



Violence Against Women in Matrimonial Home: Existing Perspective in India

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ABSTRACT:

'Matrimonial Home' is not specifically defined in any matrimonial laws in India. However, with the introduction of Domestic Violence Act, a wife has a right to stay in her 'matrimonial home' but no ownership right gets transferred to her. Again matrimonial violence mostly affect those women who belong to low socio-economic status. But in the present so-called cultured society it is also increasing day by day. Interestingly, 'Wife' is not a defined term in matrimonial laws. According to section 125 of the Cr P C a wife includes a 'Divorced Wife' also. 'Maintenance' is defined in section 3 (b) of Hindu Adoption and Maintenance Act. This paper seeks to expose the complexities and challenges of the problem and also like to suggest the essential restructuring of official / administrative structure for bringing the desired changes in the lives of married women who are victims of matrimonial violence in their everyday life.

The present work has been inspired by every day newspapers reporting which is full of news of some incidents where a married women has been tortured, even murdered by her husband or in-laws because her parents could not fulfill their need of dowry, or where a married women has been forced to commit suicide because of the act of cruelty and violence against her. The study is an attempt to unveil the important causative factors that relates to violence in matrimonial home and discussion about various types of violence which occur particularly in matrimonial homes. Purpose of this study is to delve into or examine the causes of various types of matrimonial violence.

KEYWORDS:

Matrimonial violence, Physical Abuse, Psycho-social Abuse, Economic Consequences. Women Harassment.



1. INTRODUCTION:

In India history tells us that the women are considered a divine force but the multi-cultured Indian society placed women at different positions. The Indian philosophy poses the women with dual character. On the one hand she is considered aggressor and represents “Shakti”. Matrimonial violence is one of the gender based crimes against married women which is linked to their disadvantageous position in the present society. Matrimonial violence refers to violence against women especially in their matrimonial homes. Therefore matrimonial violence is recognized as the significant barrier to the empowerment of women, with consequences of women’s health, their health-seeking behaviours and their adoption of small family norm. Background characteristics of education, age, marital duration, place of residence, caste, religion, sex of the head of the household, standard of living, work status of women, exposure to mass media and the autonomy of women with respect to decision making, freedom of movement and access to money are very much linked to matrimonial violence. Again matrimonial violence is more common among women belonging to low socio-economic status.

Matrimonial violence means any act of physical, sexual, or psychological abuse, or the threat of such abuse, inflicted against a woman by a person intimately connected to her through marriage, family relation, or acquaintanceship is universal and has its root in the socio-cultural set up of the present society. The perpetrators of Matrimonial violence have often been found to be the males and the victims, their sexual partners. Looking at the domestic front, starting from Vedic age to twenty first century, women in India perhaps have never experienced equal rights and freedom compared to their male counterparts.

In view of the prevalence as well as the pervasiveness of matrimonial violence, many researchers in the past have attempted to assess the situation besides exploring its possible cause and subsequent consequences for society in general and women in particular. The number of family members, type of marriage and husband’s education besides menstrual problems have significant influence on matrimonial violence. While many researchers come out with findings that lifestyle of men such as smoking, alcoholism and drugs promote men to commit matrimonial violence some are of the view that masculinity and matrimonial violence are closely interlinked. Again, persons with lower socialization and responsibility are found to be the enhancers of the problem. Studies have also revealed that sons of violent parents raised in patriarchal family structure that encourages traditional male gender role are more likely to abuse their intimate partners. Gendered socialization



process is what is mainly responsible for matrimonial violence. The low educational level and poverty are important reasons for matrimonial violence. Further, marriage at a younger age makes women vulnerable to matrimonial violence. Besides this, the role of inter spousal relationship, sex of the children, ownership of property, dowry, working status, autonomy, religion and caste of the person can't be ignored.

Many studies are of the view that violence by intimate partner most likely undermines the sexual and reproductive health of the women. This extensive violence has significant harmful effects like unwanted pregnancy, gynecological disorders and physical injuries to private parts besides large-scale mental health impacts (UNICEF, 2000). Again, many of the commonly associated disorders / problems are found to be inadequately addressed. Further, as Freedman has written, violence by husbands against wife should not be seen as a break down in the social order rather than an affirmation to patriarchal social order. Similarly, not only wife torturing is deeply entrenched, but also people justify it. Thus, matrimonial violence is simply not a personal abnormality but rather it is rooted in the cultural norms of the family and the society. Again, looking from another angle, it is found that many of the victims of matrimonial violence has either refused to name the perpetrator of the assault or attributed the injuries to other reasons. It is not consensual, but rather a pattern of behavior used by an individual to maintain coercive control over another. The abusive behavior may become more frequent and severe. It is divided into five heads such as:

