

Gender Inequality and Domestic Violence: Related Laws and Policies

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Abstract

Gender-based violence is a problem that is deeply rooted in gender inequality and remains one of the most important violations of human rights in all societies. Gender-based violence is gender-driven violence against a person. Gender-based violence and violence against women are words that are often used interchangeably, as it has been widely recognized that most gender-based violence is perpetrated by men on women and girls. Nevertheless, it is important to use the 'gender-based' component as it highlights the fact that many types of violence against women are embedded in gender inequalities of power.

The Indian woman was the subject of numerous laws in the post-independence period, with the Women's Protection from Domestic Violence Act 2005 being one of the newest and undoubtedly the most controversial addition to the list. While in some sections it has been eagerly awaited as a step that should significantly strengthen Indian women's position within the family unit, it has been widely criticized as ambiguous, discriminatory, and even potentially dangerous. This article has made an attempt to critically examine its provisions and highlight its positive and negative implications.

Further, laws and policies to promote gender equality have been discussed in this article. Finally, the article attempts to bring the overall impact this law would have on India's family unit and social fabric into perspective. This paper seeks to illustrate the intersection of domestic violence, gender inequality and related laws and policies.

Keywords: Gender inequality; Violence; Laws and policies; Legislative; Patriarchal

Introduction

In Indian, the situation of women is changing from time to time. The situation of women in society is not exactly right. In social and cultural areas, they have gradually lost their position¹. From the history of India it could be revealed that the position of Indian women in Vedic society was respected, loved and recognized. She had her own identity and received equal respect given to men². In India, till the arrival of the Turks, Indian women enjoyed relatively great independence and prestige, but due to the

unhappy influence of some social, economic and political agencies and the foreign ideologies, inhuman restrictions were imposed on them, and they were downgraded to a situation of more insignificance and severity and they were burdened with numerous taboos and restrictions. Indian society has been a tradition bound society in which traditionalist would present a perfect picture of women validating their claims on the ground of certain references from the classical and Vedic literature. In the proper evaluation of Indian women, in contrast to their western counterparts, the Indian woman is a part of the culture which goes back into the past. If she has a specific conviction or art in a particular way, then it is due to the pattern that has become involved in it through a very stable structure of thousands of years.³

In India, women have been given the highest place for religious and philosophical ideas. The primordial one is considered as a harmony of 'Prakrati' (female) and 'Purusha' (male). The concept of 'Ardhanarishwara' described the head of God as half woman and half man. The 'Shakti' cult is centered on the superiority and destructive power of women. Streams and rivers, flowers and seasons, dawn and twilight, music and knowledge are considered as females.

In our Indian society, traditional bondage and male domination are described, women still have a secondary sexual relationship, they are confined to domestic slavery, their activities have been banned, they are identified by father, brother, husband and son at every step of her life, and as a result, considers herself as a subordinate person.

Ancient Indian scriptures played a major role in reducing the image of women in our society. "Manu", the ancient law maker equated the woman with slave and its laws are symbols of complete subjection to women and they have still been approved at present by the code of conduct prescribed and accepted by majority of women.⁴ This is the code of Manu which has the most negative influence on Indian women for countless generations, even today it is their law that millions of helpless people in the prison of Hindu Orthodox. In the Hindu tradition, we find that Manu was the first person who had legally decided her position in society. Manu is confused with his own thoughts because he provided his high status in the form of a spiritual unit against man but in law he made it worse and equated her with the least group in society i.e. "Shudras". He kept many directions of her behavior and asked her to be the most loyal and obedient to her husband. She is expected to be under the authority of her father, husband and son and is never permissible to be free. All these references in Indian history show that women were subjected to all indignities, humiliation.

In our Indian society, mythological stories extending from generation to generation have produced an image of women as self-sacrifice, happily facing difficulties for husband and family. Indian

society established stereo-type ideal role models in the name of Damyanti, Sita, Draupadi, Tara etc and reduced a woman into mental, physical, and slavery, which eventually made her and the means of pleasure to man and never gave her the position of better half in reality.

According to this historical viewpoint, along with the harsh reality of the existence of domestic violence in globalized cultures, has made it a global phenomenon and its relevance to Indian history proves that women are still facing the violence in number of ways from ancient time. Although, according to class, religion and cultures degree and form of violence may vary in every level of Indian society occurs.

Women are not safe in society, whether they are outside or inside their home. In fact, she is subject to terrible forms of crimes within her domestic domain. She is not even safe inside her house. Crime against her has been done inside her house which is more dangerous in nature. The crime against her inside the house is known as "domestic violence". Since the very long period, protective laws are present in our statute books and with the passing of time more legislation is being added, yet in our society, violence against women has suddenly increased, especially in their homes whether the paternal house or matrimonial house. She is subjected to cruel crimes like marital rape, dowry death, wife-beating, foeticide, sexual abuse, financial dependence, infanticide, bigamy, etc.

The family, which was believed to be the center of love, affection, humility and solidarity and warmth, had become the center of exploitation, killing, assault, offensive attacks, assault and violence for dowry or other reasons.

The silent victims of Indian women are making it easy target for male domination, which is supported by patriarchal principal. The commanding, dictatorial nature of male member in society and harassment of female makes the condition worst. "Almost every house in India must be suffering from some kind of domestic violence where women are being mentally, physically, verbally, financially abused as a daughter, daughter-in-law or a wife⁵.

The domestic violence at home appears on the two levels against her in the natal house and at the wedding home. In a son favorite society like ours, the journey of a girl child from the womb to the tomb is riddled with inadequate events⁶.

Different types of domestic violence in India against women have its origins in the deep rooted gender bias, patriarchal structure and discrimination against them. This deeply connected patriarchal system, which sees the male child as a salvation for the future providers of all kinds of securities and

even for the parents and sees the girl as burdens and liabilities, therefore negatively contributed towards total discrimination and family violence in case of girl child.

This is a gender based violence that reflects the current inequality among the relations between men and women, which inhibits the subordination and devaluation of the female in opposition to the male and is present in the form of a symbolic system within the patriarchal structure that denies the rights of women and reproduce the imbalance and inequality between the sexes, it is rightly defined as gender explicit crime occurring within family between persons related through blood, intimacy or law.

