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PROTECTIVE LEGISLATION FOR MEN IN MATRIMONIAL VIOLENCE- NEED FOR LAW IN INDIA

Virek Aggarwal*

Abstract

Several laws, in India and around the world, have been designed to provide legal protection to women, who have been perceived as a vulnerable group. In order to confer protection to women in disputes arising out of matrimonial relationships, particularly domestic violence and cruelty, India enacted the Protection of Women from Domestic Violence Act, 2005 and amended the Indian Penal Code in 1983 to insert section 498A, to make cruelty against women punishable. The above legislations are great examples of the legal provisions enacted for protection of women. However, the vital question which arises for consideration is whether men can be "victim" to the above offences in which protection has been afforded to Women exclusively. There is not a single law for protection of Men in India in the field of matrimonial violence. Further no research has ever been conducted to assess the extent of the crime against men in this field. Having no law to address a particular offence is a violation of the right to legal remedy. This paper focuses on the need for creation and implementation of legislations for protection of men in India against domestic violence and cruelty, parallel to those enacted for women.

INTRODUCTION

The Constitution of India aims to secure justice for all, which includes providing legal remedy against any wrongful or un-just act across all cross sections of society. However, in recent times, there have been infrequent incidents where men have been the 'victim' of emotional and mental harassment in matrimonial cases, yet there is no legal remedy protecting men and enabling them a legal action in such situations. While laws have been created to rightfully protect women in such incidents, men are still deprived of the

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appropriate legal protection which has led to incidents where the husband have committed suicide due to harassment by wife or her family members. Such extreme situations may be rare, but cannot be completely ruled out. The idea of protective rights for men has seldom been perceived as a legislative lacuna.

Women in India, unfortunately, carry a long history of reported cases of violence against them. Indubitably, protective legislations are positive steps aimed at empowerment of women. But legal issues relating to men cannot be completely ignored as men too, can be victim to violence by the other party to the marriage. In India however no step has ever been taken towards enacting protective legislation for men, let alone any study in this field has been conducted at the national level. Since no one has ever conducted a study in this area to gather data, comparable to those for women, this lacks sufficient statistics and gets washed under other general legal framework.

Matrimonial relation is a relation of union of both the sexes. An act of aggression can be committed by either side. It can assume the shape of domestic violence, in the nature of economic deprivation or physical or psychological torture, or it may amount to cruelty to the extent of harassment which drives the other to commit suicide. This paper is divided in 2 parts. The first focuses on the need of law on Domestic Violence for men in India, and the other focuses on the need for law on cruelty on the husband by the wife and her relatives in India.

Domestic Violence against Men in India

A "domestic relationship", as per the Protection of Women from Domestic Violence Act, 2005[1] means "a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family". *Domestic Violence* as per the aforesaid Act means[2] "any act, omission or commission or conduct of the respondent in case it - harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or otherwise

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

2 Section 2(g) read with Section 3 of the Protection of Women from Domestic Violence Act, 2005, (Act No. 43 of 2005)

injures or causes harm, whether physical or mental, to the aggrieved person." However the Act has been enacted specially for protection of women, and therefore the "aggrieved person" in the above Act is limited to women victims, and defined as "any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent." [3] Various reliefs have been provided in the said Act, including monitory relief, custody order, residence order, interim compensation etc. The preamble of the Act, itself sets out the objective that it is enacted for providing more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The objective of the Act is undoubtedly noble and does confer protection to women. However the question arises as to whether the men in India, deserve equal protection, against any alleged violence by women. Male victims of domestic violence may suffer psychologically or socially on account of anger or harsh abuses from their wives and her relatives; they can suffer economically when the wife controls the finance resources against the wishes of the husband and compels the expenditure in a certain way, they may suffer mentally on account of lifestyle differences etc. As per a recent published report in the Indian Journal of Community Medicine, a research was conducted in this field in the year 2012-13, in District Rohtak, in the stateof Haryana, in which a total of 1000 married men in the age group of 21–49 years were interviewed using modified conflict tactics scale. It was found that 52.4% of men experienced gender-based violence. Out of 1000, males 51.5% experienced violence at the hands of their wives/ intimate partner at least once in their lifetime and 10.5% in the last 12 months. The most common spousal violence was emotional (51.6%) followed by physical violence (6%).[4] In the recent years the incidents of suicide by men have been reported from across the country, and in most of the cases, the suicide notes have alleged the harassment at the hands of wife and her relatives. In April 2019, a 40 year old man jumped on the railway track and committed suicide, and the suicide note alleged the harassment of wife, her brother and mother, and the lover[5]. The matter is under investigation. In May 2019, in a similar incident, reported from Ahemdabad, a man committed suicide by consuming sedatives, and an FIR was filed against his wife and her parents, for abetment to suicide of her husband, as it was alleged that he had been harassed by her wife and previously also the wife had filed