- i. Verbal abuse – like name calling, threatening, intimidating etc;
- ii. Emotional abuse- criticizing constantly, displaying extreme jealousy, publicly humiliating, isolating the partner, domination;
- iii. Financial abuse- controlling the money, concealing joint assets, keeping the other impoverished, using partner's money without consent. These abuses though may be witnessed in an infant form in the initial stages but in later stages they might take an inhumane form as listed below;
- iv. Physical abuse- pushing, slapping, hitting, kicking, choking, pulling hair, biting, using weapons, tying the partner up, locking the partner in a room with denial of food;
- v. Sexual abuse- raping, physically attacking sexual parts, forcing the partner to carry out sexual acts against her consent.

Physical violence can also be classified into two heads such as:



- i. Physical, sexual and psychological acts of violence inflicted on married women within the family (i.e. matrimonial violence) and;
- ii. Physical, sexual and psychological acts of violence inflicted on married women in their communities (i.e. community violence)

In order to develop effective intervention programme and policy, it is vital to know the attitude and perception of the women towards the issue in-depth. Most of the studies conducted in the past are small in nature and reflects the regional picture that might not be a true picture of the whole country. In view of the above discussion, it seems essential to understand the women's viewpoint besides the assessment of the problem and its correlates at country level. Further, in the present world, where gender equality and justice have become the buzz words, examining the matrimonial violence in the largest democracy of the world appears worthy for the betterment of half of its citizens.

In the present paper, an attempt has been made to study whether ever-married women of reproductive age group in India viewed matrimonial violence justified on certain situations. In addition, emphasis is there to examine the prevalence of torturing or physical mistreatment, regionally and also by background characteristics. Specifically, the objectives of the study can be put under the following heads:

- i. To study the women's view about matrimonial violence as justified, with specific reasons;
- ii. To examine the differentials of women's view about violence as justified with specific reasons by background characteristics;
- iii. To understand the regional variations of the prevalence of physical and mental mistreatment since marriage and the person who physically or mentally mistreated and also the prevalence of physical or mental mistreatment;
- iv. To investigate the determinants of women's view about matrimonial violence as justified and also the determinants of prevalence of matrimonial violence or physical mistreatment and how it should be stopped by implementing a strict law.

The planning of the paper is divided into five sections. After the introduction in section I, the methodological aspect and data sources have been discussed in section II. Then section III includes the main analysis of the paper followed by conclusion and policy suggestions in section IV. Finally references are given in section V.

2. METHODS AND DATA:



Methodology which has been applied in working this paper is purely doctrinal and on books of eminent philosophers, eminent scholars and writers, various journals, different articles, reports, case laws, newspapers etc.:

The work is based on the secondary data sources. No primary data will be generated in this study. The major sources of the secondary data for the proposed study are mentioned below:

- i) Reports of different government and non-government organizations and their project works;
- ii) Various research report conducted both at the state and national levels
- iii) National Women Commission's reports;
- iv) National Sample Survey Organization Report and;
- v) Different case studies of various courts.
- vi) National family health survey (NFHS) report.

3. ANALYSIS:

3.1 WOMEN'S RIGHTS IN THE CONSTITUTION OF INDIA:

The Constitution of India, 1950 include certain provisions relating to women. It also makes some special provisions for the development of women in everyday life. The preamble of the Constitution of India, 1950 deals with various objectives including "the equality of status and opportunity" of all the citizens of India. This objectives give equal status to men and women in terms of the opportunity. The Articles 12 to articles 35, Article 39(a)(d) and Article 42 of the Constitution of India, 1950 gives fundamental rights to all the citizens irrespective of sex and religion. The fundamental rights can be divided into eight heads such as:

- i) **Right to Equality:** Articles 14 and 15 of the Constitution clears the equality of the opportunity, equality before the law, equal protection in the laws, not to discriminate any person on the ground of sex, religion, cast, and place of birth and no discrimination is to be made in case of public employment also specially on the ground of sex as provided in Article – 16 of the Constitution.
- ii) **Right to Freedom:** Article 19 to 22 includes right to freedom of speech, right to property, protection in respect of conviction of an offence, protection for life and personal liberty, and also give protection against arrest and detention.