The early childhood is an extraordinary age where she first met gender discrimination in various ways. Gender discrimination is to denial their basic human rights such as medical facilities, food etc. Gender discrimination signifies the horrible side of society. Gender biasness is not only invasive for human rights and human dignity, but has emerged as a central crisis in the whole world.

Today, in India the fact is that the women tend to suffer human right abuses in a gender explicit way and it is often underestimated and ignored because there is still an attitude of unwillingness to treat a right of women a human right subject.

In our society, we get specific gender roles that are created socially for men and women, which are hierarchically designed as men who exercise power and control over women. The patriarchies is deep-rooted in social cultural rules and are deeply institutionalized in the law also, it is embedded in the formal beliefs in public discourse.⁷

It is essential to compare and contrast similarities and differences between the factors connecting to gender inequality that feature regularly in cultures with lower or higher rates of violence against females. It has been noted that domestic violence is more in societies with strong belief system about male dominance.

To study domestic violence, it is necessary to study men and women in relation to gender and crime. Generally, most culprits are more likely to be male and suffering women, it clearly indicates that domestic violence is taken by society's gender structure.

Gender Inequality

Gender refers to the social materialization of relationships between women and men. Our concern is to confirm that the difference is not used to victimize against any person or group. The society and state need to eliminate all forms of oppression, subordination and discrimination on the basis of gender. Gender is a socially created phenomenon which refers to the subject of sexual dissimilarities between women and men, which present in every society.

The idea of gender has been addressed in various specific topics such as history, anthropology and literary studies, and each of these topics distinguishes this concept from considering the combination of social and biological factors. The biological dissimilarity between women and men causes a general assumption that women are relatively less intelligent and physically weak than their male counterparts.

The idea of gender, which was developed in the early 1970's is used as an analytical category to establish the biological sex dissimilarities and the methods in which these dissimilarities are employed to allocate conduct and complexes as feminine and masculine. An effort has been made by sociologists and feminists to distinguish between the concepts of 'Gender' and 'Sex'. While the term 'Gender' is a socio-cultural construct, 'sex' has a biological meaning. The aim behind highlighting gender/sex division was to discuss the actual moral or physical significances, in order to understand the patriarchal system in society.

The United Nation Committee on CEDAW accepted that gender centered violence is a type of discrimination which utterly prevents capability of women to enjoy freedom and right on the basis of equality with male⁸.

Due to gender biasness and differences, women are positioned at numerous disadvantageous points. Gender discrimination symbolizes the ugly side of the society which is not only offensive to human rights and human dignity but has also occurred as a main crisis all over the world. The query of gender equality and gender justice is a very longstanding and burning problem because contribution of both the gender is necessary in order to achieve a developed country. It is significant to distinguish the inherent equality, dignity and indisputable rights of all the members of the society which will lay the base of justice, freedom and harmony in the world. In spite of playing chief roles during several phases of her life as a mother, wife, daughter, sister etc and her contribution to the society she is still suffering from exploitation, victimization and discrimination.

Gender discrimination has become a matter of great worry all over the world. Gender differences are to great range products of cultural and social constructions. These social structures are influenced by expectations, roles, behavior, presentations and sometimes to beliefs and values that are particular to women or men. Although gender dissimilarities are influenced by biological constituents, there are socially approved variances and implications that culture assigns them. Therefore, this involves the area of gender differences and it is mainly due to these differences that gender inequality is dominant. One of the key features of gender inequality is social inequality in the distribution of opportunities between women and men.

Although there is no parameter for determining the major dimensions of gender inequality, but many scholars say that it is composed by various sectors like political, economic, educational, legal, health and family system.⁹

Ann Oakley explores the construction of gender, she emphasized that Western cultures have already made a good deal of exaggerating the existing gender differences and said that socially determined sex roles limit the status of a housewife and mother¹⁰.

'The Second Sex' written by the famous French theorist Simon de Beauvoir has emphasized this social stimulating difference in the view that 'there is no birth, but has become a woman'.¹¹ The argument of De Beauvoir marks it clear that gender differences are generated in the hierarchy opposition, where male principles always uphold advantaged position and the women get sidetracked. He blamed God of spirituality and religion for this unsatisfactory and unequal behavior given to females in our society. J. S. Mill an English philosopher from the 90th century, in his essay "The Subjugation of Women" (1869)¹² has also considered that one of the main reasons of gender inequality is to uphold spiritual inequality in the form of maintaining and promoting gender inequality. Mill, who was an empirical, believes that it is impossible to know what a woman is in her own self because nobody has direct insight in her personality.

Therefore, gender inequality has become a usual phenomenon in every area of our society. The U. N. Development Program has indicated in its Human Development Report of 1997 that there are no such zones where equal opportunities and treatment are given to women and men.

Women and men share the same habitation in physical terms, but society does not offer equal privileges and rights to them. Gender plays a very significant role in determining the privileges and rights of a person. Therefore, gender inequality starts with the threshold of family and is widespread throughout the country. The nature of gender inequality in India is complex and versatile because it is present in diverse fields of family, employment opportunities, education, political sector and nutrition, survival and health. In addition to the cultural, social and economic sectors, women have to tackle with inequality in access to health care, education, physical and monetary resources. It is within the four walls of the household that discrimination between women and men is practiced because it is still understood that men are breadwinners and women are born to take care of domestic work.

It is very unsatisfactory that women in Indian villages are considered incompetent to do any work other than the domestic tasks delivered to them. Then, there is gender inequality in education: There are homes in India where parents strongly feel that spending money on women's education is useless because they are not family breadwinners. Instead, the education of a male child is preferred because they will

take care the family economically in the future. As far as employment openings are concerned, gender inequality is also dominant, because in the 20th century, male candidates are given preference to female candidates. As a result, gender inequality confines the wellbeing of the persons and has become a stoppage in the growth of the country.

