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Exploring the Scope of Gender-Neutral Reform in the Protection of Women from Domestic Violence Act, 2005

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Abstract

The following research paper aims to understand the various nuances of gender-neutral reforms concerning the 'Protection of Women from Domestic Violence Act, 2005'. The paper begins with a brief regarding the tensions that exist in the area. It then moves forward to elaborating the details of the research. The research paper consists of several chapters which focus on specific areas relevant to the topic.

The first such chapter provides the reader with an understanding of domestic violence and its meaning. The paper then moves to the specific legislation under examination. The author has attempted to provide the reader with a comprehensive yet concise insight into the 'Protection of Women from Domestic Violence Act, 2005' (hereinafter referred to as the Act). The following chapter marks a turn towards the gendered discussion on the topic and, it aims to look at those provisions of the Act which signify its gender specificity. It also provides a brief introduction to the concept of gender neutrality.

The research paper then progresses on to the chapter concerning the debate, between those advocating for a gender-neutral reform of the Act and those who warn against it. Herein, the author has attempted to provide a balanced perspective. Following this, a brief chapter on COVID-19 puts forward a summation of the contemporary situation relating to domestic

violence in the country. The paper concludes with a look at the responsibilities of those advocating for gender equality whom the author regards as 'feminists'.

Keywords: Protection of women from domestic violence act 2005, Domestic violence act, Gender and violence, Gender Neutrality, Violence Against Women Act, María da Penha Law.

I. Introduction

Domestic violence continues to be one of the most prevalent kind of abuses faced by women. While the discussion on the 'women issue' in the current times tilts towards more visually gruesome crimes of exceptional nature, the daily cycle of domestic violence gets lost in conversation due to its 'non-glamorous' nature. One in every three women faces the harsh reality of domestic violence, according to the National Family Health Survey-4 conducted in the year 2015- 2016 (Golder, 2016). In India, domestic violence suffered by women finds widescale acceptance in the socio-religious fabric of the country. Wife battering is not the exception to the norm but the norm itself.

In the period following independence, India has been part of several human rights treaties and conventions. With the realisation of women's rights as human rights, there has been a thrust in the international sphere towards national laws improving the status of women. Domestic violence is an indispensable area of action. Subsequently, we see a rise in the laws on the

same. In India, the 'Protection of Women from Domestic Violence Act' came up to combat all types of violence faced by women in domestic settings (The Protection of Women from Domestic Violence Act, 2005). It was a watershed moment in the fight against gender inequality. However, in the following years, new concerns emerged, a trend visible in all countries which undertook similar actions.

In *Next Time, She'll Be Dead*, which is one of the most revolutionary works on domestic violence in modern times, Ann Jones re-evaluates the situation related to domestic violence in American society. Giving a scathing yet a scholarly argument she bases the book on a central question: why are women still being battered? While her analysis revolves around a western society, the principles and behavioural components discussed as well as the principal tenet remain valid for everyone around the globe (Jones, 2000).

The case of Hedda Nussbaum discussed at length in the book points out the complexities one encounters while analysing case laws related to domestic violence. This particular case revolved around the death of Lisa Steinberg, the adopted daughter of Joel Steinberg and Hedda Nussbaum. The case ultimately unfurled years of child abuse and, while initially both the parents faced charges, in the trial, the authorities observed that the physical and mental condition of Hedda Nussbaum too pointed towards a long and deep-rooted history of domestic violence at the hands of her partner. All charges against her were dropped, in exchange for her agreement to testify against Joel Steinberg. This decision was not without its critics. More importantly, it created a rift among feminist scholars. On one side, were those feminists who saw Nussbaum as a typical victim of domestic violence and on other, those who pointed towards sadomasochistic tendencies and the active role played by Nussbaum, a woman, in the crime (Jones, 2000).

This tension finds a reflection in the new discourse around the domestic violence Act in India. After a good number of years since the first legislating exercise on domestic violence, there have now emerged some new questions. Questions relating to male victims and same-sex couples is a specific conceptualisation of the changes in the area of abuse in the private sphere. These questions in-turn relate to the emerging literature on female criminality. The paper tries to look at innovative ways of understanding the emerging dialogue.

II. **Statement of Objectives**

The objectives that the researcher aims to achieve are:

1. Understanding the nuances of the Protection of Women from Domestic Violence Act, 2005.
2. A balanced evaluation of the claims, made by those in support of gender-neutral reforms and those against it.
3. Placing the discussion in the context of the ongoing pandemic.
4. Drawing inspiration from the path followed by other countries.

III. **Hypothesis**

The positivity attached to the gender-neutral reformation of the Protection of Women from Domestic Violence Act (2005) should not be accepted at its face value rather, a critical analysis would be more beneficial.

IV. **Method of Study**

The research paper adopts a doctrinal mode of research. The focus is on analysing the text of the concerned Act and the related case laws. However, to expand the knowledge of the basic concepts repeated throughout the Act as well as to make the discussion relevant to contemporary times, the researcher makes an attempt to review the existing literature on the topic as well as refer to recent studies coming up on the issue.

