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Gender Equality: Need for Criminalizing Domestic Violence against Men in India

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In a caring society, protection for every sect of the society is inevitable. No State can claim itself civilized if it refuses or fails to ensure equal protection of its subjects on any ground. State while framing the laws should always cater for the society's evolving gender dynamics and the need to ensure equal participation and equal protection for everyone. When both men and women aim at allowing the breach of patriarchal notions that are embedded in society, with an intent to ensure a more inclusive legal framework, the need for gender-neutral legislation can be reflected. A gender-neutral approach in-laws would allow the victims of domestic violence irrespective of their gender identity to redress their grievances, without any feeling of being left out or discriminated against due to their gender identity. The traditional notion of men being perpetrators of domestic violence and women as victims of domestic violence has led to a biased approach against men, thereby subjecting them to double calamity. As rightly said by David Lisak 'The biased use of pronouns serves to perpetuate the culturally biased myth that men are perpetrators and women are victims'. This myth is extremely damaging to the millions of male victims of sexual and physical abuse who live unacknowledged by our society.

Keywords: *domestic violence, equal protection, equal participation, discrimination, patriarchal, gender-neutral, gender dynamics.*

INTRODUCTION

To align with international standards, India has ratified several International as well as Regional Treaties that voice gender equality and elimination of discrimination against all. India is a country that has a long history of male dominance and where gender neutrality as to legislation remains a long-cherished dream of people, the need for considering the evolving gender dynamics is very crucial. The Government from time to time puts forth efforts to ensure proper representation and participation of women in all the forums of decision-making, which resulted in a paradigm shift over the years from a patriarchal-rooted society to a society that allows equal participation of both men and women in all the affairs of decision making. However, this paradigm shift can be seen due to the enactment of the legislation, The Protection of Women from Domestic Violence Act, 2005¹. The very legislation has undoubtedly played a significant role in protecting women from domestic violence and upholding the lofty ideals and international mandate of the Convention on Elimination of all kinds of Discrimination against women. Over the years, the Protection of Women from Domestic Violence Act has become a tool of social justice ensuring protection for women only regardless of their religious beliefs and background. However, the need to criminalize domestic violence against men equally stands important in order to protect the men from being subject to domestic violence by the other spouse and to ensure a more inclusive legal framework for domestic violence against any person.

LEGISLATIVE GAP

As rightly observed by Kimmel M in his book, 'Male Victims of Domestic Violence' opined that 'Domestic violence is one of the major problems and men also suffer from domestic violence at the hands of their wives or intimate partners. Efforts to prevent domestic violence and its successful implementation have followed years of research and advocacy on behalf of their victims. New laws, police procedures, and medical and forensic research have improved the conditions of men who suffer from domestic violence. In recent years, domestic violence has become a hot topic among activists, individuals, and many organizations. After decades of

¹ The Protection of Women from Domestic Violence Act 2005

research, many political activists are now shouting at the top of their voices that both men and women can be the victims of domestic violence in roughly equal numbers. Despite several studies that have suggested that only women can face domestic violence at the hands of men, the other 100 empirical studies suggest that the victims of domestic violence can be both men and women. This has provoked the enthusiastic ‘male gender activists’ that policymakers should keep in mind regarding the policies related to domestic violence who made policies and laws mainly focusing on women’.²

Whenever the incident of domestic abuse occurs, women are usually presumed innocent and men as perpetrators of the crime. But in some cases, the situation differs where women are the perpetrators and men are the victims of domestic violence. This means when a woman is a victim of domestic abuse, she is financially as well as physically and mentally supported, assisted and aided by the service providers. Also, the women who have been subjected to domestic violence are provided free legal aid services, with which they can safeguard and protect their life and property. However, the situation for the men is totally different. Men who have been subjected to domestic violence are not given any support or assistance nor their claims are duly addressed by the authorities. Like women, men are also abused either physically, mentally, emotionally or even financially. Thus, hampering their harmonious development and quality of life. Meaning thereby, that the benefit of Presumption of innocence is given to only women in domestic violence cases and men are always deemed to be perpetrators and accomplices. Furthermore, such miscarriages in providing justice to men who have been victims of domestic violence, also result in clear-cut violations of Article 14³, and Article 15⁴ which aim at equality and strike at discrimination and arbitrariness. Also, the Right to life and personal liberty of a man is compromised by treating him as the perpetrator of domestic abuse.