- iii) **Right Against Exploitation:** Article 23 of the Constitution deals with protection from traffic in human beings and forced labour and Article 24 protect children from employment.
- iv) **Right to Freedom of Religion -** Article 25 to 28 of the Constitution includes right to freedom of religion which entitles professing , practicing and propagating religion freely.
- v) **Educational and Cultural Rights –**Article 29 of the Constitution protect the interest of the minorities and Article 30 further provides the right of minorities specially in educational Institutions.
- vi) **Constitutional Remedies -** Article 32 to 35 deals with each and every citizen’s right to Constitutional remedies which is, approaching Courts for enforcing fundamental rights.
- vii) **Right to Livelihood -** Article 39(a)(d) mentions a directive principle of state policy which entitles both men and women the right to a means of livelihood and equal pay for equal work .
- viii) **Right to work and Maternity Relief –** According to Article 42 the State is bound to make provision for ensuring just and humane conditions of work and maternity relief.

3.2. CLASSIFICATION OF MATRIMONIAL VIOLENCES:

Some of the judicially recognized classifications of matrimonial violence are stated hereunder:

- i. **Dowry death:** Dowry death is the worst form of the matrimonial violence. Dowry related violence is a problem unique in India. It cuts across all background be it social, cultural, economic or religious. It cuts across class, caste and ethnicity. It is considered as one of the greatest social evil¹. Dowry has been referred to as a social cancer, a cruel custom and an insult to the dignity of women². Dowry harassment cases that erode the entire base of womanhood in India, in several cases culminating in suicide or homicide, are part of tragic drama of matrimonial violence being perpetrated every day in some part of the country. There cannot be

¹ Journal A.I.R, 2003, p-314-315.

² Advani, P; Crime in Marriage: A Broad spectrum, 1994. Also see Dewan, V.K. Lae relating to offences against women, 1996,p-97. Also see Max Radin; Encyclopedia of Social Sciences V of p-230.

- any second thought that brides being harassed for dowry are a blot on our society that must be erased-the sooner, the better³.
- ii. **Cruelty:** Cruelty in the form of matrimonial violence may be physical or mental cruelty. It is not possible to give any precise definition of cruelty. Any conduct of the spouse which causes pain and injury to the mind and consequent detriment to health of other spouse may amount to cruelty⁴.
 - iii. **Female Foeticide:** Though the gender inequality has its roots in the Patriarchal system the society professes but the misuse of modern technology had added in following the practices of eliminating the female foetus after undergoing sex determination tests⁵.The female children are killed even before they acquire the age of viability in mother's womb. Female foeticide is increasing throughout India. Female foeticide is an extreme manifestation of gender violence against women⁶where women is deprived of her most basic and fundamental right—the right to life⁷.
 - iv. **Female Infanticide:** The traditional method of getting rid of the unwanted girl was female infanticide where the female baby was done away with after birth in various ways by either poisoning, suffocating the infant under the mother after birth. Female infanticide, a most inhuman, uncivilized event is taking place silently. The entire society should fight to stop the murder of the female child.
 - v. **Incest:** Incest is one of the most ghastly crimes. The crime of incest has become rampant in Indian society. The incidence of sexual abuse of girl children is a very common affair. Incest means the sexual violation of the girl child in the family by her own relatives. Such crimes threaten the fabric of family life and are always kept in dark⁸.

So among the many manifestations of the violations of the fundamental rights of women, matrimonial violence is one of the most vicious. Matrimonial violence is undoubtedly a human right issue and serious deterrent to development.

³ The Times of India, January 4, 2008.

⁴ Rajendra Singh Joon Vs. Tarawati, A.I.R 1980 Delhi, p – 213-14

⁵ Journal of A.I.R, 2003.

⁶Hindustan Times, October 12, 2000, p - 2

⁷ Prof. Syed Khalid Rashid, "Protecting the Life and Health of unborn children". International Conference on Global Health Law, 1997, Souvenir- 1997, The ILJ, New Delhi. P -164

⁸Gupta ,Srinivas, "Incestuous Relations and Sexual Abuse of the Children in India and abroad, Amity Law Review, Vol. 3, Part –I, 2002, p – 79.

3.3 OFFENCE RELATING TO MATRIMONIAL VIOLENCE UNDER CRIMINAL AND CIVIL LAWS:

3.3.1 Criminal Law:

Certain provisions under Criminal Laws which deals with offence in the form of matrimonial violence against women are mentioned below.