Due to resource and time limitation, the paper

does not give an account of the empirical analysis. Future work can adopt this widened perspective. Additionally, the researcher has tried to provide an unbiased analysis of the subject at hand. The aim is not to refute the claims of any section. The work is ultimately a preliminary analysis and a starting point for those stepping into the area.

V. Literature Review

1. *Domestic Violence, Personal Control, and Gender*

The article offers a comprehensive approach to domestic violence and the interplay of gender. It focuses on the psychological aspect of personal control to analyse the positions of women and male victims of domestic violence. The article also provides adequate attention to perpetrators of domestic violence. Finally, it makes a case for feminists who advocate for a gender-specific approach to domestic violence policies (Umberson, Anderson, Glick, & Shapiro, 1998).

2. *"What about men?": Ideological dilemmas in online discussions about intimate partner violence committed by women*

The article evaluates the debate on intimate partner violence and gender in the online sphere. The author focuses on the process of meaning-making and how gender neutrality and gender equality feature in the online discourse. The area of women perpetrators is the pivotal element of the paper. The paper uses the method of internet research and content analysis to put forward the challenges feminist understandings of "gender, violence and power" face. (Venäläinen, 2020).

3. *Domestic Violence*

Citing various empirical surveys on domestic violence, the authors make a case for male victims. According to them, domestic violence is not necessarily a gendered issue. The article even goes to the point of arguing that women have more power to commit violence in intimate relationships. The authors contest that the lack of reporting on female to male violence

is due to the bias that exists in studies and broadly in academia (Horner, et al., 2002).

4. *The invisibility of gendered power relations in domestic violence policy*

The chapter follows an exploratory study to signify how political and policy environment affects the interaction of actors with concepts of gender and racism. Set in the Australian context, the researchers put forward two case studies to showcase how the concerns of aboriginal and non-aboriginal women can vanish from policy purposes. Like other feminist literature on the subject, attention shifts to the language and the peculiarities of terms used (Vincent & Eveline, 2010).

5. *Domestic Violence*

The article presents an innovative approach to the question of violence in a woman's life. It traces the violence that women encounter at different points in their life to construct a model about the lifecycle of violence. The article is specific to the Indian context and provides a much-needed insight (Karlekar, 1998).

6. *Equal but Inequitable: Who Benefits from Gender-Neutral Tenure Clock Stopping Policies?*

The research article focuses on the analysis of the practical application of a gender-neutral policy. While the research is not directly related to domestic violence, it does offer important insight into gender neutrality. The researchers put forward their observations related to gender-neutral tenure clock stopping policies and how it might harm female tenure rates (Antecol, Bedard, & Stearns, 2018).

V. *Supreme Court and The Domestic Violence Act: A Critical Comment On "Indra Sarma V. K.V. Sarma"*

The research article takes a critical analysis approach to one of the landmark judgements concerning domestic violence. Through the case of *Indra Sarma v. V.K.V. Sarma*, the author brings attention to the restricted interpretation of the Act offered, concerning live-in relationships. The author carefully points out

that the Apex Court failed to take into account the cultural specificity of the country while giving its judgement. Finally, the author discusses possible remedies for those not falling under the purview of the Act (Goel, 2014).

7. *Conceptualising Violence and Gender*

The chapter deals with a framework for examining an interplay between violence and gender. It begins by providing a brief introduction to the concept of violence and, then goes on to elaborate the selected sub-themes concerning physicality and measurement. The paper also addresses the topic of gender by elaborating on its invisibility and mainstreaming. Through this, it provides an understanding of the concepts that authorities may prescribe while formulating policies (The concept and measurement of violence, 2017).

In all the literature reviewed, the researcher notices a pattern in the papers. Most individual articles focus on one particular side of the debate i.e. they argue either in favour of gender- neutral reforms or against it. However, in this paper the researcher attempts to bring attention to the aspect that there is no one side which is completely correct. Moreover, there exist strands on each side. The solution perhaps lies in choosing the right mix.

VI. Nuances of Domestic Violence

The term 'domestic violence' is composed of two parts: 'domestic' and 'violence'. Even as one recognises the ubiquity of the terminology, it is essential to understand that its components continue to remain contested. While the term 'domestic' is the offering of a neoliberal perspective that sought to create a tension between private and public, the concept of 'violence' is to be now understood in the context of power systems especially those specified in post- modernist conceptualisations of the term. According to Black's Law Dictionary, violence is equivalent to unwarranted and unlawful use of force which is backed by the intention of creating harm. In modern-day societies, where the rule of law prevails, the

legality of violence is a preeminent area of focus (Black, 1891).

