

# RECENT EFFORTS IN DOMESTIC VIOLENCE PREVENTION PLANS



**Dr. B. Lalitha Kumari**

**Director,**

**Centre for Women's studies and Empowerment,**

**Kakatiya University, Warangal, Telangana**

**Email: [lalitha21prasad@gmail.com](mailto:lalitha21prasad@gmail.com)**

## INTRODUCTION:

Violence against women is regarded as a necessary concomitant of the generally oppressed position to which women are subdued in the social structure. Patriarchal bias, powerlessness and dependence have put them into a vulnerable position and made men unjustifiably superior, owing to which crimes against women galore. Violence is always opposed to reason and tolerance, and undermines human rights and welfare. Law, representing the latter, should employ all means to curb the violence and protect the victim. Sincerity of legal systems concern for women's protection should be exhibited in the efficacy of criminal law in sternly dealing with the crimes against women. Protection of life and personal liberty through legal procedure will be meaningful to women only when an atmosphere free from violence is created through rule of law. About the disturbing trend of development in this sphere, what Justice Dr.A.S.Anand has observed in *kundula Bala Subrahmanyam* in the context of dowry death is worth noting as it holds good for other crimes as well. He said, "Of late there has been alarming increase in cases relating to harassment, torture, abetted suicide and dowry death of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of "live and let live". Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime".

Crimes against women occur both within the home and outside the domestic walls. They range from assault to deprivation of life, and from indecency to ravishing the woman's honour by rape. The crimes are dealt under the general law like Indian Penal Code and special statutes enacted to deal with specific crimes like dowry and domestic violence. This chapter discusses trends of legal development in these spheres from the perspective of promotion of gender justice and a desirable change. It also analyses the role of the National Commission for Women for protecting the interests of women.

### **Domestic violence:**

It is unfortunate that home, the sweet home, the adobe of rich and complex feelings and a place of retreat for protective sphere of family life, could be a very dangerous place for women. Instead of giving protective shade by being a sanctuary of tranquility and harmony, family has become in many situations breeding ground of violence against women in the hands of their own relations. Domestic violence, being incongruity in terms and gender neutral in words, is frequently and privately inflicted on women. Wife battering is the prominent type of domestic violence, practiced as a matter of legal privilege in common law. Rule of thumb represented

that the husband had the right to beat his wife so long as he used a stick no thicker than his thumb. Blackstone recognized husband's right to give his wife moderate correction by domestic chastisement to prevent her misbehavior. The practice was prevalent in lower ranks of people, and continued although sparsely in 20<sup>th</sup> century England and

### **RECENT EFFORTS IN DOMESTIC VIOLENCE PREVENTION PLANS**

Dependence have put them into a vulnerable position and made men unjustifiably superior, owing to which crimes against women galore. Violence is always opposed to reason and tolerance, and undermines human rights and welfare. Law, representing the latter, should employ all means to curb the violence and protect the victim. Sincerity of legal systems concern for women's protection should be exhibited in the efficacy of criminal law in sternly dealing with the crimes against women. Protection of life and personal liberty through legal procedure will be meaningful to women only when an atmosphere free from violence is created through rule of law. About the disturbing trend of development in this sphere, what Justice Dr. S. Anand has observed in *Kandula Bala Subrahmanyam* in the context of dowry death is worth noting as it holds good for other crimes as well. He said, "of late there has been alarming increase in cases relating to harassment, torture, abetted suicide and dowry death of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of "live and let live". Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime".

Crimes against women occur both within the home and outside the domestic walls. They range from assault to deprivation of life, and from in dependency to ravishing the woman's honour by rape. The crimes are dealt under the general law like Indian Penal Code and special statutes enacted to deal with specific crimes like dowry and domestic violence. This chapter discusses trends of legal development in these spheres from the perspective of promotion of gender justice and a desirable change. It also analyses the role of the National Commission for Women for protecting the interests of women.

### **Domestic violence:**

It is unfortunate that home, the sweet home, the adobe of rich and complex feelings and a place of retreat for protective sphere of family life, could be a very dangerous place for women. Instead of giving protective shade by being a sanctuary of tranquility and harmony, family has become in many situations breeding ground of violence against women in the hands of their own relations. Domestic violence, being incongruity in terms and gender neutral in words, is frequently and private inflicted on women. Wife battering is the prominent type of domestic violence, practiced as a matter of legal privilege in common law. Rule of thumb represented that the husband had the right to beat his wife so long as he used a stick no thicker than his thumb.