The Protection of Women from Domestic Violence Act, 2005 is the only specific legislation designed to protect the rights of women who have been subjected to domestic violence in India. Section 2 (a) of the very Act defines the ‘Aggrieved Person’, who can claim the benefits under

² The Equality Committee of the Department of Education and Science, *Male Victims of Domestic Violence: A substantive and methodological Research Review* (2001)

³ Constitution of India 1950, art 14

⁴ Constitution of India 1950, art 15

the Act and men are excluded from the purview of the protection given under the Act. Also, Section 3 of the very Act, defines different types of domestic abuses, shielding only women from those abuses and leaving men with no protection. Furthermore, prior to the enactment of 2005 legislation, the Indian Penal Code by virtue of Section 498 A⁵, specifically dealt with cruelty and harassment by husbands or their relatives against wives, therefore, lacking any corresponding provisions for women. Overall, it can be said that initially prevalence of violence was low in India as compared to other countries following low levels of reported violence against men, societal pressure to prove masculinity, and remaining silent about abuse for fear of shame, and limited awareness. However, in recent years there has been an unexpected surge in domestic violence cases related to men. There are a lot of non-governmental Organizations like Save Family Foundation, Men Welfare Trust, MAVA India etc that aim to provide gender equality. These organizations work to highlight men's rights and the importance of their contribution to the social hierarchy. Such organizations caution the authorities related to the misuse of various legislations against men, but their voice always remains unheard matter.

STATISTICS

International and Indian Position: As also acknowledged by the World Health Organization, marital violence acceptability is among the highest in the world with 52% in women and 42% in men⁶⁷. Globally, Indian wives rank 3rd in beating their husbands with the United Kingdom and Egypt leading the race. According to a Survey of 1000 married men aged between 21 to 49 years in rural areas of Haryana showed that 52.4% of married men have been once in a lifetime subjected to domestic violence by the other spouse. Among all the abuses, Emotional abuse marks the highest level at 51.6%, accompanied by physical abuse at 6%. The National Family Health Survey of 2004, indicated that approximately 30 million men in India face domestic violence both physical or verbal either from the wife or the wife's relative⁸. Also, the Save Family

⁵ Indian Penal Code 1860, s 498A

⁶ Ministry of Health and Family Welfare, *National Family Health Survey (NFHS-4)* (2016)

⁷ Priyanka Garg et. al., 'Trends and correlates of intimate partner violence experienced by ever-married women of India: results from National Family Health Survey round III and round IV' (2021) 21(2012) BMC Public Health <<https://doi.org/10.1186/s12889-021-12028-5>> accessed 29 June 2024

⁸ Ministry of Health and Family Welfare, *National Family Health Survey (NFHS-3)* (2006)

Foundation⁹ and My Nation¹⁰ collaborated on a study that interviewed approximately 1,650 married men aged between 15 to 49 as to domestic violence and the findings from the very study highlighted that these men had experienced various forms of violence including economy abuse (32.8%), emotional abuse (22.2%), physical abuse (25.2%) and sexual abuse (17.7%). At the international level, Studies have shown that the occurrence of spouse violence stood at 51.5% in India which is notably greater than figures obtained in research conducted in the US, Canada United Kingdom, where it was recorded at 19.3%. Having regard to these studies and research, still India has no provision that safeguards men from intimate partner violence. The subsisting lack of recognition of domestic violence against men still prevails and remains an unacknowledged subject by lawmakers. No due effort is put forward to address such a big issue which is on so much surge. As per the recent statistics, it revealed that in India, spousal violence against men stands at 29 per 1,000. The proportion of currently married women committing spousal violence against their husbands varied from 2 per 1,000 in Sikkim to 90 per 1,000 in Tamil Nadu in NFHS-4. It was observed that the prevalence of spousal violence against husbands increased rapidly in the majority of the States, except Sikkim, Goa, and Mizoram, from 2005-06 to 2015-16. The prevalence of violence against husbands was higher in nuclear families (34/1,000) compared to non-nuclear families (28/1,000); higher among those who live in the poorest households; who were exposed to TV (31.4/1,000), or working and getting paid in cash (43/1,000) than those who were not working. The researchers noted that the prevalence of violence against husbands was higher among those women whose husbands consumed alcohol (56.1/1,000) when women were afraid of their husbands (31.4/1,000), who had childhood exposure to parental violence (66.9/1,000), husbands displayed increasing marital control behaviour¹¹.

