

Legalized Cruelty: Domestic Violence Against Men

Surbhi Parakh

Research Scholar, School of Law, Manipal University Jaipur, Jaipur- 303007, Rajasthan
surbhiparakhtime@gmail.com

Dr. Vijay Laxmi Sharma

Director, School of Law, Manipal University Jaipur, Jaipur- 303007, Rajasthan
vijaylaxmi.sharma@jaipur.manipal.edu

ABSTRACT

Domestic Violence is one of the most occurred matrimonial criminal offence. Domestic Violence is a gender specific law in India. The paper highlights the societal background of India, how women were suppressed and how this constant suppression has led to an explosion. Plethora of laws have been frame for the upliftment and protection of women but gradually with time women have secured their place in various walks of life and is not lagging behind than her counterpart. Equality, a grundnorm is losing its essence. The paper focuses on The provisions of Domestic Violence Act, 2005, which are gender biased in approach and critically analyses the Act, had the act been gender neutral, men could also have claimed their rights and obtained justice. There is dire need of gender neutral laws in India and to support the same the paper lays down international perspective on the issue of Domestic Violence against men. It also postulates numerous Indian case laws highlighting how law is being misused by married women and how men are being granted divorce on issues, which if Domestic Violence Act had been gender neutral, complaints could have been filed under the above Act. Society, Judiciary and Legislature have side lined and is considering this issue to be illusionary in nature. Crime against males is not an imaginary situation, it's a disease which needs to be acknowledged, checked and thus alleviate as they say prevention is better than cure. The quest is not for man v. woman but for equality solely.

KEYWORDS: Domestic Violence, Gender Equality, Gender Neutral, Gender biased, Men, Women

INTRODUCTION

Mahatma Gandhi once said *"In a gentle way, you can shake the world"*

Indian society is dominated by patriarchal culture. Dominance of men has not just been inside the four walled space of the house but outside too. In our society man possessed physical, societal and economic advantage and thus has always considered himself superior. The condition of females was flip sided, ignored and was treated nothing, but like a cattlor a commodity who was transferred from father's hand to husband and from husband's hand to son's. Existence of woman was more like a burden and she symbolized liability in the household. Women was nothing but marionette in the hands of men. All indispensable responsibilities like governing, protecting, commanding and controlling were taken care of by men. Women were considered as a tamed cow who faced discrimination at all the stages of their life ie. Birth (even in womb), as an infant, as an adolescent and as an adult. She was subjected to undue superstitious practices like sati, child marriage, polygamy, female infanticide etc. Men treated women as "second - class citizens" and merely a machine for reproduction so that the family name continues for generations to come. She was deprived of basic rights like right to live, education, property, equality etc. Her life was doomed, aspirations crumbled and hopes were suffocated with the dogma of orthodox mentality. A sapling which could become a humongous tree was uprooted at early stages and was left to be a lifeless being mechanically doing her duties as a daughter, wife and mother.

Powers makes a person blind and in quest for embedding the same in the roots and in the ambition of continuing it till eternity, one does unreasonable and irrational activities. Man did the same to his counterpart. Indian society suffered with the disease and mentality of male dominance which percolated in the generations from the preliminary level consciously and subconsciously by the process of socialization.

Excessive control often leads to uncontrolled situations. Constant suppression and atrocities on woman at various stages in life led to development of pro women laws in our country. To uplift the position of women in society and to deter exploitation women centric laws came into being. Though from pre independence era itself ground work for improving the status of women had begun. Series of Acts were legislated for example the Sati Abolition Act, 1829, the Hindu Widow's re-marriage Act, 1856, the Immoral Traffic Act of 1923, the Child Marriage Restraint Act, 1937

for restoring the stature of women from total degradation in the social structure. Constitutional makers also kept a sensitized approach towards women while framing the constitution and included various provisions for ameliorating the position of women for example Article 15(1), 15(3), 16(2), 23(1), 39(a), 39(d), 42, 51A(e), 243D-(3), 243D-(4), 243-T(3), 243-T(4). Post-independence also legislating body imbibed the values of constitution makers and framed pro women laws bearing in mind the deep rooted menaces embedded in the society Acts like Maternity Benefit Act 1961, Dowry Prohibition Act 1961, Hindu Marriage Act (1955), Medical Termination of Pregnancy Act (1971), The Equal Remuneration Act of 1976, The Orphanage and Widow Home Act 1960 etc. laws proved to be boon and helped in boosting the physical, mental, social, economic, political growth. Women became more conscious and aware about her constitutional and legal rights, started taking a stand for her and fought for her rights.

