

“The Anecdote of Two Pandemics”

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ABSTRACT

The plight of a women initiates right from the inception, being subjected to feticide and infanticide, continuing throughout her life in the form of child sexual abuse, acid attacks, rapes, dowry death, molestation etc. This predicament of women is never ending. One such heinous acts against a woman is Domestic Violence. Man and women both play a significant and equal role in the development of a family all together. The domestic abuse deprives a women from her socio-economic progress. This paper aims is a verifiable study of the serious offence of domestic violence along with in-depth analysis of its scope and ambit with the help of various judicial pronouncements. The role of the various enactments and studies and its implications on the enhancement of the lives of the women have been discussed adequately in the paper. The paper in particular aims at studying the current scenario of domestic violence which has severely increased manifolds due to the outbreak of Covid-19.

Keywords: - Domestic violence, Abuse, Covid-19

The spread of Covid-19 pandemic has impacted our lives significantly, leading to lockdowns and stay at-home directives, globally. And while the entire world currently battles against the spread of COVID-19 pandemic, women and girls across the globe are struggling against another pandemic, Domestic Violence, which is a sad reality in our society. The cases of domestic violence have surged exponentially in various countries after the Covid- 19 lockdown. Unfortunately, India is no exception. According to reports by Nation Commission for Women, the instances of domestic violence reported during lockdown have increased twofold. Regardless, the condition of woman in India has always been perturbing and distressing. While on one hand they are put on a pedestal and worshiped as Goddesses, at the same time they are subjected to constant atrocities and oppression. Surprisingly, women and young girls face a higher risk of lives and violence at their households, which is meant to be their safe haven. Home, no more a sweet home. Even when the law ensures equality of law to all to both men and women still for some of the women their homes have tuned into torture chambers.¹

Domestic violence is nothing but a product of patriarchy and misogyny. The patriarchal society, the distribution of powers and even the gender norms which include stereotyping of gender roles, which are deeply rooted in our society treating women as a secondary gender and which in turn proves to be a major factor for a male to believe that he has the authority to dominate a woman, maltreat her and subject her to cruelty. Therefore, gender inequality, predominance of male in our society and women being looked upon as not at par but inferior to men gives rise to instances of domestic violence. In India, particularly, preference of male child, various age-old customs which govern our beliefs and traditions, strains of poverty, addiction to narcotic substances and alcohol have further worsened the scenario and contributed to the problem.

Ministry of Health and Welfare in collaboration with the International Institute for Population Sciences (IIPS) conducts National Family Health Survey (NFHS) which provides us data on various indicators of health and welfare for different states throughout India, respectively. According to NFHS 2015-2016, 42% of men believed that it is justified for husbands to physically assault their wives; and 52% of women feel that it is their destiny to be beaten up by their husbands. But what comes as a shocking revelation is that as per UNICEF's "Global Report Card on Adolescents, 2012, 57% of adolescent boys in India believe that it is reasonable for

¹ Kira I. Assessing and responding to secondary traumatization in the survivors' families. Torture 2004;14:38-45

husbands to hit their wives. Undoubtedly, people in our society still suffer from regressive mindset in this day and age, which is a serious concern as it will hinder the progress to reduce gender-based violence in our country.

Now, with the nationwide lockdown, imposed on 25th March, 2020, everybody is forced to confine themselves within four walls, making the situation even worse. To add to their woes, the victims are now locked in at their households, trapped with their abusers. The strained finances, stress of cut in salaries or losing jobs or loss at business has added to the stress in the families, cultivating more violence against women and girls. The National Commission for Women (NCW) Chief, Rekha Sharma, attributed the rise in number of domestic violence cases during lockdown period to the fact that men now, stay at home and take out their frustration on women and refuse to participate in domestic work. As per the data provided by the commission, 239 domestic violence complaints were received between March 23 and April 16. The highest number of cases being reported in the states of Uttarakhand, Haryana, Tamil Nadu, Punjab, Uttar Pradesh and Bihar.² In one of the instances reported to NCW, a girl was beaten up by her parents and forced to get married. In another instance, a man seeking help for his sister complained that she was being beaten by her in-laws. In many instances, women were beaten and then locked out of their homes. In various instances, along with physical assault, women were also subjected to emotional and verbal abuse.

The Protection of Women from Domestic Violence Act, 2005 (herein after referred to as Domestic Violence Act, 2005) is the piece of legislation which affords a civil remedy to the victims against their abusers. It was enacted in furtherance of the recommendations of the United Nations Committee (CEDAW). This act not only provides protection to the wife or female live-in partner from domestic violence by the husband or male live-in partner or his relatives, but also to all females living in a household, such as sisters, widows or mothers. In the case of Sandhya Manoj Wakhade vs Manoj Bhimrao Wakhade³, the Supreme Court held that the word 'relative' shall include the female relatives of the husband or male live-in partner. While the ambit of domestic violence is often confined to physical violence, the act provides for an extensive definition of Domestic violence. It is defined under Section 3 which includes "actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic". The harassment caused due to illegal dowry demands to the woman or her relatives also falls within the meaning of this definition. Thus, this legislation comprehensively provides for wider forms of violence against women.

