

SUMMARY

Violence and cruelty against women is a matter of serious social concern. Violence against women is a phenomenon that cuts across boundaries of ethnicity and age. The phenomenon of domestic violence in India is widely prevalent but it has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. It is due to unequal power relations between men and women which have led to domination over and discrimination against women by men. The violence against women ranging from physical beatings, emotional torture, mental abuse, sexual abuse, threat of violence, denial of basic necessity such as food and maintenance or where there are children, there is the additional blackmail that custody of the children will be denied to her if she does not fall in line. Often, the violence is directed not, only against the woman but is intended to cut off all her support structures, deny her access to essential services and to withhold a woman's own property. The most obvious way of achieving this object is to throw the woman out of the household.

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women...”

Said the United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution, December 1993.

There is no universally accepted definition of violence against women. The Declaration defines 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 women, including threats of such acts,

coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹

Violence/Domestic Violence is such an offence which is linked to the disadvantageous position of women in the society. It is an international social issue. Laws have been enacted to give statutory protection to women from domestic violence in other countries. Serious efforts have made at international level for prevention of violence against women. United Nations have incorporated a series of Treaties and Conventions to achieve equal legal and political right of women worldwide. The Vienna Accord of 1994 and Beijing Declaration and the platform for Action (1995) have acknowledged that violence against women is undoubtedly a human right issue. The United Nations Committee on Convention on Elimination of all forms of discrimination has recommended that state parties should act to protect women against violence of any kind especially that occurring within the family.

There are various forms of violence against women. Female Infanticide and female foeticides are very serious forms of violence. Infanticide means murder of an infant or a newly born baby. The sections dealing with murder under IPC are applicable to the offence of infanticide. Female infanticide is shockingly very common.

The technological advancements in Bio-medical and Genetic fields are being misused to eliminate the girl child. One of the most common and simple mechanism of eliminating female foetus is ‘female foeticide’. It is the act of determining sex of the child in the womb and if it is found to be a female, to get it aborted. ‘Foeticide’ means destruction of foetus at any time prior to birth. Foeticide is unlawful expulsion of foetus. It is also called criminal abortion or causing miscarriage. The criminal abortion is punishable under sections 312-316 of IPC. After Independence, The Medical Termination of Pregnancy Act, 1971 was enacted as a means of population control. However,

¹ See, Definitions and key concepts, United Nations, Mehr Khan p. no. 2.

new techniques have enabled the determination of abnormalities as well as sex of the child in advance much before the birth of the child. For prohibition of sex selection before and after conception, The Pre-conception and Pre-Natal Diagnostic techniques (Prohibition of Sex-selection) Act, 1994, has been passed. The Act was amended by Act of 2002. Now the Central Govt. has taken up this issue more seriously. Our worthy Prime-Minister has launched a programme “Beti Bachao and Beti Pathao”.

Incest and child sex abuse has also become rampant in the society. Incest is defined as sexual intercourse between close relatives within prohibited degrees of relationship.

Sexual Harassment of women is other form of violence against women.

In *Vishaka v. State of Rajasthan*,² the vibrant judiciary has exalted the dignity of working women by issuing directions for providing safe environment at the work place to ensure protection of female employees from sexual harassment.

Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 has been enacted by parliament to provide safe, secure and enabling environment to every woman, irrespective of her age and employment status.

The offences relating to dowry are spreading like a deadly disease. The practice of Dowry is prevalent among all the Indian communities Bride Burning, wife beating, abetting a woman to commit suicide are some of the offences related to dowry. The Dowry Prohibition Act, 1961 was enacted, but it has not been able to achieve the desired objects. Hence IPC was amended first by inserting chapter XX-A (Section 498-A) in it by the Criminal Law (Second Amendment) Act, 1983 (46 of 1983); and then, by inserting of Section 304-B by the Dowry prohibition (Amendment) Act, 1986 (43 of 1986). Section 304-B is aimed to punish those who indulge in ‘dowry-deaths’.

² AIR 1997 SC 3011.

Abetment of suicide is another offence punishable under S. 306 of IPC.