Women with a weaker sector of society are not only subject to extreme violence outside their households but also inside their households. Domestic violence is old as our civilization; it is not limited to any specific class or any specific country. We celebrate 8th March, as an International Women's Day, but we still see that women are becoming targets of domestic violence and exploitation by male dominated society. According to the U. N. report of 1980, women constitute half of the population, about 1/10 of the world's income, 2/3 of their working hours and 1/100 of the world's property.¹³ These data show that due to gender differences and biasness, women are kept under numerous harmful circumstances.

What is Violence?

In general, violence is a coercive mechanism to declare a person's desire to another person, in order to prove or feel the sense of power. Violence is committed to controlling someone with intent to hurt or humiliate the person. It can be preserved by those in power against powerless people, or to refuse their powerlessness. The power imposed by the state is accepted as valid means of resolving the problematic condition. One of the fundamental elements of violence is that the forced involved is neither legal nor socially acceptable. Any hierarchical structure of the society, where there are categories of main groups and subordinate groups, is certainly accompanied by the harassment of the latter through numerous means- subtle pressure, through the power belief, through mechanism of socialization that reward compliance and punish non- compliance and also through open power. Any person or group is facing the threat of compulsion or being disciplined to act as necessary by another person or group is subject to violence.

Violence against women is an expression of historically unequal power relations between women and men, who has directed the supremacy over and discrimination against women by men and to preventing the full progress of women. Violence against women is one of the most important social mechanisms by which women are forced into lesser conditions compared to men¹⁴. Violence against women is always valid through the arguments of 'culture', because no society is empty of culture. The patriarchal culture essentially recognizes violence as an acceptable, even desirable, attribute of masculinity inclines to de-value women and all attributes considered feminine and thereby dominant into

relations. On the role of women, old philosophical notions of age enter into all the male-female relationships within the four walls of the house, which are considered as the stores of love, warmth and affection.

Violence against women is partly a consequence of gender relations which considers men better than women. Given the subordinate status of women, most of the gender violence is considered normal and enjoys social acceptance. Disclosure of violence includes psychological violence such as physical aggression, such as various intensities, bombs, attempt to hang, sexual abuse and rape, insults, forcibly, blackmail, economic or emotional hazards, and control over speech and actions. In extreme, but not unknown circumstances, death is the final result. These manifestations of violence occur in a man-woman relationship within the family, state and society. Generally, domestic aggression towards women and girls is hidden for various reasons.¹⁵

Due to gender differences and bias, women are kept in various harmful situations. Due to the process of socialization, different roles of men and women. The socio-cultural factory is being connected together with growth and has emphasized violent conduct. Women generally play the role of dependence, surrender to the right, while men undergo the stereo-typed gender role of dominance and control. With this girl child grows up with a constant sense of being weak and in need of shelter, whether physical, social or financial which led to her exploitation at almost every phase of life. The whole life of a woman is based on the safety by the male in the nature.

Domestic Violence

Domestic violence is violence between people in the private sector. The term domestic violence refers to violence among people who are usually bound by law, blood or personal intimacy. Psychologists say that in the safe premises of the domestic walls, people deal with their insecurity and inadequacy by misusing and controlling their lives. The domestic situation usually makes misbehavior very weak and delicate. Since the ancient front, violence on the domestic front has been part of human society. Violence not only involves beating, rape or sexual abuse, it is anything that violates the rights of a person which is considered as human. Violence in the periphery of the house is domestic violence.

In modern legal definitions, the questions of power, domination and control are also explored to discover the intent behind domestic violence¹⁶.

The WHO has defined spouse violence as any conduct within an intimate relationship that causes psychological, physical or sexual harm, including:

1. Psychological abuse such as constant belittling, intimidation and humiliation;

2. Acts of physical aggression, such as hitting, slapping, kicking and beating;
3. Forced sexual relation and other forms of sexual stimulation; and
4. Many controlling behaviors such as detaching a person from their friends and family, monitoring their activities, and limiting their access to assistance or information.¹⁷

The term "domestic violence" has been used with a wide viewpoint, which includes every possibility of violence because it includes all potential and possible forms of sexual, physical, verbal, emotional and financial abuses that can harm, life, safety, limb, or welfare, either mental or physical of the victim. This is very extensive definition and covers every possibility of violence which may be imposed upon woman by the male member.¹⁸

Domestic Violence is in most cases violence against women by the members of the house where she lives. It can be husband, his parents, or siblings or any other resident, who may have excessive or latent latitudes for actions which can cause physical or psychological pain to women. It happens behind the closed doors and often rejected by women, who has been a victim of violence".¹⁹

The concept of domestic violence can be accurately described as follows:

- 1) Domestic violence is a harassment of the woman within the boundaries of the family; a woman can be a married, girl child, elderly or a relationship.
- 2) Violence can be any type of harm psychological, emotional, spiritual, physical, economic etc. It involves not only the physical harm of her body but also the threat or aggressive behavior towards her self-esteem and self-confidence.
- 3) Domestic violence against women is a structural and systematic mechanism of the patriarchal control of a woman. That is built up on superiority of male and women's inferiority.
- 4) Domestic violence occurs in the private sector. House where she expects affection, care, love, warmth and wrongful workers to her family members.
- 5) It is expected to have a sex-conservative role of society to be dominant for men and women should be subordinate.
- 6) It is a gender based violence that replicates the current inequality among the relations between women and men, which inhibits the subordination and devaluation of the female in opposition to the male and exists in the form of a symbolic system within the patriarchal structure. It is rightly described as gender explicit offense occurring within family between individuals connected through blood, intimacy or law.²⁰ Domestic violence refers to the pattern of violent abusive and

overwhelming behavior by a partner in relation to maintain control and power over another person's life.

- 7) Domestic violence as a result of feminist movements is increasing concern around the world. Terms like marital violence, conjugal violence, are used to indicate the violence between partners while other terms like inter-family violence, domestic violence are used to generally contain violence in partners, shown against children, between siblings and usually between individuals who shared a mutual house and live in close relationship.
- 8) Violence against women is the most embarrassing human rights violation. It knows no boundaries of culture, geography, caste, wealth or other. It is a universal phenomenon that is found in different forms and dimensions in developing, developed and undeveloped countries.

