The Domestic Violence in India.

Domestic Violence can be described as when one adult in a relationship misuses power to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. The violence may involve physical abuse, sexual assault and threats. Sometimes it’s subtler, like making someone feel worthless, not letting them have any money, or not allowing them to leave the home. Social isolation and emotional abuse can have long-lasting effects as well as physical violence.

Domestic violence against women is increasingly recognised as a major health and social problem in India. It is also a concern for public health. Not only is violence against women widespread, deeply entrenched, silently borne, and relatively impervious to women’s situation, but also attitudes uniformly justify wife beating, and only a few women would opt out of an abusive marriage. At the same time, there is a dearth of information on the magnitude and patterns of domestic violence against women in India, particularly by way of community-based data. Facility based data-from police, court, hospital and NGO records-do exist, but remain scattered, poorly maintained, and seldom used.

Although both men and women can be abused, in most cases, the victims are women. Children in homes where there is domestic violence are also abused.
or neglected. Although the woman is usually the primary target, violence is sometimes directed toward children, and sometimes toward family members and friends. Many women in India are the victims of domestic abuse.

Atrocities against women in India are on an alarming rise. A recent study showed that:

- Every 26 minutes, a woman is molested;
- Every 34 minutes, a rape takes place;
- Every 42 minutes, sexual harassment incident occurs;
- Every 43 minutes, a woman is kidnapped; and
- Every 93 minutes, a woman is burnt to death over dowry.

One-quarter of the reported rapes involve girls under the age of 16. However, unfortunately, the vast majority of cases are never reported.

The oppression, borne by Indian women, was intolerable until the 19th century. During this time, the British and the great Indian social reformers set the stage for vast improvements in every aspect of the lives of these oppressed women. Some of the customs and practices, which were banned, are the practice of sati, female infanticide, child marriage and the prohibition on widows to remarry. The Constitution of India, adopted on 26th January 1950, was the fundamental Charter. This provides for equal rights for women and men and equal voting
rights for women. This right of women suffrage is something that women even in advanced Western countries have had to struggle for.

(A) Forms of Domestic Violence

Domestic violence can take many forms and variations and can happen once in a while or all at the same time. Domestic violence can be Psychological Abuse, Social Abuse, Financial Abuse, Physical Assault or Sexual Assault. Violence can be criminal and includes physical assault or injury (hitting, beating, shoving, etc.), sexual abuse (forced sexual activity), or stalking.

(B) Common Forms of violence against Indian women include:

Female feticide (selective abortion based on the fetus gender or sex selection of child), Domestic violence, Dowry death or harassment, Mental and physical torture, Sexual trafficking, and Public humiliation.
A possible case of domestic violence includes women who refused to report the name of the perpetrator of the incident, whether assault, or burn. Also classified, as possible cases of domestic violence are women who have resorted to attempted suicide, since much of this relates to harassment and abuse. Almost half of all women (44 per cent) fall into this category.

They may develop stress-related problems in health. They can lose self-confidence, be afraid/angry, and blame themselves for what is happening or feel guilty.

The aspirations of a woman trapped in a murderous marriage and seeking relief from its bondage do not find reflection in any of our laws. Irretrievable breakdown of marriage is not a ground for divorce in India.

Courts also use archaic methods to settle disputes over custody of children, marital property, return of streedhan, maintenance that often weigh heavily against the interests of the woman.

The absence of adequate civil courts lead many women to seek police help and exploit Section 498 A IPC to secure divorce or settlement.

Although incomplete, inadequate, and inconclusive, data collected in emergency police registers argue strongly for greater sensitivity in recording information on domestic violence against women, and in recognising and providing sensitive counseling and referral to potential victims of domestic violence.
Results suggest that as many as 23 per cent—almost one in four—women can be classified as definite cases of domestic violence. They have either suffered an assault by a family member or "known person," or, in a minority of cases, attribute the burns they suffered to their husband or other family member.