The necessary ingredients to attract section 306, I.P.C. are that

- (a) A person must commit suicide;
- (b) The accused must abets the commission of such suicide.

Rape is other form of violence against the person of a woman. It is defined in section 375 of IPC. The judiciary has taken seriously view in cases of Rape.

In the landmark judgment of *Delhi Domestic Working Women's Forum v. Union of India*,³ the Supreme Court suggested the formulation of a scheme for awarding compensation to rape victims at the time of convicting a person found guilty of rape. The court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account the pain, suffering and shock as well as loss of earning due to pregnancy and the expense of child birth, if it occurred as a result of rape. Unfortunately, there has been no response from the states even after almost a decade in this regard. The judiciary however, has awarded compensation to the rape victims in *Bodhisatwas case* and *Chairman, Railway Board v. Chandrima Das*.⁴

In addition to these Honour Killing, Acid throwing, Practice of Sati, Prostitution and Devadasis system sale of girls are other forms of violence against women. However, wife beating and domestic is one of the most serious forms of violence against women.

There are various causes of Domestic Violence. The causative factors of domestic violence are illiteracy, unemployment, religion, economic inequality, drug abuse or alcoholism, social conditioning and patriarchal structure etc. Women continue in violent relationship for myriad reasons, the most crucial being the fact that they are economically dependent on their husbands to support them and their children. They lack education and training to get jobs and attain economic independence.

³ (1995)1 SCC 14.

⁴ AIR 2000 SC 988.

Battered women have tendency to remain quiet, agonized and emotionally disturbed after the occurrence of the torment. A psychological set back and trauma of domestic violence affects women's productivity in all forms of life. The suicide cases of such victimized women are also serious consequences and the number of such cases is increasing.

Constitutional and Legal Measures to Combat Violence Against Women in India

The Constitution of India provides many safeguards to women and their rights. The Preamble of the Constitution provides to all citizens equality of status and of opportunity as well as justice – social, economic and political. Article 14 of the Constitution ensures equality before law to all persons within the territory of India. Article 15 prohibits discrimination on the ground of religion, race, caste, sex, place of birth or any of them. Article 15(3) empowers the state to make special provisions for women and children. Article 16 speaks of equal opportunity in the matter of public employment. Article 39(a) lays down that the State shall direct its policy towards securing all citizens, men and women equally the right of means of livelihood and Article 39(c) ensures equal pay for equal work. Article 42 directs the state to make provisions for ensuring just and humane conditions of work and maternity relief. Above all, the Constitution imposes a fundamental duty on every citizen through Article 51 A (e) to renounce the practice derogatory to the dignity of women. The question, however, is : Have the women been able to reap the benefits of rights provided for them under the Constitution of India. The answer unfortunately is not encouraging.⁵

The State has enacted many women specific and women related legislation to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriage, dowry, rape,

⁵ Sarla Gupta, "Evolving New Feministic Jurisprudence – Violence Against Women: A Policy of Neglect or a Neglect of Policy" (2005) Cri. L.J. 282.

practice of sati etc. The Hindu Marriage Act, 1955, the Dowry Prohibition Act 1961 (as amended in 1983 and 1986), the Commission of Sati (Prevention) Act, 1987, the Indecent representation of Women (Prohibition) Act, 1986, the Immoral Traffic (Prevention) Act, 1956 (as amended in 1986) and recently, to check female foeticide, the Pre-Conception and Pre-Natal Diagnostic techniques (Prohibition of Sex Selection) Act, 1994 have been passed. The Criminal Law (Amendment) Act 1983 has amended the Indian Penal Code and has introduced certain provisions concerning the punishment of rape, the procedure and rules of evidence. Nearly a decade after signing the UN General Assembly Resolution to adopt the Declaration of Elimination of Violence Against Women, the Protection of Women from Domestic Violence Act 2005 has been passed.

The Act has some commendable provisions for protection of women from domestic violence.