Blackstone recognized husband's right to give his wife moderate correction by domestic chastisement to prevent her misbehavior. The practice was prevalent in lower ranks of people, and continued although sparsely in 20<sup>th</sup> century England with a rider that the beating should not be violent or cruel. In ***Meacher vs. Meacher***, the court of Appeals declined to uphold husband's right to assault his wife when she refused to obey his orders not to visit her relations. But some cases in 1959 and 1975 support husband's privilege as long as its effect was moderate. Anyway, the traditional rule reflected subordinate position of women in family and other social institutions.

In India, the ancient law given by **Manu** and **Yajnavalkya** entrusted the responsibility of protecting females upon father, husband and son at various stages of life. The parental and quasi-parental right on the part of father and husband to protect from evils is the basis for mild disciplines in the interests of the woman and family itself. Wife's duty to act according to the reasonable words of the husband also subjected to her to some amount of regimentation. But this is a reciprocal duty in marriage as it is also provided in ***Manu Smriti*** that husband shall not only maintain his wife but also treat the wife with respect. It was considered by Narmada that wife was half of the husband, and the very pelled to undergo penance or disentanglements rather than beating. On the whole, absolute privilege of wife beating was not the spirit of ancient Indian law.

The Madras High Court discussed legality of wife beating in ***Subbiah Gounden case*** in 1936. The Session Judge of Madura District Court had exempted the husband from criminal liability for beating his wife, as the husband had the right to batter his wife. Categorically denying any foundation for such legal proposition, the Madras High Court observed, 'No such unqualified right is nowadays recognized by the law and wife beating is not one of the exceptions in the General Chapter in the Indian Penal Code'. The Court stated that no one should rely on the Sessions Court judgement in future as a justification for wife-beating. Gandhiji hailed this judgement as a fitting attack on the remnant of barbarism. The implication of ***Subbiah Gounden*** judgement is that wife beating amounts at least to the offence of application of criminal force or assault, and in case of grave injury it may amount to serious offence like grievous hurt etc. According to Section 350 IPC, "Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force". Since marriage is not a factor that amounts to giving of consent for the purpose of Section 350, wife beating can be brought within the ambit of Section 350. But use of the phrase "no such unqualified right" in ***Subbiah Gounde*** judgement hints that the husband has a qualified right of wife beating in justifiable circumstances. The position is different after the Domestic Violence Act, 2005. The fact that women seldom resort to general law like IPC owing to family relationship, dependency, lack of legal literacy or haplessness does not mean absence of legal remedy. But it is a fact that calls for a comprehensive legal scheme for protection from domestic violence.

Domestic violence in a wider sense includes all types of physical and mental cruelties, and use of force upon any members of family by its other members. In a limited or technical sense it means cruelty against female member of the family by other members. Undoubtedly, it involves human rights issue and is a serious obstruction to development. According to Poornima Advani," it is pernicious because it is directed against women who are supported to carry generations forward and goes against all canons of civilized behavior. It is insidious because it takes place within the closed walls of the home, which is supposed to be safe sanctuary for this occupancy. Social norms of subordination, economic dependence upon preparatory of violence and helplessness because of non-interference by third parties compel the women to silently tolerate the violence. The growing menace dowry harassment has aggravated the problem of domestic violence.

CEDAW has recommended that state parties should act to protect women against violence of any kind especially that occurring within the family. The Vienna Accord of 1994, and the Beijing platform of action [1995] reiterated this policy. The phenomenon of domestic violence is widely prevalent but has largely remained invisible in the public domain. In view of this and also realizing the serious inadequacies in the present law, in 1994 an expert committee on laws drafted the Domestic Violence to Women[prevention Bill].There was also wide spread demand for the comprehensive legislation on the subject by various women's organizations in 1997- 1998 the National Commission for Women forwarded its draft to the Union Government ,which was tabled in parliament as the protection from Domestic Violence Bill,2002.

The Bill was referred to Standing Committee of the HRD, and the resultant draft was circulated amidst other ministries in June 2005 the Union Cabinet decided to reintroduce the Bill in Parliament with certain refinements. A decade of development in public opinion and interactive law making process is quite encouraging and demonstrates the strength in public opinion to mould legal policy. In 2005 a fresh Bill with new features was introduced and was passed in Parliament. As a result, the Protection of Women from Domestic Violence Act 2005 has emerged the Act intends to give effect rights of women under Constitutional and international law and tries to give civil law's protection to Women who are victims of violence occurring within the family.

