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DOMESTIC VIOLENCE: AN ISSUE OF CONCERN FOR ONE AND ALL

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Abstract:

Such has been the development of the patriarchal society that the woman has become a weaker section of human population. Her only function is procreating children and attending households. She is 'Ardhangini' but is a target of social and economic exploitation. The whole of her life is so structured that that she becomes subservient even in the era of equality of sexes, equality before laws and equal protection of laws. It is ironical that cruelty to women and problem of battered wives has become almost a worldwide phenomenon. Domestic hooliganism and violence against married women (the battered wives) occurs all over the world on a significant and disturbing scale. When the constitution was drafted, the drafters were aware of the problems of women as the weaker section of our society. This has been taken care under various Articles of the Constitution. But Indian Constitutional promise of gender equality has not faced a greater neglect than in the area of violence against women. To realize a woman's right to live with dignity as guaranteed under Article 21 of the Constitution means, first to recognize the pervasive indignity of women's condition.

KEY WORDS:

Domestic , Issue , Violence , Households , Hooliganism.

I. INTRODUCTION

The issue of domestic violence is essentially the issue of the personhood of woman, violation of her right to life and liberty. Domestic violence has drastic and devastating effects on its victims. Violence against women has been hidden behind the walls of the home, those within it do not wish to speak about it, those outside do not want to hear it. It is a myth that family is a sanctuary of tranquility and harmony and domestic violence is a veritable incongruity, a contradiction in terms. Domestic violence is unique in the concentration of risk factors and absence of formal controls for violence. The issue of domestic violence has assumed a dimension which renders it as a category of its own. It deals with all forms of violence against women in all roles that they play in society— daughter, sister, wife, mother and mother-in-law. The statistics of 2004 published by Government of India show that a woman is a victim of domestic violence torture every 20 minutes.

II - CONCEPT OF DOMESTIC VIOLENCE

Domestic violence can be understood to be behaviour, emotional, psychological, physical, sexual or economical, that one person in an intimate relationship uses in order to control or abuse the other. Domestic violence includes a range of violent activities as hitting, punching, slapping, kicking, shoving, choking, biting, assault/battery, cruelty, intimidating, forcible sex, degrading, humiliating in public, sex selection tests, aborting female fetus, dowry, dowry demands, criminal Acts, harassment, adverse effect on

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health, safety, well-being, stalking, disposal of household property in which applicant has interest, to the more subtle ones as emotional pain, constant criticism, threats to hurt, isolation, anger, destroying property, denial of family assets, financial resources, household necessities and over-protectiveness etc. are encompassed within the matrix of domestic violence.

The various causes for domestic violence are a complex mixture of social, economic, cultural, biological and legal factors accounts for the rising crime against women that has assumed an avalanching trend. Social pressures of urbanization, compelling ethics of success, demonstration of money power, scarcity of essential commodities and geographical mobility have put traditional Indian values in the melting pot and have resulted in a highly criminal, immoral and psychologically unfit atmosphere. There has been a virtual disintegration of joint family that provided an emotional safety net and gave physical support to all its members. Children are emotionally abandoned and invariably teenage criminals and delinquents. It reflects the sorry situation at home and this mirrors India's cultural degeneration.

Women's traditional role as housewife and mother is institutionalized; the new role of a working woman creates confusion and ambivalence. Home is the place where men's writ runs unchallenged by use of brute force when they fail to prove their superiority at the workplace. While men do want a working wife, they fail to recognize her freedom so essential for her work. A sense of urban anomie, fast paced changes and an influx of rural population with very different value systems, influence of media and middle class explosion have variously influenced value system. Heterogeneous charter of population and absence of fear of being criticized by the community has also encouraged crimes against women. Domestic Violence cuts across all social barriers of caste, class, education and religion, yet it is not recognized as a crime by society. Women from all sections of society, all income groups, educational levels and socio-economic strata face domestic violence.

