

MARITAL VIOLENCE AGAINST WOMEN: SOCIO-LEGAL PERSPECTIVE

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ABSTRACT

The manifestations of violence against women vary with different economic, social and cultural contexts; there is no doubt that the phenomenon is universal and a major factor in the subordination of woman worldwide. Conceptualizing violence against women as a violation of human rights was a critical first step in framing abuses of women's rights within the international human rights system. While the manifestations of violence against women vary with different economic, social and cultural contexts, there is no doubt that the phenomenon is universal and a major factor in the subordination of woman worldwide. In the 1980s., when violence against women's movements was at its peak in every region, the focus was on acts of overt physical and sexual violence. This included, for example, female infanticide, female foeticide, incest, battering, bride burning, marital rape, honor killing in private sphere, sexual harassment, rape in public arenas.¹ Violence against women is also a manifestation of class oppression. Violence in a society on a family initiated by those who have power or by those who want to retain power². The definition of violence had been expanded to include more structural forms of gender-based violence. Certain cultural practices, like son – preference, dowry customs etc.

KEYWORDS: Marital Violence, human rights, Constitution of India

INTRODUCTION

In India, pre-birth selection and consequent infanticide is a common occurrence and the preference for a male offspring is widespread.³ Millions of Indian women face severe harassment due to unfulfilled dowry demands and many are victims of homicide and are even driven to suicide. The subjugation of women in a subordinate position which characterizes her in patriarchal societies such as ours⁴. Patriarchy is responsible for the subdued position of women.

Women are beaten in their homes by inmates partners, sexually assaulted by the family members, they are victims of marital-rape, they are otherwise sexually assaulted during times of internal conflict by soldiers; sexually assaulted by law enforcement personnel while in their custody; and targeted for sexual violence based on their weaker sex. The family and the state, both operate on patriarchal gender modes. This has widened the gap between women and men and put women in the disadvantageous position.

¹ Dr. Santosh Nandal(Violence against women: Violation of human rights) Cr LJ, 2004.

² Ibid

³ Preeti Misra(Domestic Violence against women) Deep \$Deep publications, New Delhi, 2006, P. 24

⁴ Fatima Ehleshm Siddiqi,(Women and Human Rights), Kanishka Publishers, Distributors, New Delhi, P 569, 2001.

VIOLENCE AGAINST WOMEN: CONSTITUTIONAL PERSPECTIVE

The Constitution of India, 1950 has certain provisions relating to women. It makes special provisions for the treatment and development of women in every sphere of life. The Preamble is the key to the Constitution. It does not discriminate men and women but it treats them alike. The framers of the Constitution were well aware of unequal treatment meted out to the fair sex, from the time immemorial. In India, the history of suppression of women is very old and long which is responsible for including general and special provisions for upliftment and development of the status of women. Certain provisions are specifically designed for the benefit of women. Part III of the Constitution of India deals with the fundamental rights. Article 15(3) of the Constitution provides that discrimination on grounds of religion, race or place of birth shall not prevent the state from making any special provisions for women and children.⁵ Under the Constitution, the state has been given the power to make laws regarding women and children but such laws shall not be violative of Article 15 of the Constitution. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that ignominy and permits the state to positively discriminate in favor of women to make special provisions to ameliorate their social, economic and political condition and accord them parity.⁶ Article 14 and 15 of the Constitution of India provides that equality of opportunity, equality before law, equal protection in the laws, not discriminating against any person on grounds of sex, religion, caste and place of birth and no discrimination in the matters of public employment on the grounds of sex only as provided under Article 16 of the Constitution.⁷

Under the Constitution of India, 1950 the directive principles of State policy is the reflection of governance that India is a welfare democratic state. This policy envisaged equal rights to work, equal pay for equal work, and adequate means of decent and dignified livelihood to both men and women, these are guaranteed under the directive principles of state policy. Part IV of the Constitution containing Articles 38, 39 (a) (d) and (e), 42, 44 and 45 deal with the welfare and development of women.⁸ Moreover, the sexual harassment of women particularly the working women at workplaces by their male counterparts is against the principle of gender equality, it is violation of the fundamental right, particularly Articles 14, 15 of the Constitution which enshrined principles i.e., equality before law and prohibition of discrimination on the grounds of religion, race, caste, sex and place of birth. Such sexual harassment also violates Article 21 of the Constitution which deals with the protection of life and liberty.⁹

THE CONCEPT OF MARITAL VIOLENCE

Some people take marital violence for granted and think that little can be done about it. Marital violence is a feature of family life to which society has usually turned a blind eye¹⁰. Marital Violence in the private sphere of the family and the victimization of women in the intimate relationships has acquired legitimacy and urgent attention to the legal discourse. Marital Violence as threatened or actual physical assault by one marital partner upon the other¹¹.

⁵ Dr. S.C. Tripathi and Vibha Arora (Law relating to women and children), Central Law Publication, 2008, p.5

⁶ Dr. G.P. Reddy (Women are law) IV ed., 2000, p.2

⁷ Dr. S.C. Tripathi and Vibha Arora (Law relating to women and children), Central Law Publication, 2008, p.5

⁸ Ibid, p 14.

⁹ Vishkha v. State of Rajasthan, (1997)6 SCC 323.

¹⁰ Borkowski Murch Walker, (Marital Violence – The Community Response), Tavistock Publications, London & New York, 1983, P. 3

¹¹ Ibid

Millions of women bear this quietly and silently. Physical force, verbal abuse, persistence born out of violence not necessarily extreme, continually pushing, showing, making women a doormat make out a case of marital violence.

