

Domestic Violence and Violation of Child's Right in India

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ABSTRACT

Domestic violence or abuse is a behavioral pattern used by one person to maintain power and control over another in a relationship. The term domestic refers to running of a family or a home. Violence means a behaviour involving physical force intending to hurt, damage or killing someone. Domestic violence does not discriminate anyone. Person of any race, age, sexual orientation, religion or gender can be a victim or perpetrator of domestic violence. A domestic violence may have direct or indirect impact on a child. A child may not be abused physically who is passively participating in such relationship by seeing and experiencing the trauma of such abuse rather participation can also cause mental pain or long-term change of attitude. Treating a child differently or creating a dreadful environment can shatter a child's life by leading them to death. Violence against children in general and domestic violence in particular, is a multidimensional problem, which requires a more serious approach by the state, NGOs, citizens and domestic members themselves, who subdue directly or indirectly to the violent actions.

Introduction

The term “domestic violence” comprises elaborately all forms of real abuse or threat of abuse of physical, sexual, spoken, emotive and monetary nature that can harm, cause grievance to, and compromise the health, wellbeing, life or either psychological or physical condition of the aggrieved person. Domestic violence can be bodily or emotional, and it can affect anyone of any age, sex, race or caste. It may include behaviors meant to jolt, physically injure, or control a partner. It generally involves an unequal relationship in which one partner tries to emphasize control over the other partner in various ways by using their power on them. Gender-based violence is defined by the United Nations as any act of violence that results in physical, sexual,

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or psychological harm or suffering to women, girls, men, and boys, as well as threats of such acts, coercion, or the arbitrary deprivation of liberty.

Impact of domestic violence on children

A child from 0-5 age group is considered as toddlers and those below 18 of age are considered as adolescents or teenagers.² A child who lives in a home where there is domestic violence is often seen that they grow up in an environment that is unpredictable, filled with tension and anxiety and dominated by fear. The environment can lead to significant emotional and psychological trauma, similar to that experienced by children who are victims of child abuse. Instead of growing up in an emotionally and physically safe, secure, nurturing and predictable environment, these children are forced to worry about each day or future; they try to predict when the adverse situation might occur next and went on to protect themselves and their siblings. They tend to pass each day silently by being unnoticed, there remains little time for fun, relaxation and future planning. In the case of *Prakash v. State of Rajasthan*,³ the court focused on the impact of abuse on the children of sensitive age. It observed that a child, who puts his faith in his elders to protect him, falls prey to the uncontrolled libido of the adult. The psychological effects of such betrayal haunt this child throughout his life. Sometimes, this abused child who is wronged becomes a mal adjusted citizen and rebels against the society and state. The duty is of the state and the society to protect children and promote him in his life thereafter. Hence, witnessing and experiencing domestic violence can lead to many effects such as:

Emotional and Psychological trauma

Children living with domestic violence by seeing their mother or father being threatened, demeaned, physically or sexually assaulted suffer emotional and psychological trauma from the impact of living in a household that is dominated by tension and fear. When they overhear conflict or violence and see the aftermath of the violence such as their mother's injuries and her traumatic response, they turn up to be one sided. Children at young age are not rational enough

² Child Development Ages and Stages, (last visited on 27 February 2020), <https://www.choc.org/primary-care/ages-stages/>,

³ CRIMINAL APPEAL NO. 26 OF 2008

or lose the sense of reasonability which often leads to manipulation. Sometimes they are neglected or disserved.

Indirect victim of physical injury when intervening

Children may be caught in the middle of an assault by accident or because the abuser intends it. Infants can be injured if being held by their mothers when the abuser strikes out and often pregnant mothers suffer miscarriage.⁴ Children may also get hurt if struck by a weapon or by a thrown object and older children are frequently assaulted when they intervene to defend or protect their parents.