Another 44 per cent of all women appear to be possible victims of violence. They have either refused to name the perpetrator of the assault (19 per cent), or attributed the burns they suffered to accidental stove burst etc. (9 per cent), or were clear cases of attempted suicide, a measure to which women who have suffered violence and harassment are likely to resort to (16 per cent). Hence certainly one quarter, and up to two thirds of all women reporting may have suffered domestic violence.

Other points that corroborate this conclusion of domestic violence include the fact that disturbing proportions—over one fifth—have suffered the injury in the late hours of the night (roughly between 10 pm and 5 am) raising further doubts about their accidental status. Moreover, age distribution of women who attended the hospitals suggest that a large proportion of these women are in the peak-reproductive ages, 20-34 years, a period during which women have little say in their own lives.

Most of the definite cases of domestic violence occurred as a result of beatings, either by slaps, punches, and kicks, or with a stick or belt; of knife or blade wounds, or in a small proportion of confirmed cases, as a result of wife-burning. Attempted suicide claimed 16 per cent of all cases, and these may well
have been attenuated by domestic violence and harassment. Most burn victims claimed the burn occurred accidentally while cooking; and a large proportion of women who suffered assault refused to identify the perpetrator; undoubtedly some of both these groups of women have concealed the fact that they were deliberately set on fire.

While cuts and bruises dominate, profuse bleeding, and fractures are also evident among assault cases. A disturbing proportion of women have received serious and life threatening injuries - one in eight women whose injuries have definitely resulted from domestic violence, one quarter of the attempted suicide cases, and three in five of the "accidental" burns cases, with burns over more than half of their bodies.

(C ) Two-third married Indian women victims of domestic violence: UN

Around two-third of married women in India were victims of domestic violence and one incident of violence translates into women losing seven working days in the country, a United Nations report said.

"In India, one incident of violence translates into the women losing seven working days. In the united states total loss adds up to 12.6 billion dollars annually and Australia loses 6.3 billion dollars per year," it said.

Noting that women with tangible economic assets were less likely to be victims of domestic violence than those who lack them, the report cited Kerala as an example.
"In Kerala, a survey found that 49 per cent women without property reported domestic violence compared with only seven per cent who owned property," it said.

The report also commended the family counseling centres set up by Madhya Pradesh police department and supported by UNFPA, which provide legal services in cases violence related to dowry, harassment by in-laws, child marriage and rape.

The report said one in five women will be a victim of rape or attempted rape in her lifetime, one in three would have been beaten, coerced into sex or otherwise abused usually by a family member or an acquaintance.

Despite efforts by governments and campaigns carried out by international organizations, violence against women continued on a wide scale in both developed and developing countries, the report said.

The report said women in several countries justify wife-beating for one reason or another.

The reasons include neglecting children, going out without telling partner, arguing with partner, refusing to have sex, not preparing food properly or on time and talking with other men, it said.
Overall, the report said, several governments have started taking action and enacting laws to fight the menace but their effect is limited because of deep-rooted social mores in several societies.

Violence, it said, kills and disables as many women between the ages of 15 and 44 as cancer and its toll on women's health surpasses that of traffic accidents and malaria combined.

The consequences of gender-based violence are devastating, including life-long emotional distress, mental health issues and poor reproductive health.

"Abused women are also at a higher risk of acquiring HIV," the report said adding that it puts burden on the healthcare system as they become long-term users of health services.

Besides, the effect might extend to future generation as children who see violence, or were victims themselves, often suffer a lasting psychological damage, it added.

(D) The Domestic Violence (Prevention) Bill

The Government of India has enacted some laws to safeguard the interest of women in India. This has strengthened the woman's position at the workplace because of labour laws legislation. However, ironically, her status in her matrimonial home has deteriorated as there has been no just and effective legal remedy to guarantee her physical safety, her mental stability, her financial
and economical welfare and custody of children. Though women in cities do not undergo such atrocities, they are submitted to harassment and domestic violence. Acts, such as mental abuse, economic abuse, verbal abuse, sexual abuse and physical abuse constitute domestic violence.