The pervasive existence of violence against women, especially marital violence and perpetrated by intimate males, was seen as a private matter, a cultural and family issue. Marital/Domestic violence is the most serious violation of all basic rights that a woman suffers in her own home at the hands of members of her own family. In this society of ours which is chained by orthodox traditions, superstitions, myth and make beliefs, these are the terming million who have suffered most the women, being exploited from time immemorial, socially, economically, physically psychologically and sexually but this classification is fairly crude and there are endless variations within each category. These are complemented with an analysis of the psychological understanding of the violent marital interaction and the difficulties confronting the women to leave the situation or to understand why he remains in it. In case of women who are economically dependent on her husbands, her status is that of the helpless person with no financial support. As a result, she continues to stay in the violent relationship.

The inferiority of women is indicated by the fact that Indian woman does not possess an identity of her own. She owes her identity to a particular relationship with a man. She is either a daughter (or the father), or a wife (or husband) or a mother (or son). The very existence of women is related to marriage and procreation. To be socially accepted, a woman must be married and be a mother, preferably of a son, not a daughter. The status of woman in the society is dependent upon her marital status. A lot of mothers who bear male children is better than those who give birth to daughters. In many traditional families, the news of the birth of a daughter is treated as a family calamity. Friends and relatives express their sympathies to the members of the family upon the birth of a girl. With the birth of a son, a woman is granted certain privileges which were denied to her so far. But with the birth of a girl, a woman is granted with disrespect. For this, reason, she is in constant fear during pregnancy. This is the worst form of marital /domestic violence.

Marital Maladjustment is the cause of a large number of crimes against women in matrimonial homes. Maladjustment may arise both because of the personality characteristics of the husband as well as that of the wife and environment in which the marriage functions. Whatever may be the cause of domestic violence, one thing is clear that it is woman who becomes 'victim' of it. Women, who are victims of domestic violence, are unable to leave abusive situations due to several social and financial factors.¹² Many of them are at risk of further violence or even being killed by their partners when they attempt to leave the abusive relationship. Most women do not get much support from their maternal family after marriage. The cruellest aspect of marital violence is the role that brides parents play in perpetuating it. Most of the parents of bride do not want to take their daughter back. There is considerable social stigma in India against those parents who shelter a married daughter back in their family. The daughter's change of status and her transfer from one family to another have a strong cultural sanction. The parents themselves ignore the case of daughter who is being harassed and wishes to come back. The advice her, pressurize or even force her to stick to the "Real" home and try to adjust. For this reason most of women's do not have the courage to complaint against such marital violence because it would make her an outsider within her marital family. Indian homes are more vulnerable to marital violence because the ever prevailing system of dowry which deteriorates the harmony of the house, and precipitates into deaths of many innocent victims. Marital rape is seen as appropriate behaviour by some males. The paradigm of power and control explains about the social isolation of the women and the sexual, emotional /physical and economic abuse by her husband

¹² Kuljit Kaur, (Domestic Violence Act 2005 : A Step Towards Upholding the Rights of Woman) NYAYA DEEP

who, finally is making the wife fully responsible for child care & when separated using children in situations to harass her¹³. Children who have experienced or witnessed violence at a younger age in their families follow a pattern of violence in their home or adult. Spousal violence, remains hidden and under-reported not least because it occurs within the family precisely the institution that is conventionally assumed to be driven by altruism and instrumental in enhancing rather than diminishing human well being. Worldwide, physical violence by husbands against wives is estimated to range between 10% and 50% (Population Reports 1999). Psychological abuse is even more common and often, physical, psychological and sexual abuse overlaps¹⁴.

FORMS OF MARITAL VIOLENCE

Various forms of marital violence are prevalent in all the societies. One of the reasons for it being so prevalent is the orthodox and idiotic mindset of the society that women are physically and emotionally weaker than the males. According to the United Nation Population Fund Report around two-third of married Indian women are victims of domestic violence and as many as 70 percents of married women in India between the age of 15 and 49 are victims of beating, rape or forced sex. In India, more than 55 percent of women suffer from marital violence¹⁵.

The greed for dowry, desire for a male child and alcoholism of the spouse are major factors of marital violence against women in India. In particular, discrimination occurs within the family, where norms regarding woman secondary status are in force in children from birth. Son preference is one of the key aspects underlining social values that view girls as burdens. Women are viewed as dependents within the family and face severe restrictions on their mobility, which further impedes their ability to gain access to education, economic opportunities, to move freely and settle any where, to form unions or groups, which are all fundamental freedoms under the Indian constitution, women are kept out of decision making processes even within the community and state institutions. Practices like female foeticide, infanticide and the constant incidents of violence constitute consistent assaults on women's right to life and personal liberty. Gender injustice is taking the shape of violence against women. A concept of violence against women may suggest an act of illegal, criminal use of force but it also includes exploitations, discrimination upholding of an unequal economic and social structure, creation of an atmosphere of terror, a situation of threat, reprisal and other forms political violence. Women activists regard specificity of violence against women as a part of general violence against oppressed classes. The forms of control and coercion exercised in the case of women are gender specific and arise out of a hierarchical gender relationship, where men are dominant and women are subordinate. Women are instruments through which the social system reproduces itself and through which systematic inequality is maintained. This inequality is further strengthened and maintained over-time by the socialization process. She believes it to be true. She accepts whatever is given to her as her fate. She is not aware of her constitutional and human rights.¹⁶

Violence against women is also a manifestation of class oppression. Domestic violence, marital violence, battering, dowry, rape, suicide, marital rapes, female foeticide, are the manifestations of gender inequalities within the family system. The equality of status guaranteed by the constitution is only a myth to millions of women for whom life is stalked by various kinds of violence within their homes. Marital maladjustment is the cause of a large number of crimes

¹³ Ibid

¹⁴ Retrieved from www.binaaggarwal.com visited on March 12,2011

¹⁵ Srikrishna, (Crime Against Women And Its Impact On Them) Feb. 18, 2011, retrieved from www.legalserviceindia.com visited March13, 2011.

