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EXPANSION OF DOMESTIC VIOLENCE AND ITS LAWS IN INDIA

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ABSTRACT

The range of Domestic Violence is not only limited to India but also all over the world. Women are more probable to be victims of domestic abuse. The issue of domestic violence in India arises due to gender discrimination. Both males and females are still not treated equally which maximizes the occurrence of such offenses. The count of cases related to domestic abuse is increasing due to non-awareness of the laws among women. Research reflects that over-drinking alcohol by men is the biggest source of Domestic Violence in opposition to women. Through this article, we will deeply study the meaning of Domestic Violence, the categorization of several types of abuse against women, the main factors behind the rise of domestic abuse against women, and so on. Certain types of laws which are based on the concept of Domestic Violence are also covered under this article, for instance, the Protection of Women from Domestic Violence Act, 2005, Section 498 A of the Indian Penal Code, etc. In a conclusion, I have presented some of the measures which are needed to be improved to decline the scope of Domestic Violence. I have also presented my view that there must be more laws meant for both men and women equally to diminish violence.

Keywords: domestic violence, gender discrimination, women, violence

I. Introduction

Domestic Violence can be expressed as a cruel dominance by one individual over another. It comprises creating a good height of fear in the minds of the partner with whom he/she is upholding a relationship. They usually present

their superiority by reflecting on various sorts of abuses. There are many divisions of abuse for instance, sexually-oriented, psychological, physical torture, economic, etc which can be adopted by a person to commit domestic violence. Such offense is not limited to a social issue but also proved to be a heavy cause of infringement of human rights. According to the United Nations, abuse is the sexual, psychological, and economic acts that are executed by having treatment that manipulates, humiliates, or terrorizes someone³¹. Domestic Violence is not only restricted to the spouses but other family members also found to be its target. Mother, sister, or any sole woman who belongs to the same family may also be part of it. Therefore, it can be stated that it is not mandatory that domestic violence only covers the intimate family members but other remaining members of the family can also get trapped in its network. The report from BBC³², reveals that a man named Kenneth Melville had abused his girlfriend in several ways and eventually assassinated her brutally.

In 2022, about 6900 complaints relating to Domestic abuse occurred which is comparatively higher than the records of last year³³. In 2021, UP records the highest number of complaints about 55% with 11% in Delhi and 5% in Maharashtra³⁴.

³¹ UNITED NATIONS, <https://www.un.org/en/coronavirus/what-is-domestic-abuse#:~:text=Abuse%20is%20physical%2C%20sexual%2C%20emotional,%2C%20injure%2C%20or%20wound%20someone> (last visited March 11, 2023).

³² BBC NEWS, <https://www.bbc.com/news/uk-scotland-tayside-central-64391024> (last visited March 11, 2023).

³³ INDIATIMES, <https://timesofindia.indiatimes.com/india/over-6900-domestic-violence-plaints-filed-by-women-in-2022/articleshow/96839600.cms> (last visited March 11, 2023).

³⁴ *ibid*

II. Kinds of Domestic Violence

In *Bhartiben Bipinbhai Tamboli v. State of Gujarat*³⁵, the classification of Domestic Abuse got clarified. Domestic violence is divided into Physical Violence, Sexually Oriented Violence, Psychological violence, and Emotional Violence.

A. Physical Violence

Physical violence includes the use of brutal force against a female to cause a bodily injury. Biting, smashing, using the weapon to kill her, abusing her children, torturing her during sexual intercourse, forcing her to depart from her matrimonial house, etc got covered in the physical violence.

B. Sexually Oriented Violence

Sexual abuse of women is extremely terrible as it includes the use of heavy violence by a man during sexual intercourse. Under this, a female is involuntarily pushed into the sexual relation or any other weird acts. She is treated very badly by calling her names regularly and hitting her with weapons during the commencement of a sexual relationship.

C. Economic Violence

Economic violence is not same as the physical violence. It includes harassment of women in monetary terms by neglecting her and her children to provide the basic resources for a standard living such as garments, edible items, and so on. Neither, she made open to any work with the aid of which she can meet her general expenses of a day. Her intervention in household resources got negligible. She also made isolated herself from her goods or any capital including jewelry items which they have their possession.

