

## **GENDER INJUSTICE AGAINST MEN UNDER DOMESTIC VIOLENCE ACT, 2005**

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### **Introduction**

The historical legacy is an integral part of our legal heritage because law still continues to define and redefine boundaries for the apposite role and activities of women. Accordingly, law was and still is a critically contested terrain more of feminist inquest than of feat. Law and justice has always been one of the most important arenas where women's movements and feminist activists seek to change women's position and achieve equality/equity/justice. The principle which regulates the existing social relations between the two sexes- the legal subordination of one sex to the other –is wrong in itself and now one of the chief hindrance to human improvement; it ought to be replaced by the principle of perfect equality admitting no power or privilege on the side, nor disability on the other. From the fifteenth century onwards since when the genesis of capitalism can be traced, the notion of equality together with the kindred concept of gender justice, inspired individual feminist on one hand and provided the socio- political context in which the feminist legal and juridical voice began to challenge the male stream juridical notions on the other. After hard and bitter struggle for centuries the newly born area of scholarship known as 'feminist jurisprudence' or 'feminist legal theory' though far from being essentialist and homogenous , was finally able to demonstrate that doctrinally the legal theory is nothing but an ideology of male supremacy.

But with the flowing gust of time the rights meant for the empowerment of women was misused for the very reason that the rights were not understood in its proper sense. The right which empowers women and is for the protection of women is used for the protection in other way i.e.

by harming the other part of society. Law empowered women and gave her a status in society but if the same tool is used in unconstructive way it calls for attention.

Man and women are both equal and both play equal vital roles in the creation and development of their families in particular and society in general. The constitution of India declares that the equality before the law and the equal protection of laws shall be available to all. Time and idea are not static: they change and, therefore, the life of a nation, society and its people is dynamic, living and organic; its social, economic, political and legal conditions change continuously. Consequently Social mores and ideas also change from time to time creating new problems and altering the complexion of old ones. It is therefore, quite possible that rules made for governing the society and its individuals in one era, and a particular context may be found inadequate in another era and another context. In the present system of government, the legislature enacts new legislations for regulating and controlling the conduct of the people so that they may live peacefully in the society. For governing the conduct of people in society law plays an important role and becomes the instrument of social change.

The Constitution of India being the paramount law of the country, has declared fundamental rights e.g. Right to Equality and mandated the State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Though the Constitution has provided equality of both the sexes, misnomer of biological inferiority of the female and developed sense of subordination demands extra protection for women. However the courts can certainly go beyond mere legality insulating women against injustice suffered due to biological and sociological factors. Indian judiciary has been very sensitive to women and women related issues. The Apex Court of India took special interest in discharging its legal and constitutional obligations and safeguarding the interests of women in changing situation and societal demands. A vibrant legal system cannot afford to work on the basis of pre-conceived notions of 'who is always the victim' and has to continuously fine tune itself in the context of the changed circumstances for its efficacy and relevance.<sup>1</sup>

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<sup>1</sup> Gender Bias in Matrimonial Laws: A Review by Sakal Bhushan SC Advocate

In India for centuries until the mid-twentieth centuries women were not granted permission to engage in economic activities. They were made to be an economic burden on some man – their fathers, brothers, husbands, sons, etc. As a result, the dowry system was fashioned and observed by many communities on the principle that it was unfair to place a woman's entire economic burden on the husband.

As the twentieth century progressed the hurdles towards women participating in the economic activity were gradually eliminated and by the 21st century the hurdles have been more or less removed in most sections of Indian society. Strictly speaking, now that women, by and large are economically independent, there is no longer any need for her to be dependent on a man. However it is being seen that the Courts still treat women as "*Abla Naari*" needing financial assistance from some male, mostly her husband. Given the current social scenario, it now becomes imperative that women be weaned away from this dependency on income earned by the husband's sweat. There is no longer any need to demand financial assistance from husbands to live their lives. The Hindu Marriage Act (HMA) also clearly states that when a woman has access to independent income then she is not entitled to financial assistance in form of maintenance or alimony.

Unfortunately financially independent women are still misusing the maintenance laws (Section 125 of the Criminal Procedure Code) and Section 24 of Hindu Marriage Act, 1955 to demand financial settlements as 'maintenance'

It is always said justice is equal for all. Then why do women get protection against men and their families, but the men are left alone to get victimised and ruined? Is it possible that only women get tortured? Can't a woman torture a man? Where does he go to save himself and his family? If a husband cannot express his feelings to his wife out of fear, then what is the point of the marriage?