Direct Victim of Physical or Sexual Abuse

It is not mandatory that a natural child will only be abused rather an adopted child, a child helper or even maids are likely to be abused more in comparison to natural child.⁵ They are often been beaten or threatened. Only physical violence may not be true violence rather mental cruelty is another form of gravest violence like, not giving enough food to eat, letting them to stand outside the home as a way of punishment or letting them to sleep in floor during winters without mattress or blanket. Few parents also punish their children for not obtaining higher marks in exams. They are abused or put under the pressure of better performance not only in studies but also in other co-curricular activities. They are compelled to compete, which instills a sense of selfishness too. A child may be directly targeted by the perpetrator and suffer physical, sexual or mental abuse. Men who abuse their partners are also likely to assault their children. A direct blow to the abdomen when experiencing domestic violence can cause complications and miscarriages. Few women even develop tokophobia.⁶ Such situation leads to long-term stress that can compromise the child's development, resulting in low birth weight, and even cause preterm delivery leading to early death.⁷ Daughters are more likely to become victims than sons. Where a mother is assaulted by the father, daughters are exposed to a risk of sexual abuse. In a

⁴ ANDREW SOLOMON, The Secret Sadness of Pregnancy with Depression, The New York Times Magazine, Published on May 28, 2015.

⁵ *Ibid.*

⁶ Tokophobia is a pathological fear of pregnancy and can lead to avoidance of childbirth.

⁷ ALEXANDER C. MCFARLANE, *The long-term costs of traumatic stress: intertwined physical and psychological consequences*, p.3-10 *world psychiatry* (2010).

report⁸ a boy was born with "**floppy baby syndrome**," this is a muscular condition in which doctors said it might be attributed to abuse during pregnancy. Children struggle with health issues, including speech disorders, and spend months in instructional therapy to learn how to follow directions. Brain imaging in infants' shows that exposure to domestic violence- even when they were sleeping or in uterus- can reduce parts of the brain, change its overall structure and affect the way its circuits work together. Studies show that when babies born to mothers who were subjected to violence during pregnancy after becoming adults, they have three times as much inflammation in their bodies as those whose mothers weren't.⁹ Inflammation causes a much higher risk of poor health, and a far greater likelihood of depression. The research also shows that these children are likely to have Post-Traumatic Stress Disorder as soldiers returning from war.¹⁰

Child Abduction

The abusers often increase their use of violence and abuse to stop their partners from divorcing. Abusers hurt their children to an extent that the spouse is being forced to return home. The abuser may attempt to take the children away from their mother in order to punish the woman for leaving the home. Because of domestic violence children lacks concentration they become aggressive which may lead to disobedience. The trauma of domestic violence leads to disturbed sleep and nightmares. The mental status ignites the feeling of withdrawal and low self-esteem. They sometimes show no emotion, always on edge and wary way. Children to an extent fantasies about normal home life and be pessimistic about the future.

Children who have experienced or witnessed domestic violence are often seen with physical or mental disorders or behavioural change. Children blame themselves for being helpless for such violence. They take huge time to adjust with normal life as they live in constant terror, sadness, worry, shame, anger or numbness. Children find it difficult to concentrate in studies as a result few of them drop out. Domestic abuse hampers their overall growth; they develop with poor communication skill. Most of them leave their studies in order to earn living and protecting their

⁸ Jayne O'Donnell & Mabinty Quarshie, *the Startling toll on Children who witness domestic violence is just now being understood*, USA Today, published on 29 January, 2019.

⁹ *Ibid.*

¹⁰ *Ibid.*

mother from such violence and such situation impacts children largely as they desire to take revenge once they grow old. Children are often forced to enter into early marriage or illicit relations. With the start of day children leave home early and mostly reluctant to return home early. They even develop the habit of consuming drugs or alcohol at a very tender age. Few of them gets embarrassed about their family publically and often show violent outbursts, to an extent of saving themselves from anxiety they commit suicide.¹¹

Reasons of child abuse through domestic violence

A PTI report stated that during March 2020, the first week of the lockdown, the Childline India helpline 'CHILDLINE 1098' received over 92,000 SOS calls from across the country, asking for protection from abuse and violence. According to another PTI report, the National Commission for Women (NCW) received 315 complaints of domestic violence in April.¹²

Merely punishing a child in order to teach them manners is not abuse. But it is not tough to distinguish between child abuse and child admonishing. Abusing is a barbaric act whereas admonishing is an act towards making a child a better human being.

Domestic violence or child abuse can be caused due to many reasons like poverty, unemployment, poor health status, community violence, drug abuse or alcoholism. It also occurs out of rage, too disciplinarian nature or parental mental illness followed by disruptions in family life. Due to these reasons children experience violence in life and while experiencing this they undergo emotional, physical, social and behavioural damage. They believe, it is right to use violence and when they get adult they implement the same and domestic violence from the very domestic level becomes a national level crime.

