

# **SPECIFIC JUSTICE NEEDS OF VICTIMS OF DOMESTIC VIOLENCE - LEGAL SERVICES AND LEGAL AID INTERVENTIONS**

- Yashita Munjal\* & Diksha Munjal\*\*

## **I. Introduction**

India has a huge population.<sup>1</sup> Some part of the population which is denied the enjoyment of the normal privileges or rights of a society because of low economic and social status constitutes the underprivileged section of it. People who are below poverty line form a part of the economic underprivileged. The socially disadvantaged group is larger in terms of categories of people and is hard to define.

In terms of gender ratio, there are 940 females to every 1000 males.<sup>2</sup> Statistics show that the male-female gap in literacy rate is 16.68%.<sup>3</sup> The figures all go on to portray women as underprivileged compared to men. The question is where does this stem from? The answer is a patriarchal society.

The patriarchal society has and has had many repercussions which have only constantly eroded the status of women. Women have been subjected to atrocities for times immemorial.<sup>4</sup> The problem still persists and in different forms. One of the most common forms of it today is violence in the home.

## **II. Domestic Violence**

Violence against women is endemic in India. The country is growing at a rapid rate in all spheres and the economy is progressing but sadly the issue is still prevailing in most areas of the country. The statistics show that 32.7% women in India suffer some form or other of

---

\*Student, Faculty of Law, Delhi University

\*\*Research Associate, National Law University Delhi

<sup>1</sup> Ministry of Home Affairs, Government of India, *Census of India 2011: Provisional Population Totals* (Office of Registrar General & Census Commissioner, India, 2011) p.38 (India ranks second, after China, in world population)

<sup>2</sup> *Ibid.* p.79, 80

<sup>3</sup> *Ibid.* p.102

<sup>4</sup>The practice of *sati* stands a classic example of it.

physical and/or sexual violence in their lifetime.<sup>5</sup> For years the problem was considered to be a 'private affair'. The patriarchal society reinforced the problem under the guise of privacy.<sup>6</sup>

Domestic violence springs from the not so obvious currents of power and control which run beneath the relationship between intimate partners. The perpetrator seeks to exert power and increased control over the victim in different ways, isolation being the first step.<sup>7</sup> Dobash and Dobash have observed that as a woman starts settling into her 'role' as a wife, she loses control over her life, contact with the outside world and becomes submissive to her husband's expectations and demands.<sup>8</sup>

Violence at home has an appalling impact on the victims.<sup>9</sup> The ramifications are wide spread and multi faceted. It has been observed that domestic violence is an issue that further 'triggers' more problems.<sup>10</sup> The victim is left grappling with issues such as physical injuries, depression, social isolation, constant fear, insufficient financial resources, decreased productivity and concentration and frequent absences from work, separation or divorce, housing, etc.<sup>11</sup> Therefore, a vicious circle of additional and greater problems stands staring before the victim. This makes it extremely difficult for the victim to walk out of the relationship.<sup>12</sup>

A victim faced with such challenging and trying times looks for a support system which is rarely in place. In 1983, domestic violence was recognised as a specific criminal offence by the introduction of Section 498-A into the Indian Penal Code.<sup>13</sup> This was followed

---

<sup>5</sup> UN WOMEN, (2011) *The Violence against Women Prevalence Data: Surveys by Country* [[http://www.unifem.org/attachments/gender\\_issues/violence\\_against\\_women/vaw-prevalence-matrix-2011.pdf](http://www.unifem.org/attachments/gender_issues/violence_against_women/vaw-prevalence-matrix-2011.pdf)] last accessed on July 28, 2012.

<sup>6</sup> See generally Elizabeth Schneider, 'The Violence of Privacy' (1991) 23 *Connecticut Law Review* 973; M.D.A. Freeman, 'Violence against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?' (1980) 7 *British Journal of Law and Society* 215

<sup>7</sup> R. Emerson Dobash and Russell Dobash, *Violence against Wives: A Case against the Patriarchy* (London: Open Books, 1980) 76

<sup>8</sup> *Ibid.*

<sup>9</sup> See generally Erin Pizzey, *Scream Quietly or the Neighbours will Hear* (Harmondsworth: Penguin, 1974) (Her book brought to light the crises and trauma faced by battered women.)