Traditionally, domestic violence has come under the restricted ambit of violence against women in heterosexual relationships, that is, harm caused by men to women. There is still no precise universally accepted definition and, sometimes the interpretation varies across cultures and nation-states. Domestic violence, in simple terms, is the unjust and unlawful use of power against women by men in domestic spaces that results in harm to the physical, mental and social well-being (Goswami, 2018).

Historical Underpinnings

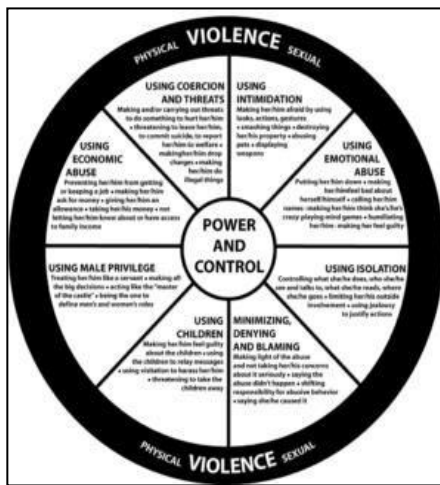
Historically, almost all societies are guilty of accepting as well as condoning domestic violence faced by women. It is not a distant point in human history wherein the beating of the wife was a 'right of the husband' (Goswami, 2018). Scholars, predominantly male at the time, often provided philosophical, religious and even scientific arguments to support the same. However, with the beginning of the feminist discourse, a shift came into being slowly and steadily.

This shift fully manifested itself with the radical feminist movement which, perhaps more than anything else focused on the 'banality of violence' faced by the women. The claim that the 'personal is political' has special significance for domestic violence which lay in the private sphere and, therefore, mostly outside the realm of legal intervention. Today, most nations have formally accepted a stand against domestic violence. However, implementation and genuine commitment are yet to achieve mainstream nature.

Types of Violence

Domestic violence is a broad category which interconnects several otherwise isolated aspects of violence. While the world still has a long way to go before combating the issue, this area represents success as our interpretation of

domestic violence has come a long way from being compounded in terms of only continual physical abuse. Today, due to several contributions of feminist and psychosocial literature, we have come to the awareness of the widespread consequences as well as components of domestic violence. Some broad areas that have received recognition find comprehensive coverage in what is known as the 'power and control' wheel.



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Scope

Domestic violence is not a contemporary phenomenon but perhaps, antiquity that has retained its position in today's day and age. It is paramount to note here that it comes under the ambit of gender-based violence and, its understanding has changed over time. Over the years, the term has been used interchangeably with other conceptualisations like intimate partner violence, though each carries a slightly different philosophical phrasing. As the gender debate continues to expand, especially in light of LGBTQIA+ movement and the introduction of intersectional argument, the issue of domestic violence has called for a re-evaluation.

According to the United Nations, violence

against women is any gender-based violent act which leads to "physical, sexual, or mental harm or suffering to women" irrespective of its place of occurrence which could be public or private (The United Nations, 1993). The organisation has adopted the term intimate partner violence to make it more inclusive in present times.

However, this line of thinking is not without its critics. Many point toward the specificity of domestic violence faced by women in a patriarchal structure. There is still not a full-scale acceptance of the rationalisation put forward by those advocating for male victims of sexual violence and, even those who try to bring same-sex relationships under the purview of domestic violence statutes. This debate forms the basis of the present research paper and, therefore, features in detail in the subsequent chapters.

VII. Legal Reaction to Domestic Violence

Domestic violence is a pertinent issue in the human rights category. Several instruments of international law have played a significant role in establishing this assertion. Central among these have been the Vienna Accord of 1994 and, the Beijing Declaration and the Platform for Action (1995). The issue also finds sanction under the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) which provides a nearly exhaustive acknowledgement of different kinds of violence faced by women. The recommendation called on the States to protect women against such violence and was ratified by India in June 1993 (The Protection of Women from Domestic Violence Act, 2005).

In India, before the coming in of a specific act on the issue, Section 498-A of the Indian Penal Code, 1860, which deals with cruelty faced by women by her husband or his relatives, was the only remedy available to victims of domestic violence. The lack of civil law on the subject

created a justice gap. This gap led to an introduction of a Bill on the same issue, which, ultimately resulted in 'The Protection of Women from Domestic Violence Act, 2005'. The Act was unprecedented legislation on the problem of domestic violence faced by women and, it came into effect from 26th October 2006 (The Protection of Women from Domestic Violence Act, 2005).

The Act lays down several chapters which in turn cover numerous sections. It is one of the most comprehensive and, extensive legislations that seeks to protect women. The interpretation of the Act is to be in line with the international conventions and norms as held in the case *Vandhana v. T. Srikanth*, (2007). Thus, the Act, when enforced in its full spirit, is a one-stop relief for women suffering in domestic spaces.

Some key features of the Act are:

Section 2

This section provides the definitions of terms that are repeated throughout the statute and are central for understanding the Act. Key terms like "aggrieved person"; "domestic relationship", "respondent" and others find a place in this section. These feature in detail in the next chapter of the paper.