Violence between family members is not viewed as seriously as violence between strangers. Complaints are withdrawn under duress from husband or even parents. It is high time that domestic assaults, notwithstanding the intimate nature of relationship, be treated as a crime not different from other crimes. Very few cases that come to Crime against Women Cell are registered as First Information Report. The 1983 and 1986 amendments to IPC are superficial, fragmented and sketchy and do not cover the specific crime of wife-beating directly which is so all pervasive. These provisions deal with the extraordinary and sensational issue rather than the daily, ordinary and repetitive violence. Cruelty is assessed by the judges according to the versions of the witnesses and evidence of the parties. Cruelty and wife beating, which are alien to our image of non-violence and respect for womanhood, is emerging as one of the least recognized and most appalling crimes. Far from being a haven of safety and security, the home has become a cradle of violence. For a man, beating his wife is a private privilege of marriage, a way to unload himself of his anger and frustration of daily life, without fear of reprisal. It is assumed that wife must have done something to deserve beating. For a woman battering and ill treatment by a husband is regarded almost like a concomitant of marriage, a daily ritual, something as routine and inevitable as doing the housework. Most women sincerely believe that a husband has a right to beat his wife and she is his property.

III - MAGNITUDE OF THE PROBLEM

Domestic violence is the most prevalent crime and remains largely invisible. It is the least reported crime due to the feelings of guilt and shame, fear of further beatings and desertion, loss of economic support. Inept handling by police and due to social compulsions, statistics present only the tip of the iceberg as most cases remain under cover of privacy. Several victims have moved between the matrimonial home and the natal home several times. They lack education to become economically independent. Most of domestic violence cases never cross the holy precincts of home. A woman is unable to bargain for herself in the present social structure and legal system.

Many facets of this violence and cruelty are not even recognized by law. Law of evidence does not recognize the basic fact that wives suffer from a special kind of violence of which only they are victims. It occurs within the four walls of the house and cannot be easily proved because of the nature of the crime and the overwhelming social compulsions. Some women get beaten up once in a while, some every day even for a small reason, but most often without reason; some when husbands get drunk; some are beaten up with hands; some with objects around; some with sticks; some to coerce money from their natal family; some are starved; some are bashed up against walls, objects, some get fractures, loss of vision, hearing, sexual harassment. Once husband wife relations get spoilt it leads to violence.

According, to India's most comprehensive National Family Health Survey- III Conducted by the International Institute of Population, interviewed 1.25 lakh women in 28 states and the NCT of Delhi in 2005-06, 40% of the surveyed women said they are the victims of the domestic violence. The worse aspect this survey reveals, is that 54% of the women say it is O.K. 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 O.K. 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.

This attitude of Indian women is truly shocking. 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. The survey is an eye opener. It shows that mere laws are not enough to curb domestic violence, if the victims themselves regard it as justified. Even strict laws can't achieve much. What is needed is a concerted national effort to drive home a message that to both men and women – wife beating is unacceptable. Not only government and Women's Groups but also the civil society institutions must play an important role to do away with this social evil as it can't be wished away with legal wards.

In India the worst problem we face is that victims in almost all states don't feel victimized both in case of dowry or spousal violence. They feel that being beaten up or tortured by their husbands is all right. They have been groomed to believe that. This mindset requires to be changed by educating and empowering more women, making them aware of their rights.

National Family Health Survey – III has made some other shocking observations, while 1 in 10 women have experienced sexual violence while 1 in 6 have been through emotional violence by their husbands. Bihar has been found to be the worst state with abuse rate as high as 59%. About 63% of these incidents of violence on women are in urban families. Bihar is followed by Rajasthan 46.3%, Madhya Pradesh 45.8%, Manipur 43.9%, Uttar Pradesh 42.4%, Tamil Nadu 41.9% and West Bengal with 40.3%.

According to the figure 62% of the women have faced physical or sexual abuse within two years of marriage while 32% women have experienced it in the first five years of their marriage. Slapping was the most common Act of physical violence by husbands. 34% women were slapped, 15% faced hair pulling or twisted arm.

Women of SC/ST communities were the worst affected, with one in three women experiencing domestic violence. Buddhist women reported the highest number of violence— 41% followed by Muslim and Hindus 34% and 35% respectively and Sikhs and Christians around 26-28%. Women from Jain community reported the lowest level of violence that is only 13%.

IV - LAWS RELATING TO DOMESTIC VIOLENCE

Domestic violence is undoubtedly a Human Right issue and a serious deterrent to development. The Vienna accord of 1994 and Beijing declaration and the Platform for Action 1995 have acknowledged this. The UN committee on Convention on Elimination of all forms of Discrimination against Women (CEDAW) 1993 to which India is a party clearly sort to define violence against women as an act of gender based violence that result in or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life. CEDAW casts an obligation on the state to take all legal and other measures necessary to provide effective protection to women against gender based violence specially occurring inside the family, without insisting on legislative enactments as a condition for enforceability at the domestic land. Supreme Court also lost no time in reading the convention into Constitutional Rights. Resultantly domestic violence is the violation of fundamental rights.