### **Gender Equality and Laws favoring Women**

India has pledged itself to gender equality through several Articles of the Constitution.

In fulfillment of this constitutional mandate, several steps have been taken since independence to empower women, including a series of women-specific and women related legislations; creation of national policy level commitments including the National Policy for Empowerment of Women 2001, the National Common Minimum Programme. Indian women, in general, do not have equal rights as men in either political, social or economic spheres; they are discriminated against in jobs and in education; they are not equally represented in public institutions; they do not enjoy equal pay for equal work; and violence against women in both public and the private spheres is increasing, with impunity for the perpetrators and little justice for women.

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensures equality before the law, equal protection of law, prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantees equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the constitution are of specific importance in this regard.

### **Constitutional Feminism**

Constitution of India has done a magnificent job in ensuring gender justice in the supreme law of the country. The preamble to the Constitution, inter alia, assures justice, social, economic and political, equality of status and opportunity and dignity of the individual. It recognizes women as a class by itself and permits enactment of laws and reservations favoring them. Several articles in our Constitution make express provision for affirmative action in favor of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation.

The elimination of gender-based discriminations is one of the fundamentals of the constitutional of India. In fact the Constitution empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative discriminations and deprivations which women face. Article 14 of the Constitution of India ensures to Women the right to equality and

Article 15(1) specifically prohibit discrimination on the basis of sex and article 15(3) provides for affirmative and positive action in favour of women by empowering the state to make special provisions for them.

Article 16 of the Constitution provides for equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically forbids discrimination inter-alia on the ground of sex. These articles are all justiciable and form the basis of our legal-constitutional edifice.

Our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by Article 51-A. The directive principles of State policy contained in Part IV of the Constitution direct the State to protect human rights of women including right to equal pay for equal work, the right to health and work in hygienic conditions, right to maternity benefits, and respect for international conventions have significant value in building the corpus of constitutional feminism.. The Equal Remuneration Act, 1976, the Maternity Benefit Act, 1961, the Dowry Prohibition Act, 1961 and the Immoral Traffic (Prevention) Act, 1956 are some of the enactments which owe their existence to those provisions of the Indian Constitution.

### **International treaties and conventions**

The 20th century has witnessed the expansion of women empowerment movement universally. **The Universal Declaration of Human Rights (1948)** reaffirming faith in the fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women, contemplated the entitlement of all cherished freedoms to all human beings without any distinction of any kind, including discrimination based on sex. The International Covenant of Economic, Social and Cultural Rights, 1966 and the International Covenant of Social and Political Rights, 1966 lay stress on equality between men and women.

**The Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979** is the United Nations' landmark treaty marking the struggle for women's rights. Described as the Bill of Rights for women, it spells out what constitutes discrimination against women and propagates strategies based on "non-discriminatory" model, so that women's rights

are seen to be violated, if women are denied the same rights as men. The Covenant prohibits all distinctions and restrictions and the exclusion of the enjoyment and exercise of empowering women, her rights and freedom—civil, political, economic and cultural.

The equality principles were reaffirmed in the **Second World Conference on Human Rights at Vienna** in June 1993 and in the **Fourth World Conference on Women held in Beijing** in 1995. India was a party to this Convention and other Declarations and is committed to actualize them.

The Constitution has empowered the Parliament to make such laws by providing Article 253 and thereafter by putting an obligation on the State to give effect to the covenants by such enactments by providing such an obligation under Article 51.

The unity of family is already under threat in our country. Some of these Acts has been given another weapon in the hands of women. Before bringing any law, we need to educate people about its usage. George Washington was presented an axe by his father on his birthday in his childhood. Since he did not have the knowledge of using it, he destroyed the whole garden. The misuse of this Act will take women away from their family and the society. There are forces in the country that are jealous of our strong family system. Now they have started entrapping women. I am against crime against women, but I doubt whether the Act would be used to protect the family.

## **Domestic Violence**

### **According to the Indian Domestic Violence Act:**

Domestic violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over **a female** partner. Domestic violence can happen to anyone of any race, age, sexual orientation, religion or gender – except to males. It can happen among couples who are married, living together or who are dating. Domestic Violence affects people of all socio-economic backgrounds and education levels. Abuse can be physical, sexual, emotional, economic or psychological actions or threats of actions that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound the female partner.