Constant saturation often leads to explosion. Prolonged atrocities and suppression led to eruption of women centric laws and the same helped a lot in betterment of the status of women in society. Criminal Law (Amendment) Act, 2013, Protection of Women from Domestic Violence Act, 2005, Maternity Benefit (Amendment) Act, 2017, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Decriminalizing of Adultery, Abolition of Triple Talaq are a few laws and rulings paving way for a better and an equal stand for women to live with dignity.

Plethora of women centric laws in today's time has no doubt profusely changed the position of women as compared to previous times. Society is changing and so is the mindset. A sword given can be used for protection acting as boon and can also be swayed to kill the other acting as bane. The same is the situation prevailing today; laws were legislated to shield and not to back fire unnecessarily. Various provisions of law are used by women as tool for wreaking vengeance on the spouse and his entire family. Pro women legislation aimed at ameliorating the position of women in the society but if they are being misused by women in order to avenge, satisfy ego, to harass and to intimidate the spouse, it's a sheer mockery of law. Misapplication of law by women leads to distressed society, chaotic households, disturbed children, agitated and frustrated personal life - once bitten, twice shy.

A MYTH CALLED EQUALITY

Equality is one such phrase which finds a place in almost all written constitutions. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is a fundamental feature of the constitution. Equality act as a grundnorm, it is something so intrinsic and integral that it cannot be shunned away. A society devoid of equality breeds all characteristics of an uncivilized and a disgruntled society. The principle of equality imbibes two concepts one is *equality before law* which is a negative concept, means that law is supreme and no individual is above law, implying thereby the absence of special privilege in favour of any individual and another is *equal protection of law* which is a positive concept implying the right to equality of treatment in equal circumstances. Among equals, the law should be equal and equally administered, that equals should be treated alike and not that unlike should be treated alike. Likes should be treated alike. The moment discrimination creeps in, it becomes the duty of legislature and the judiciary to do away with such provisions of law and practices inculcated by the society. Gender equality is more than a goal in itself. It is a prerequisite for a civilized society where people live with harmony and peace. Equality and justice must go hand in hand.

Women was considered as a weaker sex and at a vulnerable position before, such is not the case now. Women are not lagging behind any arena whether its military, corporate field, Entertainment industry, politics, sports, banking etc. Man and women are walking at an equal pedestal, there has been a drastic change in the societal thinking too which are evident with progressive judgments like *The Secretary, Ministry of Defence Babita Puniya & Ors*, wherein the Supreme Court held that the idea that there is an "inherent psychological difference between men and women" is constitutionally flawed and women and allowed Female Army Officers have equal entitlement as Male Army Officers, in terms of exercising the option to avail a Permanent Commission in the Army. The daughters would be considered as coparceners and have an equal share as that of sons in joint family property after the amendment of 2005 in Hindu Succession (amendment) act. The Supreme court has struck-down Section 497 of the Indian Penal Code, 1860 (which criminalized adultery), *inter-alia*, for its idea of considering woman to be the property of man and thus, being a "weaker" or "inferior" sex in the case of *Joseph Shine v. Union of India*. The Supreme Court in *Roxann Sharma vs. Arun Sharma* held that the custody of the child under five years of age should be given to the mother unless it is proven by the father that custody of child to mother would hamper the upbringing of the child. In *Charu Khurana and Ors v. Union of India and Ors*. the Supreme Court held that refusal of membership as a make-up artist to a woman in the Cine Costume Make-up Artists and Hair Dressers Association, whose rules only allowed

men to be make-up artists must be considered as discrimination on grounds of gender, it was a clear violation of her right to equality and a denial of “her capacity to earn her livelihood which affects her individual dignity.” Plethora of judgments and legislations have made clear that women have fought for her rights and won in claiming that she is equal to men and no one can undermine her existence in the society. Equality is neither circumstantial nor available in a stereotype manner at convenience. Crime must be seen only as a crime irrespective of gender, if not equality goes crashing to the ground. Law must not be framed and used as one likes it, according to whims and fancies of one gender only. Feminism does not mean subsidizing the other gender in order to bring women up in the society in fact it means equality in true sense. Claiming rights in name of equality and special privilege and vanishing at the point when accountability of an offence is to be incurred is sheer opportunist behavior. Shunning away from the liability of an offence just on the ground of gender, when the facts and the statistics illustrates that a woman is also capable of doing and has done those heinous offences promotes inequality in itself.

