
ENFORCING THE AGENCY OF WOMEN TO COMBAT DOMESTIC VIOLENCE: A CULTURAL AND LEGAL PERSPECTIVE

Co-Authored by Akshay Krishna P, Siva Ram J & Alen Mani, SLS Nagpur

ABSTRACT

Abusive relationships have been the bane of societies for millennia. To address this, many cultures from around the world have evolved with guidelines to combat abuse directed at women. While many of these cultures did identify that violence against women and abuse was indeed a problem, they did little to stem the tide of abuse and grant women a favorable position in society. Many cultures restricted women to be the sole comfort of a man who strived to keep not only her happy but healthy as well. Women were often denied agency and a lack thereof in our current society is indeed vexing. Meaningless platitudes mentioned in many cultures like those of the chivalrous knights of Europe, have long since been seen for the folly that they are and the author welcomes a call for a uniform code to combat the abuse of women. In light of this, the development of legislations to combat the same such as the PWDVA of 2005 will see limited success if it does not cut through the societal barriers obstructing women. According to the World Economic Forum's Global Gender Gap Index 2020, India ranked 149th out of 153 countries when it comes to the economic participation of women. HUL's survey on the agency of women also states a similar fate wherein only 38% of the respondents agreed that they get to define their identity themselves. The author would like to argue that the rights of women are overshadowed by a need for cultural cohesion and this cohesion is not worth the damage being done to women. Walking the tightrope between traditionalism and feminism is indeed a difficult challenge, but not impossible. In light of this, the author would like to suggest change and ensure that women would indeed gain agency over their own lives and makes sure that they have the means necessary to do so while also respecting the many traditions of not just India but other countries as well.

Keywords: Culture, Society, Uniform, Legislations, Feminism, Structuralism, Functionalism

Existing legal framework to identify an abusive relationship

To prevent domestic violence, our primary prerogative must be to understand the terms “abuse” and “abusive relationship” in this context. While accounting for all types of abuse might be difficult, the Protection of women from domestic violence act makes it much simpler to identify and deal with abusive relationships and partners. According to section 3 part 1 of the aforementioned act, different types of abuse have been mentioned in extensive detail. These abuses include sexual abuse, economic abuse, physical abuse, emotional abuse.

According to this act, Physical abuse consists of:

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes- (a) insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child;

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

With the definition of all abuses given, we can now delve deep into the commission of these abuses. The author of this research paper firmly believes that many cultural factors and the lack of agency given to women are widely responsible for their abuse in many if not all scenarios. In light of this, to understand how we could enforce the agency of women, we must first understand the many problems that pervade this society.

The cultural problems that women face in India:

1) The superiority complex of males:¹

The superiority complex of the Indians is not a new phenomenon. This superiority complex has evolved over time and proof of this can be seen throughout our history. We can look at historical examples from the Vedic age and the Middle Ages to prove this. In the early Vedic age², the inclusion of women in Indian society was seen as an inevitable process. Women were granted rights and they were made to feel on par with their male contemporaries in many matters. Many accounts suggest that the presence of a wife was essential for conducting sacrifices and many woman of nobility would often engage in the practice of swayamwar wherein the woman in question would marry the man of her choice from amongst the gathered. However, as we study the later Vedic period, we tend to realize that the rights of women had drastically reduced when compared to the early Vedic period. Many accounts suggest that the inclusion of women was seen as unnecessary by the priestly class and this is something that dealt a severe blow the rights of women. Gradually, this trend followed through to the middle ages as well and we can see many examples of men being apprehensive of women leading them or actually achieving more than them.

Razia sultana³ is a great example of the position of women in the middle ages. The praise given to the slave dynasty for allowing Razia sultana being the first “sultana” is highly misplaced. This is because of the fact that Razia was never meant to succeed Qutub Ud Din aibak and

¹ Singh K and Agrawal P, “Masculinity and Femininity among Working Women in Indian Urban Culture” (2007) 21 Journal of Human Ecology 135, (last visited Jan 26th, 2023)

² EARLY VEDIC PERIOD ENCYCLOPÆDIA BRITANNICA, (last visited Jan 26th, 2023).

³ Razia Sultan: The story of the first, and last, female ruler of the Delhi sultanate, THE BETTER INDIA (2017), (last visited Jan 26th, 2023).

instead inherited the throne when Raknuddin proved to be a complete failure, her brief reign saw Delhi prosper but this was not enough to satiate the nobles. The Dal chalisa was said to have had a hand in her assassination as they believed it to be below their dignity to be ruled by a woman. While there have been many instances of our culture glorifying female leaders and warrior and leaders, Rani Laximibhai and Indira Gandhi probably being the most famous among them, the fact of the matter is that Indian males have never gotten over their feeling of superiority when compared to females and many studies point to this. According to a new report by the American Think tank, pew research Center, 87% of all the respondents questioned stated that they completely agree that a wife must “always obey her husband” and this includes 64% of all respondents who completely agree with this statement. However, the most surprising of this survey⁴ was the fact that women themselves agreed with this sentiment. According to the same survey, 61% of the female respondents completely agreed with this statement. This survey points out the cultural problems with regards to the Indian male mindset. Many Indian males are of the opinion that they are superior to their wives and this is one of the primary reasons why Indian men look forward to marrying women who do not actively pursue a professional life.⁵

Concluding from the survey given above, we can easily conclude that when men are instilled a false sense of superiority since birth, they carry this supposed feeling of superiority into adulthood and they begin to subject women to what they feel are the cultural norms that founded our society. This is something that we must be wary about and counter in every possible way.