Section 3

The definition of domestic violence comes under this section. It is notable here that the Act goes beyond all previous legal understandings of the term domestic violence and offers a detailed analysis of the term. Domestic violence under the Act includes:

1. physical abuse
2. sexual abuse
3. verbal and emotional abuse
4. economic abuse.

Definition of these terms also features in the section. Moreover, the Act shows a sensitivity to the specific nature of each domestic violence case and, resultingly emphasizes the "overall facts and circumstances of the case" in

determining whether a particular action can be categorised as domestic violence.

Section 4

This section provides yet another much-appreciated feature which allows anyone to bring the attention of the authorities to any situation which the person may believe to be an act of domestic violence. The law also frees people who act in good faith from all liability.

Section 5 to Section 11

These sections deal with the duties of police officers, service providers, magistrate and the government. Section 6 deals specifically with shelter home provision to the aggrieved woman.

Section 12 to Section 29 (Chapter IV)

Many acknowledge this Chapter of the Act as the heart and soul of the statute. Various reliefs feature in this chapter. Some prominent ones are:

- The Act ensures a speedy address of the application filed by the aggrieved person. Section 12 provides that the Magistrate is to fix a hearing on the application within three days from the date of receipt. Further, the application is to be disposed of within sixty days from the first hearing.
- Section 14 covers the provision of counselling which is a unique and commendable feature of the Act. The legislation shows sensitivity under sections 15 and 16, which provide for welfare expert and in-camera proceedings respectively.
- Section 17 is a much-discussed provision of the Act. It puts forward the right of the aggrieved woman to reside in the shared household. The concerned woman can thus continue to live in the same household as the husband "whether or not she has any right, title or beneficial interest in the same".
- Protection orders (Section 18), Residence orders (Section 19), Monetary reliefs (Section 20), Custody orders (Section 21), Compensation orders (Section 22) and, Interim and ex-parte

orders (Section 23) further enhance the ability of the aggrieved woman to claim relief. Remaining sections of this chapter deal with issues of jurisdiction, procedure, appeal etc.

Section 30- Section 37 (Chapter V)

This chapter deals with several miscellaneous provisions of the Domestic Violence Act. Section 31 covers the penalty for breach of protection order by the respondent. According to this section, a breach of a protection order or any interim protection order is an offence. The offence is to be punished with either imprisonment extending up to one year or a fine of rupees twenty thousand or both.

Section 32, dealing with Cognizance and Proof, lays down that offence under section 31 is cognizable and non-bailable. The sub-section 2 goes on to put forward that the "sole testimony of the aggrieved person" will be enough to conclude that an offence had occurred under the previous section.

VIII. Gender Neutrality and the Domestic Violence Act

The term 'gender neutrality' refers to an approach that its core argues that the aspect of gender should not be an active variable in making policy decisions. One can here breakdown the term into its components and understand how it is a corollary of neutrality that extends to the gender dynamic. A superficial look at the concept does not allow one to apprehend the complexity it carries with itself. The ambiguities of the independent terms 'gender' and 'neutrality' pass on, which results in the modelling of an amalgamated concept. This concept, in turn, becomes a discourse which offers remarkable potential for theoretical exploration but at the same time leads to onerous practical implementation.

What one needs to draw from this observation is not an argument against gender neutrality but just a testament of its intricate nature. When two people refer to reforms on the lines of gender neutrality, there lies a possibility that they could be referring to two mutually

exclusive, at times even contradictory, positions. In the current context, it is crucial to note this point because, in addition to legislations being broadly in the gender-specific and gender-neutral categories, one needs to examine the kind of gender specificity and gender neutrality it offers.

We shall now review the Protection of Women from Domestic Violence Act, 2005 through this framework:

The domestic violence legislation in India straightforwardly through its name clarifies the group of people it seeks to protect i.e. women. This understanding of a woman stems out from the binary model of gender, which is the base of legislations in India. Thus, the Act aims to provide relief to heterosexual women.

Even in its acceptance of a heterosexual model, the Act does not necessarily function on the principle of formal equality. This feature is not present in specific chapters or sections of the Act. Instead, it forms the foundation of the Act. Thus, the domestic violence act does not merely have gendered features but, is gender-specific in its outlook. However, it has also shown some degree of fluidity in its expansion of the concept. To understand this more clearly, we shall now shift our attention to the text of the Act. Besides, the interpretations that have been offered by the various courts provide a thought-provoking area for examination.

Aggrieved person: Who can seek relief?

The Act does not recognise all victims of domestic violence. In Section 2 (a), the "aggrieved person" offers a precise definition as to who can seek relief under this Act. As per this section, any woman, who currently or in the past, has had a domestic relationship with the respondent can seek relief if she feels she was subjected to domestic violence by the said respondent.