¹⁶ Preeti Misra, Gender justice: Some Issues, lectures in law department, J. N. P. G. college, 2001.

against women in matrimonial homes as well as outside. Marital violence is the most serious violation of all basic right that a woman suffers in her own homes at the hands of members within her own family.¹⁷ There are various forms of marital violence which are as follows:

- **Cruelty /Wife Beating**

For a man beating his wife is a private privilege of marriage, a way to unload himself of all the angers and frustrations of his daily life, without any fear of reprisal. Marriages are made in heaven indeed, but mothers-in-law, sisters-in-law, husbands and other relatives are being increasingly involved in the breaking of the wedlock for the lust of dowry. Dowry deaths, murder-suicide, and bride burning are symptoms of peculiar social malady and are an unfortunate development of our social set up.¹⁸ The construction of this section clearly discloses that if a cruelty within the meaning of section 498-A, IPC committed on a married women drives her commit suicide or to cause grave injury or danger to life, limb or health, the person guilty of such willful conduct is liable to punishment. The act of suicide or causing grave injury or danger to her life is meant as a result of the past events.¹⁹

Cases of cruelty and torture against women are increasing in number as well as in magnitude and are causing serious concerns for everybody the executive, legislature and the judiciary. In 1983, matrimonial cruelty was introduced as an offence under sec-498-A of Indian Penal Code. Cruelty is the worst form of marital violence against women. Cruelty was defined as “any willful 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 or limb or health (whether physical or mental) of the woman.” It includes harassment of the woman in connection with demands for property and the like.

The core of a definition of domestic violence consists of all the acts that constitute violence. In India, public discourse and media equate domestic violence with dowry violence. This incomplete representation undermines awareness of the widespread, daily psychological, physical and sexual abuse women confront that is often unrelated to dowry.²⁰

Indian legislation on marital violence perpetuates this narrow definition. For example, both section 498-A of 1. P.C and the Dowry Prohibition Act emphasize violence within the context of dowry harassment.²¹

The provision of section 498A was enacted to meet the social challenge to save married women from being-ill-treated by the husband or his relatives. Cruelty is a substantive offense punishable under section 498-A of the Indian Penal Code. It is a crime which is not even reported. Cruelty and wife beating, so alien to our image of non – violence, and respect for womanhood is emerging as one of the least recognized and most appalling crimes. It is a crime which is not even reported. Husbands who illtreat threat wives do it with utter impunity because neither the police nor the public will interfere in a matter which is so private. Far from being a haven of safety and security, social has become a cradle of violence and most of the violence is directed against one of the most ‘equal’ partners, the wife, by her husband.

¹⁷ Ibid

¹⁸ K.D. Gaur (The Indian Penal Code), Universal Law Publishing Co., 2011, P.513-514

¹⁹ P. Bikarhpathi and others v. State of A.P., 1989 Cr.L.J. 1189 (A.P).

²⁰ Misra, Preeti, Domestic Violence Against women, (2006) P. 60.

²¹ Ibid.

Criminal law in India recognizes both mental and physical torture as cruelty. In India, certain forms of domestic violence have been made the offence under the Indian Penal Code namely section 498-A, which deal with cruelty by a husband or his relations with a woman. "Cruelty in the form of domestic violence may be physical or mental, criminal or civil.

- **Wife Battering/Wife Beating**

Wife battering is a global phenomenon. The institution of marriage which is supposed to protect women renders her even more vulnerable to assault. It is only in the last decade that wife battering has been recognized as a social problem of major proportions sometimes death. Wife beating is perhaps the most prevalent form of violence against married women²².

The deaths which occur within the home is the ultimate manifestation of the violence suffered by most Indian women in varying degrees. The term 'dowry deaths' is an oversimplification of a far more complex social phenomenon of power relationships within the family. Most of these women's are harassed for a long time before they are murdered or driven to suicide and for every woman who dies in her home, there must be a million more who are beaten and harassed, economically deprived and mentally humiliated²³. It appears that domestic hooliganism and violence against married women what has come to be called "wife battering" occur all over the world on a significant and disturbing scale²⁴.

- **Dowry Deaths and Dowry Harassment**

A problem which is deep rooted in Indian society is the problem of dowry system. It is an everyday news item, no day passes away when we don't hear news relating to dowry death or dowry harassment. Despite fact that women in India, are worshipped in the form of Shakti, she is burned and harassed by her-in-law. In India there is a tendency to club most marital violence under the overall heads of 'dowry', 'dowry harassment', 'dowry deaths'. However, to argue that dowry is not always the cause of marital discord is not to ignore the fact that it is one of the major factors responsible for the marital violence.

"Marriages are made in heaven, is an adage. A bride leaves her parental home for the matrimonial home, leaving behind sweet memories with a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra, and maidenhood. She expects not only to be a daughter-in-law, but a daughter in fact Alas! The rise in the number of cases involving harassment of newly wedded girls for dowry shatters the dreams. In-laws are characterized to be outlaws for perpetrating terrorism which destroys the matrimonial home. The terrorist is a dowry, and it is spreading its tentacles in every possible direction²⁵.