The passing of the Domestic Violence Act 2005 is an important marker in the history of Women's Movement in India. The Act has widened the scope of the violence as earlier all categories of violence suffered by women within the family were related to dowry. The Act acknowledges that domestic violence is widely prevalent and is a universal problem of power relationship more than the culture specific problem called as dowry harassment or dowry death.

The Act has been passed keeping in view the rights guaranteed under the 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 protection of women from Domestic Violence Act 2005 represents a landmark in the achievement of gender equality for Indian women in two fundamental ways, firstly it confirms the fact that Indian family is not a safe place to live in, as the DVA Act covers abuse of elderly, child sexual abuse and violence against divorced and widowed women.

Another distinctive feature of DVA is that it de-links domestic violence from the confinements of dowry murders and dowry harassments. Till the passing of this law victim women were forced to link the violence to a dowry demand in order to have access to justice under section 498-A, 304 - B or divorce on the ground of brutality. PWDVA is a path breaking law as it recognizes the right of a woman to live in homes devoid of the violence and provide the women victim a right to reside in the shared household.

The definition of domestic violence as provided in Sec. 3 of the Act has been adopted from the UN framework for model legislation on domestic violence and covers physical sexual, verbal, and economic violence. It reads as – any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) 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, verbal and emotional or economic abuse; or
- (b) Harass, 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
- (c) Has the effect of the threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) and (b).
- (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I, For the purpose of this section: Physical Abuse means any Act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force; Sexual Abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman; Verbal and Emotional Abuse includes-

- (i) Insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
- (ii) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Economic Abuse includes-

- (i) Deprivation of all or any economic or financial resource to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- (ii) Disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds, and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
- (iii) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue to domestic relationship including access to the shared household.

Explanation II - For the purpose of determining whether any Act, omission, commission or conduct of the respondent constitutes domestic violence under this section, the overall facts and circumstances of the case shall be taken into consideration.

The Act defines aggrieved person as any women who is or has been in a relationship with an abuser where both parties have shared a domestic relationship by living in a shared household and are related either by consanguinity, marriage or through a relationship in the nature of marriage. From the definition under section 2(a), it can be seen that the aggrieved person can only be a woman. However the Protection Officer or any other person may present an application to the Magistrate seeking one or more reliefs under the Act for the aggrieved person. In a case the court justified filing of an application by the father of a lady claiming medical expenses. Another striking feature of Domestic Violence Act is that it legally recognizes marital rape as a form of domestic violence which the Indian Penal Code has still not been amended to enable a woman to file a rape case against her husband.

The Act also provides civil remedies including securing a protection order or injunction against abusers. The Act has an inbuilt mechanism of the protection officers and service providers to assist the women at time of seeking relief under the Act. As provided by section 27 and 28 of the Act, a judicial magistrate of the first class or the metropolitan magistrate of the first class has been empowered to grant protection orders and to try the offences under the Act vide section 28 of the Act. All proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and the offences under the section 31 shall be governed by the provision of the code of criminal procedure 1973.

Under section 18 of the Domestic Violence Act, the magistrate may after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in case of the aggrieved person and prohibit the respondent from—

- (a) Committing any domestic violence;
- (b) Aid or abetting in the commission of Act of domestic violence;
- (c) Entering the place of employment of the aggrieved person, or if the person aggrieved is a child, its school or any other place visited by the aggrieved person;
- (d) Attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephone contact;
- (e) Alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other properties held jointly by the parties or separated by them without the leave of the magistrate;
- (f) Causing violence to the dependents, other relatives or any other person who gives the aggrieved person assistance for domestic violence;
- (g) Committing any other Act as specified in the protection order.