Prevention of domestic violence is a burning issue all over the world. Domestic violence is not confined to any one socio-economic, ethnic, religious, racial or age group. It is an issue of increasing concern because it has a negative effect on all family members, especially children. It has been found that children, who witness violence in the home, suffer many of the symptoms that are experienced in children, who are directly abused.

The offence of domestic violence is generally perpetrated on a married woman by her husband or his relatives. However, domestic violence is not restricted to marriage, though this is the primary area of domestic violence.

Acts of domestic violence extend to young girls, who are victims of sexual assault within the family. Such violence may also extend to young boys. Elderly family members, particularly women, who are assaulted by other members of the family, are also victims of domestic violence.

The devastating effects of domestic violence in India, and the Government's indifference towards the growth of domestic violence, compelled the women activists to prepare a model bill on Prevention of Domestic Violence.
They submitted the same to the Government of India in 1994. This proposed bill was drafted by Supreme Court Advocate, Indira Jaisingh and the Lawyers' Collective, along with a wide range of women's groups who had been dealing with cases of domestic violence for over 2 decades.

The main purpose of this model bill was to provide civil remedies to the victims of domestic violence. It was felt that Section 498A of the IPC, which entails filing a criminal complaint for cruelty and harassment, does not take into account other kinds of harassment, such as violence, beating, mental torture, deprivation of finances, denial of maintenance and abuse of children. The object of the Indian Penal Code is to try the perpetrators and punish the guilt. However, it does not rescue women from a situation of continued violence. The matrimonial law also offers little help to a spouse who does not wish to separate from her husband. Women, who have been living in the gruesome conditions, due to barbarous traditions, laws and religious practices require statutory protection. For this purpose, the women activists formulated a model bill in order to enact a specific law that would deal with the violence that women experience within their homes.

This Bill was an attempt to introduce, into the existing law, the following concepts:

- The civil wrong of domestic violence
- The right to protection against domestic violence, by attaining protection orders, residence orders and monetary relief orders.
- The right to be informed of the accessibility of such orders and the service providers; and
- The right to reside in a shared household.

The chief features of their Protection of Women from Domestic Violence Bill, 2001 included:

(i) it gives the right to shared residence for the woman;
(ii) it recognizes the various forms of domestic violence, viz. physical, sexual, mental, verbal and economic abuse;
(iii) it recognizes that violence within a domestic relationship need not be habitual to come within the purview of the definition of "domestic violence", and that a single act of harm or injury should be able to allow the victim to seek protection under the law;
(iv) it brings within its fold not only married women, but also women related by blood, through a relationship in the nature of marriage, adoption or those living in a joint family;
(v) courts have the jurisdiction to pass a wide range of protection orders.

The erstwhile the then Government, in 2001, introduced a separate Protection from Domestic Violence Bill, 2001, which generated massive
opposition from women's groups who felt that the bill had betrayed their
expectations. It was subsequently referred to the Parliamentary Standing
Committee on Human Resource Development, which came out with a set of
recommendations to amend the Government bill.

The Bill defined domestic violence as an act, omission or conduct, which
is of such a nature as to harm or injure or, has the potential of harming or injuring
the health, safety or well being of the person, aggrieved or, any child in the
domestic relationship and, includes physical abuse, sexual abuse, verbal and
mental abuse and economic abuse.

The Bill was finally tabled in the Lok Sabha on 8th March 2002. However,
the Bill had been a disappointment to the women activists who were fighting for
such legislation. It was opined by the women's organizations that the
Government's version of the Bill was a far cry from what they had proposed.
Looking at the provisions, as incorporated by the Government in the Bill, the
women's organizations maintained that the Bill could turn out to be dangerous in
its implications for women, who are victims of domestic violence. The Lawyers
Collective went a step ahead to term the Bill as 'an exercise in tokenism.'