In the interpretation of the domestic relationship aspect, the Courts have acted in a way that

upholds the spirit of the Act. Judges have gone beyond restrictive literal interpretation rule. Thus, the Act provides a widescale scope by offering relief to even those women who are not currently in a domestic relationship with the respondent. The court held in *M. Palani v. Meenakshi*, (2008) that even application from a woman against a man with whom she has shared a closed relationship is maintainable. Divorced women too can file a complaint.

Respondent: Who can be the perpetrator?

In Section 2 (q), the Act defines the term "respondent" thereby fixing the class of people who can be held liable under the Act. Initially, the term respondent remained restricted to an "adult male" who had, at any point in time, been in a domestic relationship with the aggrieved person seeking relief.

However, in a landmark judgement in *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016), the Supreme Court interpreted the definition to include females and non-adult males. According to the apex court, such a distinction did not pass the reasonable classification test. In its thorough analysis of the issue at hand, the Supreme Court provided its rationale for such interpretation. Herein, the court referred to the purpose of the concerned legislation itself. The court reiterated the purpose of the Act. It put forward that the Act aimed to protect women from all categories of abuse in the domestic setting. Further, as per the court, the protective provisions of the Act become futile if a restricted stance is adopted.

The court also drew attention towards the aspect of a shared household, which is one of the central features of the Act. The court reasoned that the restriction of the word "respondent" to "adult male", was not based on "any intelligible differentia having rational nexus with object sought to be achieved".

Lastly, according to the court, such phrasing was also absent from the Sexual Harassment of Women at Workplace (Prevention, Prohibition

and Redressal) Act, 2013.

Herein, it is paramount to acknowledge that such reasoning was not a novel reading taken by the court in the above case. In previous cases like *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*, (2011), the Supreme Court had read the term "relative" to be inclusive of female relatives. The apex court referred to the intent of the legislature to substantiate its argument.

Domestic relationship

The meaning of the term "domestic relationship" is also necessary to examine the gender-specific nature of the Act. It finds its definition under section 2 (f), as a relationship between two people, who have lived together at any point in a "shared household", when they were related through "consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family".

A crucial aspect here is related to the relationships in the nature of marriage. Though the Act, to some extent, moves past the hesitance of Indian legislature in recognising live-in relationships, the phrasing of the phenomenon in terms of marriage has restricted progressive interpretation. In *Indra Sarma v. V.K.V Sarma*, (2013), the Supreme Court has called for a "balanced approach". It has specified the criteria for testing the applicability of section 2(f) to live-in relationships, though, it pointed out that the list was not exhaustive and ultimately the decision was to be based on the facts and circumstances of each case. In its criteria, the Supreme Court emphasized the aspect of marriage and, opined that in the relationship "some characteristics of marriage" must be present.

This observation of the court introduces a hindrance for same-sex relationships that seek recognition under the Act. Marriage under Indian laws strictly adheres to the binary model of gender and is between a heterosexual man and a heterosexual woman.

Other features

There are some other provisions of the Act that play a significant role in understanding the overall validity of the gendered nature of the Act, discussed in the next segment.

Sole testimony

Section 32 (2) of the Act, regards the sole testimony of the aggrieved person as sufficient proof for establishing the occurrence of the offence. As will be discussed, this is one of the reasons that many categorise the Act as 'women favouring'.

Shared household

The purpose of extending the right of the woman to this space stemmed out from the practical experiences of women in the country who were left homeless in the instance of filing a complaint.

Protection officers and welfare expert

Though a minute aspect of the Act one must notice that in sections relating to the appointment of protection officers and welfare experts, the Act underlines a preference for women. This feature also supports the gender lens adopted by the Act.

Through this segment on gender neutrality, we can conclude that the Protection of Women from Domestic Violence Act, is fundamentally an Act that addresses gender-specific violence.

IX. Neutral Evaluation: Understanding Both Sides

There is a notable tension among those who advocate for the gender-neutral reformation of 'Protection of Women from Domestic Violence Act', and, those who call for caution against the same. While any attempt to reduce the debate to writing would be insufficient, we can identify some particular threads on the lines of which most conflict occurs.

One must remember here that the aim of such pitting of arguments is not to test the intellectual superiority of any side but to identify

those overlapping areas that allow for workable solutions. The 'two groups analogy' has been used for the sole purpose of simplifying a tricky discourse. These arguments are to be understood in their commonality as much as in their differences.

Constitutional validity

Perhaps, the broadest argument put forward by those advocating for gender-neutral reform of legislation is that the present Act lies in violation of Article 14, 15 and 21 of the Indian Constitution. As per this group, the classification created by the Act between men and women is unreasonable. This factor leads to a question regarding the constitutional validity of the provisions and procedures specified under the Act.

However, this is perhaps an easily refutable argument. Those on the opposite side put forward the need to go beyond formal equality and focus on substantive equality. According to this group, the Act is not a 'denial' of rights to men but a fuller 'realisation' of the constitutional rights of women. It necessarily has a constitutional mandate. The Constitution, both as a static and living document, has recognised the special issue of women safety in the country.