The practice of dowry abuse is rising in India. The most severe in "bride burning" the burning of women whose dowries were not considered sufficient by their husband or in-laws. It appears when the Dowry Prohibition Act, 1961, in its original form was found inadequate the legislatures in order to eradicate the prevailing malady of the dowry system in our society including dowry deaths, introduced section 304-B of the Indian Penal Code.

²² Rehana Ghandially (Remedies Women in Indian Society) Sage Publications, New Delhi, 1988 P.152

²³ Ibid

²⁴ Paras Diwan (Law Relating to Dowry Deaths), Universal Law Publication Pvt. Ltd, New Delhi, 2002, P.1

²⁵ Kamesh Panjiyar V. State of Bihar, 2005 Cri. LJ 1418 (S.C.)

The Dowry Prohibition Act of 1961 marks the first attempt by the Government of India to recognize dowry as a social evil and to curb its practice. The Act was modified with the Dowry Prohibition Amendment Act of 1984, which has again been modified with Dowry Prohibition (Amendment) Bill 1986. Section 304-B of IPC was inserted by the Dowry Prohibition Amendment Act of 1986 with a view to combat the increasing menace of dowry death.²⁶ Despite the statutory prohibition of dowry, the menace continued more, because the law was absolutely ineffective and in view of its language it was very difficult to apprehend and convict anybody under the Act. Unfortunately, despite modifications of the Act in 1984 and 1986 to make it more effective, the Dowry Prohibition (Amendment) Act has remained more or less a dead letter.

Dowry Deaths

The practice of dowry has become an important problem in the marriage, resulting in cruelty to married women. The evils of dowry have become so pernicious that a large number of women are being murdered burnt, or assaulted every year on the alter dowry²⁷. With a view to combating the menace of dowry deaths a new offense in the Indian Penal Code viz. Dowry Deaths. Sec.304-B has been added to the Indian Panel Code of 1860 by Section 10 of the Dowry Prohibition (Amended) Act, 1986. Unnatural death of a married woman where the motive for a wait of dowry is existing and such death is taking place within 7 years from the date of marriage is called dowry death. The provision under section 304, I.P.C are more stringent than that provided under section 498 A of the Penal Code. In view of the nature of the dowry offenses that are generally committed within four walls of the house, and in secrecy, independent and direct evidence necessary for conviction is not easy to get. In order to invoke the legal presumption under S.113 -B²⁸ of the Evidence Act, it is necessary to prove that the deceased was subjected to cruelty or harassment. The Dowry Prohibition (Amendment) Act, 1986 has also inserted a new provision in the Indian Evidence Act 1872 to raise a presumption of "Dowry Death".

- **Female Foeticide**

Female Foeticide is one of the worst forms of marital violence. The Girl child is, oftener than not, the lesser child, especially in cultures that adore sons, and abhor daughters. The rejection of the girl, unwanted as she is begins, unfortunately, even before she is born, i.e., in the mothers womb. Thousands and lakhs of female fetuses are eliminated by pre-natal sex determination tests or amniocentesis. Those who are lucky enough to escape the tests are born into indifference and brought up in negligence to the greatest detriment of their potential.²⁹ There are certain provisions were included in the Indian Penal Code 1860 which make forced miscarriage or abortion as illegal if it is not done in the good faith effort to save the life of the woman. Then in 1971, Legislators in order to make reforms in Indian Penal Code enacted Medical Termination of Pregnancy Act which gives wide discretion to the medical practitioner to determine the grounds existed to justify abortion on the basis of extensive health of the women or on the basis of humanitarian grounds. With the advances made in the field of medical science, with the introduction of new diagnostic techniques it becomes easier to determine the sex of the foetus and thus MTP Act was also misused. It further gave them the right to decide on

²⁶ Shanti Devi v. State of Haryana, AIR 1991 SC 1226.

²⁷ Dr. Niroj Sinha (Women and Violence) Vikas Publishing House, New Delhi, 1983, P.83

²⁸ Section 113 B of the Evidence Act reads as under:

113 B. presumption as to dowry death: when the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected such person to cruelty harassment for, or in connection with any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation: For the purpose of this section, 'dowry death' shall, have the same meaning as in d\section 304B of the Indian Penal Code (45 of 1860).

²⁹ Dr. M.K. Chakrabarti (Gender Justice) R. Cambray & Co. Private Ltd, Kolkata, 2006, P.1.

having or not having the child. However, this good intentioned step was being used to force women to abort the female child. To tackle with this problem, The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act had to be passed in 1994, which came into force in January 1996, to combat the practice of female foeticide in the country through misuse of technology. The Act prohibited determination of sex of the foetus and it provide punishment for the violation of the provisions. The Act was amended in 2003 to improve regulation of technology capable of sex selection and to arrest the decline in the child sex ratio as revealed by the Census 2001 and with effect from February 2003.

- **Marital Rape**

Marital rape is any unwanted sexual acts by a spouse or ex-spouse committed without consent and/or against a person's will, obtained by force, or threat of force, intimation, or when a person is unable to consent. Fifty-one countries in the world have criminalized marital rape and India is not one of them. Society of India has always made a God of man and has kept him on a pedestal which just gives him the license to do as he pleases.

