



**BEYOND THE VEIL OF ILLUSIONARY FANTASY  
LIES THE TRAUMA OF DOMESTIC VIOLENCE**

By

**SUTAPA SANÝAL**

Advocate, High Court, Calcutta;  
Adjunct Faculty West Bengal National University of Juridical  
Science

[Email-sutapasanyal@nujs.edu](mailto:sutapasanyal@nujs.edu) ; Mobile-9831129688

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# **Beyond the Veil of Illusionary Fantasy lies the trauma of Domestic Violence**

**Sutapa Sanyal<sup>1</sup>**

We the humans, originate from the primate order of the Class of Mammals, Homo sapiens, was thought to have evolved from a common ancestor, “Homo erectus”, thereby meaning “upright man”. Genetically it is said that we are evolving every day and in no uncertain terms the same is beyond the cloud of doubt of whatsoever nature. In this modern days when technology is developing in leaps and bound and also resulting in remodelling the socio-economic structure the demon of Domestic Violence tend to magnify its strength and tend to retrofit its form and vigour only to scribe a claim of permanence.

We being gifted with a complex brain unlike other mammals engaged ourselves in the development and growth which invariably resulted in this present world but while inventing amenities, developing infrastructures, restructuring our economy for ensuring the betterment of humans the other factor which also developed with the same pace was the predominance of patriarchal society. It is obvious that every concept, mechanism, object or perception ought to have a binary choice. Thus with the virtues of development the malady of exploitation of women is still holding the field from time immemorial and the issue of Gender Violence has become a global pandemic and an issue of concern Worldwide and it cannot be ignored that this vice is one of the obstacle to the speed of development and growth of mankind.

## **1. INTRODUCTION**

The concept of Violence was born after human realised the word socialisation. In primitive days the struggle for existence was such that there was no scope for indulging in violence. However as the civilisation started to grow this evil of violence targeted towards woman also started to grow and its expansion has reached such an alarming stage that it has become a matter of serious concern for the entire world.

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<sup>1</sup> **Sutapa Sanyal**, Advocate High Court Calcutta, Adjunct Faculty of West Bengal National University of Juridical Science , Empanelled Mediator under the Calcutta High Court Mediation Committee, mail id –sutapasanyal@nujs.edu, mobile number -9831129688.

Although women are topping the list of achievers in every field of life be it science, literature, history, art and culture, various professions, academics, politics sports and many others but still women continues to be a victim of domestic violence and sometimes even these achievers cannot squeeze themselves out of such unwarranted trauma. It is a fact that most of the women choose to remain silent even after being subjected to such tortures for varied reasons and at times even success and accomplishments of women becomes the triggering cause for such unrest in her family life. Indeed to succinctly address to this growing pandemic the element of ego and greed cannot be ignored.

Attempts are being made at large to combat the growth of this cancer and attempt to eliminate the same from the society and to bring back equality in true sense of the term.

## **2. CRITERIAS FOR COMMISSION OF OFFENCE**

It is a fact that whenever there is a dispute or an ailment the initial endeavour is to detect the root cause which culminated to the creation of the same similarly when we speak of Gender Violence or Domestic Violence the first mandate which perhaps can aid us to lessen the same if not eradicate is to understand the motive behind the commission of such act. The word motive in its literal sense means, a reason for doing something. But once this reason gets the blend of bad intention it transforms itself into “Malice”. Malice gives rise to guilty mind and with it originate “mens rea”. Mens rea on being executed becomes “Actus reus”. The two together defines the elements of crime and this was phrased in the famous Italian Maxim “Actus non facit reum nisi mens sit rea”.

In a more lucid interpretation for the concept of commission of an offence of Violence is the presence of Intention, Preparation, Attempt and Commission. While analysing the root cause of Domestic Violence broadly it can be related to four **major factors** –

**2.1(a) Childhood experiences-** it can be the case that the husband had witnessed during his childhood instances of Domestic Violence or was subjected to torture during his childhood or had witnessed any elder practicing like behaviour with his spouse and developed a perception that this was the way of control of the family.

**2.1(b) Major Change in Life-** there are numerous factors which can attribute in changing the life of a person from the where he stood and this change can

catapult anxiety, depression and other allied emotional stress which in effect can have a gross impact on the matrimonial relationship.

**2.1(c) Economic Circumstances** – this is one of the major factor which is seen in most matrimonial cases where the family of the groom considers dowry to be there basic right and for securing the same the bride is unnecessarily subjected to torture only to get their demands and it is seen that in most of the occasions offences like homicide , abetment to commit suicide and similar offences are triggered out of such greed and ego.