The Government's Bill proposed that an offence should be considered as
domestic violence, only if it is habitual. The Bill was argued on the contention that
the very definition of domestic violence in the Bill was inadequate and backward. The draft ignored the definition of domestic violence, as detailed in all international treaties, to which India is a signatory. Instead, it was left to the discretion of the judge to decide what constitutes domestic violence.

The women activists also viewed that the Government's Bill legitimizes violence against women, by laying that, if the perpetrator of violence can prove that the act was committed for his own protection or for the protection of his or another's property, then it does not constitute domestic violence.

The Government's Bill was also restricted only to the victims who fall under the expression 'valid marriage'. Thus, the Bill excluded protection to women who are tortured or harassed before marriage or, women who are second wives, who cohabited without legal documents to prove their marital status. They may have been duped into so called legal marriages, which do not hold up in a court of law.

The Government's Bill gave wide discretionary powers to the Magistrate, who presides over the case. It is for him to direct mandatory counseling for the accused and the complainant, either singly or jointly. The women's organizations
stated that, though counseling does helps to reconcile differences, the same should be voluntary and, not in the presence of the perpetrator. They have viewed such a course of action as inhuman and unjust.

On the whole, women’s groups rejected this Bill, in totality. They urged the Government to modify the Bill so that it includes what they term are "non-negotiable provisions". Thus, the women’s organizations requested the Government to widen the approach of the Bill. Firstly, they propose the changing of the definition of what constitutes domestic violence so that it conforms to the U.N. definition. Secondly, the law should include all categories of women, without restricting it only to those legally married. All abused women should have the right to shelter, including in their marital home.

(E) Provisions under Indian Laws

In India, there is no single comprehensive law that deals with the issue of domestic violence. The range of violence that a woman faces within the home may extend from minor injuries to serious psychological impairment and even death, and some of this is covered by provisions within the existing criminal and civil laws.

Any woman who has been a victim of domestic violence has the following options open to her:
1. Matrimonial relief;
2. Suit for a civil wrong;
3. Recourse to Criminal law.

(i) A Domestic Violence Law

Women's groups in India hold widely divergent viewpoints on the question of a law on domestic violence. Should the law create a separate crime of domestic violence, or should advocacy efforts be focused on ensuring the enforcement of existing laws?

Some groups are of the opinion that the Indian already has laws that criminalize many of the acts that constitute domestic violence: assault and battery, kidnapping, and harassment. Instead of constantly introducing new laws which would come with their own set of problems, they contend, efforts should be made to use the existing legal provisions.

However, a counterview is that making domestic violence an independent criminal offence, separate from other offences, can send a message that the community will not tolerate domestic violence. Creating a separate offence may also be considered necessary to counteract a failure by law enforcement officials to treat domestic violence as seriously as stranger violence under existing laws.

(ii) Indian Penal Code (IPC)
Section 498A of the Indian Penal Code (IPC), introduced in 1983, is the mainstay of women who have faced harassment or torture at the hands of their husbands or members of the husband's family. It recognizes matrimonial cruelty as a specific criminal offence and goes some way in expressing formally the state's intention to end violence against women.

Offenders are liable for imprisonment up to three years as well as a fine under the section and the offence is non-bailable (the alleged offender remains in the custody of the police until the court decides that s/he can pay bail and be released), non-compoundable (the police may continue to investigate and prosecute even if the original complainant withdraws his or her statement implicating the accused) and cognizable on a complaint made to the police officer by the victim or by designated relatives. The law makes it mandatory for the police to arrest the accused husband or in-laws immediately after a complaint is registered.