Marital rape is a result of the patriarchal nature of the society where man has every right to do as he pleases with his wife and this has historical proof as can be seen in the works of Tulsidas and Manu. India is a male-dominated society and husband is considered '*Pati Parmeshwar*'. The viewpoint in India is that with marriage comes fulfilling the husband's conjugal rights and the wife cannot refuse him.³⁰

Rape is one of the most brutal forms of violation of a woman's privacy and integrity.

Recent Position of Marital Rape in India

"As per the *National Health and Family Survey (NFHS-4), 2015-16* at least 5.4% women suffers from marital rape. Ironically, the Ministry of Women and Child of Union Government asserts that the term "marital rape cannot be recognised in the Indian context".³¹ The figure recorded by NFHS-3 for 2005-6 was 9.5%. These numbers are far from accurate, not just due to under-reporting but also because they do not give the entire picture of the extent of marital rape. It is likely that these women have experienced marital rape multiple times over. When husband is in drunkard form then wife can experience more sexual violence than in normal circumstances. In this regard, 66% married women asserted that their husbands sexually torture them when they are in drunken state.³² Despite the brutal gang rape and death of 'Nirbhaya', the massive protests, the uproar in parliament and the Justice Verma Committee (which did in fact recommend criminalising marital rape), India's parliamentarians just could not find it in them to treat married and unmarried women equally, on matters of rape. Married women have been made a special category in the law. After the brutal gang rape and murder of "Nirbhaya" the Criminal Law Amendment Act, 2013 was passed by Indian Parliament. However, this amendment does not recognize marital rape. A survey conducted by "The Wire" finds out that 55% Manipur married women have experienced sexual, emotional and physical violence in the hands of their partners. However, lowest percentage of married women i.e., 3.5% from Sikkim have been experienced sexual violence.³³

³⁰ Dr.Rakesh Kr.singh(Trauma of Marital Rape: Husband turns Predator) CR LJ. Apr. 2008 Journal Section, P.103.

³¹ Retrieved from <https://thewire.in/gender/indian-law-denies-marital-rape-exists-5-4-married-indians-claim-victims> , visited on April 8, 2018

³² Ibid.

³³ Retrieved from <https://thewire.in/gender/indian-law-denies-marital-rape-exists-5-4-married-indians-claim-victims> , visited on April 8, 2018

In the case of *Independent Thought v. Union of India*³⁴, “the Supreme Court bench, in the present case, refused to look at marital rape as an issue that can be debated and considered as a criminal act under the IPC. Parliament has extensively debated the issue of marital rape and considered that it was not an offense of rape. Therefore, it cannot be considered as a criminal offense.” In fact, the bench seemed to have clammed up and passed the buck to the Parliament.”³⁵

“Under the IPC, if a married man has sexual intercourse with his legally separated wife, he can be punished for rape. Under Section 376-B, a man who is *legally* separated from his wife under a decree of separation or otherwise can be punished for raping his wife. Once again, a legal fiction created due to the Indian obsession with marriage and its illogical connection to a man’s right to sexual intercourse and to a woman’s body. The recent Right to Privacy judgment by India’s Supreme Court examined in detail the concept of personal autonomy and its relation to privacy, the right to privacy of rape survivors and the right to privacy in relation to abortion but sadly, missed a historic opportunity to enlarge the concept of privacy with respect to marriage and a woman’s right to her body.”³⁶

- **Domestic Violence against Women**

Domestic Violence against women is a phenomenon not confined to India only. The Act, 2005 provides is more in terms of a comprehensive definition of domestic violence, incorporating even sexual abuse within marriage. Domestic violence is the most serious violation of all basic rights that a woman suffers in her own home at the hands of members of her own family. In this society of ours which is chained by orthodox traditions, superstitions, myth and make belief, these are the terming million who have suffered most the women, being exploited from time immemorial, socially, economically, physically psychologically and sexually but this classification is fairly crude and there are endless variations within each category.

Domestic violence occurs in families of every class, race, and culture. It occurs in families with children & without, in the first marriage, second marriages, and arranged marriages. The victims can be a spouse, generally wife, children, etc. The presence of children in a violent relationship creates additional stress for a woman, who may fear for their safety. The Protection of Women from Domestic Violence Act, 2005 having been passed by the Lok Sabha on August 24, 2005, and by the Rajya Sabha on August 29, 2005, and received the assent of the President of India on September 13, 2005.

Though domestic violence in the modern times has been recognized as a violation of human rights, yet the extent of it is difficult to measure because many assaults go unreported. Many women so are tortured every day but this topic has failed to capture the required attention because we have been socialized to accept violence against women as common -place routine and less than horrific. Domestic violence is national health hazard of epidemic proportion.³⁷ According to the study conducted by International Council for research on women, 45% of Indian women experience violence in some form, 55% women perceived violence as normal part of their marriage. Physical violence on women at

³⁴ Retrieved from <https://thewire.in/gender/indian-law-denies-marital-rape-exists-5-4-married-indians-claim-victims> , visited on April 8, 2018

³⁵ Retrieved form <https://www.firstpost.com/india/sc-says-marital-rape-cant-be-considered-criminal-tradition-doesnt-justify-assault-child-marriage-3917749.html> , visited on April 8, 2018

³⁶ Retrieved from <https://thewire.in/gender/the-legal-dissonance-between-marriage-and-rape-in-india> visited on April 6, 2018

³⁷ Dr. Krishnan Chander Jena (Violence against women a human right violation) AIR Journal Section, Vol. 90, 2003, P 3.12.

home is not confined to homicidal deaths by way of stabbing, strangulations or setting them afire. The violence originates from minor offenses like pulling hair, pinching, pushing, hitting to throwing boiling water and acid before the fatal blow is given. Ignoring any minor ailment may lead to a fatal disease. Similarly, condoning trifle nature of tortures encourages the male or female oppressors to become more and more violent.³⁸

