male partner to file a complaint against the wife or the female partner. [Section 2(a)]

(4) Domestic violence

The Act defines "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Further, harassment by way of unlawful dowry demands to the women or her relatives would also be covered under the Act. (Section 3)

(5) Right to Secure Housing

(iii) The legislation provides for the rights of women to secure housing. It also provides for the right of women to reside in her matrimonial home or shared household, whether or not she has any title or right in such home or household. The Magistrate has been authorised to pass such an order ensuring her right to residence. (Section 19)

(6) Protection Order by Magistrate

(iv) The Magistrate has been empowered under the Act to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence. Section 9 Rule 8 of the Protection of Women from Domestic Violence Rules, 2006.

(7) Protection Officers

The Act provides for the appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person in regard to her medical examination, obtaining legal aid, safe shelter, etc. (Section 8)

(8) Reliefs Available Under the Act

Section 12 (i) of the Act provides that an application seeking any relief can be submitted to the Magistrate by an aggrieved person, a Protection Officer, or any other person on behalf of the aggrieved person. Section 12(ii) of the Act stipulates that the relief may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent. Further, under Section 19 of the Act,

while disposing of an application under Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order in favour of the aggrieved person. Section 19(2) stipulates that the Magistrate may impose any additional conditions or pass any other direction which he may deem necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person. In this regard, the Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. [ Section 19(3)] Section 19(4) envisages that an order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973. and shall be dealt with accordingly. Section 19(5) is very crucial as it empowers the court to pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order passed under sub-section (1), sub-section (2) or sub-section (3) of this Section. Section 19(7) stipulates that the Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order. Section 19(8) provides that the Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to. Further, Section 20 deals with monetary reliefs. While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence. Such relief may be inclusive of , but not limited to (a) the loss of earnings;(b) the medical expenses; (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 Cr.P.C., or any other law for the time being in force. Section 21 is about custody orders. The Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

Section 22 deals with the compensation orders which says that in addition to other reliefs as may be granted under the Act, the Magistrate may pass an order, on an application of the

aggrieved person, directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

## SOME SIGNIFICANT JUDICIAL PRONOUNCEMENTS

### 1. **Ishpal Singh Kahai v. Ramanjeet Kahai**<sup>xiv</sup>

In this case, the Maharashtra High Court held that the object of the Act is to grant statutory protection to victims of violence in the domestic sector having no proprietary rights. It provides for security and protection of a wife irrespective of her proprietary right in her residence. The Act is aimed at providing protection to the wife against violence and at prevention of recurrence of such acts of violence.

### 2. **M. Palani v. Meenakshi**<sup>xv</sup>

In this case, it was held by the court that any woman who is or has been in a domestic relationship is entitled to file a complaint, invoking the provisions of the Act. It is not necessary that the petitioner and respondent should live or have lived together for a particular period of time. The court found the lady's application for maintenance, from a man with whom she shared a close relationship, maintainable.

### 3. **Krishna Bhattacharjee v. Sarathi Chaudhury**<sup>xvi</sup>

The Supreme Court of India, in this case held that judicial separation does not alter the status of wife as an "aggrieved person" under Section 2(a) r/w Section 12. Also, it does not terminate the "domestic relationship" under Section 2(f). Judicial separation amounts to mere suspension of husband-wife relationship. It is not the complete severance of a relationship as happens in divorce.

### 4. **D.Velusamy v. D. Patchaiammal**<sup>xvii</sup>

In this case, the Apex Court explained the nature of "domestic relationship" in varied aspects. To begin with, the Court stated "Relationship in the nature of marriage" is akin to a common law marriage which inter alia requires that the parties must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. The parties should also have a "shared household" as

defined in Section 2(s). Merely spending weekends or one night together does not constitute "domestic relationship" under Section 2(f). Further, the Court held not all live-in relationships form a relationship "in the nature of marriage" because several parameters have to be satisfied in order to constitute a relationship in the nature of marriage. The Court also clarified the position of a "keep" and held that relationship with "keep" whom a man uses for sexual purposes and/or as a servant, does not constitute relationship in the nature of marriage.

#### **5. Indra Sarma v. V.K.V.Sarma<sup>xviii</sup>**

The Supreme Court in this case held that polygamy is a relationship or practice of having more than one wife or husband at the same time. A relationship by way of a bigamous marriage is marrying someone while already married to another. Also, maintaining an adulterous relationship is having voluntary intercourse between a married person who is not one's husband or wife. All these forms of relationships cannot be said to be a relationship in the nature of marriage. The Court further held that for determination of relationship in the context of marriage, the court should have a common sense/balanced approach. A close analysis of the entire relationship is required. Various factors existing in a particular relationship have to be weighed. Individual factors cannot be isolated. Invariably, it may be a question of fact and degree as to whether a relationship meets the tests judicially evolved to fall within "relationship in the nature of marriage" under Section 2(f).