The section has, from the time it was introduced, faced allegations, without supporting evidence from the judiciary, police and others of being misused by women. On the other hand, women's groups have contended that Section 498A is ambiguous and not effectively implemented. Moreover, the section is extremely limited in scope in that it makes no provisions for maintenance, for protecting the woman when the alleged offender is let out on bail, or for protecting the children.

(F) The Protection from Domestic Violence Act, 2005
A conviction of an errant husband under Section 498 A IPC does not give the woman divorce. She has to approach a civil court and also pursue the criminal case filed in a police station. If she is economically dependent on the husband and if he is imprisoned, the question of maintenance may not arise. So, women use Section 498 A IPC to redress all marital grievances for a quicker and advantageous settlement.

Acquittal/discharge in cases of cruelty by husbands and relatives is high at 81 per cent of cases. The crime rate of cases of cruelty by husband or relatives is as high as 4.4 while the crime rate for dowry death is 0.7 and sexual harassment is 0.9 in every 100,000 population. Similarly, the arrest rate for cases of cruelty by husband or relatives is 10.3. Thus there is no single window where a woman can obtain relief on an emergency basis beginning from basic protection from violence; being turned out from the husband's home; restraining the husband from disposing of property, emptying bank lockers and accounts and depriving her of custody of her children and the right to be with them. Consequently, the harassed woman is forced to agree to what is far less than her due. Most harassed women can file a criminal case under Section 498-A IPC on the charge of mental and physical cruelty and a divorce on the same grounds. But, deterred by the long time that it takes to secure the court order, she is forced to seek closure under Section 498 A IPC and settle for divorce on grounds of mutual consent.
Therefore, the Protection from Domestic Violence Act, 2005 is a significant step forward in recognising the problems of women, children and other family members living in an atmosphere of violence. When it is finally enacted, it will provide protection against domestic violence by obtaining protection, residence and monetary relief orders. However, it does not cater to the longstanding demand of women for appropriate linkages between civil and criminal law to make Section 498-A effective. At most, the portent of the proposed legislation is like providing first aid to a critical patient.

However, this temporary relief should be followed up by setting up more family courts to deal with divorce, maintenance, child custody and division of property and reverting to the spirit that led to the formation of the family courts providing early, easy solutions to domestic problems.

With a view to providing a remedy under the civil law, which is intended to preserve the family and at the same time provide protection to victims of domestic violence, legislation is being proposed.

The Act seeks to achieve the below mentioned objects. The main features as contained in the Act are as follows:—

(i) it is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;
(ii) the Judicial Magistrate of the first class or the Metropolitan Magistrate may take the cognizance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;

(iii) the Magistrate may even require as an interim and urgent measure from the relative of the woman to execute a bond, with or without sureties, for maintaining domestic peace;

(iv) the violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment up to one year, or with fine, or with both;

(v) it is being proposed to set up an institution of Protection Officer to help the victim of domestic violence in making application to the Magistrate and in availing of her other legal rights;

(vi) a provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and
Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he fails or refuses to discharge the duties as directed by the Magistrate, his act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.

It is observed that the Act defines domestic violence as conduct whereby the abuser 'habitually assaults' the person aggrieved or makes her life 'miserable' by his conduct. Why does the assault need to be 'habitual' for it to amount to domestic violence? What does one mean by making the life of a person 'miserable'? This is a highly subjective term that would not help a judge in deciding whether a said conduct amounts to domestic violence or not. Why has the government chosen a definition that hides rather than reveals the true dimensions of violence against women?

All forms of violence will be covered by the expression in Section 4(1)(c) of the Act - "Otherwise injures or harms the aggrieved person". Thus, everything is left to the imagination of the judge and to his/her individual perception of what is violence and what is not, which, to say the least, is very problematic.

Further, the Act suggests that a plea of 'self defence' will be available to a man faced with a complaint of domestic violence. In real terms, the perpetrator can use this to undo the main provision - the definition of domestic violence. A man can always say he was trying to get out of a fight between himself and his
wife or between his wife and his mother, and that he caused the injury complained of, not intentionally, but in order to protect himself. If the intention is to protect women from violence, this provision must be dropped.