The Protection of Women from Domestic Violence Act, 2005 is a civil law aimed at providing immediate support to women facing domestic violence. It is different from criminal law, which is directed at providing punishment to perpetrators of violence (those who commits violence) through imprisonment or fines.⁶

The law recognizes the right of a woman to live in a violence free home and provides legal remedies if this right is violated. Legal remedies pertain to civil reliefs such as injunctions, compensation and monetary relief. There can be no arrests made on a complaint filed under this law.⁷

In addition to the above reliefs under the Act, a woman can also file criminal complaint under criminal law (Section 498 A of the Indian Penal Code) seeking the arrest of the violence perpetrator under the circumstances mentioned there in. The decision of whether to go under the new law or

⁶ www.sciencedaily.com/releases/2008/04/080423/01759.htm accessed on 14.7.2009.

⁷ Ibid.

Section 498A Indian Penal Code is that of the woman and depends on her goals.⁸

Section 3 gives almost a comprehensive definition of the term “Domestic Violence” encompassing covering every possible facet, manner and method of domestic brutality. It means any act, conduct, omission or commission of a person that causes; harm, injury or endanger the health, safety, life, limb or well being, whether mental or physical of any women in a domestic relationship and includes sexual, physical, verbal, emotional economic abuse. All forms of abuse have been defined very liberally.

The victim of domestic violence may get the following orders issued in her favour through the court once the offence of domestic violence is prima facie established:

- (a) Protection orders
- (b) Residence orders
- (c) Monetary relief
- (d) Custody orders
- (e) Compensation orders
- (f) Interim and ex-parte orders

The Act also recognizes the right of a woman to claim relief who is in live-in-relationship in the nature of marriage. The Supreme Court accepted the principle that a long term of cohabitation in live-in-relationship makes it equivalent to a valid marital relationship. In *S. Khushboo v. Kanniammal*,⁹ the Supreme Court held that there was no law which prohibits live-in-relationship or pre-marital sex.

However, there are many issues and challenges in the proper implementation of the Act. Unless the hurdles are removed, the desired objects can not be fully achieved. The NGO’s police and government schemes may

⁸ Ibid.

⁹ (2010)5 SCC 600.

play effective roles in this regard. To combat violence against women necessary suggestions are given.

Suggestions

Besides the enactment of Domestic Violence Act, in the interest of justice, equality and empowerment of women, it is also necessary that the law should be accompanied by sensitization of the police, the judiciary and the society, as a whole. The law, itself, will not combat the violence, but it would provide the women with a protection mechanism and would signify the official response of the State that violent behaviour even within the confines of the 'home' will not be excused or tolerated. Gender justice cannot be brought about merely by passing laws. Bare legislative enactment is like band-aid on a festering wound unless certain structural changes are brought about.

A clear cut administrations machinery should be made available at the District level for monitoring and reviewing the incidence of violence against women.

The family courts under Family Courts Act, 1984 have not been established by most of the state governments with a view to promote conciliation and securing speedy settlement of family disputes. State governments should identify more locations and should take effective steps to set-up more family courts. There should be better coordination between police and NGOs. There is urgent need of sensitization of criminal justice system. A widespread network of social defence services should be set-up. Strict punishment should be given to the accused of dowry demands and strong public opinion be formed against dowry system. The government should frame schemes for compensation to victims of matrimonial cruelty. Necessary steps should be taken to educate the women and make them economic independent. There should be speedy disposal of women's cases and child marriages be discouraged. The all India 'women's fund' should be properly utilized for the welfare of women and liberal grants should be given by the governments to

NGOs engaged in helping women in distress. Judges should also make law more effective by interpreting it more liberally to serve the changing needs of the society. There is need for change in the mindset of the people. In place of violence, there is need to show more respect to women. The media should play a positive role in influencing public opinion about social norms. The states should ensure proper enforcement of laws to combat violence against women. A cumulative approach must be designed to combat marital violence. The root causes of domestic violence should be addressed firstly and than its manifestations should be treated.

For proper implementation of PWDVA 2005 full times appointment of protection officers be made. The identified services should be made easily accessible. The scope of Act should be expanded to include ‘child sexual abuse’. The states should allot adequate budget and provide proper infrastructural facilities. To avoid the misuse of the provisions of the Act, a provision of punishment should be made in case of a frivolous complaint is made by a woman. There should be proper follow-up and monitoring of cases of domestic violence by service providers and protection officers.