CRITICAL ANALYSIS OF DOMESTIC VIOLENCE ACT 2005

British politician Lord Acton once said” *Power corrupts; absolute power corrupts absolutely*”. Domestic Violence Act was enacted in the year 2005 and was brought in force by Indian government from 26th October 2006 with the objective of safeguarding the rights of the women guaranteed under the Constitution who are victims of violence of any kind. The Act was passed for upholding constitutional values and various fundamental rights like right to live with dignity, right to shelter, right to be free from violent environment etc. The term domestic relates to the running of a home or to family relations and violence indicates behavior involving physical force intended to hurt, damage, or kill someone or something. The meaning of domestic violence is exhaustive in the act and includes physical, verbal, sexual, economic abuse. Domestic violence Act envisages to provide monetary relief, compensatory relief, shelter home, medical facilities, custody orders, services of protection officer, welfare expert, counselor etc. The rationale or the purpose behind the act was secure and armour married women against violence, the same is now being used in an irrational and adverse manner against men. The tool which was given for defence is now being used as a threat and opportunity to harass the husband and his family.

The definition clause laid down in section 2 of domestic violence act, 2005 mentions the following, which illustrates paramount inequality and the biasness of law makers towards men. Section 2(a) refers to “**aggrieved person**” means any **woman** who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent and section 2(q) refers to “**respondent**” means any **adult male person** who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act. The definition clause itself clarifies that the victim is woman only and perpetrator is husband and his family, legislature fails to acknowledge that a criminal act cannot be made synonymous with a particular gender. Act of violence is not patented by a man only; the same can be done by female also. Problem or a disease if not seen or felt can never find its cure. One needs to be conscious of the fact that such an issue is rampant rather than turning blind eye towards it. It is folly to live in an illusion that men don't face domestic violence rather than accepting the hard truth of present time.

Section 3 Explanation Iof Domestic Violence Act defines Domestic Violence as

- 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;

Criminal Intimidation is threatening another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. To make a person liable under criminal intimidation threat is not dependent on nerves of the victim because section nowhere directs so, it may not necessarily be direct; it's sufficient if it reaches the victim through third party

Thus the section clearly illustrates that if a wife threatens to commit suicide, threatens to kill children, falsely implicating in-laws, any kind of alarm to husband or his property or reputation she would also fall under the purview of this definition as an accused, had this act been gender neutral. Equality, an indispensable feature of our constitution falls straight on face. Wife can file a complaint under domestic violence act for physical abuse and if the same is happening with a man, unfortunately he cannot and the reasons could be several for example notion of men being always strong, men don't cry, patriarchal society, man of the house syndrome, protector of the family etc.

Delhi High court had provided police protection to 90% physically challenged man after it was proven that if was physically assaulted by his wife. He along with his child was tortured physically and beaten by his wife. In the case of *Vishali Mahindra @ Shallu & Anr. v. State of Punjab & Ors.* High Court held that allegation of criminal intimidation by wife weren't true as there was no concrete evidence provided for the same. Allegations were vague and omnibus just to wreak vengeance.

- ii. **“sexual abuse”** includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

The word dignity according to Oxford Dictionary means the state or quality of being worthy of honor or respect. The major question here is, is the word dignity synonymous with females only? Men do not possess dignity? Shouldn't they also be treated with respect and honor in our country? Fundamental Right Article 21 envisages right to life and the same includes right to live with dignity. The word dignity cannot be just coupled with females as the term is not gender specific. Supreme Court in the case of *Maneka Gandhi v. Union of India, Francis Coralie v. Union Territory of Delhi, Bandhua Mukti Morcha v. Union of India* held that “the right to live includes the right to live with human dignity”.

Nagpur bench of Bombay High Court held that untrue impotency allegations against husband by wife amounts cruelty and thus husband was entitled for divorce and wife's plea for restitution of conjugal rights was rejected. In case of *Smt. Rajeshwari v. Sri Umesh Kumar* wife alleged husband of impotency and along with same filed a petition for various reliefs under section 12 of Domestic Violence Act. Wife was seeking divorce against husband because of his impotency. Such being the fact, alleging impotency against husband, does not amount to domestic violence. However, it may be a ground for seeking divorce. Wife failed to produce evidence and make out a case of domestic violence plus there was no cogent and convincing evidence given for impotency too.

- 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.

It's not just female who can be subjected to insult, ridicule and humiliation, the same can be inflicted or suffered by a male also. Trying to maintain a constant balance between family members and wife, husbands often go through emotional turmoil, constant pressure of earning more, continuous nagging, comparing, displaying extreme jealousy, isolating the partner, domination, over possessive behavior, taunting causes mental harassment to husband, alienating children from shared household, forcing husband to live separately from his parents, threats or attempt to commit suicide, attempt or threat to defame, mental anguish, threat to divorce etc such acts would come under the purview of verbal and emotional abuse only if legislature recognized that men can also suffer mental abuse.