The Act provides that only a woman related to the respondent by blood, marriage or adoption could take recourse to relief under the proposed law. This means sisters; daughters and mothers will be in a position to file a complaint against the abuser. However, it is debatable whether a woman who has been led to believe that she is married to a man but is not actually married for want of compliance of essential ceremonies, will be able to use the law. This will also be the case in bigamous marriages as the husband who enters into a second marriage will not be considered to be legally and validly married to the second wife, leaving her vulnerable to abuse without remedy.

There is no provision made to address the most commonly faced problem of women. Often, the violence is directed not only against the woman but is intended to cut off all her support structures, deny access to essential services and to withhold a woman's own property or children in an attempt to blackmail. The most obvious way of achieving this aim is to throw the woman out of the household. Unless the power of restoration to the matrimonial home exists or the power to remove an abusive spouse exists, there is no purpose to this law.
It is just not good enough to argue that such orders can be given under the provision to "pass any other direction as may be considered necessary". Considered necessary by whom? We know about the necessities of women who face domestic violence, then why are those necessities not spelt out? There is an imminent need for this law to provide for a woman's right to reside in the matrimonial home.

The law also needs to provide for the temporary custody of children (or child) to the woman - so that she cannot be blackmailed into exchanging her right to property and 'stridhan' for her children; compensation for injuries sustained as a result of domestic violence, apart from injunction restraining acts of domestic violence; and maintenance for her and her children.

Although a woman could get any of the above by way of relief (except perhaps the right to reside in the matrimonial home), this would require monetary resources enough to litigate for these rights in four to five different fora. Most often, a woman would not have access to as many resources. Any law on domestic violence needs to address this and allow a woman to seek varied relief under a 'single window clearance' system.

Moreover, Section 11 contains a provision for the woman to undergo mandatory counselling with the abuser. This goes against all accepted principles of counselling. Mandatory counselling is one method of correcting abusive
behaviour. It is ridiculous to enable the magistrate to insist on 'mandatory' counselling of the innocent party. Such counselling can only end up 'convincing' her to accept her situation - of being abused - as being normal, and to continue in a violent marriage. Counselling for the innocent party can and should only be voluntary.

The problems with this law are manifold - from the appointment and qualifications of the protection officers to the jurisdiction of magistrates, to cognisability of the breach of a protection order passed by the magistrate. Complex as its implications are, the point is that this law, if enacted thus, will turn out be extremely dangerous for women survivors of domestic violence.

(G) Note of Caution

It is important to remember that domestic violence need not be limited to any one branch of the law. Victims of domestic violence may need legal counselling on matters ranging from landlord/tenant issues (say, if a spouse or partner has been forced out of her apartment), to credit/bankruptcy issues (say, if a spouse or partner's credit is being impacted or abused by another's). Practically every area of the law - civil, criminal, medical, tort - can impact victims of domestic violence.
Furthermore, a strategy to deal with domestic violence must go beyond legal interventions and look at the special needs of the victims of violence. For instance, understanding the reasons why they remain in situations of abuse; disseminating widely information about safety plans so that they can prepare themselves for dealing with potentially dangerous situations.

The Union Government hopes to bring new legislation to tackle the widespread problem of domestic violence against women. Several other legislations including the Indecent Representation of Women Act, the Sati Act, the Immoral Traffic (Prevention) Act and the Dowry (Prohibition) Act will also be reviewed during the year, which is being celebrated as the Women’s Empowerment Year.

Finally, legislation cannot in itself bring about social change. Campaigns for law reforms can be used as focal points for mobilizing popular support around issues, and engaging with the law has the potential to challenge dominant notions of gender, tradition and culture, but expecting violence against women to stop as soon as the Domestic Violence Bill is passed is a utopian notion.

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