<sup>10</sup> Pascoe Pleasence, Nigel Balmer and Alexy Buck, *Causes of Action: Civil Law and Social Justice* (London: The Stationery Office, 2006) 55

<sup>11</sup> Diksha Munjal, 'Intimate Partner Violence – Is there a Solution?' (2012) 19 *Duke Journal of Gender Law and Policy* 347, 349

<sup>12</sup> *Ibid.* p.351

<sup>13</sup> *Indian Penal Code, 1860* (Section 498A: Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:

by a specific legislation, the Protection of Women from Domestic Violence Act, 2005(PWDV Act). Though the PWDV Act does attempt to provide a safety net to battered women, it is however unable to take care of all the needs of these women in distress. What is needed on the legal front is an integrated and wholesome approach along with the support of legal services and legal aid interventions.

### III. Legal Framework

The Constitution of India provides for the protection of women or the other underprivileged sections of society. This includes fundamental rights contained in Articles 14<sup>14</sup>, 15<sup>15</sup>, 21<sup>16</sup> and Directive Principles of State Policy contained in Articles 39<sup>17</sup>, 40<sup>18</sup>, 42<sup>19</sup> and 44<sup>20</sup>. It is pivotal to note that according to Article 51A(e) it's a fundamental duty of the citizens to renounce practices that are derogatory to the dignity of women.

Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Article 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In 1987, the Legal Services Authorities Act was enacted by the Parliament with an object to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 (LSA Act) to monitor and evaluate implementation of legal services available under the Act. In every State, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee has been constituted. District Legal Services Authorities and Taluka Legal Services Committees have also been constituted in the Districts and most of the Talukas. The Legal Services Authorities have been asked to discharge the following two

---

For the purpose of this section, "cruelty" means—

(a) 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

(b) 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)

<sup>14</sup> *Constitution of India, 1950* (Article 14 : Equality before law)

<sup>15</sup> *Ibid.* (Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth)

<sup>16</sup> *Ibid.* (Article 21: Right to life and personal liberty)

<sup>17</sup> *Ibid.* (Article 39: Certain principles of policy to be followed by the State)

<sup>18</sup> *Ibid.* (Article 40: Organisation of village panchayats)

<sup>19</sup> *Ibid.* (Article 42: Provision for just and humane conditions of work and maternity relief)

<sup>20</sup> *Ibid.* (Article 44: Uniform civil code for the citizens)

main functions on regular basis: (i) to provide free legal services to the eligible persons; and (ii) To organize Lok Adalats for amicable settlement of disputes.

The free legal services include payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings; providing advocate in legal proceedings; obtaining and supply of certified copies of orders and other documents in legal proceedings; preparation of appeal, paper book including printing and translation of documents in legal proceedings. Eligible persons for getting free legal services include women, among others.

Research has shown that abused women who sought formal help were more likely to be exposed to physical or sexual intimate partner violence, severe psychological violence, and severe and long-lasting physical and sexual violence.<sup>21</sup> In other words, victims who did seek formal legal and medical services were vulnerable to more violence. As re-victimisation is a unique characteristic of domestic violence<sup>22</sup>, merely lifting the financial burden off the victim's shoulders is not enough. The victim would surely feel some relief but it is not enough to make her feel safe and secure. Though the Constitution mandates free legal aid to the weaker sections of society, including women, free legal aid doesn't equate to quality legal aid. Thus, what is required is an all-round and comprehensive approach that would help alleviate the victim's overall condition.

#### **IV. Suggestions**

Domestic violence cannot be addressed solely by improving the legal aspects of dealing with the issue. It is a social problem that has its roots in patriarchal order of the society. The measures to deal with the menace therefore need to be as multi-faceted, widespread and equipollent as the menace itself.

##### **(a) Domestic Violence Court**

Domestic violence can more often than not lead straight to separation and divorce which can further bring into the arena issues regarding maintenance, custody of children (if any), property etc.<sup>23</sup> It has been observed that there are long delays in domestic violence hearings.<sup>24</sup> A special forum with an integrated approach such as

---

<sup>21</sup> EE Duterte, AE Bonomi, MA Kernic, MA Schiff, RS Thompson, FP Rivara, 'Correlates of medical and legal help seeking among women reporting intimate partner violence' (2008) 17 *Journal of Womens Health* 85 (The study aimed to examine the relationship between intimate partner violence type, severity, and duration and abused women's use of medical and legal services.)