Role of gender inequality contributing to the prevalence of domestic violence

The deficiency of gender equality is often cited as the fundamental determinant of violence against women. Declaration on the abolition of violence against women in UN General Assembly, 1993, said that this violence is an expression of historically unequal power relations between women and men. Due to violence against women, gender inequality also reduces the approach of prevention by organizations like World Health Organization²¹ and, in Australia, Vic Health²², as well as much of the research on the topic²³. Hence it has long been understood that gender inequality is a problem, yet proof of the relationship between gender inequality and violence against women has hardly been determined to clarify this connection. Based on the whole framework on the basis that there is a need to improve gender equality in the prevention of violence against women, it is important to summarize and investigate the evidence on this matter.

To achieve gender equality is one of the important goals in preventing violence against women. But, without an current model of gender equality to establish the end product, and a lack of research and statistics around whether some aspects of gender equality are more significant than others in stopping violence, it is difficult to pin down the influence that gender inequality actually has as a determinant of violence against women, in spite of the obvious reasoning in the connection. It seems that the vital component to consider is the gender customs and views surrounding male supremacy and male dominance, generated by power hierarchies that accord men greater position. However, accepting social norms as a major factor means that the issues of measurement and definition become more complex. Then how do we decide that when we have reached the position of gender equality or come closer? How can we include or measure other sources of inequality that add inequality?

In the acceptance of gender inequality as the underlying determinant of violence against women, the implementation of gender equality has become a strategic policy goal in international organizations like many countries and world organization organizations. It is sometimes called "gender mainstream" - the process of updating important concepts to enable the understanding of the world through a gender lens.²⁴ However the benefits of this method are quite obvious in recognizing the effects of gender shortcoming, there has also been some criticism that it fails to recognize other sources of and intersections of disadvantage such as race and class, which may compound gender disadvantage.

Role of gender stereotypes contributing to cultural conditions which support domestic violence

Gender stereotyping and forced adherence plays a major role in battering. Definitely girls are taught to be passive, be nice, accommodating, smile, take care of and be sensitive to other's needs. Beyond "teaching", our culture actively punishes girls who overstep those rules. Such punishment contains social boycott, poor grades in school, ridicule, and often sexual harassment, assault and physical violence. As a result, girls soon learn the value of speaking, freedom and autonomy. Individual females may have these lessons tempered or more harshly imposed by their own specific family members, extended family, neighborhood, teachers and school, but the overall cultural message remains same.

In discussions of gender stereotyping, usually, the issue is raised that men are taught to be tough, not to cry, not to be verbal and not to disclose their feelings. However, this is not the feature of gender stereotyping which contributes to battering. Batterers express feelings of anger, grief, pain and loss. They do cry. Many are extremely clear, motivating and efficient in recognizing and expressing their emotions.²⁵

The idea of male entitlements generated by gender roles is related to domestic violence. Men have been taught via social role modeling and media that they deserve the attention and services of females. Women are required to listen, be helpful, to increase the status of their partners, to meet men's sexual needs and to take care of their children. Traditional gender roles maintain the expectation that women need to cook, maintain and clean the house. Gender roles have created mobility within close relationships, which keeps women as subscribers and men as power holders and decision makers, which is ultimately harmful to women's health and survival. Often, in an abusive relationship, if a woman does not obey these unrealistic and strict expectations, then it is a license to be violent for the male.

These roles are deeply entrenched in many women and men so that it is difficult to expose the amount to which behavior have been affected by socialization.

Some males are struggling conscientiously to divest in the benefits presented to them grounded on their gender. Gender roles are so elaborate and deceptive that women (and men) do not even realize how seriously they affect our behavior. There are males who have chosen non-violence, are actively participating in equal relations with women and are working to challenge male pleasure. It is encouraged that all people play a big role in challenging violence and sexuality.

Women are encouraged with the concept that they are only appreciated if a) they are in or seeking out heterosexual relation and, b) have children. Apart from this, the pressure to maintain a family is clear on many women in our culture. The danger of losing a family is a serious one. Women are taught to believe that they are responsible for their family, and are in charge of its health and welfare. Again, gender roles tell that women are nurtured, cared for and self-sacrificing.

These philosophies work against women who are caught by violent males. When women do what they are taught to do (stand by their man, take care of their children) and then are blamed for living. They are categorized as codependent or masochistic.

Some suffering women live because besides being battered and being women, they are from another historically deprived population.

Laws and policies to promote gender equality

Laws

The Preamble of the Indian Constitution positively endeavors to end gender inequality; it talks about attaining the objectives of economic, social and political justice for everyone and providing equal opportunities and status to all its citizens. Art. 15 provide the prohibition of discrimination on the basis of gender also apart from other basis like caste, religion, race or place of birth. Art. 15 (3) also empowers states to make special provisions for children and women. The Directive Principles of State Policy of the Constitution also provide various provisions for the benefit of women and provide protection against discrimination.

In addition to Constitutional safeguards, the Indian Parliament has passed various protective laws to remove the exploitation of women and give them equal status in society, such as,

1) Sati (Prevention) Act, 1987

The Commission of Sati (Prevention) Act, 1987 was approved by the Parliament in December 1987 to offer for additional effective stoppage of the commission of Sati and its adoration and matters associated therewith. The Commission of Sati (Prevention) Act, 1987 was passed by the Parliament in December 1987 for the extra effective prevention of Sati and for the matters related to it. The Act defines that Sati generally to contain of not only the burning alive of a wife widow with her dead husband, but also of a woman or relative anybody who assists the commitment of Sati by encouragement or widow woman with the body of any other relative or any item related with the husband, participation, inducement in convoys avoiding the widow from saving herself etc., imprisonment for life or death. The abetment of an attempt to commit Sati would be illegal with imprisonment for life in the case of individuals impeached under these crime the accountability of proof that he had not committed the crime shall be on him those sentenced for such offenses shall be barred from receiving the property of the person committing Sati; individuals sentenced under such crimes shall be barred under the Representation of the People's Act, 1951 from the date of such judgment and shall continue to be barred for an additional period of five years after release adoration of Sati.²⁶

2) **Dowry Prohibition Act, 1961**

The Dowry Prohibition Act 1961(amended in 1986), bars any individual for giving and/or taking dowry a punishable offense with a punishment of at least five years in jail and not less than Rs. 15,000 fine or whatever the value of given dowry. However, the act does not prohibit the giving of gifts at the time of marriage with affection by parents or close relatives. Some states amended the provision by decreasing the punishment for taking or giving dowry.