Male victims

Perhaps, the first aim of any gender-neutral reform is to break the strict understanding of 'men as perpetrators and women as victims' dynamic. Thus, those advocating for gender neutrality in domestic violence law, often, call attention to male victims of domestic violence and, this is perhaps the most discussed issue too. Advocates of gender neutrality contest the assertion that women are the only victims. According to them, remedy and relief should also be available to adult male victims. As per their understanding, non-inclusion of male victims in the Act restricts the Act from realising its full potential in the form of providing relief to all those who suffer violence in domestic settings.

This group also cites studies which deny the asymmetrical nature of domestic violence faced by women. They call for equal treatment of male victims as female victims based on the similar nature of the harm caused. Moreover, they point towards the gross under-reportage that happens concerning male experiences of such violence (Horner, et al., 2002).

It is essential to note a duality of arguments presented by this group. Both feminist and anti-feminist reasonings exist. Thus, while outwardly this group might seem as one simply advocating what many feminists have termed as the 'infamous men's rights' which are a little more than a conservative backlash to women's progress, it is not entirely the case. There do exist those who engage in this simplistic understanding and pit the fight as one between men and women, in which they refuse to acknowledge the historical exploitation faced by women. This is perhaps most remarkedly seen in the work of Dutton (George & Stith, 2014). However, there also exist amongst this group people who advocate for a condemnation of a patriarchal setup. They draw attention towards the harmful effects of patriarchy on men that results in men facing shame as victims (as opposed to pride as perpetrators). Moreover, they argue that the assumption that only the female body is capable of being violated also stems out from a sexist outlook. Besides, they aim for solutions that don't simply take away resources from women victims in favour of men.

Coming to the other side of the issue, we come across those who raise a concern with the recognition of male victims of domestic violence at par with female victims. According to this group, women continue to be the predominant victims of domestic violence. They point towards statistical data that supports their claim. Regarding the under-reportage aspect, they argue that under-reportage is an issue which is similar for men and women victims. They deny the insistence that male victims suffer more in this regard. For them,

while men do suffer from violence, the nature of the violence is glaringly different for women. They put forward that even in domestic violence that takes place within the private sphere men are more likely to face danger from another man. Raising an issue with the contestation that the purpose of the domestic violence act is the protection of the people from violence in domestic settings, they counter-argue that the Act was gender-specific from its inception and the legislature created it with the sole purpose of extending protection to women victims. Thus, the point lay outside the scope of the purposive rule of legal interpretation.

Talking about the female body, they describe the cycle of violence that it goes throughout life, from inception to death. Domestic violence is only a part of the violence faced and, thus, simply equating their experience with that of men was an injustice. While there can be no comparison between traumas, in a patriarchal society it is essential to note the differences in the lived experience of those historically classified as inferior human beings (Karlekar, 1998). Herein, many also refer to studies on personal control which assert that when men and women face the same degree of domestic violence a greater sense of loss of control is faced by women as opposed to men who often as perpetrators show a gain of the same (Umberson, Anderson, Glick, & Shapiro, 1998).

Women as perpetrators

The group advocating for gender-neutral domestic violence law following from the previous point, of male victimisation, raise a concern about the assumption that women do not engage in violence. Herein, the duality of this group continues. There are those who base their claim on the 'equal viciousness' projected by women in relationships (Horner, et al., 2002). They go ahead to argue perhaps what is now the popularly called 'misuse' of the Act by women. This phrasing often results in the identification of 'modern women' as 'anti-family' beings who raise all sorts of injustices for the

man and his family. Often such arguments are accompanied by a criticism of the 'radical feminist agenda'.

But this group is not limited to this line of thinking. Some, as previously mentioned, prescribe to a way that adheres in a real sense to the goal of gender equality. The point they raise is related to the humanity of women. According to them, seeing women as 'incapable' of engaging in violent acts is in itself a patriarchal idea. For them, the basis of gender-specific legislation often lies here. One can herein draw a relation to the literature on women criminals.

The other group (advocating against gender neutral reforms) through the way of judging the motive behind the first line of thinking negates the claims that try to construct an unwarranted image of modernised womanhood. The counter-argument raised in opposition to the second line of thinking is again related to the nature of violence. As per the group, there is a distinction between "common couple violence" and "patriarchal violence" (Umberson, Anderson, Glick, & Shapiro, 1998). For them, domestic violence essentially belongs to the latter category. Thus, while women do engage in violence in intimate relationships it does not stem out of patriarchy and gender inequality.

Also, some people of this group point towards a flaw in domestic violence data collection. According to them, a reason why the data shows symmetry in the violence experienced by men and women is that these studies often fail to draw a distinction between violence used in offence and violence used in defence, as well as between single isolated acts of violence and continued violence (Umberson, Anderson, Glick, & Shapiro, 1998).

Besides, according to this group, women as perpetrators are not backed by a socio-religious mandate which is often the case for male perpetrators. Violence perpetrated by women does not inherently receive the support of the society and the State.