- Dowry Death : Sec 304B. I.P.C
- Forceful termination of pregnancy : Sec – 313 to 316 of I.P.C
- When women is driven to commit suicide: Sec - 305 and Sec- 306 of I.P.C.
- Causing hurt and grievous hurt :Sec - 319 and Sec - 320 of I.P.C
- Unlawful confinement: Sec - 340 of I.P.C.
- Marital Rape: Sec 376-A of I.P.C.
- Misappropriation of wife's' property: Sec 405 of I.P.C.
- Matrimonial cruelty: Sec - 498A of I.P.C.
- The Dowry Prohibition Act, 1961: Dowry demand for property or valuable security.
- The Commission on Sati Prevention Act, 1987: Sec- 2 of the Commission of Sati Prevention Act,1987
- The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse Act, 1994- Sec 4)
- Indian Evidence Act, 1872
- Code of Criminal Procedure (Cr.P.C.)

3.3.2 Civil Law:

The victims of Matrimonial violence can seek civil relief under the following Laws:

- Dissolution of Muslim Marriage Act,1939⁹
- The Hindu Marriage Act, 1955¹⁰
- Other matrimonial enactments as Special Marriage Act¹¹
- The Indian Divorce Act¹²
- Parsi Marriage and Divorce Act¹³

⁹ Section 2 , Chapter VIII, D.M.M.A.

¹⁰ Section 13 (1) (1a), H.M.A

¹¹ Section 27 (1) (d) S.M.A

¹² Section 10, I.D.A

¹³ Section 32 (dd) P.M.D.A

The criminal offences, however, are not enough to deal with the complexities of domestic violence because the violence inflicted is not by stranger but an intimate partner or family member. A criminal remedy will only serve to punish the abuser and is not sufficient to address the needs of the victim of violence who has to stay within the family.

The criminal law remedies do not succeed providing immediate or emergency protection to the victims of matrimonial violence. Under civil Law, there is no remedy for matrimonial violence. A closer look reveals that the various personal laws provide remedies only on divorce or separation. The women suffering from matrimonial violence may not opt for divorce and may wish to continue with their marital relationship, in such circumstances the civil law is silent¹⁴.

The spiral of matrimonial violence against women is rising at an alarming rate so there was a need of a new law to identify the social and domestic relationship in which today violence is perpetrated with immunity¹⁵. So, the Protection of women from Domestic Violence Act was passed in 2005 to provide civil remedies to women in abusive violent relationship.

The Act is meant to provide protection to women living in a matrimonial relationship and who alleges to have been subjected to any act of domestic violence. In addition, relationship with family members living together as joint family is also included. Even those women who are sisters, widows, mothers or single women, living with abuser are entitled to legal protection under the enactment.

The term matrimonial violence under law includes elaborately all forms of actual abuse or threat of abuse physical, sexual, verbal, emotional and economic nature that can harm, cause injury to, endanger the health, safety, life, limb or well-being, other mental or physical of aggrieved person. The definition is wide enough to cover child sexual abuse, harassment caused to women or her relatives by unlawful dowry demands and marital rape¹⁶.

3.4 Authorities Responsible to deal with Matrimonial Violence:

The Act provides for appointment of Protection officers and service providers by the state governments to assist aggrieved person with respect to medical examination, legal aid, safe shelter and other assistance for accessing their rights¹⁷.

¹⁴ Jayna Kothari, "Domestic Violence: The Need for New Law", from the lawyers collective, March 2001.

¹⁵ Dr.RKarthibeyan, "Human rights problems and solution"-p-57 to 87 also see Women and Law in India, Issues and Challenges by Dr. G. S. Reddy - A.I.R 2003 Vol.- II Nov- p-331.

¹⁶ Sec- (2f) and (2g)

¹⁷ 5, Sec- 8, Sec-9, Sec-10, Sec-11 and Sec-12 of The Protection of women from Domestic Violence Act, of 2005.

3.4.1 Procedure of Filing Complaint and the Court's Duty:

The aggrieved person or any other witness or any other witness of the offence on her behalf can approach a Police Officer, Protection Officer, and service Provider or can directly file a complaint with Magistrate for obtaining orders or reliefs under the Act¹⁸.

3.4.2 Penalty/Punishment:

The breach of Protection order or interim protection order by the respondent is cognizable and non bailable offence which is punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both¹⁹.

3.5 Appeal:

An appeal can be made to the Court of Session against any order passed by the magistrate within 30 days from the date of the order being served on either of the parties.²⁰ From the above survey of existing literatures we have observed the following:

Human rights are those basic entitlements and freedom that make our lives satisfying and meaningful. A serious human right violation could be seen in the form of matrimonial violence against woman which is a serious problem. The women by reasons of violence against them are denied of full enjoyment of their human rights.