The 'dowry' system is a special feature of the subcontinent, which has become significant portion of the life of women in India of any caste, class or creed. Its origins are deeply engrained, which makes the crime grave one and it is not responding satisfactorily to the law, although strict provisions are made by the state. In this system, giving and demand goes so unknowingly that it increases the possibility of female victimization throughout her life. It is linked to the greedy nature of humans and basically it has nothing to do with social norms, but social pressure is very high and dowry practice goes without any disruptions. The bride's family is supposed to give cash, jewelry and other valuable thing as a gift to the groom's family. Often the bride's side promises to overdue arrangements of dowry. In such circumstances, the bride is often subjected

to domestic violence, if the gift is not made as promised.²⁷ Accepting the fact that this dowry is the source of domestic violence in the marital home, the Dowry Prohibition Act also demands criminalizes the giving or taking dowry, prohibition of advertising, even demanding is crime, agreements for dowry, put ban on advertisement, made the crimes under the Act non-bailable, and cognizable non-compoundable.²⁸

3) Pre-Natal diagnostic Techniques (Regulation and prevention of misuse) Bill,

This act reflects the general form of domestic violence in the form of forcible termination of female embryos. Since ancient times, in India, the terrible legacy of killing the girl child in the crudest type such as adding opium to newborns milk or by suffocating the newborn which is carried on with the assistance of scientific procedures proficiently in a so called sophisticated method. The sex selection is estimated through tests such as Amniocentesis that it is believed that well-educated and well-off households is a depressing condition alarming the future of human being unhappy hence the state has passed the Pre-natal and Pre-conception Diagnostic Techniques Act to control the use of pre-natal identification. Such tests are only allowed for the purpose of detecting some specific abnormalities and disorders.²⁹

The Act was presented in the Parliament in 1991 and was approved in 1994 to prevent female infanticides and many such acts. In this Act, detailed provisions have been made in this Act to restrict the clinics not only to control pre-diagnostic diagnosis techniques organized by various clinics but also to determine the gender of the fetus. Using any pre-delivery diagnostic technique, the task of exposing the fetal gender, is a punishable offense with imprisonment for three years and fine up to Rs. 10,000. Under this Act, every crime has been made cognizable and non-bailable. However, due to the lack of social clearance, it is very difficult for the Police Authority to register any case under this Act unless the people are sensitive to the need for more women in the country to balance the sex ratio.³⁰

4) Special Marriage Act, 1954

Any person related to any community can opt to marry under this Act. Under Section 30 of this Act, 'cruelty' has been recognized as a ground for divorce. Section 36 provides maintenance in the proceedings for marital rights and divorce. Section 37 of the Act provides for permanent alimony. Section 40 of the Act states that the provisions of the Civil Procedure Code shall be apply to the action under this Act.

5) The Hindu Marriage Act of 1955;

The Hindu Marriage Act 1955 deals with features of domestic violence only in the perspective of divorce and judicial separation. The law also deals with maintenance and alimony.

Section 10 of the Hindu Marriage Act permits either party to a marriage to present an application for judicial separation on the same basis as are available for a decree of divorce under Section 13. However, while it is not essential to set out in detail the differences in the relief of divorce and judicial separation, it is satisfactory to say that a decree of judicial separation will not put a termination to the marriage. The basis for both divorce and judicial separation is the same and has been prescribed in Section 13.

6) Hindu Succession Act, 1956

The act provides full ownership rights on the property and woman can make will leaving her property or share to the successors. Section 10 of the Act delivers for the property of an interstate being distributed among the successors in accordance with certain approved rules.

7) The Child Marriage Restraint Act, 1929

Child marriage is a form of domestic violence, which often takes the form of child abuse within the household. Child marriages have been a criminal offense in India with the enactment of the Child Marriage Restraint Act; 1929. It applies to all marriages made in India, including Hindus, Christians, Muslims and Parsi marriages. The Act does not purport to ban child marriage but it simply seeks to restrain them. The court has said that it is not authorized to present child marriage as void.³¹ Instead, it determines the penalties for those responsible for child marriage. This Act keeps a check from the exploitation of minors for money on their parents. This act makes a crime for a girl less than 18 years of age and a boy less than 21 years of age to marry. It makes the offenders to parents and if the husband is over 18 years of age. Under the above Act³² and the civil court under its jurisdiction has the power to issue an injunction to prohibit a child marriage from being performed, in the interest of the child. Failure to adhere to the prohibition is punishable with a simple imprisonment for 3 months or fine with Rs. 5,000 or both.

8) Family Courts Act, 1984

In 1984, an Act was passed to establish family courts in the country, so that quick settlement of disputes related to marriage and family matters can be secured and for matters connected therewith.

9) The Indian Penal Code, 1860;

Section 304 B, 1860 (amended in 1983) of IPC was included for punishing the dowry death a specific crime with at least 7 years of imprisonment and maximum of lifetime. If a woman's death (i.e. bride) is resulted by burn or bodily injury within 7 years of her marriage, and

there is proof that before her death she was subjected to harassment or cruelty by her husband or her relatives. Then, it is supposed that her death was due to her husband or husband's relatives. Section 113-B of IPC and Section 304-B of the Evidence Act has been used to convict those who were able to escape the trial under the Dowry Prohibition Act. Although promoting suicide is a crime under section 306 of the IPC, Section 113A of the Evidence Act makes a similar assumption, if the death of a married woman is seven years of her marriage.³³

Section 498A of IPC mainly addresses cruelty by husband or his relatives. This section defines "cruelty" as any willful behavior which causes a woman to commit suicide or severe physical injury; danger in life, health risk, harasses a woman or her relatives to fulfill the demands of dowry. Crime under this section is non-bailable, compoundable (i.e., the complaint cannot be withdrawn), and cognizable (i.e., it is considered a serious offense and therefore, the case must be registered and investigated needed). Any person who is guilty of doing such acts shall be punished with imprisonment up to 3 years and fine.