The Domestic Violence Act has also recognized child sexual abuse as an offence and in a way recognizes Child's right to be free from violence in the home. A case under this Act can be filed against any male adult person as well as other relative of the husband. The Act covers verbal violence which includes accusation against a woman's character or preventing her from taking up a job or forcing her to have a job and then talking away her income, insult her for not having a male child. The Acts that constitute the emotional violence include not providing food clothing shelter and medicine for one's children, preventing a child from attending school/college, forcing a child to get married where he or she does not want to, or preventing the person of his or her choice. Complaint of domestic violence can be filed by neighbours, social workers, or even the relatives on behalf of the victim. Magistrate under the Act have been given broad powers including issuing protection and injunction orders, providing monetary relief or payment of maintenance.

Women can no longer be evicted from their homes by the abuser and can seek an order to reside in the same house or be allotted a part of it for personal use even if she has no legal claim or claim in the property. The abuser can also be prohibited from entering the house of the victim and if the aggrieved person is a child then the school of the child. The Act is thus a progressive remedial, civil law which puts the women in a position of dignity and equality from where they can seek negotiations. Following are some cases filed by taking recourse to the provision and Protection of Women from Domestic Violence Act, 2005.

The first case decided by the Hon'ble Supreme Court of India under Domestic Violence Act, 2005, S.R. Batra and another v. Smt. Taruna Batra, is the biggest setback of Domestic Violence Act 2005. In this case, Smt. Taruna Batra was married to Mr. S.R. Batra's son. After the marriage the couple was living in a house owned by the husband's mother. The husband filed a divorce petition against the wife. As a counterblast the wife filed a FIR under Section 506, 498-A/34 IPC and got her in laws arrested. In between wife Smt. Taruna Batra moved to her parent's house because of the dispute.

Later when she tried to enter the house she was prohibited to enter it. In the mean while her husband (Anil Batra) shifted to Ghaziabad in a rented house. She filed a case invoking sec 17(1) of DVA which reads as - notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

It was held by the court that the wife is entitled to claim a right on residence in a shared household. And a shared household means only the house belonging to the husband or the house which belong to a joint family of which husband is a member. However house in question in this case is of the mother in law and not of the husband so the wife cannot claim on it.

Another section 19(1) (f) of the Domestic Violence Act deals with the right to alternate accommodation directing the respondent to secure the same level of alternate accommodation for the aggrieved person as enjoyed by the wife in a shared household or to pay rent for the same. If the circumstances so require. It was held by the court that claim for alternate accommodation can only be made against the husband and not against in-laws or any other relatives.

In this regard the learned single judge of the high court was of a view that the second floor of the property in question was the matrimonial home of Smt. Taruna Batra and even if her husband is shifted to Ghaziabad in a rented house— it would not make a matrimonial home. Mere change of the residence by the

husband would not shift the matrimonial home from Ashok Vihar to Ghaziabad. So the high court held that Smt. Taruna Batra can reside on the second floor of the Ashok Vihar house as her matrimonial home.

However, the Supreme Court held that only a household owned by the husband could be described as shared household and the household owned by the mother in law could not be described as shared household. However from the language it seems that - the house in question can be said to be a shared household within the meaning of Protection of Women from Domestic Act 2005. Section 2(5) of the Act states;

shared household means, a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right title interest equality and includes such a household which may belong to a joint family of which respondent is a member of irrespective of whether the person has any right, title or interest in the shared household.

In another case B.P. Achala Anand v. Appi Reddy and Another, the court emphasized that Domestic Violence Act is not limited to matrimonial relationships. In a case where a young girl went against her father who was forcing her into marriage, the court restrained this marriage without her consent to take place.

In Ajay Kant and Others v. Smt, Alka Sharma, an application filed by the respondent under section 12 of the PWDVA 2005 for seeking relief under this law, and the magistrate granted her relief by providing her residential facilities, custody order for child and compensation.

Prior to the passing of the Domestic Violence Act 2005 to combat the increasing incidents of torture of the women by their husbands and their relatives the legislature enacted S 498-A, IPC and section 113 A of the Indian Evidence Act. In order to convict a person for a crime under section 498-A the husband or relatives of husband must have treated the women with cruelty. For the purpose of this section cruelty means –

- Any willful conduct which is of such a nature as is likely to derive the women to commit suicide or to cause injury or danger to life and limb (whether mental or physical) of a woman;
- Harassment of a women where harassment is with a view to coerce her or to any other 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 meet such demand.

