



Justice to work: Legal mechanisms to curb domestic violence against women in Jammu and Kashmir

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Abstract

In contrast to a tradition of commentary which has been negative about the law's potential to benefit women who experience violence from several centuries due to variety of reasons, Domestic violence has always been an instrument of oppression and exploitation against women resulting in the various forms of gender based violence. It occurs in all settings; at work, in the home, in the streets and the community at large, in situations of armed conflict and is perpetrated by men. Ironically women and girls in general experience violence primarily at the hands of men they know and within the so-called 'safe heaven' of the home and family. In all of these situations gender power differentials and other inequalities play an important role in the dynamics of violence. Women in Kashmir equally share the sorrows and fortunes of life with women in other parts of world, although the practice of infanticide, foeticide, dowry deaths are not resorted to, women are generally abused and maltreated, subjugated and physically victimized right from their childhood because of the gendered society. Although there are laws (civil & criminal) to tackle the issues of domestic violence but there is always nonchalance to implement them. The present paper examines the legal mechanism to curb domestic violence in Jammu and Kashmir and to come up with the strategies to deal with such violence against women.

Keywords: domestic violence, legislations, women, traumatic stress, gender disparities

Introduction

Domestic abuse has been increasing at an alarming rate in the state. Even though most of the people refuse to acknowledge the prevalence of domestic abuse in Jammu and Kashmir, the recent reports and studies prove otherwise. The data that is available doesn't accurately portray the real scenario due to a number of issues. Most of the women don't speak about it as they believe (or are made to believe) that it's their destiny or kismet, and they have to live with it. A large number of women do not see such acts as violence if they believe them to be justified. Thus, wife beating is not seen as an extreme response if the woman gives cause for jealousy or does not perform her-wifely duties adequately, such as having meals ready on time or adequately caring for children. This is further complicated by a common belief that violent acts are an expression of love and merely a desire to help the subject be a-better person (International Center For Research On Women, 1999). A large number of the women are unwilling to file a grievance or a complaint of this nature due to the disgrace that will befall them and their family. Many are scared of the legal issues and hassles which come with the territory. Data compiled by the Jammu & Kashmir Police Crime Branch reveals that in the past three years around 22,645 cases were reported in 2015 the numbers increased to 24,130 in 2016 and 25,870 in 2017. The police station's of the state, on an average, receives over a dozen complaints of domestic dispute, per day. Also, as revealed by Dr. Mohammed Muzaffar Jan, 55 percent of the patients who visit

the single psychiatric Hospital in Srinagar are women suffering from Post Traumatic Stress Disorders (PTSD).

Majority of the population in Jammu and Kashmir comprises of Muslims, the incidence of domestic Violence was below 20 percent before 2010. However, as of now the situation has worsened and the present studies reveal more than 43 percent of women are suffering from domestic violence in Jammu and Kashmir in one or the other form. Violence against women, being a complicated issue, can be defined as an oppressive act against a woman's personality and being. The main aim of violence against women is to control the behavior of women through fear. In cases of violence, males tend to have the upper hand.

The problem of violence against women involves beating, sexual harassment, and psychological exploitation, which cannot be determined easily since it is a hidden issue, especially in Kashmir. While no community is free of abusive practices, the Muslim society is beset by two further problems. One is that violence is committed not just by some husbands but also by fathers and brothers which make for an expanded circle of familial abuse for women. The other is the tendency to ascribe this abuse to Islam. However, the prophet Muhammad (PBUH) made lot of efforts for Women's improvement in comparison to the situation of women in Arabia prior to the advent of Islam. But after the Prophet's death the condition of women in Islamic countries began to decline.

Shockingly, in the month of May 2015, we came across 3 cases of women being set on fire in a single week. These

women - Shahzada, Manjuli and Maroofa - were allegedly set ablaze by their in-laws. The Muslim men usually trace the sanction of wife beating to verse in chapter 4:34 which points out that men are the Women's guardians. 'Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).' Surrah Nissa 4:34

It is observed that, unlikely that a pious Muslim man first reads the Quran and then sets about beating a wife with whom he is unhappy, or killing a daughter or sister who he thinks has ruined his reputation by making choices of which he does not approve. But, of course, it is convenient for abusive men to pretend they are being forced to act in accordance with the Quran's teachings while they are actually ignoring and misreading most of these teachings. However Quran makes no derogatory claims about women and it says God created human beings from a single self (nafs). Under no circumstances is violence against women encouraged or allowed. The holy Quran contains numerous verses commanding good treatment of women.