2) Domestic chores and child rearing being referred to solely as the responsibilities of a woman:⁶

Household chores are a monotonous part of everyday existence. Washing clothes, doing dishes etc. are not only annoying and repetitive tasks but also low skill and physically demanding tasks. As a result of this, many women are forced to make this choice between their education and their so called “domestic responsibilities”. These “responsibilities” are societal norms that are put in-to place as a result of a decade old patriarchal culture in play. While the women are forced to raise children and be responsible for the upkeep of the house, the man is free to earn and pursue his education without a care in the world. This is highly unfair and this is a

⁶ Daschadhuri DK, “Human Rights of Working Women & Violation with Special References to India” (2018) 15 Journal of Advances and Scholarly Researches in Allied Education 5, (last visited 26th Jan 2023)

result of a systematic effort to subjugate the female sex. Even to this day, many Indian males still believe that they do not need to pay attention to child rearing and domestic chores as these are seen as womanly pursuits. According to an Ipsos Global Trends Survey of 2017, the majority of Indians still believe that the sole responsibility of a woman is to be good mothers and wives. According to this survey, India was ranked third in terms of the percentage of people supporting traditional gender norms with a staggering majority of 64%. According to Parijat Chakraborty, the executive director of Ipsos public affairs, the Indian society sees women who follow traditional norms as more accomplished than women who are deviant to this trend. PepsiCo CEO Indra Nooyi has even been quoted as saying, "We pretend we have it all. We pretend we can have it all. But if you ask our daughters, I'm not sure they will say that I've been a good mom. I'm not sure. And I try all kinds of coping mechanisms." This cultural norm is extremely destructive as many women. According to a 2013 World Bank study, only 27% of the female population aged over 15 is working in India. This is the lowest rate of women's participation in any workforce among the Brics (Brazil, Russia, India, China and South Africa) countries, with the highest in China at 64%. Professor Padmini Swaminathan, senior researcher at Mumbai's Tata Institute of Social Sciences, says the situation is unlikely to improve soon. A survey of 1,000 women working in the capital, Delhi, and its neighboring areas found that only 18-34% of married women continued working after having a child.

3) The desire for a male child⁷:

Many Indian families inherently view sons as being superior to daughters. The reasons that these families give to justify their stance can vary from purely cultural to economic. In India, Female children are often viewed as a burden and the fact that they will not carry the family name irks many Indian families. In addition to this, male children are often viewed as true successors as they are traditionally seen as the children who carry the family name. In addition to this, It is often viewed that the son is the only person who is willing and capable of taking care of his parents. Many parents view their daughters as a part of their husband's family after marriage and so, they believe that it is not the responsibility of the daughter to take care of her parents. However, since sons carry the family name, no such rule applies to them and they are seen as the true saviors of their parents. In light of this, Many Indian families prefer sons to daughters and this has been nothing short of disastrous for women empowerment in India.

⁷ Nag A and Singhal P, "Gender Preference towards Male Child among Uttar Pradesh Migrants in Ludhiana, Punjab, India" (2013) 15 *The Anthropologist* 219, (last accessed 26th Jan 2023)

Firstly, we must be willing to acknowledge that nearly 239,000 female children are lost to the practice of female infanticide in India each year according to a Lancet study. This kind of targeted killing has had ripple effects in India and the treatment of female children is only bound to get worse as a result of this mindset. While people in India are indeed keeping up with the times and becoming more accepting of female children being the sole heir of a family, many are still of the opinion that a male child is superior.

Enforcing the agency of women as a solution:

An analysis of these cultural problems indicates quite an interesting trend. These cultural problems all result from the lack of agency that we give to women. This can be proved by looking at the cultural aspects and statistics regarding the aforementioned cultural problems. The first cultural problem was that men have a superiority complex that is fed to them since childbirth. However, studies indicate that this superiority complex and perception of women is broken when these men see women in powerful positions and achieve financial success, in addition to this, enforcing the agency of women to make their own choices and actually lead their lives according to their wish will go a long way in actually ensuring the demise of traditional gender roles. The progressive family model will be challenged when the wife is just as successful if not more successful than her husband. Submission to traditional gender roles will significantly dent the role of women in any household and will definitely ensure that women are subjugated in the same manner that they are continued to in many parts of India.