Same-sex relationships

One of the strongest and, perhaps the most well-founded case for gender neutrality features lies in the issues raised by the members of the LGBTQIA+ community. The implosion of the binary model and the subsequent intersectional conceptualisation changes the way one has traditionally navigated through partner violence instances. This group makes an argument in favour of gender-neutral reforms because, currently, such relationships exist altogether outside the purview of the law. The situation could lead to a prevalence of abuse in such relationships, which would pass completely unaddressed.

The counter-argument raised in regards to same-sex relationships is that the source of discrimination lies in the broader stance of State and not a specific statute. Same-sex relationships need full recognition under the law. This is not a simple task of creating minute changes in civil law. Making such changes in the existing law only introduces inconsistency in various legalisations, and at the same time dilute existing law without benefitting the community which needs it.

Nothing said in the above paragraph should be construed as a denial of the need for such legislation. Immediate recognition which is being rightfully demanded by same-sex couples calls for a more targeted and refined approach that helps in maintaining the consistency of law in the country and, at the same time recognises the varied context of such injustice. This recognition should then subsequently flow into other instruments of the legal system.

X. International Standards

Domestic violence goes beyond borders and is a global issue. While the phenomenon is affected by cultural-specific factors, nation-states have found common grounds. This factor forms the basis of international cooperation and the thrust from the global

community to end violence against women in all forms. International collaboration has thus been instrumental in providing a guiding light for national legislations.

In terms of domestic violence, we see a regional variation too. One can speculate these to be stemming out of the cultural variations. In western cultures, the thrust on individual liberty translates into recognising the rights of victims. Moreover, the aspect of formal equality has scope for further advancement in many developed nations in which gender equality though not completely established but still has laid down a strong foundation. A different sort of tension exists in the countries of the East and more specifically, the Global South. Herein, the basic structure of society is family and not the individual. This factor is instrumental in determining the rights of the victims because these rights are to be realised without threatening the basic familial structure.

In a globalised world, such simplistic and watertight demarcations have proven to be of little use. However, culture specificity plays a significant role in the acceptance of legislations and their on-ground implementation. With this understanding, we can now turn towards the examination of some countries and their domestic violence legislations. The lens of gender neutrality is adopted here too.

United States of America

With its popular designation as the “leader of the free world”, the United States is seen as a nation championing the cause of individual rights. In the area of domestic violence, the country enacted the Violence Against Women Act (VAWA) of 1994. The legislation aimed to combat violence against women which had been increasing in the past decades (Sacco, 2019).

Delving on the gender neutrality aspect, the VAWA though in its name specifically mentions women, aims to provide relief to all victims. With the acceptance of same-sex relationships across all states, VAWA further expanded the

scope. Thus, the legislation is a classic example of gender-neutral legislation. It is pertinent to note here that VAWA focuses on both criminal and civil response to domestic violence.

However, the law has faced several challenges regarding its imagined implementation as well as related to its very existence. VAWA in the USA has to be continually re-authorised. Due to bipartisan polarised politics, this process has not been easy. Moreover, the legislation is closely related to the issues of immigration status of couples as well as gun control. This factor introduces new layers to the problem. In addition, even though male victims are well recognised, the on-ground implementation regarding same-sex relationships and male victims paints a picture that shows the inherent inadequacies of the legislation (Sacco, 2019).

VAWA again stands for re-authorisation. Critics have pointed towards a hard fight for its maintainability. However, there can be a change in the country's position with the recent election win of Joe Biden, who was deeply involved in the whole process of VAWA. The decisions taken would set an example for all nation-states debating gender-neutral reforms.

Brazil

Violence against women has been a burning concern in the country. Brazil records some of the harshest conditions for women, especially in a domestic setting. The nation was shook into awareness through the efforts of a survivor of domestic violence Maria da Penha, and the Law No. 11.340 (popularly called the *María da Penha Law*), came into existence in 2006 (UN Women, 2011). The act too criminalised domestic violence and, applied to same-sex couples as well as male victims. Brazil also legalised same-sex marriages in 2013.

Even with the presence of pragmatic legislation, subsequent implementation has proven to be problematic. Especially, with the ongoing political strife in the country over the past years

and the declining economic condition, Brazil has remained notoriously famous for the declining women rights in the country.

One can look at the example of the country to see the impact political leadership has in realizing the true potential of gender-neutral reforms.

South Africa

Violence against women is extremely prevalent in the African continent. The country of South Africa came up with Domestic Violence Act in 1998 recognising the issue of domestic violence as "serious social evil" (Domestic Violence Act, 1998). The legislation was one of the first to cover same-sex relationships, as well as those, dating. Same-sex marriages have also been legalised in South Africa.

South Africa is a crucial example in understanding the role feminist thinking can play in pushing for legislation in the country.