A core issue is that intimate partner violence and abuse at the hands of the in-laws is considered to be mainly a social issue. It is only in extreme cases such as deaths and serious injuries, that the authorities take notice of the offence. But, even then it's too late for the victim as there is usually not much left to be done except for investigation, trials etc. Another problem is that the state's social welfare department is more or less non-existent. Over the past years it has become obsolete and its functioning is centered on a few of issues and problems. Even as the social welfare department has not shown any development or maturity in past years, there does not seem to be any institution on the State that would take these cases. The police are often the last resort, as people are afraid of getting involved with them. The responsibility lies with us as well as the leaders of the society to come up with solutions to end this major problem.

What constitutes domestic violence

Part III (Act No. XI) Of the Domestic Violence Act, 2010 of Jammu and Kashmir states that what constitutes domestic violence according to which domestic violence shall include:-

- a. Threats to health, safety, life etc., whether mental or physical, including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b. Harassment through any forms such as harms, injuries to the aggrieved person by coercing her or any other person related to any unlawful demand for dowry or other property or valuable security; or
- c. Otherwise injuring or causing harm, through physical or mental means to the aggrieved person.

Objectives

1. To study the legislations in Jammu and Kashmir for the

protection of women against the menace of domestic violence.

2. To find out the impediments in upbringing the women in Jammu and Kashmir out of their destitute due to domestic violence.

Legal legislations to deal domestic violence

Violence against women could be verbal or physical. This article focuses on domestic violence involving women, the existing law & incorporation of new act safeguarding them from domestic violence. The status of women in India has been subject to many great changes over the past few millennia. From equal status with men in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been eventful. It is very disturbing as well as discouraging to think that a country that praises womanhood through epics and their devotion to goddesses can be so demeaning and indifferent when it comes to the common women living in the country. There are many forms of violence against women, including sexual, physical, or emotional abuse by an intimate partner; physical or sexual abuse by family members or others; sexual harassment and abuse by authority figures (such as teachers, police officers or employers); trafficking for forced labour or sex; and such traditional practices as forced or child marriages, dowry-related violence; and honour killings when, women are murdered in the name of family honour. Systematic sexual abuse in conflict situations is another form of violence against women.

The mounting incidents of domestic violence compelled the state government to pass the Protection of Women from Domestic Violence Act (PWDVA) in 2010. Since the Act was passed, very few efforts were made for the proper implementation of the Act, though the domestic violence against women is rising in Jammu and Kashmir. The state government seems to be too lethargic in providing an effective protection to the aggrieved persons under PWDVA which indicates that the state is reluctant in fulfilling the promise as mandated by the law. The then Minister of Social Welfare of Jammu and Kashmir in 2012 clearly blamed lack of funds as being the cause of improper implementation of the Act. Also, the State's budget of 2014-2015 has not allocated enough funds for the proper implementation of the Act.

Despite the fact that a number of legislations have been enacted to address violence against women, both in the public and private spheres, there are real challenges in achieving the ultimate goal of progressive elimination of all forms of gender-based violence. A growing number of cases are being registered under section 498A of the penal code (IPC, 1983) which indicts a husband or relative of the husband for cruelty against a wife. Also the Government of J&K enacted J&K Protection of Women from Domestic Violence Act 2010, nevertheless the fact that women fear the possibility of a social trial constraints them from filing such complaints. There seems a direct relationship between violence against women and the socio-cultural setting in J&K, which claims a sanction from religious scriptures. To set right the moral values of our society, domestic violence basically means any violent or aggressive behaviour of any person within the home

as the word here is 'domestic' or in other words a violent quarrel between a couple which may force a female spouse to file for mental harassment under domestic violence act and other provisions of Indian Penal Code (IPC) and Criminal Procedure Code (CrPC). Basically from ages, domestic violence has been committed against women but in today's scenario men can also file for domestic violence which can come under the category of domestic abuse, family violence arising in the relationships such as marriage including relationships with family members, family friends etc. and it can be in various forms such as physical aggressions, sexual abuse, emotional abuses etc. there is a need to do progressive studies on the faith of Muslim men and women in J&K.