**2.1(d) Insecurity** – this is another factor which grossly impact upon the commission of Domestic Violence and is more fully psychological in nature but had been cited as menace over the generations.

**2.1(e) Illiteracy** – this is another evil with catapults the demon of domestic violence.

Significantly, the **types of Violence** which are generally witnessed by the women when the dreams of building a castle with her beloved turns out to be a teasing mirage and the tears rolling down her eyes starts drying up in her arid cheek with respect to relationships both intimate as well as matrimonial are grossly identified to be of the following types:-

**2.2(a) Physical Violence-** this type of violence constitutes all acts of physical assault and includes forcible wrongful confinement or detention;

**2.2(b) Mental or Emotional or Psychological Violence-** this type of violence constitutes acts of humiliation of every nature which includes making foul comments on her or her personality or character or a desperate attempt to find fault in every acts of the partner or to ridicule and minimise all her achievements only to rob her of all her confidence and force her into a situation of constant depression or fear or threatening her in various manner including the threat to separate her from her child or to cause harm to her loved ones including pets and also denigration of the partner both in public and in private;

**2.2(c) Absolute control and isolation** - this is also a form of violence where the male partner tries to take over absolute control of the victim lady by dictating terms on her , denying her any access to socialise, taking absolute control over her finances , making her absolutely dependable even for the bare necessities of

life including food, isolating her from friends, relatives or neighbours , criticising her and rebuking her for everything even if she has no access to such activities or events and such other types of acts. The sole purpose of this type of violence is to make the woman frightened,, intimidated, and helpless by diminishing her self esteem and grounding the instincts to rebut the acts of violence;

**2.2(d) Coercive and jealous behaviour** – this sort of violence are generally not detected until it reaches an extreme level. Display of over possessive nature although is initially construed as love but gradually when it takes the shape of recurrent incidents of espionage on every act of the partner including checking the call records, whatsapp messages, email, facebook and other social media contacts, the woman starts to feel in secured, intimidated and frightened as she is coerced to act as per the dictate of the man and in defiance of such commands becomes subjected to physical assault;

**2.2(e)Sexual Violence-** this type of violence also finds place in relationship where the lady is forced to engage herself in sexual act against her will and is constantly bullied with unwanted pornographic images or videos and at times may also become a victim of sadistic sexual pleasures;

**2.2(f) Religious and Cultural Violence-** this type of violence occurs when the woman is victimised on the score of culture or is manipulated by citing religious beliefs or practices or is coerced to do something in the name of religion;

**2.2(g) Neglect** – this type of violence is felt when without a cause the lady is ignored and neglected by her beloved. The main motive behind such type of violence is to break the confidence of the woman and keep her in a continuous depressed mode of life;

From the real life Court Case studies it is apparent that when the victim lady starts facing violence in most of the cases they are oblivion of the fact that such conduct of her beloved are in effect instances of torture. It is only when the magnitude enhances beyond humanity the lady gains in the courage to fight back but by then the damage is irreparable. It is time for women to become aware of the cause of violence the remedies available under the law and the modes to combat the same. It is time for women to stand up and say “No” if they intend to save the castle of their dream. The basic indications of onset of domestic violence or intimate violence can be detected from the conduct of their partners, which are grossly in the nature of aggression, suspicion,

jealousy, desire to control her emotion, decisions and finance, instances of threats or attempts to isolate the women from her world. In the event this difference can be resolved by counselling or mediation then the agglomeration of the same into a magnified dispute can be nullified to a greater extent.

This issue of Gender Violence, Intimate Violence and Domestic Violence has become a concern for the world at large and jurist, legislators, activist, judiciary, professionals as well as the academicians are working on this growing menace to raise awareness amongst people and to effectuate the same Convention's are adopted, International Treaties' are entered upon Statutes, Rules, Regulations, Notifications and such like are being legislated all over the World, Seminars, Webinars, Awareness Programmes are being organised worldwide. One of such attempt was the Convention on the Elimination of All Forms of Discrimination against Women

### **3. SOME OF THE INTERNATIONAL LAWS FOR SAFE GUARDING THE INTEREST OF WOMEN**

3.1 Convention on the Elimination of All Forms of Discrimination against Women - New York, 18 December 1979<sup>2</sup>, while espousing the cause of women this Convention was grossly divided into six parts to ensure that effective implementation of this Convention takes Place.