Abusive relationships tend to arise as a result of a woman's complete surrender of her rights to another person. This surrender entices the other person to abuse in the event of noncompliance by the woman. It is a well-known fact that the more a woman tolerates abuse, the more she will continue to face an exaggerated version of the current abuse that she is facing. Standing up to an abuser requires that a woman have the ability to decide her own fate. This is not possible if a woman obeys traditional gender roles as most Indians believe that, according to the statistics mentioned above, the primary role of women is to be good mothers and wives. Our society can be termed as patriarchal as it enforces these gender norms in an extremely implicit manner, a manner that seems right and just. Many Indians will come forth to defend the traditionalist archetype of women being slaves to their husbands primarily because of their lack of education and exposure. These two factors are extremely important as these will help us determine the solution to the cultural problems mentioned above.

Abuse in a relationship is faced more often when there is no recourse available to the person who is being abused. Many a times, women stay quiet and do not report the abuse that they face as they fear that they will not only be shunned by society but also be deserted by their husband their only means of a stable life. A woman who grown up under such implicit social biases often tends to project her misogyny upon other women in her life, i.e. her daughters and siblings and this becomes a self-serving cycle of misogyny and discrimination. To combat this, there are definitely many legal avenues but these avenues will only work in the extreme case and are not a lasting solution as no law can be perfect and loopholes will be exploited and engaged with. In light of this, a much more lasting solution is to embrace to counter culture to the dominant misogynistic culture present in India. Media representation is the primary factor that can help sway people to progressive positions and this representation must be used wisely to convince people to allow their daughters and wives the same amount of freedom as their male counterparts.

A Sociological Perspective⁸:

Structuralism and functionalism are the two main sociological theories that we can use for a sociological analysis of these cultural problems. Structuralism is a sociological theory which states that any action taken by a human, be it positive or negative, is a result of complex social conditions that govern them. Functionalism is a sociological theory which states that every institution in a civilized society is an institution that works interdependently with other intuitions. No institution is purely independent and every societal institution is interwoven into each other. An understanding of these terms helps us greatly as we can come to the conclusion that abusive relationships, when looked at from a structuralism point of view, tend to exist as a result of some negative social conditions. To fix these social conditions via law or any other means necessary will not only reduce the risk of such action or abuse occurring but will also have a domino effect that will have a positive impact on other institutions. This is one of the primary reasons why an effort must be made to spread awareness through digital media as it has the ability to imprint values into the hearts and minds of an impressionable audience rather than just provide a set of rules and penalties that serve as a deterrence to would be offenders.

Enforcing the agency of women: A Legal perspective:

⁸ Reddy DKS, Dr.B.Penchalaiah DBP and Raju PMPN, "Problems of Women in India" (2012) 3 Paripex - Indian Journal Of Research 280, (last accessed 26th Jan, 2023)

1) Section 498 of the IPC, 1868:

According to section 198 of the Indian penal code:

[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.

Explanation. —For the purposes of this section, "cruelty means"—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Section 498 is one of the primary laws to stop domestic violence in India. The interpretation of cruelty is something that has allowed it to be interpreted in a myriad of ways to benefit women. However, we must understand that

While this law is aimed to deter people from indulging in domestic violence, something that is often overlooked is the societal conditions that have forced this law to be enacted in the first place. The underlying social bias that husbands must be in charge of their wives has already limited the scope of this law. While we may have defined sexual abuse in the earlier part of this paper, the fact of the matter is that marital rape is not considered a crime in India. As a result of this, people who indulged in this heinous act can only be charged with cruelty according to certain cases but cannot be charged for the offence of rape. This shows us the flaws of our society.

According to the Protection of Women against Domestic Violence Act 2005, physical abuse is defined as:

“means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;”

However, something that we fail to notice is that according to the National Family Health Survey ('NFHS') 4, conducted in 2015-2016, 52% women and 42% men justify the use of violence against their opposite partner under certain conditions. In conclusion, I would just like to state that a legal analysis of any contemporary event is not possible without the sociological analysis of that very event.

Conclusion:

In conclusion, the authors would like to reiterate on the needs for social changes as well as changes in the law to accommodate the growing needs of men and women alike. Women make up 50% of our population and can potentially make up a greater amount of our workforce as well. It is up to our society to ensure that women reach their true potential by breaking the shackles of the slavery of economic dependance as well as the ruinous effects brought forth by biased and incomplete laws that can be used against women. The authors would also like to reiterate on the fact that the needs of the women in our society is dynamic and changes according to the economic liberation of the women in India. With an increased sense of economic mobility, women would be able to stand up for their rights as well as their interests in our country. The reasons that were mandated by the constitutional framers for the reservation of women was to ensure that women have a say in the policies of the government. While this may be a solution for the short term, in the long term, it is always better to ensure the economic liberalization of women. In light of this, good policies that prevent abuse, especially economic abuse, must be crafted and this abuse must be identified and countered at its nascent stage i.e. from the societal factors that lead to such thinking. The authors would finally like to state that the economic upliftment of women is directly proportional to the economic upliftment of our country. If women feel safe and join the workforce in droves, our country too will benefit greatly from the same. Therefore, we must help them and help our country in the process as well.