It is therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

The very nomenclature indicates that the Domestic Violence Act is not restricted to violence perpetrated against a woman by her husband or in-laws. It includes under its protective umbrella every woman living in a domestic relationship as a member of a family with the person the person indulging in violence who in this case must invariably be of the male gender.³⁹ What has been perceived as radical in certain quarters, a relationship between two persons who are living together as a family in a shared household even though they are not connected to each other by blood or marital relation? So put it simply and adopting the modern-day lingo, women involved in “live-in-relationship” or bigamy or adulterous connections are also covered as beneficiaries. The new law also gives the victim the right to residence and access to a protection office, who is answerable to the courts.⁴⁰

- **Adultery**

When a married man is having a sexual relationship with another married woman, his act amounts to domestic violence against his legally married wife. In legal term, it is called adultery which is an offense⁴¹. Section 497 of the Indian Penal Code punishes a man having sexual intercourse with a woman knowing that she is the wife of another man and without the consent or connivance of such other man. It is an offense against marriage. Section 497 of the Indian Penal Code⁴² punishes a man having sexual intercourse with a woman knowing she is the wife of another man and without the consent or connivance of such other man. The scope of the offense under the section is limited to adultery committed with a married woman, and the male offender alone has been made liable to be punished with imprisonment which may extend up to five years or fine or with both.

Husband, The Only Aggrieved Party

In the offense of adultery, law considers only the husband as the aggrieved party and not the wife of the adulterers. In other words, only the husband of the adulterers and not the wife of the adulterer is aggrieved to party.

³⁸ B.D. Agarwal (Legislating Domestic Violence), Cr. L.J. Journal Section, 2002, P. 131

³⁹ R.K. Gauba (Domestic Violence Law- A Recipe for Disaster?) Nyayadeep, P.23

⁴⁰ Ibid.

⁴¹ Dr. S.C. Tripathi & Vibha Arora (Law Relating to Women and Children) Central Law Publications, Allahabad Ed: 3rd, 2008, P.38.

⁴² Section 497 reads as under:

“whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with five, or with both. In such case the wife shall not be punishable as an abettor.

This is because only the husband has a right over conjugation with his wife and no other persons have any such right⁴³. Thus, a woman has no right to prosecute her husband if he is committing extramarital offenses.

In the case of *Sowmithri Vishnu V. Union of India*.⁴⁴, this Supreme Court has upheld the constitutional validity of section 497 Indian Penal Code. The Court observed that the section does not envisage the prosecution of the wife by the husband for adultery and that no grievance can be made that the section does not allow the wife to prosecute the husband for adultery. The Supreme Court justified its stand on the ground that in contemplation of the law the wife, who is involved in an illicit relationship with another man is the victim and not the author of the crime. The Court further held that the definition of adultery does not discriminate between man and woman by conferring the right to prosecute only on the husband and that section 497 Indian Penal Code is not violative of Article 14 and 15 of the constitution of India.

- **Bigamy**

Keeping of the second woman or of the first wife, the person who commits such act is guilty of domestic violence against the first wife. If the husband of a married woman marries someone else while the first wife is still married to him or of the husband was already married when a woman got married, a husband may be guilty of bigamy.

Conversion of Religion Does Not Give License to Commit Bigamy

In *Sarla Mudgil V. Union of India*⁴⁵ The Apex court has ruled that change of religion does not permit a person to defeat the provisions of law and give license to commit bigamy. The court held that when one or the other spouse renounces his or her religion (e.g. Islam which permits polygamy) in order to marry again during the lifetime of the former spouse section 494, I.P.C is attracted.

In *Lily Thomas V. Union of India*⁴⁶ the court said a change of religion does not dissolve the marriage performed under Hindu Marriage Act, 1955. A second marriage during the lifetime of the spouse would be void under section 11 and 17 of the Hindu Marriage Act, 1955 besides being an offense of bigamy under S.494, I.P.C.

MARITAL VIOLENCE: DATA ANALYSIS AND INTERPRETATION

Today, Indian society is surrounded by many problems such as unemployment, illiteracy, corruption, among these problems, a problem which is deep-rooted in Indian society is the problem of marital-violence. It is an everyday news item, no day passes away when we don't hear news relating to marital violence or domestic violence.

Adolescent marriage and domestic violence are two widely prevalent but unacknowledged practices. Recent studies on the married life of adolescent girls reveal a chilling link between the two. Anita Ray of Boston University School of Public health, involved in several and such studies said that adolescent marriage appears to be directly correlated with increased violence at home: emotional, physical and sexual, practiced both by the husband and the in-laws. It is unabated even during pregnancy and motherhood.

⁴³ G.B. Reddy's (Women and the Law) Gogia Law Agency, Hyderabad Ed. 2nd 1998, P.89.

⁴⁴ AIR 1985 SC 1618.

⁴⁵ AIR 1995 SC 1531

⁴⁶ AIR 2000SC1650

Although the proportion of girls married off in the 15 to 19 year age group has declined from 56% in 1971 to about 27% in 2006, it still means that over 1.5 crore girls are thus married. And 16% of the age group, that is about 2.4 lakh women had already become mothers or were pregnant, according to the National Family & Health Survey-3.