XI. COVID-19 and Its Implications

The pandemic has had an impact on every person across the globe in one way or another. The effects of the pandemic have been explicit, owing to their nature and coverage in media. However, the pandemic has done more than revealing the inadequacies of the healthcare system in a globalising world. We have encountered, what were presumed to be unrelated systems of inequality, come together to create a new burden. Thus, while the pandemic reveals to us our inherent similarities, it also brings attention to our created inequalities. In this context, one can imagine two different lines of pandemic the world faces. One, in terms of health and, another in terms of inequality.

For many people, the simple solution to the pandemic has been staying indoors. As nations announced lockdowns, the dynamics in the private sphere changed drastically for many. Women who often find themselves restricted to this sphere in a patriarchal society were affected in ways different than men. A drastic

rise in cases of domestic violence against women throughout the world highlights the persistent pandemic of gender inequality. The United Nations rightfully termed this phenomenon as the "shadow pandemic" (UN Women, 2020).

Domestic violence complaints saw a ten-times increase. Since the beginning of lockdown till the end of May, 1,477 complaints of domestic violence were made by women in India (The Hindu, 2020). A great majority of these complaints came through the email mode and, given the internet penetration of the country, many did not find an opportunity to raise the alarm (Das, Das, & Mandal, 2020). These figures might seem alarming, but they only portray the tip of the iceberg. The plight of Indian women during this pandemic remains unrecognised.

Amidst this reality, a question of gender-neutral reforms for the Protection of Women from Domestic Violence Act 2005 needs careful analysis. On account of loosely defined misuse by women, diluting the Act will take away the only remedy available to a vast group of women who remain stranded in dangerous situations. It is also important to note the disproportionate economic burden that women have faced due to the pandemic, which, in several cases, leads to financial dependency on the abuser, thereby further increasing the threat. One needs to examine this in the light of gross income inequality that exists in the country along the lines of gender.

Hastened changes without adequate inputs from the concerned stakeholders are bound to fail the real purpose of further extending the help to male victims and those in facing abuse in same-sex relationships. This step shall only empower those trying to circumvent liability and will deepen the gender inequality present in the country.

Conclusion

"A gender-equal society would be one where the word 'gender' does not exist: where everyone can be themselves."

- Gloria Steinem

The fight against domestic violence carries on under different circumstances and situations. The common thread of raising voice against injustice provides hope. In determining the solution, one looks for various explanations in the theoretical world. Herein, one encounters numerous conceptualisations and, gender neutrality represents one such perspective.

Gender neutrality can mean different things to different people. At its best, it dares to imagine a world free of gender-based prejudices. One, where the focus of masses is far beyond the question of gender, essentially because it would have resolved the existing tensions. At its worst, gender neutrality turns into gender blindness which refuses to acknowledge the extent of injustice that the present time marks.

Looking at the Protection of Women from Domestic Violence Act, 2005, we see legislation that more than anything does what it promised to do i.e. provide a system of addressing the violence faced by women. It provides a one-stop relief system to Indian women. This view finds some support in the Indian judiciary. In a recent webinar, Justice Hima Kohli put forward that there was "no denying that the power structure is in the favour of men". According to her, the current laws on domestic violence were adequate for protecting women across all sections and classes since domestic violence is not circumvented by higher financial or caste positions of the women. Further, she put forward that Indian society is far away from the point wherein men face large scale systemic danger from women (Srivastava, 2020).

Though the 'misuse' of the Act gets quoted on numerous occasions, we need to delve a little further into the issue to check the validity and intention of such claims. As discussed, there is

no unilateral group advocating for gender-neutral reforms. While those fighting the discrimination faced by same-sex couples and those advocating for the cause of male victims do put forward a well-intentioned claim, one needs to examine the applicability in a wider context. The question herein is related not to the destination but the path taken.

There is a strong conservative lobby in the country which sees the liberation of women as a negative change and in opposition to the vague Indian traditions they claim to uphold. It is not a surprise when this same set of people refuses to acknowledge the rights of LGBTQIA+ community or even promotes a highly toxic masculine imagery. Succumbing to the demands made by this group, in the garb of gender-neutral reforms, will be a setback to gender equality, if not to democracy. Not a long time back, Indian feminists backed away from the demand of Uniform Civil Code. They did so on experiencing an unwarranted hijacking of their cause by those whose goal was not the liberation of women or any minority class but rather who wanted further suppression.

The goal of gender equality envisioned by feminists has always had the element of imagining a gender-less society. The quote mentioned signifies the ultimate aim of feminists and others working for gender-equality under different schools of thought. However, humanity needs to deliberate on the means to achieve this goal. This difference of opinion is perhaps the reason why assertions against and in favour of gender-neutral reform of the Act simultaneously exist within feminism. Those fighting injustice now must look for an approach that goes beyond gender but not beyond true equality.

The pandemic is nothing less than a state of war for women living under patriarchal structures. After years of blatant insensitivity and violence, India owes its women a chance at survival if not more.

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