The Act defines Domestic Violence in a very comprehensive manner. According to Section 3 of the Act any act, commission of the respondent shall constitute domestic violence in case it:

harms or injures or endangers the health, safety life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse and sexual abuse ,verbal and emotional abuse and economic abuse; or harasses , harms, injuries or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any un lawful demand for any dowry or other property or valuable security; or

has the affect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause(a) or clause(b);

Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

“Respondent” means any adult male person who is, or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act[Section2(q)] “Domestic relationship means a relationship between two persons who live or have at any point of time, lived together in a shared house-hold, when they are related by consanguinity, marriage ,or through a relationship in the nature of marriage, adoption or are family members living together as a joint family[Section2(f)]

It provides for the rights of women to secure housing. It also provides for the right of a women to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or house hold. This right is secured by a residence order, which is passed by the Magistrate [Section 17].

It empowers the Magistrate to pass protection orders in favor of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a Work place or any other place frequented by the aggrieved person, attempting to communicate with her isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence [Section18].

It provides for appointment of protection officers and registration of non-Governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.[Section8,9,10].

The Act has a progressive approach of protecting the victims of domestic violence from the trauma, by providing shelter, freedom from fear, economic support, medical relief and legal help to overcome the problem and stand independently with dignity [Sections 18,19,20].Regarding sexual abuse, although it does not use the same terminology as that of vishaka guidelines, the words used in the definition can be more appropriately understood in that sense with a creative interpretation. The policy of law to provide a meaningful role for NGOs, and a right of complaining about domestic violence upon any person acting in responsible manner [Sections 10, 12] involves a social participative approach, and relies on people's support to make the social mission of law, a great success. This has added strength to combat the problem of dowry harassment.

## OFFENCES AGAINST WOMEN UNDER INDIAN PENAL CODE

### [I] OFFENCES AFFECTING THE HUMAN BODY:

#### [A] Of Offences Affecting Life:

1. Dowry death: Sec 304-B Indian Penal Code, 1860.
2. Abetment of Suicide [sec 306 and 107]
3. Presumption as to the abetment of suicide by a married women [Section 113 A of the Indian Evidence Act, 1872]
4. Ingredients of the offence of abetment of suicide.

#### [B] Of cruelty by Husband or relatives of husband

The offence of cruelty [Section 498 A of the Indian Penal Code, 1860 states:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

#### [C] Of the causing of miscarriage, of injuries to unborn children, of the exposure of infants and of the concealments of births [Section 312-318]

Causing miscarriage [Section 312 of the IPC]

Causing miscarriage without women's consent [Section 313 of the IPC]

Death caused by act done with intent to cause miscarriage [Section 314 of the IPC]

Act done with intent to prevent child being born alive or to cause it to die after birth [Section 315 of the IPC]

Causing death of quick unborn child by act amounting to culpable homicide [Section 316 of the IPC]

Exposure and abandonment of child under 12 years, by parent or person having care of it [Section 317 of the IPC]

Concealment of birth by secret disposal of dead body [Section 318 of the IPC]

(D) Of hurt and grievous hurt [Section 319-326 of the IPC]

Hurt:

Grievous hurt:

(E) Of wrongful restraint and confinement [section 339-348 of the IPC]

Wrongful Restraint [Section 339 of the IPC]

Wrongful Confinement [Section 340 of the IPC]

(F) Outraging the modesty of a women [Section 354 of the IPC]

Words, gestures, or acts intended to insult the modesty of women [Section 509 of the IPC]

(G) Of kidnapping, abduction, slavery and forced labor [Section 359-374 of the IPC]

Kidnapping and abduction [Section 360 of the IPC]

Punishment for kidnapping [section 363 of the IPC]

(H) Sexual Offences [Section 376 of the IPC]

Rape [Section 375 of the IPC]

Punishment for rape [Section 376-A, B, C, D, 228A of the IPC]

( I ) Of unnatural offences [ Section 377 of the IPC]

( J ) Of offences against Property [section 405, 406 of the IPC]