Policies

Apart from above mentioned laws, policies also play a significant role in order to get gender equality and appropriate policy may help the women empowerment. The specific policy areas involved in the analysis include civil and human rights, employment, income support and family life, education, health, livelihood, violence prevention and public safety. With a brief summary of Norway and Tanzania, the policy review organized by partners in Brazil, Chile, India, Mexico and South Africa forms the basis of the report. Country Analysis - and additional policy examples from neglected policy fields - shows the diversity of essential policy recipes.

Overall, the need for comprehensive gender equality policies, which should include:

1. *Public safety policies*, including policies of armed forces and police and imprisonment. This contains policies that make the public security tool a force for safeguard and not of harassment, that take seriously women's accounts of violence, that implement policies to decrease and penalize sexual harassment by armed forces, that hold soldiers and police responsible for acts of gender-based violence, and that train soldiers and police in protecting the rights of females, males and children. These policies should include gender based vulnerabilities and realities of imprisoned men which is the majority of prison population worldwide.

2. *Education policies*, containing early childhood education, make schools spaces where female students are free from sexual violence and sexual harassment, and where male students are free from victimization and violence from other students. School curriculum should also be examined and questioned for orthodox views about girls and boys. These policies should mandate precise activities to encourage gender equality from early childhood education through tertiary education, engaging men and boys in suitable methods. Early childhood education policies might contain, for example, efforts to recruit more boys to work in childcare, efforts to eliminate gender stereotypes from early childhood educational toys and materials, and efforts to deliver both mothers and fathers with information on child growth.
3. *Health policies* that implement satisfactory stoppage pointing women and men based on gender-specific realities and needs; that emphasis suitable consideration on how social customs related to masculinities prevent men's health- and help-seeking conduct; that offer provider training in the gender-specific requirements of women and men; and that offer primary, secondary and tertiary care with an understanding of salient rules connected to masculinities.
4. *Human rights policies* that guarantee legal security and equality for women and men, containing particular groups of weaker men, for example, non-heterosexual men, people with disabilities and marginalized ethnic sections. This means that providing legal protection for particular groups of men, especially gay and transgender men, containing civil unions and all appropriate family laws and civil code provisions. It also means executing policies to end exemption for those who commit homophobic hate offenses.
5. *Integrated gender-based violence policies* which contain primary prevention pointing boys and men; policies to include boys and men in creating public places free of violence for girls and women; programs for male culprits that are integrated with the judicial area; controls over alcohol sales; implementation of gun control; and legal, monetary and psychosocial supports for survivors of violence, both men and women. Policies that promote financial and social empowerment of women meet with attempts to include men to end gender-based violence.
6. *HIV/AIDS, reproductive and sexual health and rights policies* that involve gender in the development of the program and understand how power dynamics, stigma and financial marginalization leave men and women weak, and how HIV-related shame plays out in gender-specific methods, keeping women and men from getting tested, seeking antiretroviral treatments, communicating with their partners and remaining involved in their communities and families;

sexual and reproductive health policies (SRH) that involve men in supporting their spouses in contraceptive use, that encourage use of male ways, that deliver a full choice of SRH services containing pregnancy termination and that include other reproductive requirements, containing infertility treatment.

7. Engaging men as caregivers and fathers, containing in *maternal and child health policies*, containing parenting education courses, paternity leave policies and policies to promote men's involvement in prenatal care, maternal health and during childbirth. Publicly supported paternity preparatory courses and information campaigns focusing on the roles on men in the lives of children can provide strategic opportunities to address the feelings of the father and help men to get gain to themselves for more involvement in family life.
8. *Livelihood and poverty alleviation policies* that identify the roles of men and women, which identify different family configurations, containing the needs and realities of migrate and single-parent families. Women's financial empowerment policies and programs are one of the success stories in the international growth and gender sector, giving women many benefits, comprising evidence to lessen the vulnerability of women for gender-based violence. But the financial empowerment of women is not adequate if men are not also involved in collective decision-making at the domestic level and in taking on a greater role in caregiving in the household, and if the financial disempowerment of some groups of men is not also recognized. Without this viewpoint, policies can increase the burden of women in the home without asking much of men in their roles as partners and parents. Similarly, the place of work can be a place where gender equality can be encouraged for the benefit of women and men.

Domestic violence Act: prevention and a holistic approach

Treatment/relief available to a woman for a married woman in India in the pre-2005 era was only in the form of divorce, separation and maintenance under marital laws. The personal laws of Hindu, Christian, Muslim, Parsi, nobody has given the right to live in a married house, which eventually became the root cause of her vulnerability and the main reason by which it is possible for a woman to get out on the street or blackmail her to agree with an unfair compromise.

However remedies under criminal law were limited only to the trial and if possible to prove outside reasonable doubt a possible conviction of the respondent. There was a provision in the name of 'cruelty' to penalize domestic violence that it does not protect women from violence in a relationship

which is not marital in nature. Under the Criminal Law, relief does not provide anything like shelter, custody etc. The provision was not enough to support the law on losing the support of the family to friends, friends and relatives. The prosecution provides very little space to measure or reflect the needs of the victims. To prove the crime beyond reasonable doubt, the robustness of the criminal law system produces high burden on the victims. The practical experience of the victim about police machinery was that they refuse to file a complaint under this provision and instead recommend reconciliation.

Hence as there was no precise law defining domestic violence that broadly reflect women's experience of violence in intimate relationship, no particular cure under the civil, criminal, matrimonial law on residence right and as the criminal law do not permit a space for any compromise, all these failures in our legal system strongly recommend a different remedies within the title of single law.

The Domestic Violence Act, 2005 is the first major effort to identify domestic violence as a punishable offense. It provides emergency relief to victims besides legal provisions and enhances their provisions for live-in relations.

Legislative History

Since the early 80's women groups are cruising to bring effective laws to answer domestic violence. In 2001, lawyer's collective prepared "Domestic violence against women (protection) Bill", it takes into account many widespread forms of violence against women and girls within the family and for security orders for women. It proposes a mechanism to contact the court, to prevent further violence and to ensure that they do not have to leave their homes.