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

4 Malik JS, Nadda A.(2019) A cross-sectional study of gender-based violence against men in the rural area of Haryana, India. Indian Journal of Community Medicine 2019;44:35-8

5 India Today(2019, April 22), 'Pune man kills self after being harassed by wife, her lover'.URL (consulted June 5,2019), from https://www.indiatoday.in/crime/story/pune-man-kills-self-after-being-harassed-by-wife-her-lover-1507080-2019-04-22

a case for domestic violence against the husband.[6]In January 2019, in the national capital, Delhi, a man committed suicide by hanging himself, and early investigation showed that he had alleged in a video in his mobile phone about the harassment by his in laws as the reason for the drastic step[7]. These are just the few instances which have come up in media reports, which show that Men can also be victims of Domestic Violence from the wife and harassment at the hands of the wife and the in laws has been a cause of suicide in most of the reported cases.

"Cruelty" against Men

Section 498A of the Indian Penal Code was introduced in the year 1983, and makes the Husband or relative of husband punishable for subjecting a women to cruelty. According to the above provision, "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." The expression cruelty has been defined very broadly so as to include, any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. In *Arneshkumar v State of Bihar*[8], Hon'ble Supreme Court observed th*at, "* Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.» The Hon'ble Supreme Court took cognizance of the alarming number of matrimonial disputes in recent years, and directed all the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is

6 Times of India (2019, May 17)'Man commits suicide alleging harassment by wife'. URL (consulted on June 16,2019), from https://timesofindia.indiatimes.com/city/ahmedabad/man-commits-suicide-alleging-harassment-by-wife/articleshow/69365083.cms

7 The Pioneer (2019, January 7), 'Man commits suicide, alleges harassment'. URL (consulted on June 10, 2019) from https://www.dailypioneer.com/2019/state-editions/man-commits-suicide--alleges-harassment.html

8 (2014) 8 SCC 273

registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, of the code of Criminal Procedure.

Cruelty in simple parlance means a behavior that causes pain or suffering to others, especially deliberately.[9] The term in simplest terms, would indicate cruelty committed by one individual human being or many on the other or others. This term however conceived in the Indian legal penal scenario, is confined only to cruelty committed by male perpetrator on women victims. There have been instances where the conduct of women, has compelled the husband to take suicidal step, as discussed above.[10] In such a situation the women perpetrator can be punished with abetment to suicide. However there is no provision of protecting the Men from cruelty meted at the hands of wife during the course of marriage, when they are alive.

Very often the cruelty inflicted on men, goes unnoticed. Such instances go unreported for several reasons. One such reason is the perceived social notion of masculinity, that the men cannot be victimized. The term victim is itself a subjective term, which varies with situations. A woman in rural India, unaware of her rights, and completely dependent on the husband for earnings, may be a possible victim of cruelty from her husband. On the other hand, a well educated woman, well aware of her rights, being equally independent economically and socially as that of the husband, may be a possible victim, or may be a possible perpetrator. Thus the term victim varies from facts to facts, in different situations. A generalized recognition of women as victim of cruelty, has deprived the Men of certain protections, which the legislation in India did not foresee. It becomes imperative to enact laws for protection of men also, in the wake of growing instances of harassment against them. The idea of “male victim”, should not be lost sight of completely.

Conclusion

Matrimonial violence has to be viewed from an unbiased perspective as the aggression can be caused from either party to the marriage. The social demographic across India is so varied and complex, that no generalization can be drawn in favour of one gender against the other. Most of the studies and research in the field of domestic violence, and cruelty focus on the crime committed against women,There is no proper research on the topic of violence and cruelty committed against men. Thus there are no accurate figures available at the national level. The possibility of exploring protection to men in the law relating domestic

9 Oxford Learners Dictionary. URL (consulted on June 14, 2019) from https://www.oxfordlearnersdictionaries.com/definition/english/cruelty

10 Supra, Notes 5,6 and 7

violence and cruelty should be considered by the legislature of the country at the earliest, as affording no protection to a class of individuals, is a violation of the basic right to legal remedy.The right to legal remedy is one of the most precious human rights, which was also recognized by the founders of the Constitution of India. It is inevitable for any country that its legal system make provisions for all sections of society to address their problems, as Earl Warren once remarked in "The Law and the Future" that "The success of any legal system is measured by its fidelity to the universal ideal of justice." Therefore Justice must pervade through all sections and all genders of society.