According to India's most comprehensive, the National Family Health Survey-III conducted by the international institute of the population which interviewed 1.25 lakh women in 28 states and the NCT of Delhi in 2005-06, 40% of the women said they are the victims of the domestic violence. The worse aspect of this survey reveals is that 54% of the women say it is OK to get beaten and that such violence was justified on one or the other ground. 41% of the women justified wife beating if it was because of they showed disrespect to the in-laws, 35% women were OK with brutally being assaulted by their husbands if they neglected household chores or their children. 51% of the 75000 men interviewed did not find anything wrong with assaulting their wives. In the Indian society, men are brought up being taught that beating up their wives is not wrong while women are told that being assaulted by their husbands is acceptable.⁴⁷ National Family Health Survey-III has made some other observations while 1 in 10 women have experienced sexual violence while 1 in 6 has been through emotional violence by their husbands.⁴⁸

A unique form of violence experienced by women is „Dowry Death“ and now, the most common one. These cases have increased by 2.7% during the year 2011 over the previous year (8,391 cases). 26.9% of the total such cases reported in the country were reported from Uttar Pradesh (2,322) cases alone followed by Bihar (1,413 cases) (16.4%). The highest rate of crime (1.4) was reported from Bihar as compared to the National average of 0.7.⁴⁹

The incidents of cases registered under this Act have increased by 17.9% during the year 2013 as compared to the previous year (9,038 cases). 18.8% of such cases were reported from Odisha (2,014) followed by Bihar (1,893 cases) accounting for 17.7% of total cases at the national level. The highest crime rate of 9.8 was reported from Odisha as compared to 1.8 at the national level. 53 cities, each having population over 10 lakh and more, have been identified as megacities as per The Population Census 2011. A total of 53,464 cases of crimes against women were reported from these 53 cities during the year 2013 as compared to 36,622 cases in the year 2012. The rate of crime in cities at 69.7 was comparatively higher as compared to the national rate of 52.2. Among 53 cities, Delhi (11,449 cases) has accounted for 21.4% of total such crimes followed by Mumbai (5.5%) (2,946 cases), Bengaluru (4.9%) (2,608 cases), Ahmedabad (4.6%) (2,449 cases) and Kolkata (4.5%) (2,399 cases). Among 53 mega cities, Delhi city has accounted for 29.4% of total rape cases (1,441 out of 4,900), 35.1% of total kidnapping & abduction cases (3,093 out of 8,809), 13.8% of total cruelty by husband or his relatives cases (2,879 out of 20,795), 15.8% of total dowry deaths cases (125 out of 793), 25.8% of total assault on women with intent to outrage her modesty cases (3,069 out of 11,913) and 23.9% of total insult to the modesty of women cases (807 out of 3,375) reported out of 53 cities⁵⁰.

The National Crime Records Bureau publishes an annual report entitled “Crime in India”. As per the National Crime Records Bureau report, 2015 at least 327, 394 cases has been recorded in 2015. In the year 2015, 1,080,144 cases has been reported regarding violence against women in India. As per the National Family Health Survey -4 every third woman from the age of 15 has suffered domestic violence in India. This survey further declares that 27% women's in India

⁴⁷ Dr. Nuzhat Parveen Khan (Domestic violence: An issue of concern for one and all) Nyaya Deep, P.82

⁴⁸ The Times of India, February, 2008.

⁴⁹ India, Ministry of Home Affairs, National Crime Records Bureau, Crime in India, 2011, p.83

⁵⁰ ncrb.nic.in/CD-CII2013/compendium%202013.pdf visited on April 6, 2018

are victims of physical violence since the age of 15 years. 29% women's from rural area experienced marital violence on the other hand 23% women's from the urban area has experience marital violence.⁵¹

The Act, 2005 defines the expression "domestic violence" in order to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition. However, the Protection of Women from Domestic Violence Act, 2005 also recognizes marital rape as a form of sexual violence. As per National Family Health Survey -4, 31% married women's have been suffered domestic violence such as physical, economic, sexual and emotional violence by their partners.⁵²

However, "for women who are not married, the experience of physical violence stems from the most common perpetrators, which includes mothers or step-mothers (56%), fathers or step-fathers (33%), sisters or brothers (27%), and teachers (15%). Data from the survey shows women in India between the ages of 40 to 49 were most supportive of domestic violence, with 54.8% in agreement. The percentage justifying abuse is marginally lesser among younger women. 47.7% of girls between the age of 15 and 19 agreed with violence by husbands."⁵³

"This marginal difference in attitudes of women towards domestic violence is also visible in urban and rural areas. While 54.4% of rural women surveyed across the country agreed with domestic abuse, only 46.8% of urban women supported such violence. Among married women who were victims of sexual violence, over 83% reported their present husband and 9% report a former husband as the perpetrators. The form of sexual violence most commonly reported by women was that their husband used physical force to have sexual intercourse when they did not want to (5.4%). About 4% reported that their husband forced them with threats or in other ways to perform sexual acts they did not want to, and 3% reported that their husband forced them to perform other sexual acts they did not want to. The survey report highlighted that most common perpetrators of sexual violence on unmarried women were other relatives (27%), followed by a current or former boyfriend (18%), their own friend or acquaintance (17%) and a family friend (11%)."⁵⁴

CONCLUSIONS AND SUGGESTIONS

This present paper has discussed marital violence because it is the pivotal stone of domestic violence. The problem of marital violence against women shows that it is a serious, widespread social problem not limited to the social context of India, but is a worldwide phenomenon which affects both the developed and the underdeveloped world. Marital violence includes a range of violent activities as hitting, dowry death, cruelty, marital rape, forcible sex-selection tests, female foeticide disposal of household property in which applicant has interest, to the more subtle ones as emotional pain, constant criticism etc. The problem of marital violence against women shows that it is a serious, widespread social problem not limited to the social context of India, but is a worldwide phenomenon which affects both the developed and the underdeveloped world. Marital violence against women is a phenomenon that cuts across boundaries of ethnicity and age.