By contrast, the Indian Domestic Violence Act specifically and clearly exculpates women from being prosecuted as the principal accused of Domestic Violence, excepting mothers, sisters, etc. of the accused man being prosecuted as abettors etc., and also specifically provides that the prescribed relief's, such as maintenance, restraining orders, can be obtained **only** by a woman and never against a woman!

These rules which are set out in the Indian Domestic Violence are totally biased, and work, not to protect the institution of marriage and families, but to break marriages and families, giving ample opportunities for misuse, with no remedial measures provided for.

Together with the so-called "Section 498 (A)" of the Indian Penal Code and the associated amendment to the Evidence Act, these legislations have resulted in widespread misuse and social malaise. Additionally, under these legislations, the indirect sufferers will be women in majority of the cases, as daughters-in-law file case against husbands, mothers-in-law and sisters-in-law.

### **Domestic Abuse And Violence Against Men**

There are no absolute rules for understanding the emotional differences between men and women.<sup>2</sup> There are principles and dynamics that allow interpretation of individual situations. Domestic abuse and violence against men and women have some similarities and difference. For men or women, domestic violence includes pushing, slapping, hitting, throwing objects, forcing or slamming a door or striking the other person with an object, or using a weapon. Domestic abuse can also be mental or emotional.

However, what will hurt a man mentally and emotionally, can in some cases be very different from what hurts a woman. For some men, being called a coward, impotent or a failure can have a very different psychological impact than it would on women. Unkind and cruel words hurt, but they can hurt in different ways and linger in different ways. In most cases, men are more deeply affected by emotional abuse than physical abuse.

For example, the ability to tolerate and "brush off" a physical assault by women in front of other men can in some cases reassure a man that he is strong and communicate to other men that he can live up to the code of never hitting a woman. A significant number of men are overly

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<sup>2</sup> [www.dvmen.org](http://www.dvmen.org)

sensitive to emotional and psychological abuse. In some cases, humiliating a man emotionally in front of other men can be more devastating than physical abuse. Some professionals have observed that mental and emotional abuse can be an area where women are often "brutal" than men. Men on the other hand are quicker to resort to physical abuse and they are more capable of physical assaults that are more brutal - even deadly!

### **Why Does Domestic Abuse Against Men Go Unrecognized?**

Domestic violence against men goes unrecognized for the following reasons:

- The incidence of domestic violence against men appears to be so low that it is hard to get reliable estimates.
- It has taken years of advocacy and support to encourage women to report domestic violence. Virtually nothing has been done to encourage men to report abuse.
- The idea that men could be victims of domestic abuse and violence is so unthinkable to most people that many men will not even attempt to report the situation.
- The counseling and psychological community have responded to domestic abuse and violence against women. Not enough has been done to stop abuse against women. There has been very little investment in resources to address the issues of domestic abuse and violence against men.
- In most cases, the actual physical damage inflicted by men is so much greater than the actual physical harm inflicted by women. The impact of domestic violence is less apparent and less likely to come to the attention of others.
- Even when men do report domestic abuse and violence, most people are so astonished, men usually end up feeling like nobody would believe them. It is widely assumed that a man with a bruise or black eye was in a fight with another man or was injured on the job or while playing contact sports. Women generally don't do those things.

### **Why Do Men Stay In Abusive And Violent Relationships?**

Men stay in abusive and violent relationships for many different reasons. The following is a brief list of the primary reasons.



- Protecting Their Children. Abused men are afraid to leave their children alone with an abusive woman. They are afraid that if they leave they will never be allowed to see their children again. The man is afraid the woman will tell his children he is a bad person or that he doesn't love them.
- Assuming Blame (Guilt Prone). Many abused men believe it is their fault or feel they deserve the treatment they receive. They assume blame for events that other people would not. They feel responsible and have an unrealistic belief that they can and should do something that will make things better.
- Dependency (or Fear of Independence). The abused man is mentally, emotionally or financially dependent on the abusive woman. The idea of leaving the relationship creates significant feelings of depression or anxiety. They are "addicted" to each other.

### **How Domestic Violence Act biased Men**

**S.3 of the Domestic violence Act includes actual abuse or threat of abuse — physical, verbal, emotional or economic.**

It means whatever husband do to his wife is wrong, but same if she do, that's ok, even, shout at him, slap, insult, Humiliate

**S4 of the Act says that the information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by “any person who has reason to believe that” such an act has been or is being committed. Which means that neighbors, social workers, relatives etc. can all take initiative on behalf of the victim.**

**S.17 makes the “right of residence” a powerful tool in the women’s hands whether or not she has any title in the household.**

An adulterous woman can abuse her husband or in-laws and threaten them of false domestic violence but she cannot be thrown out of the house as per the Act. This is open license to women to harass innocent men.