Section 113-A of the Indian Evidence Act reads as under:

Presumption as to abetment of suicide by a married women-“when the question is whether the commission of suicide by a women had been abetted by her husband or any of her relative of her husband and it is shown that she has committed suicide within a period of 7 years from the date of her marriage or such relative of her husband has subjected her to cruelty the court will presume having regard to all the circumstances of the case that such a suicide has been abetted by her husband or by such relative of her husband”.

The Criminal Law (Second Amendment) Act, 1983 has changed the cardinal principle of criminal jurisprudence by shifting the onus of proof on the accused. The initial burden of proving the case beyond reasonable doubt lies on the prosecution. Now section 498-A IPC makes both physical and mental cruelty by husband and his relatives a cognizable offence. Mental cruelty may encompass confinement within house, deprivation of contact with friends/ family, deprivation of food, clothing, medicine, deprivation of other necessities, comforts and luxuries, and of other facilities, verbal abuse etc.

In spite of this amendment the law still suffers with shortcomings. The use of word grave in the section precludes everyday violence suffered by a large number of women and that is why police do not register complaint unless dowry harassment is specifically mentioned. Vague allegations added on to a genuine complaint of wife beating could not stand through the legal scrutiny in a court of law and generally resulted in acquittal of husband. This definition is not very satisfactory. The punishment needs to be enhanced from the present maximum of three years to seven years. Another limiting factor under this law is that the court can take cognizance of this offence only upon a police report or upon a complaint made by the aggrieved woman or her relatives.

There is a misconception among police officials and lawyers that Section 498-A is misused by women. A significant number of cases are withdrawn. After invoking 498-A, there must be greater scope for working out reconciliation, rather than it's resulting in disrupting the family. Conviction of husband may not be the best solution. Since the section does not protect a woman's right to matrimonial home, or offer her shelter during proceedings, she may have no choice but to work out reconciliation. She would be forced to withdraw the complaint as a precondition for negotiations. In case of a mutual consent divorce, she would

prefer following a civil case where she would be entitled to maintenance, custody, injunction against harassment and divorce, rather than a criminal case, against the backdrop of tremendous pressure for rebuilding her life.

Apart from Domestic Violence Act and Section 498-A IPC there are many other laws to deal with matrimonial disharmony but the implementation of these laws is so poor that the offenders seem to have lost all fear of authority. The violent behaviour most often remains unquestioned or unchallenged. There is an appallingly low level of convictions and an increasing number of pending cases in crimes against women cases. Criminal justice system, judicial perception and the police limit its response to protecting her or judging her. The attitude of courts in interpreting laws is conservative, rigid and traditional.

V – JUDICIAL ATTITUDE

The attitude of the judiciary in most of the domestic violence cases is highly ambivalent and is guided by the patriarchal ideology. First of all the courts come into picture far too late to prevent violence and attempts to wield punishing rod as a symbolic tool of deterrence which is largely futile. A report by an NGO Sakshi makes a startling revelation about the attitude of judges towards domestic violence. 74% of the judges felt that preservation of family should be a preliminary concern even if there is violence in marriage. 90% of the judges did not opt for legal redress in the eventuality of domestic violence involving their daughter or family members. The punishments awarded, are always less serious for males convicted of domestic violence than other forms of violence. The range of sanctions for offenders has been limited and there, deterrent effects are mitigated by social and contextual factors.

In *Evenet Singh vs. Prashant Chaudhri & Others*, the Delhi High Court Rules on Right To Residence, the judgment of the Delhi High Court, very effectively examines the Protection of Women from Domestic Violence Act 2005 and the right to residence succinctly yet very effectively thereby possibly ending any controversy that could arise due to any earlier mentioned judgements such as the Judgment delivered in *Batra case*

In *Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade and Ors.* the honorable Supreme Court analysed the definition of “Respondent” as provided in Section 2 of the Protection of Women from Domestic Violence Act 2005, in view of that High Court had directed Appellant to vacate her matrimonial house and confirmed order of Sessions Judge deleting names of the other Respondents from proceedings. The question, Whether Courts below erred in holding that no female could be made party to petition under the Domestic Violence Act, since expression “female” had not been included in definition of “Respondent” in the said Act. The Court held, although Section 2(q) defines Respondent, to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of said definition by including relative of husband or male partner within the scope of complaint, which may be filed by an aggrieved wife or female living in relationship in nature of marriage.