In case of *Narendra v. K. Meena*, wife made wild allegations of extra marital affairs, constant threats to commit suicide, she wanted husband to live separately from parents and have an independent house of their own. The aged parents were dependent on their son for maintenance and had no other means. Supreme Court held that marriage deserves to be dissolved by a decree of divorce on the ground stated in section 13(1)(ia) of Hindu Marriage Act as it was impossible to live with her otherwise it might virtually ruin his sanity, peace of mind, career and probably his entire life.

In case of *Sangeeta v. Hitesh Kumar*, Delhi high Court Granted divorce to husband under section 13(1)(i-a) of the Hindu Marriage Act on account of causing mental cruelty. Abusing husband in front of office colleagues and family members, demanding separate residence, unruly behavior in presence of relatives, putting but serious untrue allegations against husband as chain smoker, womanizer, habitual drinker amounts to cruelty.

- 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.

Marriage has become a legalized extortion racket. The bedrock of equality loses its hold and strength when it comes to economic abuse. There have been numerous instances where a wife has threatened to initiate fake legal proceeding against husband and his family member if exorbitant amount wasn't paid to her and thus in fear of loss of reputation, saving family name, future of children, he ends up paying a huge sum. It's not just leeching out of hard earned money of husband but it is a major cause of mental harassment. Minting easy money by such means and deriving pleasure out of the same has become a popular trend. Excessive expenditure of husband's money without his consent, demanding humongous amount of money at time of divorce as alimony in lieu of keeping custody of child would also amount to economic abuse of husband, if at all wife could have been treated as a perpetrator. Its sheer injustice when for same criminal act genders are treated differently, one is saved and the other is punished.

Delhi Court dismissed woman's complaint of domestic violence against husband noting that she is misusing the provisions of law to extort unjustified money and blackmail. She falsified, concocted various allegations and suppressed focal facts for unfair personal gain. The magistrate charged her with an exemplary cost of one lakh rupees as punishment to deter the likeminded people in society.

JUDICIAL PRONOUNCEMENTS

Shyamlal Devda & ors. v. Parimala

Supreme Court quashed the domestic violence case against far off relatives of the husband in absence of specific allegations. Respondent claimed to be victim of domestic violence and claimed protection under section 18, 19 and 20 of domestic violence act. Supreme Court held that High court has committed error in saying that there is prima facie case against far off relatives and they cannot be held responsible for awarding monetary relief to the respondent.

Smt. Rakhi Paul v. Sri Amit Paul

Gauhati High court held that Wife making false allegations against Husband amounts to directly harming his reputation and thus granted divorce on the ground of Cruelty. There is no iota of evidence which suggests that forcible abortion has taken place, medical record posed a urinary tract infection thus putting such slanderous accusation on husband is unacceptable and he can be granted divorce.

S.R. Batra vs Taruna Batra

Supreme Court in the above case laid down that the wife is entitled to claim right to residence in the shared household and shared house hold only means the house belonging to or taken on rent by husband or the house which belongs to joint family of which husband is the member and claim for alternative accommodation can only be made against husband and not against other relative of husband, thus it was held wife can't claim right of residence in property belonging to mother in law.

D. Velusamy v. D. Patchaiammal

Supreme Court in its appellate jurisdiction held that domestic relationship laid down under section 2(f) includes not only the relationship of marriage but also a relationship 'in the nature of marriage'. Merely spending weekends together or a one-night stand would not make it a 'domestic relationship'. Not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005 and thus the petition under section 12 of DV Act would fail. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not be a relationship in the nature of marriage.

Manmohan Attavar v. Neelam Manmohan Attavar

Supreme Court in the above case quashed the petition under Domestic Violence Act as the "domestic relationship" denotes when the two persons have stayed together in a "shared household". Wife in the present case failed to show that the parties lived together in a shared household. In fact, the spouses have never lived in the house in question thus the petition failed to succeed.

Sangita Saha v. Abhijit Saha

Supreme Court held that the petitioner who filed a case under the Protection of Women from Domestic Violence Act, 2005 seeking right of residence in the share household and maintenance to herself and her daughter but was unable to establish any incident of torture or demand of money or physical violence. No substantial evidence was instituted and thus such claim was rejected.

Shabnam Parveen v. The State of West Bengal & Ors.

