

## “Remnant nature of Domestic Violence and Covid-19 lockdown in India”

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Structural violence internalised through socialisation tending to limit domestic violence as a ‘private matter’ is long hammered into the patriarchal system. The Dowry Prohibition Act, 1961 was the beacon for the struggle faced by women in recognising their rights, which was yet inadequate and biased with its misinterpretation and non-implementation of laws. With dowry and other types of cruelty done against women, lack of aspiration and motivation towards the cause from concerned authorities intensified the campaigns run for women’s rights in the 1980s. Focus on violence in both matrimonial and natal homes came to light along with rigid mentality regarding the gender of the perpetrator. The Protection of Women from Domestic Violence Act, 2005 although practical and desired does not free itself from the gender biasness reserved only for women and its blind eye towards violence faced by men. Yet the Act was implemented when innumerable cases of dowry deaths and other forms of atrocities flooded the country and the victims could avail easy and simplified justice which seemed to be a commendable experiment. Is technology a solution for the victims of domestic violence or fragment of the problem?

Protection from Domestic Violence Bill 2001 has phrases like ‘habitual assaults’ and ‘make life miserable’ which seems to connote that the occasional beatings is a part and parcel of marital life with reference taken from Section 2 (viii) of the dissolution of Muslim Marriage Act, 1934. To entitle a women relief from the perpetrator, there needs to be an evidence of cruel or barbaric treatment and nothing less otherwise the vague and ambiguous legislation falls short on its measures.

Clause (2) of Section 4 of the same Bill gives the perpetrator an upper hand over the victim by excusing any act done in self-defence. Mode Code of US provides certain exceptions to this rule like causing physical harm to another household member rather than the victim, creating the fear of physical harm and coercing a family member to engage involuntarily in sexual activity. With regards to mandatory counselling by the Bill for the abuser and/or the victim at the direction of the Magistrate, the latter can avail for such aid only when requested. Any sort of compulsion for the victim would recreate the Peruvian model in India leading to the destruction of the victim’s integrity by reliving the trauma. No victim would relish negotiation with one’s abuser.

The victim can get monetary relief<sup>1</sup> along with protection orders against one’s any commission of such acts in the future granted by the Magistrate. The lawmakers fail to understand the consequences of exclusion of immediate provision for relief as well as expenses for shelters or safe houses, food, clothing and medical treatments. Research into actual implementation has shown that many districts do not have even one shelter home. The

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<sup>1</sup> Lalita Toppo v. State of Jharkhand & Anr., 2018 (3) ACR 3411, 2018 (II) OLR 1026, (2018) 4 RCR (CRIMINAL) 976, (2019) 13 SCC 796.

perpetrator with respect to the protection order is supposed to stay away from the places and modes of communication connected with the victim. The abuser along with being put under the surveillance of the Protection Officer of the area, may be directed by the Magistrate to participate in a program for intervention for abuses or psychiatric or psychological treatment.

The Protection of Women from Domestic Violence Act (PWDVA), 2005 enshrines the principles of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), ratified in India in 1993. Section 2 (q) of the PWDVA 2005 where the word “respondent” referred to an “adult male” which was contradicting Article 14 of the Indian Constitution has been radically replaced to accommodate a more dynamic way of thinking<sup>2</sup>. This inspired Section 2 (a) of the same Act to be struck down as well in the order passed in Mohammad Zakir vs. Smt. Shabana and Ors. 2018 where the High Court of Karnataka held that a request under the Domestic Violence Act by the husband or a grown-up male can be engaged. Gender neutrality with respect to physical abuse, mental abuse, verbal abuse and economic abuse carried out by either men or women on other men or women is upheld.