National and international framework on protection of children as victims of domestic violence

¹¹ Last accessed on 21st February, 2020, <http://www.domesticviolence.com.au/pages/impact-of-domestic-violence-children-and-young-people.php>.

¹² *Domestic violence, child abuse cases on the rise in this lockdown: Experts explain why*, (last accessed on 13th Dec. 2021), <https://www.hindustantimes.com/sex-and-relationships/domestic-violence-child-abuse-cases-on-the-rise-in-this-lockdown-experts-explain-why/story-UZUC4v491KIWBkXmQ7x3SM.html>

A child is nation's important asset, and the future well-being of a nation depends upon how its children grow and develop.¹³ It is the duty of the state to look after a child by (or "intending to") ensuring overall development of their personality.¹⁴ In India, rights of citizens including that of children have been directly or indirectly provided by the Constitution of India. The United Nations Conventions on Rights of the Child (CRC), 1989 is also an important framework to which India is a signatory.

The CRC has been adopted by the United Nations in 1989; the CRC is an international agreement legally binding on the parties' signatory to it. It has incorporated various laws related to the rights of children without any discrimination whatsoever. It was ratified by India on 11th of December 1992. The preamble sets out different principles on which the CRC is built upon.

The provisions of the CRC have been categorised as:¹⁵

PART I (Article 1-41) sets out the rights of children and obligations of the government. The rights can further be classified as:

- **Survival Rights** ensures right to life of child and their access to basic necessities to existence such as adequate food, shelter, standard of living and medical requirements.
- **Development Rights** ensures right to education, right to practice the religion of his own choice, right to perform cultural activities, freedom of thought and conscience, right to play, leisure and to access information.
- **Protection Rights** protect children from abuses which may be consequential to several kinds of circumstances, such as children subject to procedures of criminal justice system, children in employment, children who are refugees, children who have undergone abuse or exploitation.

¹³ *Laxmikant Pandey v. Union of India*, (1984) 2 SCR 795.

¹⁴ *Sheela Barse and Ors. v. Union of India and Ors.* JT (1986) 136 1986 SCALE (2)23.

¹⁵ <https://www.ohchr.org/documents/professionalinterest/crc.pdf> , Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with Article 49.

- **Participation Rights** are the rights of children to participate in activities of the society, especially matters that may affect their life, to assemble peacefully and to join associations.

PART II (Article 42-45) contains provisions regarding implementation of the provisions of CRC.

PART III (Articles 46-54) includes provisions for signing the convention by parties. Thereafter, it has rules and procedures along with the purpose of ratification, enforceability, amendment, denouncement of the convention. There are Three Optional Protocols to the CRC which have been introduced they are:

- Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography.
- Optional Protocol to CRC on the involvement of Children in Armed Conflict.
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. As of now India has not signed the third optional protocol.

Constitutional Provisions Regarding Rights of Children

The Constitution of India in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) guarantees certain rights to the children of India which are non-exhaustive in nature.

PART III provides **Article 14** guaranteeing right to equality and non discrimination to the citizens of India, including children whereas; **Article 15(3)** prohibits discrimination. However, it shall not hold a ground to prevent the state from making special provisions for women and children for their benefit. **Article 21** ensures no person shall be deprived of his life or personal liberty without due process of law. A person has the right to adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.¹⁶ **Article 21A** states, the State shall provide free and compulsory education to all the children falling in the age group of 6 to 14 years in such manner as the State may, by law, determine. **Article 23 & 24** prohibits trafficking in human

¹⁶ *Ashok (Dr.) v. Union of India* AIR, 1997 SC 2298.

beings, beggar or any other form of forced labour including children less than 14 years of age working in factory or mines.

PART IV in **Article 39 (e) & (f)** states that the state shall thrive to ensure that the tender age of children is not abused and citizens should not be forced by economic necessity to enter avocations unsuited to their age or strength. The state shall ensure that children the given facilities to develop in healthy manner devoid of exploitation. **Article 41** ensures the state is obliged to, within its economic capacity and development, secure provisions for educational opportunities and facilities. While **Article 45** ensures free and compulsory education to children until they attain they age of fourteen years. Under **Article 46** it is the duty of the state to promote the educational and economic interests of weaker sections of the society including children with special care. Under **Article 47** the state is duty-bound to raise the level of nutrition and the standard of living and to improve public health, including that of children. Under **Part IV-A Article 51 A (k)** gives fundamental duty to the parent or guardian to provide opportunities for education to his child or, as the case may be, ward between 6 to 14 years of age. **Article 243G** provides for the institutionalisation of child care by seeking to entrust programs of Women and Child Development to Panchayat (Item 25 of Schedule 11).

