
Domestic Violence : Endangering Institution of Marriage

Dr.Savita Nayyar

Sr. Assistant Professor,

Department of Law , University of Jammu, Jammu

Abstract

Violence is an act of aggression by which one person asserts one's will over another to prove or feel oneself powerful. Violence against women is a manifestation of historically unequal power relations between men and women and also one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. Domestic violence is one of the worst forms of violence faced by women in their homes and by their own people on whom they are physically, emotionally and financially dependent. In this form of violence ,women suffer in silence as they have little support to fight against this evil as in many cases it is considered as normal wear and tear of family life. Earlier this problem was handled under different laws but now special law to deal with this problem i.e. Protection of women from Domestic Violence Act is enacted. This law lays down number of provisions to deal with this problem but this evil is increasing day by day. As this is more prevalent in matrimonial relationship so people may be scared of married life and especially children who are also witness to this on daily basis which may effect their psychology and they may lose faith in the institution of marriage or may resort to same practice. In this backdrop the paper makes an attempt to explain that domestic violence is dangerous to the institution of marriage and if not checked properly in time may lead to erosion of institution of marriage.

Keywords: Violence, Domestic violence, Women, Matrimonial relationship, Institution of marriage.

Introduction

Domestic violence against women is one of the major areas of concern both at the national and international level. Women have suffered the most, because of the sudden loosening of the social rope over the conduct of men. The reason is obvious. In the modern process of socio economic evolution she finds herself holding the wrong end of the line. All along, the women have mainly concerned themselves with the finer aspects of the social life like culture and art and also these human qualities which raised the society from a purely materialistic conglomeration to a well knit social edifice based on cherished ideals. They were never concerned with the material aspects of life like providing bread and comfort for the body. Obviously, therefore, with the coming into the forefront of these very aspects as a result of the progress achieved by science and with the relegation of higher values to the background, the women have been left behind in the race of life and have become a butt of exploitation by men. The most unfortunate aspect in the developing situation is that they have not only been left behind but at every step strived hard to make them conscious of the helplessness of their situation and thus making them feel physically as well as psychologically inferior. As a result they have not only become the object of exploitation but are also not left with any will to defend themselves or to catch up with men. That is the real cause of the miseries constantly suffered at the hands of the society.

Violence against women has become now a common phenomenon. The types of violence usually practised against women is in the form of harassment, torture, abuses, sexual assault, beating, burning alive and sometimes even causing death. The indifferent attitude and discrimination against fair sex starts right from her birth but in many cases take a serious turn immediately after marriage.

Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur (Sydney Brandon 1976:1).

Violence is a coercive instrument to assert one's will over another, to prove or feel a sense of power (Robert Litke 1992). The rhetoric of inviolability of family as an institution has shielded domestic violence behind an iron curtain as an unacknowledged phenomenon behind the closed doors of the family, a private matter between inmates which is neither a concern of public scrutiny nor of intervention(Fineman 1994:xi-xviii). The reconciliation with subjugation, in the wake of limiting social circumstances violates the case of human rights- the right to liberty and human dignity. The hopelessness of their situation harms the women more than the violence itself as it erodes their personality and faith in their own people. Ignoring the victim and not

making any attempt to provide solace or restitution is a challenge to human rights especially right to live with human dignity(A.S.Anand1998).

Domestic Violence

Domestic violence can be manifested in various forms as:

- a. Physical violence or abuse which is defined as any act or conduct which is of such nature as to cause bodily pain, harm or danger to life or limb or health and it includes any kind of bodily harm, a threat of bodily harm, beating, slapping and hitting and includes criminal intimidation and criminal force(Protection of Women from Domestic Violence Act 2005:Sec.3(i)).
- b. Sexual violence or abuse i.e. any conduct of sexual nature that abuses, humiliates , degrades or otherwise violates the dignity of the person and covers instances where a woman is forced to have sexual intercourse with her husband against her will(Ibid:Sec.3(ii)).
- c. Verbal and emotional violence or abuse includes insults, ridicules, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child and repeated threats to cause physical pain to any person in whom the aggrieved person is interested and also include insults for not bringing dowry(Ibid:Sec.3(iii)).
- d. Economic violence or abuse is deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance; disposal of house effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household(Ibid:Sec.3(iv)).

Kinds of Domestic Violence

It is rather impossible to give exhaustive list of the kinds of domestic violence faced by the women in India. However, some of the judicially recognised kinds of domestic violence are:

1. Dowry death- where death of a married woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and if it is established that soon before her death she was subjected to cruelty by her husband or his relatives for or in connection with demands for dowry(Indian Penal Code 1860:Sec.304-B).
2. Abetment to commit suicide is also serious form of domestic violence as abettor is punishable with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine(Ibid:Sec.306).