If the Legislature intended to exclude females from ambit of complaint, which can be filed by an aggrieved wife, the females would have been specifically excluded, instead of it being provided in proviso that a complaint could also be filed against relative of husband or male partner. No restrictive meaning had been given to expression “relative”, nor had the said expression been specifically defined in the Domestic Violence Act, to make it specific to males only. Therefore, legislature never intended to exclude female relatives of husband or male partner from ambit of complaint that could be made under provisions of the Domestic Violence Act. Both Sessions Judge and High Court went wrong in holding otherwise. The Supreme Court set aside the impugned order. Appeal accordingly allowed.

The Supreme Court does not just decide individual cases, it lays down the law of the land. The proposition that kicking and threats of divorce do not cause a woman to feel suicidal, nor do they gravely injure her physical or mental health seems too broad a proposition. Apart from the factor of a divorced woman's status in our society, circumstances can indeed be visualised where a woman feels suicidal when she is threatened by divorce. It could gravely injure and traumatise her psyche, thereby jeopardising her mental health. Today, the law recognises that words, barbs and acts that are not physical or violent could be wounding and hurtful enough to amount to cruelty. Even if kicking may not cause grave physical injury, it could be extremely degrading, demeaning and traumatic to the individual.

The importance of the judgment is not confined to the two acts of kicking and threatening and divorce being taken out of the purview of cruelty, under Section 498 A in the present case. Following the precedent set by the apex court, numerous other acts and conduct thought “akin” or similar to kicking and threats of divorce may be taken out of the ambit of the offence of cruelty to a married woman by her husband or his relatives by the courts.

In *Mr. Ishpal Singh Kahai vs. Mrs. Ramanjeet Kahai*, the Bombay high court held that a wife can restrain a husband, who creates nuisance, from entering their home, irrespective of who owns the house. The court said that every woman has right to live peacefully in her matrimonial home. "The right to reside contains within itself the right to reside peaceably and to the exclusion of the violator (husband), by restraining the husband from entering his own flat. The interim arrangement had been made to protect the woman and her children from the violent behaviour of the husband, an alcoholic, who would lose his temper and become aggressive under the influence of alcohol.

The husband had approached the high court challenging the eviction order. And contended that he and his mother jointly owned the flat, and had ownership rights over the flat, the court could not have ordered his eviction. However the high court dismissed the contention, observing that the Domestic Violence (DV) Act puts the woman's personal rights over proprietary interest.

In *Shobna Rani v. Madhukar Reddi* the Supreme Court held that the term cruelty as defined under S. 498A of the IPC includes both mental and physical cruelty. In another case *State of West Bengal v. Jaiswal*, the court found that in the fact of the case, there was no material to show that woman was hypersensitive and that for other reasons and not on account of cruelty she would have taken her own life. The Act of taking a child away from the mother and beating the woman could amount to cruelty under Section 498-A of IPC.

In *Gurbachan Singh v. Satpal Singh* the court held the constant demand of dowry, taunts, ill-treatment, cruel behaviour are serious enough provocations for a woman to commit suicide. Section 498A IPC, although conceived as protection against dowry harassment, the wordings of section are wide enough to apply to other situations of domestic violence. In *Smt. Madhuri Mukund Chitnis v. Mukund Martool Chitnis* the court held that malicious and vexatious litigation instituted against the wife out of a sense of vindictiveness amounts to mental cruelty.

Wife beating and cruelty are crimes in their own right. Women are compelled to highlight dowry demands and down-play other problems. There are scores of wife battering cases where dowry is not an issue at all yet the abuse and violence are no less deadly. In *State of Punjab v. Iqbal Singh & Others*, it was held that the husband vitiated the general atmosphere of the house, and by his willful conduct created an atmosphere of terror that had driven the wife to a point to put an end to her life. The husband was therefore held guilty of abetting the suicide.

There are various hurdles in registering cases due to the reason that Section 198-A Cr. P. C. states that cognizance under Section 498-A is possible only on police report or a complaint by any person related by blood, marriage or adoption.

In *Prabhakar Jasappa v. State of Maharashtra* the Supreme Court held the accused guilty of killing his wife as there was no other person in the house and the circumstances brought out by the prosecution proved beyond the shadow of reasonable doubt that Malti's death was homicidal, she was throttled to death and did not die of poisoning.

In *Virbhan Singh v. State of U.P* the Apex court asserted the medical evidence clearly proved that it could not have been possible for the deceased, who had sustained severe injuries of the type and nature described in the post-mortem report in the stomach and the liver, to do it herself. The death injuries were the result of the cruelty on the part of the husband.

