

CHAPTER-THREE

EQUALITY AND NON-DISCRIMINATION

The Protection of Women Against Domestic Violence

"Equality is the soul of liberty; There is, in fact, No liberty without it"

Carl Schmid

In India, woman who constitute almost half of the population have always been ill treated, discriminated and even deprived of their right to life and personal liberty as provided under the Constitution of India. Women are always considered as physically and emotionally weaker than the males, whereas at present women have proved themselves in almost every field of life affirming that they are no less than men due to their hard work whether at home or working places. However, behind closed doors of homes all across the country, women are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolises as well. It is crossing all social classes, genders, racial lines and age groups. It is becoming a legacy, being passed on from one generation to another. Such offences reflect the pathetic reality that women are just not safe and secure anywhere in India.

Violence against women is not a new phenomenon but an age

old problem of a patriarchal society. Women have to bear the burns of domestic, public, physical as well as emotional and mental violence against them, which affect their status in the society at the larger extent. The statistics of increasing crimes against women is shocking, where women are subjected to violent attacks, i.e. foeticide, infanticide, medical neglect, child marriages, bride burning, sexual abuse of girl child, forced marriages, rapes, prostitution, sexual harassment at home as well as work places etc. In all the above cases, women are considered as the aggrieved person.

The Declaration on the Elimination of Violence against Women adopted by the UN General Assembly in 1993 defines violence against women as "any act of gender - based violence that results in, or is likely to result in, physical, sexual or psychological harm, or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty; whether occurring in public or private life". Beijing Platform for action states: "The fear of violence, including harassment is a permanent constraint on the mobility of women and limits their access to resources and basic activities. High social, health, and economic costs to the individual and society are associated with violence against women. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

The Protection of Women from Domestic Violence Act 2005 is an Act of the Parliament of India which came into force from 26th October, 2006, in every state except Jammu and Kashmir which later enacted its own law, e.g. Jammu and Kashmir Protection of Women from Domestic Act 2010. The objective of this Act is to protect the women from domestic violence. This Act, for the first time, defines domestic violence in a comprehensive manner that not only includes physical violence but also other forms of violence such as emotional, verbal, sexual and economic abuse. However, it is a quasi-criminal meant

primarily for protection orders and not meant to penalize criminally.

The term used to describe this serious problem of violence within the Indian homes is '**Domestic Violence**'. This violence is towards someone who are in a relationship with, be it a wife, husband, son, daughter, mother, father, grandparents or any other family member. It can be a male's or a female's atrocities towards another male or a female. Anyone can be a victim and a victimizer. This violence has a tendency to explode in various forms such as physical, sexual or emotional. '**Domestic Violence**' includes harms or injuries which endangers women's health, safety, life, limb or well being, whether mental or physical. It may also be through physical, sexual, verbal, emotional and economic abuse. According to 'United Nation Population Fund Report', around two-third of married Indian women are victims of **Domestic Violence**.

Domestic Violence undoubtedly is a human right issue where it is very important to know what actually leads to act of domestic violence. The most common causes for women stalking and battering include:

- Exploitation of women for demanding more dowry.
- Discrimination of women.
- Alienation of women's self acquired property fraudulently.
- Torture by husband and in-laws of the husband.
- Arguing with the partner.
- Refusing to have sex with the partner.
- Neglecting children.
- Going out of home without telling the partner.
- Not cooking properly or on time.
- Extra marital affairs.
- Not looking after in-laws.
- Cruelty by husband or in-laws mentally or physically.
- Abusing & insulting by using vulgar language.
- Sexual harassment, molestation

- Rape.
- Sodomy and all other inhuman acts.

In all above stated causes women are subjected to torture and will be considered as the aggrieved person. Usually violence takes place due to lack of understanding between the couple as well as in the family.

The Government of India has come out with some more stringent laws to protect the rights of women who are victims of violence of any kind occurring within the family, so that it will work as the preventive measure to eradicate the crime. Similarly, a strict law has been passed to punish those women who are filing a false complaint against husband or relatives by misusing Domestic Violence Act so that there will be fair justice to all.

The Protection of Women from Domestic Violence Act, 2005 is being one of the first in this spheres has concretely dealt with the problem of domestic violence taking into consideration of all the related laws and has attempted to reduce the numerous ancillary problems generally faced by such legislation (such as impractical provisions). This legislation is well placed in the Indian context and social scenario, clearly reflective of the mindset of the Indian men. The chapter primarily looks into the provisions of this Act from the constitutional perspective the "Fundamental Rights". The status of women in India is not equal to the status of men in terms of access, participation and reward. This situation owes its existence to the patriarchal and feudalistic structure of the society.

FORMS OF DOMESTIC VIOLENCE IN INDIA

Domestic violence has many forms prevalent in Indian society from rural to urban, from one community to another community and from rich to poor. Primarily, physical and psychological violences are the most commonly found form of domestic violence. One of the reasons for it being so prevalent is the orthodox and idiotic mindset of the society that women are