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DOMESTIC VIOLATION AGAINST WOMEN INDIAN PERSPECTIVE

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ABSTRACT

The greatest foundation of a family and society is a woman. She gives birth to life, nurtures it, shapes it, and strengthens it. She also transmits tradition and serves as a vehicle for passing down culture from one generation to the next. Tragically, she is treated with great injustice in our nation. She experiences domestic abuse regardless of her age, colour, caste, social standing, or economic or political position. Her vulnerability comes in many different forms, which is a regular occurrence in Indian society. A woman's secret sorrows make her an easy target for male dominance, which is backed by prevailing patriarchy. The situation is made worse by the dominant, autocratic nature of men in society and the victimisation of women. Nearly every household in India must experience some form of domestic abuse, wherein women are mistreated physically, mentally, verbally, or financially as wives, daughters, or daughters-in-law. Both genders have equal rights under the law. In this largely male-dominated society, women face discrimination. Most women are therefore unable to comprehend their own rights and freedom. Domestic violence thus hinders not only women but also the development of the nation. This essay discusses domestic violence against women in India, including its different manifestations, causes, and potential remedies.

Keywords: Domestic abuse, Discrimination, Law and acts, Awareness, Remedies

INTRODUCTION

Throughout the beginning of time, domestic violence has been reported in almost every

community and civilisation. Every patriarchal society has accepted discrimination and oppression that results in physical, mental, or emotional violence. However, recent the use of domestic violence has historically been both socially and legally acceptable. Historical context is provided by a few significant incidents, laws, and ordinances, which makes it easier to conceptualise domestic abuse. Male dominance and the projection of women as "property," an object belonging to men, and secondly expectations of women as an ideal "role model" combine to seal the status of women in such a way as to make her vulnerable and subject to victimisation of all kinds, including discrimination and oppression, which compel their subordination. Violence against women is a consequence of historically unfair power dynamics between men and women, which have resulted in male dominance, discrimination against women, and the obstruction of women's full advancement. 1 Domestic violence occurs when a family member, such as a spouse, partner, or other relative, is subjected to physical, sexual, or psychological abuse. Domestic violence happens when a family member, partner, or ex-partner tries to control or injure the other person physically, emotionally, or both. Domestic violence occurs across all cultures, and it can be committed by persons of all racial, ethnic, and religious backgrounds. Sexual violence against women, in particular abuse from intimate partners, is a major public health issue and a violation of women's human rights. 35% of women globally have suffered either physical or sexual intimate partner violence or non-partner sexual violence, according to a global



evaluation of statistics. Nonetheless, according to certain national surveys on violence, up to 70% of women have ever been the victims of physical or sexual abuse by a romantic partner.

MEANING OF VIOLENCE

The term violence refers to any physical force causes any damage or injury to the person or property. The intentional use of physical force or power, whether threatened or used, against oneself, another person, a group, or a community, which either results in or has a high potential of resulting in injury, death, psychological harm, maldevelopment, or deprivation.

Any act or behaviour that has the potential to harm or injure women physically, mentally, emotionally, socially, or spiritually within the four walls of the home is referred to as "domestic violence against women," yet typically such behaviour is not carried out by strangers. Domestic violence refers to the aggressive victimisation of women by men, typically inside the confines of the family. Most often, domestic violence refers to violence committed against a woman by other people who live in her home. The husband, his parents, siblings, or any other resident with the ability to behave in a way that could inflict bodily or mental suffering on women may be the culprit. It takes place behind closed doors and is frequently denied by the very women who have been abused.

CAUSES OF DOMESTIC VIOLENCE

Violence against women is due to a variety of factors, not just one. Research has increasingly concentrated on the interconnectedness of diverse components, which should enhance our comprehension of the issue in many cultural contexts. Women have remained disproportionately vulnerable to violence against them due to a number of institutionalised, complicated, and interwoven social and cultural variables, all of which are reflections of historically uneven power relations between men and women. Socioeconomic forces, the family institution—where power

relations are enforced—fear of and control over female sexuality, the notion that men are inherently superior, as well as legal and cultural restrictions—which have historically denied women and children an independent legal and social status—all contribute to these unequal power relations. The following factors contribute to domestic violence:

- A) Cultural
- B) Economic
- C) Legal
- D) Political

THE PROTECTION OF WOMEN AGAINST DOMESTIC VIOLENCE ACT, 2005

An act to strengthen the protection of the rights of women provided by the Constitution who become the targets of violence of any sort that takes place within the family, as well as for concerns connected to or incidental to it. Domestic violence is a widespread occurrence, yet it has mostly gone unnoticed by the general population. Currently, Section 498A of the Indian Criminal Code, 1860 makes it a crime when a woman is subjected to abuse by her husband or his family. Because of this, a law is being proposed to grant for a remedy under civil law that is intended to protect women from becoming victims of domestic violence and to stop the occurrence of domestic violence in society while also keeping in mind the rights guaranteed under Articles 14, 15, and 21 of the Constitution.