In State of Punjab v Iqbal Singh's case, on 7th June 1983 Mohinder Kour set herself ablaze along with 3 children at the residence of her husband. Suicide note mentioned that her husband was demanding additional dowry of Rs 35000 to Rs40000 and ill treats her under the influence of alcohol and her children are ill treated and beaten up. So she decided to put an end to her own life and that of her children. Supreme Court held that this amounts to abetment to suicide by her husband. In Giraja Shanker v. State of M.P., some times after marriage Urmila was being ill treated by her husband and in laws who had in fact started researching for another bride for her husband and she was made to starve and work like a bonded labour and subjected to mental and physical torture. These circumstances made appellants guilty of abetment to suicide.

3. Cruelty- means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand(Ibid:Sec.498-A).

In P Bikshapathi v. State of A.P., one Rajyalakshmi aged about 19 years committed suicide as she was ill treated and harassed continuously by her husband and his parents for not getting TV set and gold ring from her parents. Husband was addicted to alcohol, came late and subjected wife to beating. Court held this case to be of abetment to suicide and cruelty.

Court held following are other kinds of Judicially recognised harassment like:

- i. forcing women on perverse sexual intercourse
 - ii. denial of food
 - iii. forceful confinement of women within the house
 - iv. repeated physical assaults
 - v. repeatedly abusing children in presence of the mother causing mental torture
 - vi. denying women access to children with the view to cause mental agony
 - vii. taunting amounts to harassment
 - viii. threatening divorce
- 4 Hurt and Grievous hurt - Hurt means bodily pain, disease or infirmity caused to any person and grievous hurt is aggravated form of hurt(Ibid:Secs.319&320).
- 5 Wrongful restraint and wrongful confinement- wrongful restraint means voluntarily obstructing any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed. Wrongful confinement means wrongfully restraining any person in such a manner as to prevent that person from proceeding beyond certain circumscribed limits(Ibid:Secs.339&340).
6. Sexual intercourse during judicial separation is also one of the forms of domestic violence punishable with imprisonment of 2years which may extend to 7years and with fine(Ibid:Sec.376-B).
- 7 Bigamy- Bigamy is one of the worst kinds of domestic violence i.e. marriage with during the life time of his or her spouse. Persons are also converting to Islam to solemnise second marriage(Ibid:Sec.494). But in Sarla Mudgal v Union of India, Supreme Court held that if husband converts to Islam only to solemnise second marriage, then he will be guilty of bigamy.
8. Adultery -means sexual intercourse with married woman with out the consent of her husband. A woman has no right to prosecute her husband if he is committing extra marital affair. Only husband of the woman with whom he has adulterous relationship can prosecute him(Ibid:Sec.497). However, woman can seek divorce on this ground.

Threat to the Institution of Marriage

All these kinds of violence pose a great threat to the institution of marriage. Because the institution of marriage is one of the sound social institutions to bring harmony and integration in social fabric as by the apex court in Vassamma Paul v Cochin University case.

Marriage is a union of two hearts. Success of married life depends on the edifice built with mutual love, understanding, affection, trust, service and self sacrifice. Once this edifice is shaken, happy married life will be shattered into pieces. The result is one of misery and emotion.... Where it is impossible to live like husband and wife, any compulsion to unite them will lead to social evils and disturbance of mental peace and disorder in the family life. However rigid social fabric, it is not the social system but the personal safety of the parties to the wedlock which shall prevail. This observation was made by the supreme court of India in *Roopa Reddy v Prabhakar Reddy's case*.

So matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspectives for regulating matrimonial norms for making of a well-knit healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. (*Chetal Dass v Kamala Devi*).

A bride leaves the parental home for matrimonial home leaving behind memories and with a hope that a new world full of love will be in her groom's house. But the large number of cases flooding the courts with allegations of torture, harassment for dowry saddens the heart...(Manjula v K R Mahesh). This affects the institution of marriage and family to a great extent. Although in India there is high level of tolerance, in fact there is widespread acceptance of violence against women. Familiar treat is a private affair. Society considers that it is more shameful for a woman to complain of the violence and frequently justified in a thousand ways. Women are required to adjust and accommodate and to create a world for themselves that may either tolerate or mitigate the violence. Women who are victims of domestic violence, are unable to leave abusive situations due to several social and financial factors. Many of them are at risk of further violence or death, by their partners when they attempt to leave the abusive relationship. Incidents of domestic violence often go unreported because the woman is reluctant to bring a complaint against members of her own family. She would rather suffer the continuous abuse at home than face social rejection and risk separation from her children. In India, most women do not get much support from their maternal family after marriage and do not have the courage to complain against such violence because it would make her an outsider within her marital life.