Under certain situations the accused, if they have the money and the right connections always get an upper hand. In *Vibha Shukla murder case*, the accused, son of an Assistant Commissioner of Police was acquitted of charge of murder as well as cruelty under Section 498-A IPC. The female child was not accepted and her father was unable to pay Rs. 30,000/- because of which Vibha was deserted six months prior to her death, but the judges felt that these Acts do not amount to cruelty under Section 498-A IPC. It is a series of Acts and not a single or isolated Acts which constitute cruelty.

In *Lallu v. Bachi*, the wife was selling vegetables with her mother. The husband came and beat her up. The Rajasthan High Court held that this conduct of the husband at this stage cannot be ignored. A wife is not a chattel to be beaten at the whim and caprice of her husband. The court took a U turn. In *Tulsa v. Pannalal*, where the court held that it is not a crime if the husband beats his wife occasionally or refuses to give her medical treatment.

VI - ISSUES FOR CONSIDERATION

Issues that arise for consideration, includes striking a balance between rights of accused and rights of victim, during pendency of litigation. State support to victim, interim compensation and compensation under criminal law to victim of domestic violence, counseling and shelter to victim during pendency of trial by State, involvement as it is easier for access to justice, Section 135 evidence Act requires to be deleted as it is used to harass victims. Preventive measures to decrease incidences of domestic violence, are required to

be considered, wider definition of cruelty to cover abuses not endangering life, Section 107 – 114 Cr. PC to be used to prevent Domestic Violence. Conditions of non-molestation orders and stay away orders on bail are required to be introduced. Where harassment does not relate to demand dowry, but is due to incompatibility of temperaments and the woman is liquidated, the case cannot be brought under Section 304-B or 306 or 302 of IPC.

Protective laws are generally weak and full of loopholes. The maintenance laws are totally ineffective. Family property is almost never jointly held. Maxims like “the guilt of the accused should be proved beyond reasonable doubt and innocent unless proved guilty” leave women virtually without any legal remedy. Institutions like Crime against Women Cell, Family Courts, Legal Aid Cell, are not of much help. The jurisprudential enthusiasm for presumed innocence must be moderated by the need to make criminal justice system more potent and realistic. In cases of dowry death, initial burden of proof is on the prosecution, before the statutory presumption of guilt can be drawn. The time required to fight legal battles is too long. Frequent adjournments and change of dates on frivolous pretexts is very high.

Judges, court personnel and lawyers need to be sensitized, trained and exposed to the nature of violence against women and need to be trained on the dynamics between victims and offenders. They need to recognize as well as respond to gender bias behaviour in the court rooms and chambers. The language employed must not be derogatory to women and must not perpetrate traditional myth about women and their roles. Judges, court personnel and lawyers must be exposed to experiences and perceptions of women victims through interactions at workshops, training etc. with women/ human right groups, counselors, social workers and educators, which must also give space to non-judges to discuss ground realities. Judges must take responsibility for their own continuing education.

A small but well-informed advisory body/ task force consisting of judges, legal Activists and women's rights/ human rights organizations must be established. Old judgments, court forms, manuals and patterns of courtroom interaction, need to be reviewed. Studies on family law and procedure on domestic violence needs to be initiated to develop, and truly interpret the legislation as well as court rules. Assistance of psychologists, social workers and educators is necessary. A system for collecting cases on violence against women to facilitate documentation with respect to international law on violence against women and in particular, CEDAW and violence needs to be gathered, and a compilation together with statistical development on violence against women and development of law needs to be created. Violence against women units should be specifically earmarked in each jurisdiction, beginning with District Courts.

Bar Associations should create incentives for a larger number of professionals to receive this training. States should assist in making available funds for legal representation of women in such cases. Whenever possible, judges should award temporary advocates fee and costs to the economically dependent women. The law schools should develop the skills and knowledge on gender justice as the present law students are the future law makers and will be involved in imparting justice.

The legal system should be involved in formulation and administration of therapeutic jurisprudence which would expand traditional role of criminal justice system, and serve as a catalyst for change. The courts should be equipped with quasi-criminal machinery, with powers of remand and arrest and should be enabled to pass effective interim protection orders, provide mandatory exemplary damages, ex-parte order, final order not subject to appeal, cognizance of domestic violence by protection officers and other Government officers and cognizance by Mahila Panchayats, and also economic and other tangible reliefs for the battered women. Courts must be located at the nearest point to the victim as family law courts are overburdened with all matrimonial matters and are confined only to a few cities.