A wide range of discussions among the representatives of many NGOs such as the NHRC, Lawyer's Collective, the National Commission for Women and the Ministries of Home Affairs, Health and Family Welfare, Elementary Education, Social Justice and Empowerment, Justice and Legal Affairs and Legislative Department for many years led to the drafting of Bill, which was demanded to meet the existing difference in legal framework.³⁴

The safety of women from the Domestic Violence Act, 2005 was implemented by the Government of India on October 26, 2006. The Act was passed by Parliament in August 2005 and was agreed by the President on September 13, 2005³⁵.

The Statement of Objects and Reasons for passing PWDVA2005

PWDVA 2005 law has been brought in to improve the situations of Indian women in human rights viewpoint, so that provide them security for the protection from violence and cases related to violence or incidental within the four walls of household. The Constitution adopted by the country and the

International Instruments guarantee to give real justice to women, the current law is an attempt to legalize the underlying sentiment of such a guarantee. The occurrence of domestic violence is widespread but it has been largely invisible in the public domain and at present, where women were subject to cruelty by their husbands or their relatives, they were punished under Sec.498A of the Indian Penal Code, but the civil law was reckless behind Therefore, the Act seeks to deliver for the following.

1. It shelters those females who are or have been in a relationship with the culprit where both parties have lived together in a common household and are related by marriage, consanguinity or through a relationship of the nature of adoption or marriage. Even females such as mothers, single women, sisters, widows, or living with abusers are also eligible for legal protection under the law.
2. It delivers many rights to women such as rights to live in a married home, safe housing or rights to share the home despite title or rights.
3. It authorized the magistrate to pass the protection orders in favour of victim in order to protect her to respondent from any act of domestic violence, entering the workplace or another place frequented by the victim.
4. It defines the expression "domestic violence" to contain physical abuse threat that is sexual, verbal, emotional, physical, or financial in nature. Harassment by manner of illegal dowry demands to the women or her relatives would also be protected under the Act.
5. It provides the registration of non -governmental organizations as service providers and appointment of protection officers for providing assistance to the aggrieved person with respect to her medical examination, safe shelter obtaining legal aid, etc.

This Act has 37 classes, which have been widely divided into five chapters (Section 1 and 2, protection of women from the Domestic Violence Act, 2005), such as:

Chapter I deals with initial and definition partion, it comprises Sections 1 & 2.

Chapter II deals with the full and broad definition of domestic violence under Section 3.

Chapter III deals with duties and powers of service providers, protection officers, etc. under Sections 4 to 11.

Chapter IV deals with procedure for obtaining relief orders under Sections 12 to 29.

Chapter V deals with miscellaneous provisions under Sections 30 to 37.

SALIENT FEATURES OF THE PWDVA 2005

Secular law

The act is a significant breakthrough in the history of women empowerment in India due to two reasons. First of all, the country has taken a major step in recognizing domestic violence as a violation of human rights, which cannot be ignored by any civilized society. And secondly it is a civil law in theory and criminal in practice, at one time, civil and criminal treatment oriented law. This is a secular law that provides more effective solutions to the victims of domestic violence to fulfill the constitutional mandate.

Law to protect woman in every relations

It not only prevents women in marital relations, but also protects women in all domestic relations, and prevents lacunas in previous legal remedies. It provides comfort to women in any home for the first time in the country, wife, mother, sister, or even for the first in India, it provided security to females in live-in relation and also to married women.

A civil law

That law is known as a civil law, which delivers remedies and compensation to the victim. PWDVA 2005 is focused towards providing support and compensation to victims of women, not just to punish the culprit. This is the law which is sufferer driven and it does not need the state to begin e.g. 498A, where the state is a party and the victim has to be dependent on police and prosecution for implementation. It can be put in to motion by the victim by direct access to court claiming help another feature for conceptualizing it as a civil law because it restores the agency that rightly belongs to her, redefines the damage so as to recognize her to be battered.

Identification of Domestic Violence as Targets

This law identifies that women's rights are not violated in their capacity as partners and are only due to the dowry associated cruelty, but daughters, sisters, as well as live-in partners. This makes a chief break-through in identifying the reality of violence which occurs in life of women and seeks to deliver cures. Earlier it used to mention the stories around the married women.

The Act has made significant progress in understanding the word of domestic violence, which has been given the most liberal and comprehensive perspective, which is enough to include every possibility in the context of women in the Indian context. It includes all types of physical, sexual, verbal, emotional and financial abuse, which may harm the health, safety, mentally or physically harmed person, can cause harm and may be in danger. Defining domestic violence, the law cured all irregularities in previous laws and kept the current relations culture in Indian scenario. The Act delivers criteria for the assistance of the

judiciary to decide the act of violence in the realm of definition. It has been explained with examples that for the purpose of physical abuse, sexual abuse, verbal and emotional abuse and financial abuse and for the purpose of determining whether the respondent has any act, omission or conduct of the accused constitute "domestic violence" under this section the discretion of the judges with all the whole facts and situations to be taken in to consideration is final³⁶.

For the first time in India such a very intensifying meaning is considered by the legislature and even verbal emotional and economical abuse is brought within the purview of description. This enclosure itself is proof of the forward- thinking strategy of framers. Second advance of the Act is in its accepting of the term 'aggrieved'.³⁷ The Act for the first time deep-rooted it security to 'any woman' in domestic relations and cover the chance of safeguards to women in informal relations and identifies live-in relations and now a woman in such relation can also take remedy to the provisions of act. The law safeguards women in a marriage termed invalid in law or bigamous marriage. Now it takes away the option of protection by a man to disposes her or to deny maintenance to the victim women. Third significant understanding of the idea of domestic relations³⁸ and shared household³⁹ the relationship between two individuals who live or have lived together in a shared home associated by consanguinity, marriage or even relations by adoption or in the nature of marriage like relations is recognized under the this law. As formerly when under the 498A provision, complaint was filed the most obvious method of cutting in support system of women was to pitch her away out of home. The Act now takes all such possibilities in to concern and held a house where the victim women lived in domestic relations either individually or with accused is termed as shared home. In a joint family the term is considered regardless of the fact that accused has any right, interest or title or not.