All these circumstances point out that issue of domestic violence is different from other general forms of violence and needs to be treated so because women are, as a group, placed in a weaker and more vulnerable position. Because if this issue will not be addressed in its right perspective then institution of marriage will either remain an empty shell or it will not survive for long. Years of national and international publicity given to different forms of violence suffered by women globally and in India have begun to create impact on this issue. Women are speaking out and families are more willing to address the issue both in the private and in public. This is driving the State to be more responsive to this issue. It was considered that civil and criminal law remedies alone are not sufficient to address this issue. Something more is required to be done. So a comprehensive legislation was enacted by Indian Parliament i.e. Protection of Women from Domestic Violence Act, 2005.

Important feature of the Act is that the women's right to secure housing i.e. right to reside in matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by residence order, which is passed by a court and cannot be passed against a woman (Sec 17). In certain cases if she has to be provided alternate accommodation, her maintenance was to be paid by her husband.

Protection officers appointed by State Governments will be under the jurisdiction and control of the court and are responsible for monitoring the cases of domestic abuse. Protection Officers (PO) assist the court in making a Domestic Incident Report or an application for a protection order on behalf of woman or child. PO's will ensure that aggrieved persons are provided legal aid, medical service, safe shelter and other required assistance. Also ensure that necessary information on service providers is provided to the aggrieved woman and that orders for monetary relief are complied with (Sec 8).

PO can be penalised for failing/refusing to discharge his duties.

Service providers (SP) are a vital tool in implementation of this Act. SPs ensure that aggrieved person is provided accommodation in a shelter home as is required. Thus, Act recognises the role of voluntary organisations in addressing the issue of domestic violence.

Charges can be framed by the Magistrate.

The offences for breach of Protection order or an interim protection is made cognisable and non-bailable offence punishable with one year imprisonment or fine of Rs20,000 or both. Thus numbers of reliefs are provided under this Act but still problem is increasing day by day.

Conclusion and Suggestions:

Domestic violence against women is violation of the human rights and fundamental freedoms of women. It may take the form of verbal, physical or psychological abuse. Reasons may vary-sometimes it may be for dowry and other times it may be for not giving birth to child or male child or just to control women by show of so called masculine power by beating and causing hurt or grievous hurt or because of substance abuse, alcohol etc. The problem is aggravated when women suffer in silence due to hopelessness of their situation as it adversely effect their personality and faith in their own people. As the incident happens in the four walls of the home so non reporting by victim women further give courage to the accused to inflict violence . The victim's inability to access law due to poverty, ignorance of law, emotional and financial dependence etc. on the accused make her more vulnerable and law cannot give protection to that victim woman. These situations lead to suicides ,depression ,anxiety etc. and make marriage only empty shell without any love and affection. This may seriously effect the institution of marriage as people may lose faith in this institution . The need of the hour is to check this evil in time by adopting number of measures like sensitisation of society especially women to raise voice against this evil, education ,organising workshops, capacity building measures, immediately handling of the problem, strict enforcement of laws, proper monitoring by law enforcement authorities etc . As the problem is of serious nature and may effect the society to a great extent so it requires multi pronged strategy to deal with it as it may effect the human race.

References :

Anand A S(1998) ,"Victims of Crime- The Unseen Side," SCC(J) 1(3).

Brandon Sydeny in M. Borland(ed) (1976), Violence in Family.

Fineman M.A. and My Kitiuk R (eds)(1994),The Public Nature of Private Violence: The Discovery of Domestic Abuse. Rutledge New York.

Litke Robert(1992), " Violence and Power",International Social Science Journal .

Indian Penal Code, 1860.

Protection of Women from Domestic Violence Act., 2005

Chetal Dass v Kamala Devi (2001) 4SCC250

Girija Shanker v State of MP 1989 Cr LJ 242(MP).

Manjula v K.R. Mahesh AIR 2006 SC 2750

P Bhikshapathi v State of AP 1989 Cr LJ 1186(AP).

Roopa Reddy v Prabhakar Reddy AIR 1994 Karnatka 12 atp.19.

Sarla Mudgal v Union of India (1995)3SCC 635

State of Punjab v Iqbal Singh 1991 Cr LJ 1897 (SC).

Vassamma Paul v Cochin University (1996)3SCC545.