D. Psychological Violence

This type of violence does not comprise the use of any physical damage. In psychological abuse, women usually got exposed by the man

perpetually. This resulted in the insult of the women which give them mental illness in the form of depression and other stress-related problems.

III. Causes of Domestic Violence

A. Psychiatric Disorders

Due to mental instability, a person commonly starts to commit harassment to his partner for the sake of his relief. These people used to reflect their complete dominance on the sufferer in reaction to their heavy annoyance or anger. This gives birth to abuse.

B. Insufficiency in Education

Incomplete education is one of the leading factors which give rise to Domestic Violence. In the current scenario still, there are the large sections of people in India who fails to adopt even primary education. Therefore, it is extremely crucial for everyone, that they must inherit basic education so that they must understand the reality of the world. If we view it from the angle of the offender, then a good amount of education may help them to understand the consequences of Domestic Violence. This would reduce the complaints regarding Domestic Abuse. From the view of victims, basic education may help them to evaluate the behavior of the abuser, they can learn the techniques of self-defense if they are under Violence. So, education plays an immense role in influencing the victim or an abuser.

C. Social factor

In some places, society has surrounded a culture that pays less supremacy to the status of a woman, this maximizes the probability of domestic abuse or molestation. According to the data from UNICEF, the highest number of girls and boys (15–19 years) are abused in Sub-Saharan Africa due to the change in the attitude of the society³⁶. In other words, social

³⁵ *Bhartiben Bipinbhai Tamboli vs State Of Gujarat & 3* on 20 September 2016.

³⁶ UNICEF, <https://data.unicef.org/topic/child-protection/violence/attitudes-and-social-norms-on-violence/> (last visited March 11).

issues arise when the position of a female is not equal to the position of men in some places.

D. Presence of abuse in the Historical Background

The persons who were abused or molested formerly have great chances of transforming into an abuser shortly. They become capable of adopting the same cruel behavior through which they have gone through in their past or childhood. The bad treatment in history may frame them as the wrongdoer of a similar offense i.e. Domestic Violence.

E. Falling image of self-respect

Abuser under this circumstance commits violence against their victim to settle their frustration which emerged with the sense of their falling prestige in society.

IV. Laws linked with Domestic Violence in India

In India, there is separate legislation that deals with Domestic Violence in the form of the Domestic Violence Act, of 2005³⁷. According to the Section 3³⁸ of the Domestic Violence Act, 2005, any act, omission, or conduct laid by the respondent to threaten, injure or abuse the woman sexually, economically, physically, or verbally to a woman account for the offense of Domestic Violence. This act is meant to protect women from sexual, physical, and other kinds of violence. Moreover, it also provides a list of rights for a woman who has isolated herself from her family due to the occurrence of Domestic Violence. In the case of *D. Veluswamy v. D. Patchaiammal*³⁹, the court stated that the same provisions of the Domestic Violence Act, 2005, would apply to the concept of live-in-relationship also. In *Sandhya Wankhade v. Manoj Bhimrao Wankhade*⁴⁰, the question was raised on the term 'Respondent' which only covers males as an abuser, but additionally, the

court said that the respondent could also be the relatives of the husband who are females.

Section 498 A⁴¹ under the Indian Penal Code, states that if a husband or any relative of a husband of a woman imposes cruelty on her, then he can be sentenced to up to 3 years of jail. A fine may also be charged.

The emergence of the Domestic violence act, of 2005 arise from Article 253⁴² of the Indian Constitution. According to this article, Parliament can introduce a certain number of laws to promote international compliance. The Committee of United Nations had passed its proposal regarding the protection of a woman from violence, in reaction to which our Parliament framed the legislation which is known as the Domestic Violence Act of 2005. There are some fundamental rights under the constitution that upheld the validity of the Domestic Violence Act of 2005. Article 21⁴³ of the Indian, Constitution mentions the right to life and liberty. It means that none's liberty would encroach except the procedure established by law. There are various prescribed rights under Article 21 which denote the Right to Life, for instance, the right to free legal aid, the right to shelter, the right to live with human dignity, etc. It also includes the Right to be free from Violence. In *Francis Coralie Mullin v. Union Territory of Delhi*⁴⁴, Supreme Court held that any sort of action caused by someone which results in injury or physical damage to someone, then it would be violative of the 21 Article of the Constitution. The right to be free of violence is adopted by the elucidation of physical abuse which is one of the factors related to Domestic Violence. In *Chameli Singh v. State of U.P.*⁴⁵, it was held that the right to shelter would fall under the umbrella of Article 21 through the Right to Life. Whereas, in *Gauri Shankar v. Union*

³⁷ INDIA CODE, https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf (last visited March 11).