Provided strong Implementation mechanism

For active execution of the Act precaution is taken to create the authorities in the name of police officers, protection officer and also for active involvement of the public spirited individuals and associations such as Service Providers and NGOs. The NGOs who are functioning for rights of women can get themselves registered under the Companies Act with the state government as a 'Service Providers.' They are allocated the responsibilities to record domestic incident report, forward it to judge, get the victim person medically examined and confirm that the victim person is provided shelter in the shelter home if required. The Protection Officer⁴⁰ is the instant responsible authority created under the Act. They are public servants responsible to victims of domestic violence. They are anticipated to support

the victim in all respect, through filing cases, supporting the court, making accessible every support system work for victim in need.

Under the Act, the appointment of the protection officer in keeping view of the realities of ground, where legal systems and procedures are not accessible to most women. This law has conceptualized to be more victims focused with immediate relief and simple procedure. The Act has not only created the officers but has also given them work and powers in the act and have made them responsible by fixing their duties and have been subjected to penal provisions, if failed in their duties. This is a warning to the incompetent authorities to follow their duties.

Easy access to justice

This Act has provided simple non-technical process to relieve the sufferers. It's not mandatory for the victim to go and lodge a complaint but anybody who has a cause to believe, that an act of domestic violence is likely to be committed or has been done or being may give information to the protection officer. The complaint may be from the victim, the security officer or from anyone on her behalf, it can also be registered by the doctor. The technical process in the process is completely absent in this Act. Courts are also time-bound to complete the proceedings and final settlement within 60 days. Under the Act, provision of camera proceedings is also provided. The availability of counselors at any stage of the hearing can help the parties resolve this matter. This act has appealed for post-order proceedings within 30 days⁴¹ (Section 29 of PWDA 2005). Under the Act, several channels of communication have been set up for victim under the law and it is dependent on the victim women to choose more suitable for her such as protection officers, lawyers, police, service providers or magistrates etc.

Recognition of external agency/ support system

The Act provides the external agency to assistance the victim of domestic violence along with the state. It is first time that help of the non-state entities is so significant in the effective execution of the law. The service provider those are registered under the Act, authorized in the following ways.

- 1) Any direction given by external agency/service provider to shelter home would make it compulsory to provide shelter.
- 2) Any direction given by them to a medical facility would make it mandatory to provide medical services to victim women.
- 3) DIR (Domestic Incident Report) made by them has the legitimacy and would take a place of civil-equivalent of FIR.
- 4) Act gives them protection for acting in good faith.

Too many rights and reliefs under one roof

The victim oriented law provides treatment and relief to give immediate and prompt remedy to the victim, the Act has made it clear that the judicial authorities have a comprehensive discretionary right to provide relief and to recognize the rights of victims in such a way that they should not be denied from justice. Immediately after receiving the complaint of domestic violence, the court shall ensure the victim to provide relief with 'Protection Order'⁴² (Section 18 of PWDVA 2005) against the respondent. The purpose of this order is to give women free space from fear and violence. Where she can evaluate her options and choose best course of action for herself to save her future. These types of facilities make it immediate emergency law for the victim. If the accused is troubling the aggrieved in the peaceful living in a shared home, the '**Residence Order**'⁴³ to imprison the accused from disposing the aggrieved or disturbing the possession of shared home, regardless of his legal inequitable interest within. When the victim is scared for the respondent, the court may give custody of the children in the interest of the victims during the pendency of the application and even the accused can be deprived of visitation rights if it is in the interest of the children under the '**Custody Order**'.⁴⁴ '**Compensation Order**'⁴⁵ is issued when the court is of the belief to grant compensation to the victim for damages for injuries. The victim of domestic violence is also secure with the financial relief and the remedy to the victim under any other criminal or civil court is not banded.

The law is passionate in providing numerous remedies and rights to the victim and it is also path breaking in woman empowerment movement, though, with the gaps in the existing system, could not demonstrate as a finest result. But while drafting the law, the review of the success or failure of previously legislations so far and the practical assessment not made available. Hence there are some chances of failure of the Act. There are also some dark areas which can obstruct the effective execution of the Act and also the laudable object of the Act providing effective remedy to the victim may be in danger. Therefore some points of criticism can help to overcome the condition and give a method to thought provoking for the society and beneficial for the state.

Conclusion

Violence and gender inequality are the significant issue in India, which are not secret but prevailing in the society. Because of the patriarchal society that has been established in India, women of our society become mostly victim of it. After 72 years of independence, India becomes worse in terms of violence against the women.

Women of our society are always on thresholds and passing through the narratives of rapture, which criticized their self-esteem. Violence and gender discrimination are a challenge for today's India and it becomes the responsibility of every citizen of India to look and think seriously on this matter, otherwise the day is not far away that we will again enter the age of struggle.

According to feminist scholars, domestic violence is embedded in gender and power and represents the active efforts of men to preserve dominance and control over women. The outcomes presented here show that both of these descriptions are valid. Elements of structural environment—especially age, sex, race, and educational and income resources are related to domestic violence. However, these structural characteristics should not affect the violence of men and women equally. Gender interacts with structures of violence, marital status, and socio-economic status so that power can be affected in relationships and propensities for domestic violence.

Gender theorists argue that femininity and masculinity are not individual characters but related to social structure created through social practice. In addition, gender theorists argue that the construction of a masculine identity is more tough and uncertain than the building of a feminine identity. Furthermore, adult men are more often worried with forming gender difference than are adult women because they need to demonstrate that they are not feminine in order to be considered actual men.

Domestic violence is one of the chief forms of violence touching Indian women, and this phenomenon has a grave influence on the health and well-being of the women as well as the lives of other family individuals.

Domestic violence is widespread in India and 34% of women aged 15-49 are experiencing some form of violence within the family. This violence is strengthened by misogynistic social structures and broader patterns of gender discrimination that are dominant throughout the country. However, domestic violence is widely recognized as the appearance of patriarchal social structure and unequal sex power relations, whereas women's health and welfare, other family members and also the level of local and national development have serious effects. .

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