**Section 18 allows the magistrate to protect the woman from acts of violence or even “acts that are likely to take place” in the future and can prohibit the respondent from dispossessing the aggrieved person or in any other manner disturbing her possessions, entering the aggrieved person’s place of work or any other place that the abused woman frequents....**

If women say her husband and in laws stopping her from bringing her friends home, judge will order husband and his old parents not enter their own home.

**Section 32 (2) says that under the sole testimony of the aggrieved person, the court may conclude that an offence has been committed by the accused.**

This means with one word of women, it will empower her to punish men at her will. This is very dangerous for innocent men. As it is in the Divorce, alimony, rape, and dowry laws are already in favor of women. This law will not allow men to escape from the clutches of women who would lodge false complaint. All she has to do is, go to police station and shed some **crocodile** tears that are all, and husband will be full time member of jail at no cost.

**Preventing one’s wife from taking up a job or forcing her to leave job are also under the purview of the Act.**

Only solution is to save Institute of Marriage and Family of India, we should ask all organisations not to appoint women at any cost.

The Act will actually worsen the domestic problems leading to breakdown in marriages as women will be now encouraged to go to courts ,without giving any chance to settle their differences The Act discourages women to rectify their mistake. The Act not only gives powers without taking any responsibilities to women but also takes away all the rights of men.

It is not only marriage breaker but also whole family splitter, women can file case against any male member of Family, its a chain reaction, one crack in a marriage can ruin husbands other brothers and family too. Its massive bomb waiting to Explode. There is ample chance to misuse because there is no clause of punishment if misused, just like Dowry law. Feminist want Domestic Violence not Domestic harmony, that's why there is no word of spouse instead Man.

With the help of this law now women can stop Father of her children to meet them, this is total breakdown of Social structure of Indian Society it is best tool for black clad corrupt lawyers and Money minting machinery for police, women organisations and politicians. If there are abusive men, then there are Abusive women too. Laws should be gender balanced not Gender Biased.

Just imagine - a boy marries a girl and marriage lasts for a few weeks but he has to provide her a home, money and maintenance for her whole life and also face charges against 498A and 406 and etc laws. He can't sell his house any more without consent of that woman. It is sheer ridiculous and contradictory to many other basic laws and principles of the Constitution. Would it be advisable to go for marriage in India anymore? Marrying is now a very risky and costly act. In fact what happens in most urban disputes is the incompatibility and intolerance by the bride towards the groom's family and the wife's insistence on living separately. Relations sour and reach breaking point, which is when the whole act of vendetta and State Terrorism begins. Go to police file a complaint under Section 498(A) without any evidence, facts or prima facie reason. Now she will go to court lodging a complaint under the so-called Domestic Violence Act. The Domestic Violence act provisions are nothing but outright foolish, absurd, and illogical and exist to perpetrate Sate Terrorism and blackmail only. How such law can be passed in any democratic society?

## **Conclusion**

It is high time that the Government of the day should undertake a comprehensive review of the above legal provisions and ensure that suitable amendments are made in the laws to make them gender-neutral and non-discriminatory. Some of the steps which are required to be taken immediately are:-

- Promotion of the gender-neutral laws to promote family harmony (man/woman to be replaced by 'person' and husband/wife to be replaced by 'spouse' in Section 498-A IPC and Domestic Violence Act, 2005).
- Section 498-A IPC to be made bailable, non-cognizable and compoundable to save the institution of marriage. Even the Malimath Committee report has advocated for making Section 498-A IPC bailable and compoundable.
- The Domestic Violence Act, 2005 should be made gender-neutral and non-discriminatory as it is in all the developed countries of the world. Punishment for misuse of the provisions of the dowry/cruelty/domestic violence laws by default in the event of the complaint/case found to be false. This would certainly create some deterrence amongst the prospective abusers.
- Strict but reasonable time-schedule should be prescribed for the conclusion of the trials/cases under the above laws as the maximum abuse occurs on account of indefinite delay in the trial of these cases.
- Workplace harassment legal framework should be made gender-neutral.
- Duplication of legal provisions for similar benefits should be scrapped to avoid unnecessary and multiple litigations burdening the already over-burdened judicial and administrative resources.
- Empowerment of women through proper education to make them actually independent.

These steps if taken immediately would certainly provide a much-needed succor to the Indian society and go a long way in saving the Indian families from drifting and withering away

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