The rhetoric of inviolability of family as an institution, has shielded matrimonial 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 interventions.

Women's weak and vulnerable position inside their homes explodes the myth that women are subjected to harassment and violence on the streets while the home is the safest heaven. Though the statistical data on the incidence is scant and the few studies available indicate that Physical abuse of Indian women in their homes are quiet rampant. Women living in nuclear families are more vulnerable to violence than those living in joint families.

In order to address the problem of increasing domestic violence, but has remained largely invisible in the public domain. The Protection of women from Domestic Violence Act was passed in 2005 to provide civil remedies to women in abusive/violent relationship.

¹⁸ Sec-12 and Sec-14 of The Protection of women from Domestic Violence Act, of 2005.

¹⁹ Sec - 29 of the Protection of Women from Domestic Violence Act, 2005

²⁰ Sec – 30 of the Protection of Women from Domestic Violence Act, 2005



Though a plethora of laws have been enacted for the protection of women, they have remained on paper, for, the large majority of women in this country are wholly unaware even of the existence of these statutory provisions and where women become assertive about their rights, very often they are subjected to social ostracism²¹.

Women in rural areas are wholly unaware of their rights so much greater and concentrated efforts for the various measures in order to make them a living reality for these women are required. This can be achieved only through the collective effort of the state, NGO's imparting sound and informal education through media.

No doubt the Protection of Women from Domestic Violence Act,2005 is proposed to fulfill many of the hopes which women have articulated over the years. It is however the first ever comprehensive acknowledgement of matrimonial violence.

Women have to go a long way to achieve the object of ensuring the women realize their right of leading a life free of violence and full of dignity from the very beginning to the end. Changing attitude of the entire society particularly all the males who are seen as perpetrators of violence against women.

India is far ahead of many developed economics in providing progressive legislation and positive intervention on behalf of the women but law can only be an instrument of change that must be effectively used²². Society is web of social relationship of which those between male and female are the most intimate and stable. The status of women in any society is the index of the standards of its social organization. The standard of the society rises and fall in correlation with the rise and fall in the status of women.

4. CONCLUSION AND SUGESTION:

Only the legislation and law enforcement agencies cannot prevent the incident of crime against married women. Social awakening is necessary and change in the attitude of masses, so that they can give due respect and equal status to a married women not only in their family but also in others family. The awakening can be brought by education, campaign or door to door survey conducted by the Government agencies or NGO 's. Various NGO's can hold a responsible position here by assigning them with the task of highlighting socio-economic causes leading to such crimes and by disseminating information about their catastrophic effect on the womanhood and the society at large. Mass media can also play an active role here as in the present days it has reached every corner of the nation.

²¹ NALSA - NYAYA DEEP [volume VII-Issue-3rd july-2006]

²² Journal of the Indian Law Institute, Vol. – 47, April – June, 2006.



REFERENCES:

1. Advani, P (1994), Crime in Marriage: A Broad spectrum,
2. Chatterjee, M (2003), “Women’s Human Rights”, Kashmir University Law Review, Vol.I , No. 5 , January, 2014
3. Dewan, V.K. Law relating to offences against women,1996,p-97. Also see Max Radin; Encyclopaedia of Social Sciences..
4. Justice A.S.Anand: “Victims of Crime-The Unseen Side”,(1198) 1 SCC(J)3.
5. Journal of A.I.R 2003, p-314-315..
6. K.Vimala Devi,” Women and Criminal Law”. Also see Dr.S.KAwasthi and R.P.Kateria, “Law relating to protection of Human Rights.
7. Kaarthibeyan,R. “Human rights problems and solution”.
8. Rashid, S.K. (1997), “Protecting the Life and Health of unborn children”,*International conference on Global Health Law-1997 SOUVENIR 1997* the I.L.J. New Delhi.
9. Reddy G.S. (2003),“Women and Law in India, Issues and Challenges”, A.I.R., Vol.- II No- V, 2011,
10. Shrinivas,Gupta (2002), “Incestuous Relations and sexual abuse of the children in India and Abroad”,Amity Law Review, Vol.3.Part 1.
11. Srivastava, Lakshmi (1998), “Problem of Violence Against Women: A Multi Disciplinary Conceptual Analysis”, a paper read in National Seminar on ‘Women and Violence: Various Manifestation’ at A.N.S Institute of Social Studies, Patna on 17th January, 1988.
12. Sydney Brandon in M.Borland (Ed.): Violence in Family, (1976).