³⁸ Protection of Women from Domestic Violence Act 2005, section 3

³⁹ *D. Veluswamy v. D. Patchaiammal*, (2010)10 SCC 469

⁴⁰ *Sou. Sandhya Manoj Wankhade vs Manoj Bhimrao Wankhade & Ors* on 31 January, 2011

⁴¹ INDIA CODE, https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=562#:~:text=%5BW%20whoever%2C%20being%20the%20husband%20or,also%20be%20liable%20to%20fine (last visited March 11).

⁴² Constitution of India 1950, art. 253

⁴³ Constitution of India 1950, art. 21

⁴⁴ *Francis Coralie Mullin vs Union Territory of Delhi*, 1981 AIR 746, 1981 SCR (2) 516

⁴⁵ *Chameli Singh vs State Of U.P.* on 15 December 1995

of India⁴⁶, the issue based on the displacement of the tenant was raised but gradually section 6⁴⁷ and section 17⁴⁸ of the Domestic Violence Act, of 2005 reactivated this right of women. According to Section 6 of the Domestic Violence, 2005, it is the responsibility of the Protection officer to arrange a living settlement for the aggrieved party in case it does not have any place to reside. Section 17 further speaks that, it is a right of a woman to reside in a shared household, does not matter that she has no right, title, or any interest in it. *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*⁴⁹, it was held that the Right to Live with Human Dignity is also the right of a woman which mentions that, a woman should not remain under the dominance of anybody. They must remain free from any kind of violence or abuse, especially emotional and sexual abuse.

Article 14⁵⁰ of the Constitution, promotes Equality before the Law and Equal Protection of the Law. It ensures that there would be no arbitrariness in terms of Discrimination, but it permits the classification for the sake of legislative tasks. Classification under article 14 may be done but keeping in view two factors i.e. Intelligible differentia and rational nexus between the reason for making classification and the motto of the classification.

In Article 15⁵¹ of the Constitution is meant to stop discrimination based on religion, race, caste, sex, etc. But this article under its sub-clause 3 instructs the state to frame special legislative acts for particular classes such as women and children as women were not treated equally to the status of men in the past. They were the sufferers of domestic abuse.

V. Conclusion

⁴⁶ Gauri Shankar v. Union of India, 1995 AIR 55, 1994 SCC (6) 349

⁴⁷ Protection of Women from Domestic Violence Act 2005, section 6

⁴⁸ Protection of Women from Domestic Violence Act 2005, section 17

⁴⁹ *Ahmedabad Municipal Corporation vs Nawab Khan Gulab Khan & Ors* on 11 October 1996

⁵⁰ Constitution of India 1950, art. 14

⁵¹ Constitution of India 1950, art. 15

The evolvement of Domestic Violence emerges due to the abnormal pre-conceived notions of Society. In earlier times, the position of women in the eyes of society was not identical to the status of men. This was the reason why only females remain more vulnerable to such offenses. Still, in modern times, women are harassed in several ways. Presently, women are not only the victims of such offenses but men are also found its sufferers. Men are also often molested in some places. This scenario may be seen in same-sex marriages. Therefore, the laws which are against domestic abuse should be circulated well to alert society. One of the biggest challenges arises when such laws are not severely executed in the country due to carelessness. Prescribed punishments should be given to the offender, the proper spread of knowledge must be conducted through certain government programs, training camps should to arranged for all to face the situation of Domestic Violence, etc.

In my opinion, society wants some more laws which would treat both men and women with equal attention in the situation of offenses like Domestic Violence. The Domestic Violence Act of 2005 founds to inclined more toward the sides of women which needs to be improved. This improvement would ultimately support equality with fairness in terms of gender.

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