Any act, omission, commission, or conduct of the respondent shall constitute domestic violence when it endangers the health, safety, life, limb, or well-being, whether mental or physical, of the aggrieved person or tends to do so, including by causing physical abuse, sexual abuse, verbal abuse, emotional abuse, and economic abuse; or harasses, harms, injures, or endangers the aggrieved person with the intent to coercing her or any other person. The silent features of protection of women from domestic violence act 2005, as follows



It aims to protect women who are or have been in relationships with the abuser in which both parties have shared a home and are related through consanguinity, marriage, or a relationship that has the characteristics of marriage, or through adoption; relationships with family members who live together as a joint family are also covered. Under the proposed Legislation, all women, including sisters, widows, mothers, single women, and those living with others, are entitled to legal protection.

Domestic violence comprises verbal, physical, sexual, emotional, psychological, and financial abuse that has already occurred or has been threatened. The definition would also include harassing the woman or her family members with dowry demands. The right of the woman to find housing is one of the Act's most important features. Whether or not she has any rights in the household, the Act guarantees the woman's right to reside in the marital or joint household. A residence order that is issued by a court protects this right. If a person is a woman, these residency orders cannot be issued against them.

The Act also provides for the power of the court to issue protection orders that prohibit the abuser from participating in or carrying out specific acts of domestic violence, entering a workplace or other location frequented by the victim, attempting to contact the victim, dividing any assets used by both parties, and physically harming the victim, her family, and others who help protect her from the abuse. The Act allows for the appointment of protection officers and NGOs to assist the woman in obtaining a medical examination, legal representation, safe asylum, etc.

According to the Act, disobeying a protection order or temporary protection order by the responder is a cognizable, non-bailable offence that can result in a sentence of up to a year in prison, a fine of up to 20,000 rupees, or a combination of the two. Similar penalties are sought for the Protection Officer's

noncompliance with the Act's provisions or improper performance of their duties.

CRITICAL ANALYSIS OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

In reality, this legislation undermines the entire basis of marriage by fostering intolerance and pointless litigation, even for minor domestic disputes, while disguising itself as protection. This law believes that men are the only ones who commit domestic violence, which is an incorrect premise. This is a completely false perception that only serves to reinforce the law's gender prejudice in favour of women.

The law grants a right to a woman while putting no obligations on a man, who is completely denied of any analogous rights and is instead burdened with discriminatory obligations. The law completely prohibits domestic abuse against men and is gender-specific.

This Act has recognised and provided legal validity to extramarital relationships or other immoral relationships that are neither recognised by our society nor by our current matrimonial or criminal legislation in the aim of protecting and assisting women. When adopting the law, the legislators overlooked the fact that having sex with anybody but one's spouse constitutes grounds for divorce. Even the Hindu Marriage Act of 1955's sections 24 and 25, which deal with maintenance pendente lite and permanent alimony, respectively, do not recognise any other kind of connection save a legally recognised husband and wife.

Additionally, persons having illegitimate relationships are not recognised as being eligible to claim maintenance, with the exception of an illegitimate child, under Section 125 of the Code of Criminal Procedure, which provides for the grant of maintenance to wife, children, father, and mother in a broader perspective. A wife who is an adulterous spouse is expressly prohibited by Section 125(4) from making any maintenance claims against the husband under Section 125(1) of the Code of Criminal Procedure.



The Indian Criminal Code's section 497 defines adultery as a separate offence, which the legislature overlooked. As a result, a man will be punished for adultery on the one hand while still being required to provide support and residency privileges to a woman with whom he is believed to have had an illicit relationship. The social structure of the community will be disrupted by this provision, which will end married partnerships.

Apart for the cruelty offence punishable under section 498-A of the Indian Penal Code, there was no comprehensive statute defining domestic abuse prior to this Act. Opponents contend that the definition of violence shouldn't be so broad. According to the definition of "economic abuse" provided in section 3 of the Act, a male family member could be prosecuted for domestic violence even if he only misappropriates or disposes of the share of a female family member, such as movable or immovable assets. This interpretation runs counter to the Act's intent and the fundamental idea of domestic abuse. Once more, the Act grants equal weight to even a chance of abuse and makes no distinction between actual abuse and the threat of abuse. As for the notion of emotional abuse, insults, and verbal abuse that is codified in the Act, the categories themselves are incredibly relative and subjective, frequently depending on one's thinking, and startlingly, the husband has no recourse in the event that the wife engages in any abuse. Any refusal to pay money, regardless of the justification, will result in legal consequences under this statute. Even if the husband lacks the necessary finances or is in prison, failure to pay the rent for the joint home also counts as economic abuse.