In 2015, 1,33,623 suicides in India were reported, of which 91,528 (68 per cent) were by men, and 42,088 were by women. Of the 86,808 married people who committed suicide in 2015, 64,534 (74 percent) were men, according to data from National Crime Records Bureau (NCRB). Out of

⁹ 'Home' (Save India Family Foundation) <<https://www.saveindianfamily.org/>> accessed 29 June 2024

¹⁰ 'Home' (MyNation Hope Foundation) <<https://mynation.net/>> accessed 29 June 2024

¹¹ Aparajita Chattopadhyay et. al, 'Prevalence and risk factors of physical violence against husbands: evidence from India' 56(2) (2023) Journal of Biosocial Science <<https://doi.org/10.1017/S0021932023000196>> accessed 29 June 2024

60 males, 25 (2.5%) experienced physical violence in the last 12 months. The most common form of physical violence was slapping (98.3%) and the least common was beaten by weapon (3.3%). Only in one-tenth of cases (seven males), physical assaults were severe. In all cases, the spouse was responsible for physical violence. The total prevalence of gender-based violence was found to be 524 (52.4%) among males. The majority (51.6%) of the subjects experienced emotional violence followed by physical (6%), then sexual violence (0.4%) by any female. The overall prevalence of emotional, physical, and sexual spousal violence 112. In a large study of Navy recruits (1,307 men and 1,477 women), 32% of men and 47% of women reported using some form of physical aggression against an intimate partner¹².

JUDICIAL STANDING

Although a plethora of cases highlighting the need for criminalising domestic violence against men were listed before the Supreme Court of India, still no fruitful result has been harvested so far. The courts of the land are still relying on the narrow and rigid definition of Aggrieved person as demarcated in Section 2(a) of The Protection of Women from Domestic Violence Act, 2005, which excludes males from being Aggrieved of domestic abuses. The faith and belief of a man in judicial institutions who has been subjected to domestic violence by an intimate spouse gets degraded and destroyed by allowing the perpetrators to roam freely as innocent and the innocent ones to be labelled as perpetrators.

CONCLUSION

To conclude it can be said that taking into consideration the modern legal conceptions of human rights, making domestic violence a gender-neutral subject would reinforce India's deep and intrinsic commitment to upholding human rights. It can be inferred that the notion that men are treated as perpetrators and women as innocent still prevails. Such an unethical notion leads to a legal disparity between men and women and fails to achieve the goals of the Constitution itself that embraced equality among all as part and parcel of the Constitutional mandate. The legislature should intervene to enact comprehensive legislation that encompasses protection for

¹² Suzanne C. Swan et. al., 'A review of research on women's use of violence with male intimate partners' (2008) 23(3) Violence and Victims <<https://doi.org/10.1891/2F0886-6708.23.3.301>> accessed 30 June 2024

both genders against the rising menace of domestic violence. It can also be said there is a positive and effective role that the Judiciary can play while deciding the cases of domestic violence and interpreting the statute in a way that ensures social justice for all regardless of gender identity. Apart from this, the Government and other authorities should amend modify or align the laws in consistency with the modern and civilized ethos and demands, so that no gender feels marginalized or left out in the society. It can be said that from the above-highlighted statistics, the absolute legislative gap and judicial lacunae, it is inferred that the present government should introspect into the matter and every endeavour should be made to protect men as well from the rising domestic violence instances.