

Domestic Violence Act: A Decadal Experience of Failure

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Abstract

Domestic violence is understood as Physical, verbal, visual or sexual abuse that are experienced by women or girls as threats, invasion or assaults and that have the effect of hurting her, or degrading her and /or taking away her ability to control contact with another individual.

Generally crime against women is committed by Husband, former husband, boyfriends, other members of the family such as parents, siblings, progenies (son/daughter) and in laws.

Domestic violence is highest (43%) of all crimes against women. If the dowry related crime is included, the percentage is 52%. It shows that crime against women is more committed by the well known and near relatives of the women. Crimes committed by the unknown are comparatively less.

On one hand patriarchal norms preach that the women should confine to homes for their own safety. However the crimes against women start at these homes committed by their own relatives.

Despite the stringent nature of the domestic violence prohibition act, domestic violence has not reduced. Law enforcing agencies have failed to curb it. Domestic violence is a global phenomenon cutting across culture, religion, class, country and ethnicity. In India, attempts to discuss the domestic violence outside the confines of homes, or reporting to the police are met with vilification, character assassination and other forms of social retribution.

Domestic violence is attributed to low levels of education, pecuniary motives of husband and in laws, alcoholism, victim's inability to conceive, victim's economic status, as a disciplinary mechanism to enforce matrimonial sanctity, to deny women's adult hood rights, to ensure that the property is transferred only to the rightful heirs of a monogamous matrimony etc.

However the law enforcing agencies have failed to implement the domestic violence prohibition act in its true sense. Both police and judiciary are responsible for this.

It calls for the following policy implications..

1. There is a need for sensitization of the police against domestic violence
2. Recruiting more women police
3. Enhancing opportunities for literacy of women and giving a fillip to the women's education
4. Improving the sex ratio and maternal mortality rate that is directly related to respect for women

Merely a law is not adequate, a complete change in the attitude of the society to treat the women as a human is required. Domestic violence should be treated as a different crime

phenomenon in relation to other crimes committed against women. It needs a different approach to deal with.

Police agencies as well as women in the police force presumably employed to help women, have not only failed to help the victim of domestic violence, but also thwarted her efforts to seek justice. However it is also true that, socio cultural interventions like empowering women, restoring respect for women in society and reducing criminalization of society enable them in obtaining justice.

Violence against women is an obstacle to the achievement of equality, development and peace. violence against women is a 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, and the violence against women is one of the crucial social mechanisms by which women are forced in to subordinate position compared with men.

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Domestic violence against women is generally committed by Husband and other members of the family such as parents, siblings, progenies (son/daughter) and in laws

Legal Position:

The phenomenal growth of crime against women has attracted the attention of the international community. The International organisations took a serious look at the epidemic called “domestic violence”. The Vienna Accord of 1994, and the Beijing Declaration and the Platform for Action (1995) felt the necessity for a proper law on this burning issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination against Women (CEDAW) asked the member nations to enact a proper law for dealing with the mischief of domestic violence.

In India, although the criminal law deals with domestic violence in the form of Section 498-A IPC, but there was no provision in the Civil Law to deal with the said problem. In order to get rid of the mischief of domestic violence, the Parliament, in its wisdom, enacted the Act, which came into force on 26 October, 2006. The Act is a social beneficial piece of legislation, which should be given as wide and as liberal an interpretation as possible.

In 1983, domestic violence was recognised as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman. Four types of cruelty are dealt with by this law:

- Conduct that is likely to drive a woman to suicide,
- Conduct which is likely to cause grave injury to the life, limb or health of the woman,
- Harassment with the purpose of forcing the woman or her relatives to give some property, or
- Harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.

The punishment is imprisonment for up to three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf.

Specific legislation:

In view of growing violence against women it was decided to make a separate law on domestic violence. Protection of Women from Domestic Violence Act-2005 was introduced in India for the speedy disposal of the cases with victims who faced cruelty by husbands or relatives. Though the Act stipulates disposal of cases within 60 days, in reality, it takes nearly six months and sometimes more than two years. For the helpless women who fight for existence and survival, such long duration of the trials will obviously dampen their spirits (whatever left) and she is likely to give up, say the experts.

In this particular Act, unlike its predecessor 498A, the victim can directly file the case with the protection officer in charge of a particular district, who will in turn move it to the magistrate court, without the aid of an advocate. The service of an advocate is needed only during the later trials.

Forms of "cruelty" recognised by the Courts

- Persistent denial of food,
- Insisting on perverse sexual conduct,
- Constantly locking a woman out of the house,
- Denying the woman access to children, thereby causing mental torture,
- Physical violence,
- Taunting, demoralising and putting down the woman with the intention of causing mental torture,
- Confining the woman at home and not allowing her normal social intercourse,
- Abusing children in their mother's presence with the intention of causing her mental torture,
- Denying the paternity of the children with the intention of inflicting mental pain upon the mother, and
- threatening divorce unless dowry is given.

