

“Protection of Woman from Domestic Violence” Law, - A Biting Reality: History, Causes and Its Social Impact”

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Abstract: After advent of era of democracy and awakening, woman realized their political strength and power and started feminist movement in the West. Different writers and thinkers, majority of whom were women, started writing in revolt against criminal and civil rights' abrogation, infringement and violation of rights of women. To safeguard and to protect these women rights, a new feministic jurisprudence was evolved against the old theory of law of patriarchy, which envisages that males hold dominant power. Accordingly the language of law has been defined, shaped and interpreted in a manner to determine the part generally played by women in society. Eventually old patriarchal jurisprudence was rejected by liberal feminists and 'Cultural Feminism' was stressed and propagated for changing the social and legal position of women.

I. Introductory

U.N. Report of 1980 confirms one of the fundamental laws of nature, that women constitute one half of the world's population, and despite performing nearly 2/3 of combined work hours, receive 1/10 of world's income and own 1/100 of total world's property. Since 1980, though, economic and social position of woman has improved considerably. The reason for this pathetic condition was indicated as, that woman had been kept in subordinate positions world over by men, irrespective of time and place, and they were only considered objects of enjoyment and pleasure. These bitter facts led to victimization and exploitation of woman.

Of all the places, women were exposed to exploitation and violence in their own patriarchal homes where they were supposed to be in safest environment, because of mindset of males developed through age old gender based cultural, social and economic factors.

Besides, in the recent past a new group of stranger-exploiters have come into existence at work place, when women came out of confines of their homes to earn and to consolidate their socio-economic status.

Previously under the general human rights, only civil and political rights were covered, but later on social and economic rights of woman were also included in the ambit of Human Rights. This had become so because in a changed scenario previous historical unequal power equations among men and women had changed to a greater extent, which in the past had existed due to customs, traditions, culture and religious considerations.

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They started to demand changes in existing laws relating to rape, sexual harassment, surrogate motherhood, pregnancy, maternity leave and even abolishing pornography. The emphatic demand was directed to enact new legislations to stop domestic violence, unequal pay and harassment at workplace etc. Now in India various such laws have already been legislated.

The expression 'violence against women' was interpreted broadly to include all kinds of civil and criminal acts of above, harassment, victimization (physical or mental) and all kinds of abrogation of right of women. Of all these, domestic violence, even of trivial nature was considered to be a human right issue or abuse

Domestic violence is a global phenomenon, irrespective of development, caste or creed. There cannot be two opinions that it should be stopped and that can be done through legislations.

II. Historical Perspective

The feminist movement in the West had created a strong voice forcing the preamble of United Nations Charter 1945 to include equal rights for men and women. The International Bill of rights of dignity and freedom without discrimination of sex and also equal protection of law without such discrimination under Articles 1,2,3,4,5,6,7/ Articles 8, 10, 19, and 20 provide women certain specific rights.

Previously in 1980 a conference of the United Nation Decade for Women in Copenhagen coined the expression ‘Domestic Violence’ for the first time. After that 3rd World Conference on Women in Nairobi, words ‘Abused Women’ were used. In 1993 the General Assembly adopted Declaration on the Elimination of Violence against Women. In 1993 also Vienna Declaration and programme of Action, a World Conference on Human Rights, provided for special human rights for women. In 1994 Belem do Para in Latin America adopt resolutions on Prevention, Punishment and Eradication of violence against women.

In 1995 Beijing Declaration and Platform for Action adopted by fourth World Conference on women took a concrete step towards protection of victims of domestic violence.

In India there was no specific legislation to deal with domestic violence, though it was a signatory to most of the above mentioned International Conventions etc. This had created a pressure on the Indian Government (not counting the internal pressure) to formulate some laws to shun domestic violence. Parliament appointed a Select Committee in 1980 and in 1984 to amend Dowry Prohibition Act, and between 1983 and 86 Indian Penal Code was also amended for providing punishment for cruelty or death caused by in-laws of women in relation do dowry.