<sup>22</sup> Munjal, n.11 above, p.354

<sup>23</sup> Pleasence *et al.*, n.10 above, p.56; Bruce J Winick, 'Applying the Law Therapeutically in Domestic Violence Cases' (2001) 69 *University of Missouri-Kansas Law Review* 33, 40

a domestic violence court can help the victim to deal with all such issues more efficaciously.

A 'one family one judge' approach<sup>25</sup> can go a long way. It would help in information sharing between different agencies that function along with the criminal justice system. A core centralized database containing all relevant information about the victim would make sure that the judge is aware of the complete set of facts and the overall situation.<sup>26</sup> This in turn would help ensure that the judge passes orders that take into account the entire background of the case and are not inconsistent with each other.<sup>27</sup> Accordingly it would speed up the process and minimise delays that are characteristic of the Indian justice system.

The overall situation would improve for the victim. She would no longer have to shuffle between different courts for different cases such as separation, divorce, maintenance etc which are generally all interconnected. It would also put across a very robust message that the justice system takes the offence very seriously and at the same time is compassionate towards the victims.

#### **(b) Better Housing**

Women who separate or intend to separate from their partners often may not have a place to go. They may seek refuge in the homes of either their friends or relatives. However these are not permanent options and instability lurks. Even though there may be a feeling of relief and safety but over a span of time, they are likely to experience a burdensome feeling of intruding into other people's lives. Privacy could also possibly be an issue.<sup>28</sup> With little or no finances combined with such scenarios, the women may have no alternative but to go back to the former housing and carry on to survive living with the perpetrator.<sup>29</sup>

---

<sup>24</sup> TNN, 'Court Laments Long Delays in Domestic Violence Hearings' June 13, 2012 *The Times of India* [[http://articles.timesofindia.indiatimes.com/2012-06-13/delhi/32214323\\_1\\_domestic-violence-act-adjourment-trial-court](http://articles.timesofindia.indiatimes.com/2012-06-13/delhi/32214323_1_domestic-violence-act-adjourment-trial-court)] last accessed on August 1, 2012

<sup>25</sup> Deborah Epstein, 'Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System' (1999) 11 *Yale Law Journal* 3, 29

<sup>26</sup> *Ibid.* p.33

<sup>27</sup> *Ibid.* p.33

<sup>28</sup> Ellen Malos and Gill Hague, 'Women, Housing, Homelessness and Domestic Violence' (1997) 20 (3) *Women's Studies International Forum* 397, 403 (The study found that women who sought refuge in shelter homes faced privacy issues)

<sup>29</sup> Joanne Pavao, Jennifer Alvarez, Nikki Baumrind, Marta Induini and Rachel Kimerling, 'Intimate Partner Violence and Housing Instability' (2007) 32 *American Journal of Preventive Medicine* 143, 145; Malos and Hague, n.28 above, p.404

The courts and municipalities must take cognizance of the menace and as a part of social justice initiatives take concrete steps to build special shelter homes for such women. The shelter homes must also be provided with adequate security and safe environment.

**(c) Imparting Knowledge**

The prime weapon that is capable of acting as a catalyst in the fight against domestic violence is knowledge dissemination. In doing so, it must be ensured that all sections of the society are taken into account. Domestic violence as a subject must be taught in schools for children aged 8 and above. This would sensitise them at an early age. The subject must be taught again at university level across all taught programmes. Employers must also conduct workshops and seminars at their workplaces at regular intervals. Besides, pamphlets and brochures in different languages could be disseminated at public places such as at health services, cafes, bus terminals, metro stations and the like. Also short films on the subject may be showcased in cinema theatres. It would not only help in creating awareness about the problem at the grass-root level but also ensure that the fight against it is strengthened.

**V. Conclusion**

The problems faced by victims of domestic violence are far reaching. The object of social justice envisaged by the Constitution of India can be given effect to by the judiciary as well as the local constituent bodies by taking concrete and tangible steps as suggested above. The need of the hour is a groundswell movement as today even in the 21<sup>st</sup> century women are not empowered enough to fight the patriarchal system and become at par with the men!