Procedure for filing complaints

In the present day scenario, complaint can be filed against any adult male member who is in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act including the other family members such as mother-in-law, father-in-law, brother-in-law etc. or any relative of the husband or male partner. But as per Domestic violence act 2010 states that a sister cannot file a complaint against her brother's wife, or her own sister. A mother-in-law if subjected to domestic violence by daughter-in-law cannot file a case against her daughter-in-law however she can file a complaint case against her son mentioning the name of the daughter-in-law as the agent of her son.

Punishment against domestic violence

There are various regulations or provisions being made for protection of women against domestic violence under the statute such as Sec.304B of IPC pertaining to dowry death. Under section 313-316 of IPC female infanticide has been made punishable which means forcefully terminating the pregnancy of women. Other sections of IPC dealing with these issues are section 305-306 related to abetment of suicide and 340,349 of IPC respectively wrongful confinement and wrongful restraint. A complaint can also be filed under section 498A of IPC for cruelty which also falls under domestic violence.

Does domestic violence is unbiased/gender neutral

Yes, domestic violence can be said to be biased/gender neutral in Jammu and Kashmir because according to the research and studies it is clear that the number of men and women who commit violence toward each other is equal with respect to the analysis of these studies but apart from this it has also been found out that women are more likely to report act of violence than men in India. The reason for the violence both in men and women are different as men turn into violent when they feel a sense of powerlessness such as when they are not able to overcome what they want and women turn violent when they are frustrated or do not get their spouse's attention. Hence it can be said that men and women are both the victims of domestic violence and hence an inclusive approach must be taken to help families resolve conflict.

Seeking Support

- Call 100 or 1091(women emergency helpline number) and report it to the concerned authority.

- If possible write down the police report or incident number and keep with your records.
- One can seek medical attention if required.
- One can move to domestic violence shelter as stated under section 6 of protection of women from Domestic Violence act, 2010.
- Seek the support of caring people on whom you have trust or who would keep your privacy such as a friend, a family member, a neighbour etc. So that they could act as a witness in your bad times.
- One should have the safety plan to protect herself from daily violence.
- File for protection order as stated under section 18 of Domestic Violence act so that the abuser can stay away from you.

Safeguards against misuse of law (Section 498A)

- Women NGO'S should try to investigate the case properly without any biasness toward women and must try to discourage women not to file any complaint against the in-laws just for trivial matters.
- Family counseling centers must be established across the country to help harassed men and his family members so that their side of the story should also be put in front of the government.
- Definition of mental cruelty under section 498A should be elaborated so that there may be provisions for men also to file a case of mental cruelty against his wife.
- To reduce the misuse of this section, civil authorities must be appointed to investigate the case first and then cognizance must be taken.
- Section 498A must be madeailable as due to its non-bailable nature, old parents, children and other family members also suffer without any fault.
- Penalty must be charged against false accusations made by the wife against the husband.

Procedure of filing a complaint under PWDVA

The protection of women from domestic violence act, 2010. Is "an act to provide a more effective protection of the rights of women guaranteed under the constitution of Jammu and Kashmir who are victims of violence of any kind occurring within the family and for matters connected there with or incidental there to". The Act is in the nature of a 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 act entrusts the duty upon the state to give publicity, sensitization and awareness training on the issue addressed in the act to police officers, member of the judicial services etc. Therefore any person who has reason to believe that an act of Domestic Violence has been, or is being likely to happen may inform the concerned protection officer in good faith and their shall be an exclusive of the Introduction 5 liability both civil and criminal of that informed by virtue of section 4 of the act. Section 5 lays down the duties the police officers, protection officers, service providers and Magistrates who have received any complaint on domestic violence. They have to inform the aggrieved person of the right to make application for one or more of the relief's

mentioned under the act such as the availability of services of service providers and protection officers and, her right to avail free legal services or the right to file a complaint under section 498 A of The Indian Penal Code. A woman may face this cycle of violence as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime.