The Magistrate has been given unaccountable powers in this statute because he is required to take cognizance of the case and to carry out his own directives in favour of the wronged woman even though he is not asked to do so. Another unsettling feature is that the magistrate adjudicating the case must assess both the

specific violent occurrence and the overall circumstances.

The situation is to alter this clause to allow for in-camera proceedings only if the aggrieved party requests them, not when either party requests them. Any female family, social worker, or other person of the aggrieved party's choosing should be permitted to accompany her for moral support. According per section 498-A of the Indian Criminal Code, a complaint of domestic abuse may be made under the Act to both the protection officer and the police officer. Both authorities may conduct their own inquiries and present their findings to the magistrate. When both agencies' reports conflict, it is the Magistrate's responsibility to decide what should be done. Ultimate power to make the choice. The primary flaws in the Act are addressed by this repeated investigation into the same offence.

There is no doubt that the Act is historic legislation in Indian history, and the Indian people enthusiastically embraced it, yet there is concern among the populace about how the Act might be abused against an innocent husband and his family. It cannot be generalised to say that the spouse and the in-laws are always the source of problems, suffering, and conflicts of all kinds. One cannot claim that the married lady always acts in a just and fair manner. This Act is being abused in a number of cases, where the wives and their paternal relatives use it as a tool to harass an innocent husband and his family without cause. Thus, before implementing the rules of the in order to prevent unwarranted harassment of innocent people and their families, the involved parties and authorities should consider the implications of the application for the Protection of Women from Domestic Violence Act, 2005.

RECOMMENDATIONS

1. The root cause of domestic violence in India is women's vulnerability, which must be understood in its true context. to comprehend the causes of women's



vulnerability and how they set themselves up for exploitation. The majority of women are illiterate, experience silent assault, and are also subject to social pressure from tradition.

2. Men and women need to adopt new attitudes because India has long had a patriarchal social structure that is characterised by a male-dominated culture. The fundamental reason for violent attacks is an unfair allocation of power. In order to end violence victims, attitudes between men and women should also shift.
3. Internalization of Legal Norms in Agreement with the Public Domestic abuse in our nation is still perceived as a "interfamilial affair," which forbids the involvement of close relatives, strangers, and the government. Any legislation that is to be implemented effectively must first secure the support of a sizable public consensus and democratic processes.
4. A more effective execution of the Act is required, and a strict legislative mandate has been set down for officials and stakeholders. It is necessary to eradicate gender discrimination, patriarchal conventional relationships, and male supremacy.
5. Training in the gender perspective is required In order to change the mindset of patriarchal society, the police, service providers, medical professionals, protection officers, and notably magistrates who frequently tell women to put up with the violence and "stop complaining," gender perspective training should be made legally required.
6. Guidance from Experts Counselling to the harmed party is offered during the pre-litigation stage in order to restore self-esteem, offer emotional support, and aid her in deciding whether to file a lawsuit.

CONCLUSION

In India, domestic violence affects women on a daily basis and is not just apparent. She is subject to violence from the moment her mother conceives her in the womb, and ever since, she has had to battle for her life in this brutal society. Because the majority of women in our country lack literacy and knowledge of fundamental legal principles and their rights, they frequently fail to file complaints against those who violate their rights and commit crimes against them. Lack of knowledge of the law and the rights that are granted to them by that legislation, but the most important issue is that women do not know about their rights, which is caused by traditional norms. The legal remedies that the government promises for the protection of women are unavailable to victims. Women continue to be viewed as secondary sex in our allegedly male-dominated, tradition-bound society, which forces them to endure assault in silence. The reality that women in India are specifically targeted for human rights violations because of their gender. She is frequently disregarded and undervalued. The Parliament passed the Protection of Women from Domestic Violence Act (PWDVA), 2005 in response to the need for similar legislation across the globe as well as the results of the ongoing work of women's organisations. The Act grants women's rights and protection. Prior to the PWDVA 2005, the victim's remedies consisted of punishment of the offender under the IPC; however, the civil remedies of divorce and maintenance did not provide her with the fullest amount of relief. Instead, the victim had access to remedies that were related to matrimonial proceedings and also in accordance with court proceedings. Women had access to statutory protections and constitutional protections, but these protections were insufficient, and the biggest issue was that few women were aware of the rights that the constitution guarantees to protect women. Across the bounds of race, caste, religion, and class, domestic violence exists.



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