The question involved in this revision petition before High Court of Calcutta was whether the father-in-law has any obligation to maintain the widow of his son, thus a petition was filed under section 12 of Domestic Violence Act. The court held that under the Muhamadan Law there is no obligation on the father-in-law to maintain the widow of his son. Plus Section 36 of the PWDV Act, 2005 provides that the provisions of that Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force¹. The same was relied in the case of *Mahomed Abdul Aziz Hidayat v. Khairunnissa Abdul Ganith* that a person is liable to maintain another when that person could be the heir of the person whom he is called upon to maintain. Under Muhamadan Law father-in-law could never be the heir of his daughter-in-law, and therefore on that principle there is no obligation to maintain the widow of his son.

Geeta v. State of Rajasthan and Anr.

Crucial issue involved in the case was whether a unmarried daughter aged more than 30 years who has done her post-graduation from England on expenses of her father, is an aggrieved person within the Act and if yes, can she claim interim monetary relief from her father for pursuing further studies against his wishes and whether his refusal would amount to economic abuse Rajasthan High dismissed Domestic Violence petition filed under section 12 of the said act stating that monetary relief would not be granted as such amount is given for necessity and higher educational studies does not come under the purview of the same keeping in mind the circumstances of the case.

SudamaDutt Sharma v. State of Rajasthan and Anr

A complaint under section 12 of Domestic Violence Act was initiated by wife against spouse and her in-laws. The court held that the right of residence can be claimed by wife in the property owned by husband or in a property in which husband as share and not otherwise. Complaint does not disclose evidences of domestic violence moreover there was no semblance of proof furnished by wife that her deceased husband was owning a residential house or had a share in the joint family property. Prima Facie only the complaint was bereft of pre-requisites of necessary ingredient provided under section 12 plus the wife was not even living with the in laws and thus petition was dismissed.

VijayanandDattaram Naik v. VishrantiVijayanandNaik

In the above case revisional petition under section 18,19,20,22 were made to Goa bench of Bombay High Court by the wife, the court rejected the plea as there was no instance of violence being committed on the aggrieved wife. Court held that all fairness did not dispute that there is no finding of any act of domestic violence being committed by the petitioner. Wife was under an obligation to establish that she had suffered losses and was not able to incur the expenditures due to acts of violence on part of husband, if not able to establish the same thus she won't be entitled to relief under domestic violence act. Same was held in the case of *Koushik S/o Anil Gharami v. Sau. Sangeeta Koushik Gharami and Mr. Gurudas Sanvalo Naik v. Mrs. Saanvi Gurudas Naik*.

CONCLUSION

Law is all about justice and equity, the same is not birth right of a specific gender. Ubi jus ibi remedium means where there is a right there is a remedy for the same. Men do possess rights and if there are rights there must be adequate remedy provided to him by law otherwise the very law of equity gets frustrated. Law makers must not associate crime with gender; instead criminal activity is a criminal activity irrespective of gender. Inequality leads to bad taste in mouth and feeling of detest and commotion in the other segment. Punish the sinner and not the gender in specific. It's the crime or criminal activity which should be taken into consideration rather than focusing upon gender in toto. With the evolution of time, there must be change in laws otherwise law would be treated as toothless tiger, mirage or a gate with a lock but no boundaries and anyone can barge into it violating the fundamental and human rights of people. *Auegansuam turpitudinem non est audiendus* means a person alleges or boasts of his or her

own depraved conduct should not be heard in court. No one should be allowed to take undue advantage for other and use law as a tool to daunt innocent people.

The purpose of gender neutral law is not to undermine or lowering down of the standard of woman in the society, it is not just about comparison or winning or losing, it's all about the grundnorm principle of our Indian Constitution ie. Equality. If wrong is done to wife , she can make husband liable under criminal law or quasi criminal law for which there can be simple or rigorous imprisonment but if the same wrong is done by a wife , it goes unacknowledged or civil remedy is provided for the same to the husband. The quest is not for man v. woman but for equality solely. It is notable to highlight that it is not just domestic violence act which contains one sided approach but also several other provisions and offences under law for example Rape, Stalking, Husband or relative of husband of a woman subjecting her to cruelty, Word, gesture or act intended to insult the modesty of a woman, Sexual harassment.

Legislation comes in response to societal needs and collective cry; there exists a dire requirement for gender neutral laws in our country. Passing the buck, playing blame game and shredding from the responsibility would not solve the situation at hand, serious actions are needed so that innocent isn't punished to satisfy sadistic pleasure of disgruntled wives. This legal terrorism needs to be checked otherwise it would create a lot of distress in the society. Crime against males is not an imaginary situation, it's a disease which needs to be acknowledged, checked and thus alleviate as they say prevention is better than cure.

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