1. The complaint can be made by the aggrieved or by any other person on her behalf to the police officer, service provider, who then informs the protection officer (who ideally is an outreach officer of the court) who liaise between the aggrieved person, police & the service providers. He then prepares Domestic Incidence Report (DIR), prepare safety plan (Form V) as desired by the aggrieved to prevent further domestic violence.
2. He arranges legal, medical aid, shelter home, & transport for such facilities. He also updates list of all service providers in the area.
3. The protection officer sends the DIR to the Magistrate.
4. The magistrate can receive application asking relief directly from the aggrieved, from any person on her behalf or from the protection officer (Sec.12).
5. On receipt of application the magistrate then fixes first date of hearing, 3 days after filing of Application. In case of women facing grave danger, the court can pass exparte interim order in her favour and then fix the date. He shall also endeavour to dispose of every application within 60 days of the first hearing {Sec. 12(5)}
6. The respondent is then served with notice of the date of hearing, via the protection officer, within 2 days of filing application and is asked to attend the court.
7. The Magistrate after hearing both the sides may secure assistance of welfare expert (Sec.15) or direct both parties to undergo counselling (Sec. 14). He may also grant exparte orders on the basis of affidavit filed by the aggrieved (Sec. 23(2), Rule 7, and Form III). He may carry out entire proceedings in camera if requested by the aggrieved.
8. The Magistrate can pass orders within 60 days of the filing of the application U/S 17, 18, 19, 20, 21 of the PWDVA or any such order is enforceable throughout India, and shall be in force till the aggrieved person applies for discharge.
9. Either party can appeal against the order passed within 30days from the date of official receipt of order passed by the Magistrate (Sec. 29)
10. Violation of orders passed by Magistrate, is liable to one year of imprisonment or fine which may extend to Rs.20000/- or both [Sec 31(1)]

Conclusion

Women's rights are violated by the men sexually or otherwise and they always remain silent because of limitations of society on her. In a nutshell it can be said that education and women's participation in all fields of economy, science and culture will help them in achieving the real equality. But the crime against women is increasing day by day in the modern era. We read daily in newspaper the dowry death of women and the news of rapes. We read much news of rapes of girls by their fathers or other relatives in their four walls of the home. Since the past 2-3 decades, lot of efforts made by the NGO's,

social activist and time to time by the Government to curb domestic violence against women and safe guard her constitutional rights, but still there is a rise in domestic violence. The reason being incorrect implementation and misuse of these laws by the miscreants; may it be the accused, the police or the lawyers. If applied correctly the Protection of Women against Domestic Violence Act 2010 (PWDVA) is a powerful act. After the implementation of the act wide range of cases were filed across the Jammu and Kashmir state judgments delivered under PWDVA by the family courts, civil courts and in few by the supreme courts. It will still remain worthless if there is lack of awareness amongst the people of society, which could be brought about by:

1. Educating every woman about their rights.
2. Removing fear and coming out of the traditional set up of tolerating violence.
3. Counselling all family members along with the victim when the case is reported.
4. Creating awareness of social responsibility on members of society to report domestic violence.
5. Awareness produced through media sources.
6. Sensitization of the police to these issues and the power given to them.
7. Providing adequate assistance to the victim once the complaint is filed and ensuring her safety.
8. Adequate funding and proper shelter homes by the Government.
9. Lawyers should take on the responsibility of ensuring that each state is discharging its duties effectively & is completely implementing the provisions of the Act.
10. Lawyers should connect criminal, civil & family law while negotiating for women rights.
11. Inclusion of strict punishment for false charge by petitioner or misuse of the law by the respondent.

Lots of further efforts are required to make these strategies complete, which would really give justice and human rights to women. To achieve rehabilitation and prevention, some of the suggestions stated in the paper like short stay home, vocational training, etc., may be considered. For the prevention of the domestic violence, programmes like pre-marital sex education in school and collages, and workshops for parents should be organized by FCCs. The problems of delay in getting justice, follow ups of the legal cases, legal awareness etc. is also important in order to remove the menace of Domestic Violence against women.

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