Since children are unable to access the legal system by themselves, a **Public Interest Litigation** may be filed in case of infringement of above rights in the Supreme Court or the High Courts by a public spirited individual or a non-governmental organization against the Central Government or State Government or any of their respective agencies by the virtue of **Article 32** and **226** for protection of the rights of the Children. The worst or saddest part is all the fundamental rights are ensured by the government but none is insured by the family. There is no direct provision related to child abuse in domestic violation cases.

Other Legislations in India

Indian Penal Code, 1860 specifically protects children and their rights. **Section 305** of IPC states abetment of the commission of suicide of a person below the age of 18 years is punishable under this section. Under **Section 317** abandonment or exposure of a child for the purpose of abandonment by any of the parents or a person having the care of such child is a

punishable offence. **Section 361 & 369** punishes offenders who kidnap a child (male if below 16 years of age and female if below 18 years of age). Under **Section 363A** Kidnapping or maiming children for the purpose of begging is stated to be a punishable offence. **Section 366A** punishes for inducing a minor girl under the age of 18 years to do any act that may force or seduce her to have illicit intercourse with another person. **Section 366B** also punishes for the offence of importing a girl under 21 years of age into India from a country outside India or from Jammu and Kashmir intending that she may be forced or seduced to illicit intercourse with another person (like, hiring a minor as a helper or a maid). **Section 369** punishes for kidnapping a child under the age of 10 years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also liable to fine. **Section 372 & 373** prohibits selling, buying or hiring a person less than 18 years of age for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose is a punishable offence. **Sec.375** defines “rape” if a man has sexual intercourse with a woman with or without her consent when she is under the age of 16 years is called rape.

Child Marriage Restraint Act, 1929 (Amended in 1979) and **Prohibition of Child Marriage Act, 2006** restraints child marriage until the minimum age, *i.e.* 21 for male and 18 for female, has been attained by them. It applies to the people of all the religions. The **Immoral Traffic (Prevention) Act (Amended in 1986), 1956** prevents trafficking. **The Women’s and Children’s (Licensing) Act, 1956** is an act which was enacted with an object to protect women and children from exploitation and inhuman activities going on in institutions. It mandates the institutions for women and children to get a license from the licensing authority before establishing or maintaining the institution. Not only this but also **Karnataka Devadasis (Prohibition of Dedication) Act, 1982** was passed. Devadasi system was one of the gravest forms of domestic cruelty upon children in which children were taught to be prostitutes by manipulating them. **Bonded Labour System (Abolition) Act, 1976**, **Child Labour (Prohibition and Regulation) Act, 1986** and **National Policy on Child Labour, 1987** aims at eradicating the bonded labour system and child labour in India which exploits the weaker sections of society, especially children.

Probation of Offenders Act, 1958 was enacted with the help of the **Juvenile Justice Act, 2000** it tries to ensure that no person under the age of 21 years faces imprisonment. **National Policy for Children, 1974 and Education Policy, 1986** was the first written policy for the children in India. It aims at providing better enforcement of constitutional rights of the children along with those granted by the CRC. Some of the provisions include free education, comprehensive health and nutritious plans, etc. for weaker sections of the society. The **Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2000** was another important act to regulate and prevent the pre-natal sex determination in order to prevent female foeticide.¹⁷ **Protection of Children from Sexual Offences Act, 2012** aims at punishing the offenders who are guilty of sexual offences against children below the age of 18 years of age. The trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 is yet to be passed in Rajya Sabha It provides prevention, rescue, and rehabilitation of trafficked persons.

Judicial response towards domestic violence and child right

Laws are the major tool in promoting and protecting the human rights and they play a vital role in the well being of any society. Just as fair laws and right verdict can dispense justice, equally, unfair laws and wrong verdicts can lead to grave violations, turning the justice delivery system into a travesty of itself. But in *Abdul Wahid Bahadur AH Shaikh v. State of Maharashtra*,¹⁸ the Bombay High Court awarded 10 years rigorous imprisonment instead of lifetime imprisonment as awarded by the trial court to the appellant/accused charged with having committed rape on his 8 years old daughter.