Crimes against women:

Among all registered cases of serious crimes against women, the largest share was under "cruelty by husband and relatives". While 36 per cent of all cases were registered under this category, the next largest share was "assault on women with intent to outrage her modesty" (24 per cent), says a new report for the Ministry of Statistics and Programme Implementation, titled 'Women and Men in India - 2015'.

Domestic violence is highest (43%) of all crimes against women on one hand patriarchal norms preaches that the women should confine to homes for their own safety. However the crimes against women start at these homes committed by their own relatives despite the stringent nature of the domestic violence prohibition act, domestic violence has not reduced. Law enforcing agencies have failed to curb it.

The first thing we need to understand is that a large part of domestic violence can never be seen. Not only because one cannot have eyes and ears inside people's homes but also for the large part, domestic violence is actually invisible. Most women claimed that while there were times when their husbands beat them physically, the real and lasting pain came from mental torture. Making fun or abusing the members of the woman's family, taunting physical appearance, repeated humiliation before community or guests – all have a serious bearing upon the health and wellbeing of the woman.

Domestic violence is a global phenomenon cutting across culture, religion, class, country and ethnicity In India, attempts to discuss the domestic violence outside

the confines of homes, or reporting to the police are met with vilification, character assassination and other forms of social retribution

Factors responsible for the domestic violence:

Domestic violence — also known as domestic abuse, intimate partner violence or abuse — may start when one partner feels the need to control and dominate the other.

Abusers may feel this need to control their partner because of low self-esteem, extreme jealousy, difficulties in regulating anger and other strong emotions, or when they feel inferior to the other partner in education and socioeconomic background.

Some people with very traditional beliefs may think they have the right to control their partner, and that women aren't equal to men. Others may have an undiagnosed personality disorder or psychological disorder. Still others may have learned this behavior from growing up in a household where domestic violence was accepted as a normal part of being raised in their family.

A partner's domination may take the form of emotional, physical or sexual abuse. Studies suggest that violent behaviour often is caused by an interaction of situational and individual factors. That means that abusers learn violent behaviour from their family, people in their community and other cultural influences as they grow up. They may have seen violence often or they may have been victims themselves. Some abusers acknowledge growing up having been abused as a child.

Children who witness or are the victims of violence may learn to believe that violence is a reasonable way to resolve conflict between people. Boys who learn that women are not to be valued or respected and who see violence directed against women are more likely to abuse women when they grow up. Girls who witness domestic violence in their families of origin are more likely to be victimized by their own husbands. Although women are most often the victim of domestic violence, the gender roles can and are reversed sometimes.

Alcohol and drugs may contribute to violent behavior. A drunk or high person will be less likely to control his or her violent impulses toward their partner, so keeping such drinking or drug use episodes to a minimum may be valuable for a person living in a domestic violence situation. Social scientists consider dowry as a major reason for increasing domestic violence. Education levels, pecuniary motives of husband and in laws, Victims inability to conceive, Victim's economic status also Cause domestic violence.

Failure of law enforcing agencies:

Law enforcing agencies fail to deal with cases associated with the Domestic violence at any stage including

- Lodging complaint in the police station
- Investigation by the police
- Conviction in the court
- The factors at these stages are as follows –
- The number of cases filed in a court shall be directly proportional to the police strength
- Indian police is commonly known for verbal and physical abuse when dealing with the citizens. It prevents the women from complaining a case
- Inclusion of more women in police force can reduce this problem. It will have a positive impact on the investigation and filing of cases in the court
- Number of DV cases filed in the court is directly related to the number of women in the police force.
- Generally women do not approach the law enforcing agencies due to the lack of knowledge, lack of resources

- Lack of courage, determination and intelligence to be able to lodge an FIR and help the police in collecting requisite evidence to file a case in a court.
- Indian Judicial Process is extremely slow and it requires considerable preparedness to put a fight against one's own relatives
- Most of the courts are located in the towns and cities that require the women to travel to the cities to pursue their cases.
- Court work requires basic paper work. Without fundamental literacy it is not possible
- Rurality of women is negatively related to the filing of cases of crime in a court of law and their conviction
- Education enables women to file cases and improves their economic security
- Higher economic security is expected to inhibit the domestic violence
- Lesser the literacy lesser is the cases filed and convictions in the DV cases
- The societies where there is no respect in the family, community and society, the rate of reporting is less against the DV
- Sex ratio is positively related to the filling of cases and convictions in the cases of crime against women
- Where there is criminalization of state (reduced regard for the laws and their enforcement) the rate of reporting the DV conviction in the DV cases is less
- Patriarchal nature of police men who considers beating women as a legitimate instrument to discipline a wayward or a lazy wife. They advise the victim for a compromise

Policy implications:

- There is a need for sensitization of the police against domestic violence
- Recruiting more women police
- Enhancing opportunities for literacy of women and giving a fillip to the women's education
- Improving the sex ratio and maternal mortality rate that is directly related to respect for women

These aspects concludes that –

Domestic violence should be treated as a different crime phenomenon in relations to other crimes committed against women.

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