### **k) Of offence relating to marriage**

- Cohabitation by deceitful means (sec 493 of IPC)
- Bigamy (sec 494 of IPC)
- Marriage ceremony fraudulently gone through without lawful marriage. (sec 496 of IPC)
- Adultery (sec 497 of IPC)
- Enticing or taking away or detaining with Criminal intent a married woman (sec 498 of IPC)
- Special provisions relating to women under Indian evidence 1872

## CASE LAWS:

Under Section 406 of the IPC , who ever commits Criminal breach trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

1. The Court, in ***Prathibha Rani vs. Suraj kumar***, [(1985) 2 SSC 370] held that if a woman has given her sthreedhan or other personal property of her to her husband or in – laws for safe keeping, and if they sell away or misappropriate the property, she can prosecute them which Criminal breach of trust as the refusal to return her sthreedhan as it will be guilty.
2. In ***Rashmi kumar vs. Mahesh kumar Bhada***, [ (1997) 2 SSC 397] the Court held that a woman does not lose her ownership rights over the property just because she has allowed it to be used jointly as her sthreedhan or personal property has been jointly kept. The Court further held that she need not show any special agreement to prove that the property was entrusted.
3. In ***Bombay labor Union v. international franchise limited***. The invalid the rule which required that unmarried women were to give up services after marriage. The Court in ***air India v.Nargesh Mir 39 and others*** ruled at the rule declaring the pregnancy bar to air hostesses unconstitutional, as it offends Art.15&16

4. In Vinod Kumar v State [2005 Cr.LJ NOC 222 (A) (Uttar)], where the death of the deceased was due to burns and she gave a dying declaration stating that her husband and mother-in-law consistently harassed, tortured and beat her for bringing inadequate dowry and it was corroborated by other relations of the deceased and when the death took place within seven years of the marriage, it was held a presumption under section 113-A arises as to abetment.

Measures by laws, judicial decisions, against domestic violence and harassment and sexual offences are taken, though insufficient. There are several cases dealing with discrimination against women. The judiciary wavered sometimes giving scope for criticism. That it adopted a male counted approach.

Reservation for women by 1/3<sup>rd</sup> in parliament and legislatures will be made in due course time, though political parties are dodging and dealing for the last one decade. The latest attempts in August 2005 in Parliament have failed. The power of democracy 50% votes of women will prevail and women get their due share in legislative power.

## **ROLE OF NATIONAL COMMISSION FOR WOMEN**

The NCW may appoint committees necessary for dealing with special issues.

The NCW shall perform any or all of the following functions as per section 10[1] of the Act.

- (a) Investigate and examine all matters relating to the safe guard provided for women under the Constitution and laws;
- (b) present to the Central Government, annually and at other times, reports on the working of those safe guards;
- (c) Make recommendations for effective implementation of those safe guards, for improving the conditions of women by the Union or any state;
- (d) Review the existing provisions of the constitution and other laws affecting women, and recommend for amendments to overcome shortcomings, if any ;
- (e) Take up the cases of violation of the provisions of the Constitution and other laws relating to women with the appropriate authorities;
- (f) Look into complaints and take suo motu notice of matters relating to.
  - (1) deprivation of women's rights;
  - (2) Non implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development ;and
  - (3) Non compliance with policy decisions, guide lines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues raising of such matters with appropriate authorities;

- g) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
- (h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing the productivity;
- (i) Participate and advice on the planning process of socio economic development of women;
- (j) evaluate the process of the development of women under the Union and any state;
- (k) Inspect or cause to be inspected a jail, remand home, women's institutions or other place of custody where women are kept as prisoners or otherwise, take up with the concerned authorities for remedial action, if found necessary;
- (l) Fund litigation involving issues affecting large body of women
- (m) Make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil; and
- (n) any other matter which may be referred to it by the Central Government.

## CONCLUSIONS:

- Indian Criminal has substantive components and policies to deal with the offence against women. People's participation and civil societies initiatives have their own contribution to sensitise the law to dispel the gender biases.
- While the major trend of development has witnessed application of human rights norms and welfare policies, some of the remnants of male chauvinism continue to haunt the unfortunate victims and the process of administration of justice .
- The reforms in substantial law owing to progressive judgements of the Supreme Court and legislation need to be supported by strong law enforcement mechanism.

# Prevention methods

- Attitudinal changes in Patriarchal society.
- Go for a joint family.
- Economical sustainability of women.
- Transfer of property.
- Imposition of lot of conditions prepared by the government.
- Women share in property rights mandatory.
- Custody of the children.
- Medical assistance to the women.

**Thank you**