In 1992, ‘Lawyers Collective’ drafted and circulated a Bill on domestic violence. National Commission for women (NCW) also drafted a Bill in 1994 but it was opposed by other women groups. In Dec 2001 Government of India, under pressure from women’s groups, put before Parliament a Bill and named it ‘Prevention from Domestic Violence Bill’. Later on when it was passed by the Parliament in 2005, the word protection was brought in place of prevention.

III. Why Domestic Violence Takes Place

Many hypothetical theories were evolved to find out causes of eruption of domestic violence. Important among those theories are as follows –

“Provocative Wife Argument” theory envisages that wife contributes to her beating as she provokes husband through argument or actions.

“Learned Helplessness” theory believes that some events in the childhood of wife create poor image of herself, due to which she keeps silent when subjected to violence, which eventually becomes a practice.

“Family Oriented” theory envisages that some families as a social group develop a characteristic to inflict violence on family women.

“Individual Oriented” theory studies the Characteristics of victim and the assailant individually, but the main focus is on the assailant.

“Traditional Sex-Role Socialization” approach envisages that women generally complain to be a victim because the ‘sex role ideology’ was developed out of socialization process.

“Personal Resource” theory’s approach is that the wife becomes a victim of violence where husband considers himself to be less in skill, talent or resources due to which she shines, and he wants to remain in controlling position.

There is a long list of other theories as well; but to mention a few: “Coercion Theory”, “Walker’s Behavior Cycle Theory”, “Status Inferiority Theory”, “Frustration-Aggression Theory” and “Social Deviance Theory” etc. are important from that long list.

Sociologists and other thinkers often accept or reject one or many above mentioned theories forwarding their own arguments and reasons.

IV. Main features of “Protection of Women from Domestic Violence Act”

To eradicate social evil of domestic violence against women, Indian Parliament had legislated the above enactment. The main features of the law are –

- 1- The Law protects an “aggrieved person” who is always a woman, presently living or ever lived in a “domestic relationship” in a “shared household”.
- 2- All women related by consanguinity, marriage, or through a relationship in nature of marriage (concubines or live-in), adoption or members of joint family are covered under the law.
- 3- Domestic violence has been recognized as a civil right of women under broader human rights. As an issue it has tried to eliminate social discrimination.
- 4- On the other hand the law has combined civil and criminal remedies. The civil remedies are meant to give relief to the victims, while the punishments are provided to give sanction to law. Any breach of court’s order is also an offence.

- 5- The law gives right to aggrieved women to secure the shared house for residence under protection of state officers under the guidance of a court.
- 6- Under the law, right is available to all related women who are subjected to physical, sexual, verbal, emotional, economic or mental violence, even of trivial nature.
- 7- The procedure for filing and obtaining a relief by the aggrieved woman has been simplified. The Magistrate is directed to decide the matter within three days. The application could be moved by anybody on her behalf.
- 8- The law provides for immediate “monetary reliefs” to the aggrieved women besides compensation for damages in form of injuries, mental torture or emotional distress, besides right of residence in the same house.
- 9- The law has tried to put some safeguards to check its misuse. Dangers are that Service Providers, “(NGOs), or “any other person, “who are empowered to move an application on behalf of women, may turn into extortion cells. Thus the application must be accompanied with the written consent of women.
- 10- The law provides that the Magistrate may order to undergo counseling of the parties concerned with a trained service provider to settle the matter.

V. Counter Views

Howsoever it may seem to one class of society reasonable, humane and cogent the laws giving protection to rights of women, but there is other class of thinking brains who forward contrary argument against the laws for protection of women from violence or cruelty. These views cannot be rejected as male chauvinistic reactions. They forward following arguments against the legislation in question.