For effective relief to women it is necessary to focus on education for all, enforcing existing laws on age of marriage, vocational training, self-employment, family courts (at present only 12 states and Union Territories have them). Short stay homes facilities for child care, gender sensitive media, education of females, healthy and equal perception of relationships are some other aspects for consideration.

We also need to emphasize women's rights as daughters and sisters and not only as wives. Supportive parental homes to return to and rights in coparcenaries property would go a long way in ensuring equality. The moment people start to care enough, domestic violence will become unacceptable irrespective of what the law says or does not say.

By ignoring the existence of the problem, coupled with its reluctance to enter into the private sphere of the home, the state shirks its responsibility to create mechanisms to deal with the problem. State law is indeed almost totally useless as a protective mechanism for victims. Another reason is law that remains un-implementable is because often laws are drafted in isolation from social and cultural practices of the society in which they have to function. Law needs to try different tactics which involve society in a more targeted way.

Unless there are sensitive and specially trained officials to deal with investigation, it will be impossible to prove the offence beyond reasonable doubt. Very often writ petitions have to be filled to direct

the police to investigate the matter or demonstrations are held to force the police to register a case.

A more realistic remedy would be the system of diversion as in USA, which compels the husband to go through mandatory counseling, mediation and education procedures, which defer trial and conviction. For achieving the objective mandatory family counseling centers should be established in every district.

¹ Article 14: Equality before law or equal protection of laws

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth

Article 15(3); Nothing in article 15 prevents the state from making any special laws for women and children.

Article 21; Protection of right to life and personal liberty

² Annual Report 2004, Ministry of Women & Child Welfare, Government of India, New Delhi

³ Kounteya Sinha, Many Women Justify Wife Beating, 17th February 2008, The Times Of India, New Delhi

⁴ Home Truths: A Majority of Women surveyed says its OK to get Beaten, 17th February 2008, (editorial) The Times of India, New Delhi

⁵ Ibid.

⁶ Kounteya Sinha, Many Women Justify Wife Beating, 40% Beaten By Husband Says Survey, 17th February 2008, The Times Of India, New Delhi

⁷ Ibid.

Ibid.

⁸ Kounteya Sinha, Many Women Justify Wife Beating, 40% Beaten By Husband Says Survey, 17th February 2008, The Times Of India, New Delhi

⁹ Ibid.

¹⁰ Sec. 2(s) The Protection of Women from Domestic Violence Act 2005

¹¹ Section 3(i), Ibid

¹² Section 3(ii), Ibid

¹³ Section 3(iii) Ibid

¹⁴ Section 3(iv) Ibid

¹⁵ Section 2(a), The Protection of Women from Domestic Violence Act 2005

¹⁶ Johnson Fernades v. Mrs Maria Fernades, 2011 Cri.L.J. 1505

¹⁷ Mohammad Maqeenuddin Ahmad v. State of A.P., 2007 CriLJ, 3316

¹⁸ (2007) DMC 1 SC

¹⁹ AIR, 2005 SC 896.

²⁰ 2008 Cr. L. J. 12

²¹ Section 498-A IPC, (Added to IPC by an amendment Act of 1983) reads, if the husband or relative of the husband subjected a woman to cruelty shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine.

²² Section 198-A Cr. PC

²³ A. Nos. 8479/2010 (O-XXXIX, R-1&2, CPC) & 8480/2010 in CS (OS) 1307/2010

²⁴ MANU/SC/0081/2011

²⁵ IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION writ petition no 576 of 2011

²⁶ (1988) 1 SCC 107

²⁷ (1994) 1 SCC 73

²⁸ (1990) 1 SCC 445

²⁹ (1992) Cr. LJ 111

³⁰ (1991) 3 SCC 1

³¹ AIR 1982 SC 1217

³² 1983 Cr. LJ 1635

³³ AIR 1986 Rajasthan 49.

³⁴ AIR 1965 Madhya Pradesh 5

³⁵ Indian Evidence Act, 2007

³⁶ The Hindu Succession (Amendment) Act, 2005

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