In *State of Punjab v. Gurmit Singh & Ors*,¹⁹ the Hon'ble Supreme Court stated: "The anonymity of the minor victim (name, address etc.) should be maintained in all cases throughout the criminal proceeding and the name and other details of the minor should be withheld even while providing the charge sheet to the accused." The idea behind the statement is to save further embarrassment of the victim of such an offence.

¹⁷ *Centre for Inquiry into Health and Allied Theme (CEHAT) v. Union of India*, AIR 2003 SC 3309.

¹⁸ *Abdul Wahid Bahadur AH Shaikh v. State of Maharashtra* 1993 Cri L.J. 1977 (Bom.).

¹⁹ *State of Punjab v. Gurmit Singh & Ors* 1996 SCC (2) 384.

The court laid emphasis on Section 327 of the Code of Criminal Procedure, 1973, which provides for the trial of certain offences to be conducted on camera, which shall aid the victim of such offence to give her testimony comfortably. Presence of the Media or public in general may make the victim uncomfortable and shy while giving her statement.

In addition to the above-mentioned rules, the court in the case of *Sakshi v. Union of India*²⁰ said, - the video tape of the child's interview can be used by the court only in the presence of a child support person. In order to get a candid account of the complained offences, the victim should be allowed to testify through a closed-circuit television and a minor victim can be cross examined only by the judge on the basis of the written questions submitted by the defense. Further, a child should be allowed for sufficient breaks, as and when required by them, while giving their statement.

The constitution validity of Pre-Natal Diagnostic Test Act, 1994 was challenged in *Vinod Soni and Another's v. Union of India*,²¹ on the ground that provisions of the Act are violative of Article 21 of the Constitution of India, which includes right to life and personal liberty which in turn also includes the liberty of choosing the sex of the offspring and to determine the nature of the family. But court stated a child conceived is, therefore, entitled under Article 21 to full development, whatever be the sex of the child is. In *Hemanta Rath v. Union of India and Others*,²² the court stressed on the implementation of Pre-Natal Diagnostic Test Act, 1994 in the state. The Court gave explicit directions to the State Government to appoint Appropriate Authority and Advisory Committee within 6 weeks and further directed the Committee to take strict measures to implement the Act. In *Delhi Commission for Women v. Delhi Police*,²³ the hon'ble High Court of Delhi has issued various comprehensive guidelines to Police. Hospitals/Doctors, Child Welfare Committees, Session Court, Magistrate Court, Prosecutors and other concerned authorities, to enable these authorities to effectively tackle sexual offences including incest and child sexual abuse offences.

²⁰ *Sakshi v. Union of India* Writ Petition (crl.) 33 of 1997.

²¹ *Vinod Soni and Another's v. Union of India* 2005 Cri. L.J. 3408.

²² *Hemanta Rath v. Union of India and Others* AIR 2008 Ori 71.

²³ *Delhi Commission for Women v. Delhi Police* W.P. (CRL) 696, 2008.

In *Childline India Foundation v. Alan John Waters and Ors.*,²⁴ while convicting the accused on complaints of physical and sexual abuse of children, the Apex court observed, "Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children who are free from abuse and exploitation".

Conclusion

Violence is basically a state of mind devoid of humanity it becomes crime when meager abuse or admonishment become major. Children experiencing violence develops differently in comparison to children who have a happy upbringing. A child who has seen his father beating his disobedient mother and repeatedly raping her will also learn that raping and beating a women is a man's fundamental right. Similarly, if a wife cheats on her husband giving him mental cruelty her daughter will also learn and apply the same someday. It would be best suited to say that, most of the crime starts from home from the lesson we teach to our children.

The Bible verse says 'Spare the rod and spoil the child',²⁵ whoever spares the rod hates their children but the one who loves their child is careful to discipline them. But using a rod to an extent to create horrors of rod degrades ones mental stamina. Hence, a proper balance of rod and award is very important to avoid violence or any further violation of rights. We have only one international convention related to child right and no direct legislation on prohibiting children from being directly or indirectly affected by domestic violence. Hence, the role of teachers in school, neighbors, relatives or family members, friends, counselors, NGO's public authorities comes into light and they must take proper steps in order to nurture child so that they do not become tomorrow's criminal.

²⁴ *Childline India Foundation v. Alan John Waters and Ors.* (2011) 6 sec 261.

²⁵ Last visited on 27 Feb. 2020, <https://www.crosswalk.com/faith/bible-study/what-does-spare-the-rod-spoil-the-child-mean.html>.