



ESSAY SERIES - ESSAY 5

DOMESTICE VIOLENCE IN INDIA

“Women are the only exploited group in history to have been idealized into powerlessness”

- Karl Marx

Domestic violence in India is rampant and almost every day numerous women from every social background encounter violence in some form or the other. This violent crime affects not only the victim and her children but has wider repercussions on the society at large. Domestic violence is a significant barrier of women empowerment that denies women security, equality, self-worth, dignity and right to enjoy fundamental freedoms at par with men. Ironically it is the most systematically underreported form of cruel behaviour due to financial dependence, embarrassment, fear of retaliation, victim blaming and complex bureaucratic procedure. With mandatory stay-at-home rules to tackle Covid-19 pandemic, National Commission for Women flagged the issue of rise in the cases of domestic violence since the enforcement of national lockdown in India.

In 1993, **World Human Rights Conference in Vienna** first recognised gender- based violence as a human rights violation. United Nations declaration, 1993 defined violence against women as “Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to a woman, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.” The Indian Constitution not only enshrines equality to women¹ but also empowers the State to adopt actions of positive discrimination in favour of women² for neutralising collective education, political and socio-economic disadvantages faced by them. The legislative intent of **Protection of**

¹ Article 14 of Constitution of India.

² Article 15(3) of Constitution of India.

Women from Domestic Violence Act, 2005 was emphasised to provide a remedy in civil law for protection of women, from being victims of such relationship and to prevent the occurrence of domestic violence in society.³ The Act is applicable to all women irrespective of their age, marital status or religious beliefs. Definition of the term 'domestic violence' is provided under Section 3 of Domestic Violence Act, 2005 that inculcates within it sexual, emotional, verbal or economic abuse or mental or physical harassment or injury or endangers the life of aggrieved person or anyone else related to her, perpetuated by their male accomplice or his relative. It also includes unlawful demand for dowry or any other property or valuable security. **Section 498A of Indian Penal Code** covers cruelty towards women by husband or his relatives and an accommodating statement in this Section permits relatives of women to make objection for them. Even with strong laws in place to protect women, the laws in spirit have not been implemented and further callousness of authorities, judicial delays and lack of awareness defeat its purpose.

Though it is hard to decipher the cause of this crime but certain reasons behind violence can be traced to patriarchal setup and stereotyping of gender roles and distribution of power that place women in a subordinate position in relation to men. The issue is rooted in long standing societal norms and economic dependence of women. This lack of economic and social support structure to women further disables them to effectively resist domestic violence or leave abusive relationships. Some abusers learn abusive behaviour from their family, people in their community and other cultural influences as they grow up. Unemployment, drugs and alcohol may also contribute to violent behaviour. Dowry related death is a reality that testifies domestic violence. Some abusers feel the need to dominate and control their partner due to extreme jealousy, low self-esteem, trust issues or difficulty in managing anger

³ Indra Sarma v. V.K.V Sarma (2013) 15 SCC 755.

and other emotions. The perpetrator's assurance of non-retaliation by women further puts them in a vulnerable state.

In *Satish Chander Ahuja v. Sneha Ahuja*⁴, the Supreme Court overruled the law laid down in *SR Batra v. Taruna Batra*⁵ and held that "The term 'shared household' under Section 2(s) of Domestic Violence Act 2005 doesn't only mean a household of joint family of which husband is a member or in which husband of the aggrieved person has a share, instead it means the household belonging to any relative of the husband with whom the women has lived in a domestic relationship. Thus, the court enlarged the scope of matrimonial home and held that wife can claim right to residence in shared household belonging not just to husband but also his relatives. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household." Live-in-relationships are not categorically defined under DV Act but the courts interpreted and presume that live-in-relationships are covered under the ambit of expression "relationship in the nature of marriage" under Section 2(f) of the Act as the words nature of marriage and live-in relationship stand on the same line and meaning. This gives some basic rights and protection to those females who are not legally married, but rather are living with a male individual in a relationship, which is in the idea of marriage, additionally akin to wife, however not equivalent to wife. In *Hiral P. Harsora v. Kusum Narottamdas Harsora*⁶ the Supreme Court deleted the words "adult male" in Section 2(q) of DV Act as they violate Article 14 of Constitution further adding that the microscopic difference between male and female, adult and non-adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation.

⁴ Satish Chander Ahuja v. Sneha Ahuja SC Civil Appeal No. 2483 of 2020.

⁵ SR Batra v. Taruna Batra (2007) 3 SCC 169.

⁶ Hiral P. Harsora v. Kusum Narottamdas Harsora (2016) 10 SCC 165.

In order to address the cases of domestic violence, the resources of NGO's, women organisations and communities must be increased that respond to domestic violence and provide aid such as legal aid, counselling and shelter. Helplines, psychosocial support and online counselling should be enhanced using technology-based solutions such as SMS, online tools and networks to enlarge social support and reach out to women with no access to phones or internet. Incidents of violence must be given priority by police and justice system with no impunity for perpetrators. DV Act falls short in extending any relief to male members of the community who are subjected to domestic violence thus there is a need of gender neutral laws. The crime can't be eliminated from the society completely but with stringent reforms and mechanisms it can be curtailed. Though women participation in public life is increasing and laws are being amended but India still has a long way to make women equal citizens in their own country and make them feel safe and secure both in society as well within the four corners of their homes.