#### **6. V.D.Bhanot v. Savita Bhanot<sup>xix</sup>**

In this case, a woman of 63 years of advanced age, was compelled to live alone without any means of sustenance. The Apex Court held that the situation falls within the definition of "domestic violence".

#### **7. Rupali Devi v. State of U.P.<sup>xx</sup>**

In this case, the Supreme Court held that the definition of "domestic violence" in the Act of 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse, certainly has a close connection with Section 498-A Explns. (a)&(b) IPC which define cruelty.

### **8. Saraswathy v. Babu<sup>xxi</sup>**

The Supreme Court observed in this case that "Economic abuse" includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of domestic relationship including access to shared household. In this case, the husband threw appellant wife out of matrimonial home four months after marriage and despite repeated orders of various courts and intervention of police, not permitted her to live in shared household for the last 14 years. The Court held the action of respondent squarely comes within ambit of "domestic violence" in wide terms as defined in the Protection of Women from Domestic Violence Act, 2005 and especially "economic abuse".

### **9. Lalita Toppo v. State of Jharkhand<sup>xxii</sup>**

In this case, it was held by the Apex Court that any act or omission defining domestic violence is broad enough to include all "aggrieved persons" including a not legally wedded wife and those not entitled to maintenance under Section 125 Cr.P.C.

## **SOME POINTS TO PONDER**

1. Despite the rise in literacy level and better educational framework for women, in particular, their attitude towards domestic violence is generally not as harsh as it should be. Their tolerant behaviour is definitely aggravating the prevailing situation. The situation is well-explained by noted writer on gender issues, Namita Bhandare as such: " We have laws against both domestic violence (since 2005) and dowry (1961), and yet we are nowhere near stamping these out. From activists to politicians, there is near silence on these rampant issues. As a result, the real work of changing mindsets hasn't even begun."<sup>xxiii</sup> In the previous NFHS-4 report, it was observed that between 2004 and 2015, fewer women are reporting violence today than a decade ago, with complaints dropping 10% points to 14% over the decade ending 2015.<sup>xxiv</sup> In the latest survey, NFHS-5, only 14% of women who have experienced physical or sexual violence by anyone have brought the issue up.<sup>xxv</sup> Thus, the situation is broadly unchanged. This seems to be a big roadblock in the way of doing away with this menacing practice of domestic violence in India.

2. Protection of Women from Domestic Violence Act, 2005 is a civil law. It does not contain stringent penal provisions. Keeping in view the enormity of the crime of domestic violence, there is an urgent need to introduce appropriate penal provisions in the Indian Penal Code or a separate law should be enacted to deal with this inhuman and barbaric practice which not only causes the physical harm to the women, but also hurts the morale and self-confidence of the women.

3. The phenomenon of domestic violence and other related issues such as dowry, rape, sexual harassment at workplaces etc. are the natural outcome of the misogynistic thought process of males in India. There is an immediate need to change their mindset for the ultimate solution. This can be given effect by introducing necessary changes in the curricula of the primary and secondary education systems. But nothing is happening in this regard. The required intent and intervention by the governments are not forthcoming.

## CONCLUSION

The social malaise of domestic violence is still persisting amongst the women in India. Rooted in the centuries-old notions of male superiority, this patently misogynistic tradition and ill-practice is really taking a toll on many innocent and simple housewives and other women living with men for long in non-conjugal unions. The legislation has been passed in India to check the menace, but the expected results are not forthcoming. Domestic violence is not punishable as a crime in the first instance and no deterrent penal punishment is provided. The available enactment is a civil law only and lacks teeth. Taking into cognizance the unabated trend of domestic violence in the country where one out of three women is a victim of domestic violence, stringent punishment is required. This is an offence which not only results in physical or economic injury or abuse, but it also really breaks the morale and confidence of the women, making them weak and insecure. This badly reflects on the character of the nation. At the same time, it is imperative that the women themselves have to come forward on their own and must complain at the right forums to raise their concerns. Otherwise, the ill-practice of domestic violence will remain in existence unabated. Secondly, the support of the family is very much needed in such cases. The rest of the family members including father, mother, sisters, brothers

etc. must exert enough pressure on the delinquent member of the family to refrain from such a vicious practice. In fact, domestic violence is not confined to a particular family, rather the whole society is affected by this menace. Hence, the combined societal efforts will certainly bring an attitudinal change in this regard. Also, the lawmakers owe a special responsibility in this context. This is high time they thought over the problem afresh and enacted a new and robust law to contain the domestic violence completely which is a blot on a civilised society and on humanity too.

## ENDNOTES

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