The relief is, however, only available when the victims choose not to suffer in silence and seek recourse. According to NFHS 2015-16, one-third of women in India has experienced domestic violence but less than one percent of these victims have sought any sort of help. Most of them believe that it is their destiny to be beaten up but what they fail to understand is that they are born equal in the eyes of law and that law treats them as an equal citizen of the country. The Constitution of India, which is considered as Supreme law of the land, has guaranteed certain fundamental rights to all the citizens of the country, irrespective of their gender. Article 14 confers the right to equality and equal protection of law; Article 15(1) prohibits discrimination based on discrimination on the grounds of religion, caste, sex, race, etc., However, Article 15(3) permits the State to make special provisions for benefits of certain classes of persons, including women and children and article 21 provides for right to life and personal liberty except according to procedure established by law. Right to life guaranteed under article 21 also includes right to live with dignity. The Domestic Violence Act, 2005 has been enacted pursuant to Article 14, 15 and 21 of the Indian Constitution, and together they try to protect the rights, uphold the dignity and ensure the welfare of the women.

² Soma Basu, A parallel pandemic as domestic abuse victims trapped with their abusers, THE HINDU, April 20, 2020

³ Sandhya Manoj Wankhade vs Manoj Bhimrao Wankhade & Ors, (2011) 3 SCC 650

In the case of Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan⁴, the Supreme Court has held that right to life under Article 21 of the Indian Constitution is inclusive of right to live with human dignity and which in turn includes the right against being subjected to sexual acts which are humiliating in nature. It was also stated that the right against being insulted is also a part and parcel of right to life. The definitions of sexual abuse as well as emotional abuse mentions the two facets mentioned above respectively. The conception of emotional abuse as a kind of domestic abuse marks to be a praiseworthy aspect of the legislation. The legislation also recognizes sexual abuse suffered by a wife by her husband as a form of violence, which is not recognized by IPC as an offence.

In the case of Chameli Singh v. State of U.P.⁵, Supreme Court went further and it was held that right to shelter was included under the ambit of right to life. The Domestic Violence Act, 2005 at the same time has led to enforcement of this right to shelter under sections 6 and 17 of the Act. As per section 6 of the act, the Protection Officer must render help to the victim by providing an accommodation, where in the request is made by the aggrieved party or otherwise. The Section 17 of the act grants right to reside in the shared household to the woman, whether or not she has rights or titles in that household.

Many European countries have proactively dealt with this situation. For instance, in UK the government has launched “safe space” initiative, wherein the domestic abuse victims can access safe spaces at boot pharmacies across the country. In Spain, woman are allowed to violate the lockdown restrictions to report an abuse. If a woman needs to register any complaint she can go to a pharmacy and ask for “Mask 19” which works as a code for the Pharmacist to contact the authorities. Similarly, the Government in France has set up pop-up centers in grocery shops so that the woman can drop a complaint while buying groceries without alarming the abuser. The government is also providing hotel rooms to domestic violence victims who are seeking shelters. Even in Italy, government has launched an app where the victim can contact the police without making a call. The governments have come up with new ways to tackle with the surge in domestic violence cases during lockdown.

In India, many state governments have set up online complaint links and many helplines are made operational. The NCW launched a WhatsApp number to report cases of domestic abuse. Along with the number, many online complaint links, helpline numbers and emails have also been shared. The commission has also set-up a special team to scrutinize these complaints and deal with the cases of domestic abuse on fast-track basis. But not all women in India have access to resources. And considering the current situation, with the movement restrictions the channels to file complaints have been narrowed down to few options. Large number of cases are not being reported as many women lack resources while others fear the backlash by their abusers since they are locked in together. Many women are unable to register their complaints or reach out to police even if they want to. Therefore, it is the Indian government who needs to put safety of women and young girls first and walk the extra mile. The Supreme Court has held that every citizen in India shall be granted right to speedy trial under article 21 of the Indian Constitution⁶. As we are well aware that Justice delayed is justice denied, thus, the domestic abuse cases must be dealt immediately. The government needs to come up with alternative ways to ensure the effective implementation and administration of domestic violence laws and to tackle with the horrifying surge of domestic abuse cases. Also, awareness and persuasion are the most significant keys to deal with lack of courage amongst the women to stand up for themselves. Therefore, the Government, NGOs, and other agencies, who are working for the welfare of the underprivileged sections of the society, must work together in this hour, both in urban and rural areas. Certain pop-up and legal aid centers must be established in places where it is convenient for women to

⁴ Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, (1997) 11 SCC 123

⁵ Chameli Singh v. State of U.P, 1996 (2) SCC 549

⁶ Hussainara Khatoun & Ors. vs. Home Secretary, State of Bihar, 1979 AIR 1369

register their complaints and seek recourse, like grocery stores, pharmacies. The police as well should keep a check on the women who have been victim of domestic abuse in the past.

In the case of Francis Coralie Mullin v. Union Territory Delhi, Administrator⁷, the Supreme Court held that any act which permanently or even temporarily damages or injures or interferes with the use of any limb or faculty of a person would be well within the meaning of right to life under Article 21. Thus, right to life under Article 21 guaranteed by the Indian Constitution grants the right to be free of violence. Ignorance of existing laws which are enacted for upliftment and welfare of women in India and the non-retaliation by women has made the condition of women in the society even worse. The victims of domestic abuse who have accepted their fate and choose to suffer in silence are equally responsible for fostering domestic violence.

The outbreak of Covid-19 has created a global health crisis and has proved to be one of the greatest challenges faced by the entire world. But every government must prioritize the safety of women and young girls while it responds to the pandemic. The UN Secretary General, António Guterres has rightly stated that together we can prevent violence everywhere from war zones to people's home as work to beat Covid-19.

⁷ Francis Coralie Mullin v. Union Territory Delhi, 1981 AIR 746