

DOMESTIC VIOLENCE AND LACK OF CONSTITUTIONAL GENDER JUSTICE FOR MEN

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INTRODUCTION

Law and society are inextricably connected and unavoidably have an impact on one another. In India and other parts of the world, a number of laws have been enacted to give legal protection to women because women have suffered at the hands of society and men, and hence, there is a biased conviction that traditional gender roles cannot be reversed. When it comes to gender-based protection legislation, a circumstance like this has assumed primacy in the eyes of the law. Currently, the domestic violence laws vow to protect only about half of the population of the country, deliberately keeping their eyes wide shut towards the rest. Technically speaking, this is where Article 14, which says that that state wouldn't deny anyone equality before the law, should be stepping. Article 14 in turn attracts Article 15(1), wherein it is stated that the state shall not discriminate based on sex¹ and Article 21, which guarantees Right to Life and Personal Liberty.² Herein lies the fallacy. Even though the Constitution of India, through Fundamental Rights dictates the legislative to implement similar laws for both the major sexes, the reality portrays a completely different scenario, which shall be painted in the following paragraphs.

ISSUES

This article has been broken down into three main constructive-

- Firstly, the article addresses the right to Equality and need of Domestic Violence laws for men thereof.
- Secondly, the article includes a critical examination of the numerous challenges associated with the replacement of gender-specific legislation with gender-neutral domestic violence legislation.

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¹ INDIA CONST. art. 15, cl. 1

² INDIA CONST. art. 21

- And lastly, the article advocates for the right to equality in the truest sense and for the legislative umbrella providing protection to women against Domestic violence, to be extended to the men of the country as well.

CRITICAL ANALYSIS

The Constitution of India aspires to ensure justice for everyone, which includes allowing legal recourse against any unfair or unjust act committed by any member of society, regardless of their social standing. Although there have been instances in recent years when males have been the "victim" of harassment in marital disputes, there is currently no legislative remedy in place to safeguard men and provide them with the ability to take legal action in such situations.

In a study where 1650 husbands, ranging in age from 15 to 49 years, were recruited, a total of four components of domestic abuse were investigated: economic, emotional, physical, and sexual. It was discovered that the likelihood of violence grew dramatically with the length of the marriage, particularly if it was more than seven years old, which was a significant observation. It has been reported that this violence is not always perpetrated by the wife, but that male relatives of the woman often strike the husband, according to the National Family Health Survey conducted in 2004. When physical abuse and threats against men by the wives' family are taken into consideration, it is believed that 3 crore men in India are victims of domestic violence.³ In *Arneshkumar v. State of Bihar*⁴, Hon'ble Supreme Court remarked that, Section 498-A of the IPC was established with avowed intention to battle the problem of harassment to a woman at the hands of her husband and his family. Section 498A of the Indian Penal Code 1860 states that only the husband can be found accountable for cruelty to his wife in certain circumstances. But it doesn't mention anything when it comes to men, deliberately refusing to acknowledge statistics. The Protection of Women from Domestic Violence Act, 2005⁵, as well as several revisions to the Criminal Code, have been adopted to different actions that act against the modesty and dignity of a woman, and even though they define domestic violence as injury caused to an "aggrieved person", it recognises only a woman as the victim. In and of itself, this definition disregards a man's position as a victim of domestic abuse, and

³ Dhulia, VR. Domestic violence against men: High time government addressed the problem; 2015, <https://www.news18.com/news/india/domestic-violence-against-men-high-time-government-addressed-the-problem-1004785.html>

⁴ Arnesh Kumar v. State of Bihar (2014) 8 SCC 273

⁵ Section 2(a) of the Protection of Women from Domestic Violence Act, 2005, (Act No. 43 of 2005)

as a result, it is in violation of the Constitutional obligations set out in Article 14, Article 15(1), and Article 21 as explained previously.

While the question of gender-neutral Domestic Violence laws are advocated for, a question may come up. The most common argument against gender-neutral laws is that neutrality obscures unequal power relations and, in particular, fails to recognise long-standing marginalisation of women.⁶ However, it is important to note that the diverse categories of victims are each dissimilarly and differently placed in relative relation to one another. Meanwhile, women continue to be subjected to historical discrimination, men are under intense pressure to behave in accordance with the strict constraints of aggressive masculinity, which prevents them from displaying any signs of vulnerability.

The incidences of violence against men, albeit rare, have been acknowledged in a few cases by the Indian Judiciary. In a recent case, *Anupama Ashok Aher v. Ashok Bajirao Aher*,⁷ the High Court of Bombay allowed the husband the right to seek divorce on the grounds that the wife had made false charges of infidelity against him, denied him physical relations, verbally abused, and physically assaulted him. There have been a few additional instances such as *Bhagwanti v. Laxmandas Panjwani*⁸, *Vijay Kumar Jain v. Sunita Vijay Kumar Jain*⁹ and *Vidya Ramakrishnaiah v. RN Vikram*¹⁰ in which courts have acknowledged that male victims had been subjected to verbal abuse and physical violence. However, the remedy granted was divorce and there was no consideration of domestic abuse by women against men and the resulting culpability. It is high time laws are brought about to provide protection to men and the constitutional fundamental right of equality for men is upheld. High time Domestic Violence laws are made gender neutral. High time the gender-neutral domestic violence laws, such as that of a South Asian country like Bhutan¹¹ is idolized. Not just that, proper acknowledgement and treatment of male victims must also be taught to the already socially biased law enforcement officers; men too can be vulnerable and violated.

⁶ Lillian Artz & Dee Smythe, 'Feminism v. The State? : A Decade of Sexual Offences Law Reform in South Africa', (2007) 7 Empowering Women for Gender Equity 6-9, 11.

⁷ *Anupama Ashok Aher v. Ashok Bajirao Aher*, 2014 SCC OnLine Bom 792, (2015) 5 Bom CR 302.

⁸ *Bhagwanti v. Laxmandas Panjwani*, 1999 SCC OnLine MP 39, AIR 2000 MP 190

⁹ *Vijay Kumar Jain v. Sunita Vijay Kumar Jain*, 2000 SCC OnLine MP 230, (2001) 1 MP LJ 412

¹⁰ *Vidya Ramakrishnaiah v. RN Vikram*, 2004 SCC OnLine Kar 360, (2005) 3 Kant LJ 347.

¹¹ Addressing the Roadblocks to Gender Neutrality in Sexual and Domestic Violence Laws: A South Asian Perspective, 11.2 JILS (2020) 79

CONCLUSION

The social gender construct appears to be a vicious circle. The masculinity of men does not permit them to appear fragile and victimised. This creates a very strong social obstruction in reporting violence resulting in a lack of structural remedies to address their victimisation even under S. 323 or 324 of the IPC. Social stigma coupled with a lack of legal protection has pushed men facing violence at the supposedly safest corner of their houses into absolute silence or towards suicide. We must as a country stand and protect our men, our citizen and uphold the provisions of the Indian Constitution that have been blatantly ignored by the lawmakers of the country.