- 1- They say that men and women are not equal or similar physiologically or mentally. Modern science has proved that their thinking process uses different routes; hence they perceive and behave differently in taking decisions. Not only in women, the phenomenon could be seen in all existing species on earth, which shows that females usually act and remain in control of males. In other species also violence is often used as corrective measures, as is allowed to be used in case of children.
- 2- In their enthusiasm to protection to women against domestic violence, the law had given recognition and legal status to extramarital relationships, which is neither recognized by Indian society as a whole nor is the law of the land; rather it contravenes some existing laws. The “live in” or living relationship or “male partner” are purely a Western concept which is not permissible in India due to moral, cultural and social values followed.
- 3- Any aggrieved women who had “at any stage has lived in a domestic relationship either singly”, has been included in the definition of “shared household.” It is self contradictory because if a woman is living singly, her residence cannot be declared as a “shared household”.
- 4- While enacting the law against domestic violence provisions of Hindu Marriage Act and Criminal Procedure Code etc. have been overlooked, wherein no marital status has been recognized except husband and wife wedded with due process, and, secondly illegitimate relationship (as in “live-in”) is not recognized for granting maintenance, and even prohibits a wife living in adultery to seek the remedy. Under the present law woman living in immoral and illegitimate relationship, even if it is adultery, has been made empowered to claim maintenance (while adultery is an offence in itself). Thus a man could be punished for adultery and at the same time would be forced to pay maintenance plus a residence to such a woman.
Indian culture and society as a whole has certain moral norms and values, which are completely absent in Western world. Illegitimate relationships cannot be equated with sister etc.
- 5- The provisions of new law against domestic violence can be misused in many ways than one. The “Service providers” indulgence is significant. Not many NGOs command good reputation. Once woman is trapped in the litigation, she is not likely to have normal marital relation or could find affection and love, even if after genuine counseling the spouses start living together in future.
In case service providers start to function otherwise, they may turn into extortion and blackmail cells.
- 6- The harsher provisions of the new law give opportunities to such women who wanted to bring their husbands or the paramours, or their families, to their knees. Cautioning the misuse, Supreme Court in Sushil Kumar Sharma’s case has observed that it is “new legal terrorism”. She may lodge a false complaint, as has been repeatedly reported and observed in many Court judgments in the country in cases of cruelty regarding dowry or for some other reason, other than the actual cause.
- 7- Perhaps it has been rightly observed by Supreme Court in some recent judgments that the husbands or paramours, as the case may be, should be treated as victims, where the complaint by a woman is found to be false after long years of rigours of litigation. In such cases not only the males as husbands or paramours, collective ladies (mother, sister or wife, in some cases) bear the brunt of such false complaint.

- 8- As action can be initiated, under the new law, for even trivial nature, the law would promote disintegration of social institution of family, because after initiation of proceedings it would become hard, if not impossible to restore normal relationship.
- 9- According to one estimate by 2015 in Delhi alone every fourth household would be indulged in matrimonial litigation, considering the present rate of litigation. If the estimates are correct, it would be a pathetic condition for the stressful society.

VI. Conclusion

Domestic violence is in fact a social problem and society is duty bound to protect the victims of such violence, but the present enacted law is more like a penal law where the husband etc. are treated as criminals or offenders. Protection against domestic violence is a civil right which could be covered under General Human rights violations in a civil society. The other view on the other hand argues that social problems, if remedied by force may lead to stronger reactions from the respondents, which in the end may be detrimental to existence of society itself.

The stricter and large scale enforcement of gender oriented provisions of new law against domestic violence would eventually bifurcate the society into a caste system based on sexuality, which may, though certainly give perpetual equal rights (or might be more) to women, but then the relationships between two genders would emanate from grudge and suspicion, and not from love, affection and mutual confidence that had been the fundamental foundation of such relationship.

Therefore a prudent, well thought and balanced approach has to be formulated to eradicate the existing menace of domestic violence. The Apex Court has rightly observed that stiffer matrimonial laws may lead to further abuse.

Mandatory counseling by trained psychiatrists, before any actual action is taken, should be incorporated in the procedure besides other changes, to restrict misuse and abuse of otherwise much needed law which is a step forward in the right direction.

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