⁵¹ Retrieved from <https://www.news18.com/news/india/the-elephant-in-the-room-every-third-woman-in-india-faces-domestic-violence-1654193.html> visited on April 4, 2018

⁵² Ibid.

⁵³ Ibid

⁵⁴ Retrieved from <https://www.news18.com/news/india/the-elephant-in-the-room-every-third-woman-in-india-faces-domestic-violence-1654193.html> visited on April 6, 2018

The hydra-headed problem of marital violence confronts all women. The threat of violence controls women in insidious ways, curbing their freedom, their mobility, their rights and distorting their various identities. Marital violence is one of the most extreme expressions of female oppression.

In spite of various legal reforms introduced from time to time, the place and harmony even in the present to be plagued and disturbed by certain social evils like dowry demand, dowry death, cruelty against women, domestic violence, physical or emotional abuse of women and economic exploitation. Rather than being curbed with the spread of literacy and general improvement of economic conditions, there has been a disturbing trend of spiraling increase in the rate of such incidents. The worst forms of the marital violence are the verbal, physical, psychological and sexual violence is committed against women in their homes. Marital violence against women is also an issue of the women's human rights as the systematic perpetration of violence on women is a result of the subordinated position of women in society which in itself raises questions on right to equality based on grounds of sex. Patriarchy is also responsible for the subdued position of women.

The Domestic Violence Act has empowered the women to resist the violence. No doubt the Act of 2005 has given an effective tool in the hands of the women, but at the same time, its implementation lacunas can make it ineffective. A difference in treatment between men and women by the state is totally prohibited on grounds of religion race, caste, sex or place of birth. "Article 21 is on right to live; right to live with human dignity. Effective women help-lines and other emergency services should be provided around the clock and should be well advertised by video and audio messages in rural and urban areas. Emergency telephones to this helpline must also be available at all bus and train stations. Calls should be addressed by specially trained staff and automatically recorded for later review, and the staff should be able to dispatch immediate vehicles to assist women facing an emergency. Disciplinary action must be taken against staff for inappropriate or inadequate responses."⁵⁵

"The law was found to fail to stall the evil. A man is said to have committed rape if he has sexual intercourse with a woman against her will and consent; or with her consent when the man knows that he is not her husband or when she thinks that he is her lawful husband; or with her consent when she is of unsound mind or is intoxicated by herself or the man. However, sexual intercourse by a man with his own wife, the wife not being under 15 years, is not rape (375 IPC). The latter provision seems deficient as it does not include marital rape. In order to prevent sexual violence against women, there is need to have sexual material should be censored. Efficient and accountable law enforcement machinery at all levels -is needed. Gender sensitization by parents and teachers is needed regarding the sensitivities and boundaries of man-woman relationships."⁵⁶

"There should be systematic and regular review processes by independent bodies involving women's groups, put into place to audit the work of these institutions. trained police personnel and/or social worker to be appointed at every police station to take in complaints of all forms of violence against women including sexual assault. First Information Reports should be registered immediately following the complaint and due process of law be followed thereafter. The gender desks should also be required to provide immediate medical attention and other support services such as shelter, filing for compensation as may be required.

⁵⁵ Retrieved from <http://www.sacw.net/article3571.html> visited on April 6, 2018

⁵⁶ Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4462781/> visited on April 6, 2018

In spite of the amendments and judicial attitude towards dowry deaths, the spate of dowry deaths into the country is not on the decline at all. The first Prime Minister of India, "Late Pandit Jawaharlal Nehru" said that "Legislation alone cannot eradicate the deep-rooted social problems." Gaps and loopholes in-laws are a given fact of the Indian legislative system, resulting in their poor implementation. For a woman fighting the legal battle for justice, the system remains unbending due to the male dominant thought processes at all levels. Laws after laws made to protect them from violence have failed. Yet the silver lining in the cloud remains.⁵⁷

Marital violence against women is also an issue of the women's human rights as the systematic perpetration of violence on women is a result of the subordinated position of women in society which in itself raises questions on right to equality based on grounds of sex. Patriarchy is also responsible for the subdued position of women. Only legislation and law enforcement agencies cannot prevent the incidence of marital violence crime against women. There is need of social awakening and change in the attitude of society so that due respect and equal status is given to women. Domestic violence can destroy the future of human communities by destroying their children. Children who have witnessed the endured domestic violence can themselves become abusers in their adult life. Physical assault, spousal abuse, social humiliation, economic abuse, wife battering, sexual assault, marital rape, are all deadly manifestations of domestic violence.

Indian society is following the path of modernization. Though this modernization has always been supportive in changing the status of women, yet it also resulted in increasing their problem. Domestic violence is one such problem. Neither education nor career has been instrumental in removing this problem. As it is very obvious from the statistics even the educated and working women are vulnerable to the commission of domestic violence. Economic dependence has been found to be the central reason for domestic violence. Females 'who are dependent upon their husbands and in-laws are also subjected to mental torture.'

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⁵⁷ Retrieved from <https://countercurrents.org/2016/07/06/dowry-deaths-indias-shame/> visited on April 6, 2018

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- Explanation: For the purpose of this section, 'dowry death' shall, have the same meaning as in d\section 304B of the Indian Penal Code (45 of 1860).
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