There has been positive changes with respect to the definition of the ‘aggrieved person’<sup>3</sup> which now includes married women or women in relationships in the nature of marriage.<sup>4</sup> This has broken the social taboos related to the reservation of reliefs being confined only to the legal wives based on the sacramental value of a marriage and not otherwise. It has set the wave for a ray of hope and socio-political changes in the country. Section 11 of the Act delivers various duties of the government in curbing this menace with provisions laid down for effective publicity, protocols and co-ordination between services and concerned authorities facilitating it. It is the personal obligation of the husband to offer maintenance to his wife under the Act<sup>5</sup> and not doing so is a continuing offence where the wife is not debarred to seek help even if the limitation period of 3 years is exhausted squashing Section 12 of the Act.<sup>6</sup>

The indifferent approach of the state since time immemorial labelling it as a ‘household matter’ and not a social issue has not really been the cure to many wounds. Moreover due to higher proportion combined with lower political-social and economic decision-making, the women are stuck in abusive domestic relationships where the magnitude of their peril has increased during the lockdown due to the Covid-19 pandemic.

Section 498-A of the Indian Penal Code (IPC), 1860 has provided penalty for wrongdoings on women but is also subject to criticism. It does not include the term ‘dowry’ but there is reference to ‘unlawful demand for property’ and it redefines cruelty by including mental torture. The phrase ‘grave injury’ in its text does not measure the cumulative nature prolonged violence and therefore ignores the everyday violence suffered by women.

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<sup>2</sup> Shashikant Laxman Kale And Anr vs Union Of India And Anr, 1990 AIR 2114, 1990 SCR (3) 441

<sup>3</sup> Hiralal P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165

<sup>4</sup> D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469

<sup>5</sup> Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and ors., 2015(6)MhLj455

<sup>6</sup> Anthony Jose v. State of NCT of Delhi, (2019) CRILJ 800, 2019 (3) CRIMES 69 (DEL)

Section 304 B of the IPC deals with penalty related to dowry death. It is very hard to shift the burden of proof on the accused as in most cases neither records are maintained nor complaints are made at the time of meeting dowry demands while the victim was still alive. Unlike Section 498-A, this provision is valid only for a period of first seven years of marriage and not further so as it considers this period to be the most appropriate duration for death due to dowry harassment. With its limited scope for domestic violence, provisions in the IPC fail to understand that violence leading to death is not always due to dowry or that abetment leading to suicide of the victim can also be a key element.

Despite strict laws<sup>7</sup>, setting up of women police stations, family counselling cells etc., many women meet disappointment and hostility when they seek help. Section 156 of the Criminal Procedure Code (CrPC) empowers the police officers to enquire about cognizable offences like the ones under Section 498-A and Section 304-B of the IPC without waiting for a specific complaint or even if the need arises a registration under Section 154 of the CrPC would do the job, yet their reluctance is gregarious.

The rejection of dying declarations based on inconsistency of facts by the judge in some cases, questioning the mental soundness of the victim as well as the credibility of the doctor in his/her certification creates loopholes in the delivery justice. There are also instances of the victim's fidelity being tested, relaxation in giving punishment to the accused, and the length of trials and withdrawal of cases in large number all making way for leniency towards domestic violence.

During the lockdown caused due to the corona virus outbreak, threats of abandonment and the fear of contracting or transmitting the deadly ailment has become the tool for many perpetrators to isolate the victim from their family and friends. National Commission for Women (NCW) has registered nearly 587 violence complaints through its Complaint and Investigation Cell between 23<sup>rd</sup> March and 16<sup>th</sup> April 2020. With the economy of various places toppling down, the victims would be forced to continue abusive relationships. Complaints through e-mails, online portals and social media will limit the access of relief availed by victims to only those who are technologically enabled.

Men, women making up the majority of the victims, with LGBTQ face elevated rates of domestic violence but during crisis, gender-based violence increases. During the lockdown, shattered stereotypical ideologies of the demarcation of roles and statuses between males and females and the conflict between partners and their bruised egos is a magnet for violence.

According to World Health Organisation, one out of three women experience physical or sexual violence in their lifetime, with even a lesser number of victims actually reporting their plight. According to a survey conducted by the Indian Psychiatry Society, within a week of the lockdown, the number of mental illness in India has risen by 20 percent. Future mental health crisis in the country would owe its existence to unemployment, alcohol abuse, economic hardship, domestic violence and indebtedness all intermingled together.

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<sup>7</sup> Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705

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