- Part I (Articles 1-6) emphasised on non-discrimination, sex stereotypes, and sex trafficking.
- Part II (Articles 7-9) amplitude of women's rights in the public domain with an emphasis on political life, representation, and rights to nationality.
- Part III (Articles 10-14) dealt with the socio-economic rights of women including the rural sector and also the sectors like education, employment, and health was emphasised.
- Part IV (Article 15 and 16) dealt with the matrimonial rights of a women.
- Part V (Articles 17-22) focused on establishment of Committee for fructifying the Elimination of Discrimination against Women and also stressed on the reporting procedure for the participating States.

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<sup>2</sup> Inserted from <https://www.ohchr.org/cedew>

- Part VI (Articles 23-30) elucidated the effects of the Convention on other treaties, the commitment of the state parties and the administration of the Convention.

3.2 The Women's Charter, 1961<sup>3</sup> was enacted by the Legislative Assembly of Singapore and came into force on 15.09.1961 an Act which was enacted to improve and protect the rights of women in Singapore and also to ensure equality in legally sanctioned relationship

3.3 The United Nations Declaration on the Elimination of Violence against Women<sup>4</sup> was adopted by the United Nations General Assembly in 1993 provides the fundamentals which are required to define gender-based Violence

#### **4. INDIAN LAWS ON OFFENCES RELATED TO DOMESTIC VIOLENCE**

In India this concern for safe guarding the interest of woman was present even prior Independence but lately to espouse the cause of women empowerment and gender justice much focus is given to legislate provisions of law for achieving such noble purpose. Some of the list of provisions or Statutes which were legislated for achieving such purpose are interalia as follows:-

- By way of Criminal Law (Second Amendment) Act of 1983(Act 46 of 1983) which came into force with effect from 25<sup>th</sup> of December, 1983<sup>5</sup> Chapter XX-A [OF CRUELTY BY HUSBAND OR RELATIVES OF HUSBAND] was introduced by enacting Section 498A of the Indian Penal Code, 1860.

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<sup>3</sup> Act available at <https://sso.agc.gov.sg/Act>

<sup>4</sup> The New York Times,1987 ; September 20,1987 retrieved on May 31,2008

<sup>5</sup> **498A** - Husband or relative of husband of a woman subjecting her to cruelty.—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 purpose 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.]



- The other amendment which was enacted by the Dowry Prohibition (Amendment) Act, 1986, by G.S.R No 1185(E) dated 5.11.1986 and was given effect from 19<sup>th</sup> November, 1986<sup>6</sup>.
- The Dowry Prohibition Act, 1961 which was already in force underwent amendment twice
  - i. Dowry Prohibition(Amendment) Act, 1984 ( 63 of 1984 )
  - ii. Dowry Prohibition(Amendment) Act, 1988 ( 43 of 1986 )
- The Commission of Sati (Prevention) Act, 1987 (Act No. 3 Of 1988)<sup>6</sup> for effective prevention of the commission of *sati* and its glorification as even after the reform movement carried out by Raja Rammohan Roy against the custom of Sati wherein Bengal Sati Regulation, 1829 was passed by the Governor General Lord William Bentinck in India under East India Company Limited an incident of immolation in the name of Sati took place at Deorala, Sikar District, Rajasthan on September 4, 1987 where Roopkuvarba Kanwar who was married for 8 months was burned alive with her husband by the attendees present at the funeral at the age of 18 years<sup>7</sup>.
- It was also felt that there was a vacuum as the Civil laws apart from providing for maintenance under Section 125 of the Code of Criminal Code, 1973 and under Section 24 of the Hindu Marriage Act, 1955 there was no statute which addressed to the cause of Domestic Violence. Accordingly, to ensure substantive justice to women as guaranteed under Article 15 of the Constitution of India and also in execution of the powers provided under

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<sup>6</sup> **304B. Dowry death.** -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

<sup>7</sup> 21st March, 1988, vide notification No. G.S.R. 359(E), dated 21st March, 1988, see Gazette of India, Extraordinary, Part II, sec. 3(i).

Article 15(3) of the Constitution of India the Protection of Women from Domestic Violence Act, 2005<sup>8</sup> was passed.

- Regardless to mention the other Act whose victims also witnessed the abuse of Domestic Violence occasionally was The Protection of Child From Sexual Offences Act,2012(No.32 of 2012)<sup>9</sup>, was legislated to protect the children from offences of sexual assault, sexual harassment and pornography.
- Another legislature which also had the object of safeguarding domestic violence amongst other issues was The Medical Termination of Pregnancy Act,1971(Act No.34 of 1971), this Act again was amended by The Medical Termination of Pregnancy (Amendment) Act, 2021( Act No 8 of 2021)<sup>10</sup>
- The Prohibition of Child Marriage Act, 2006( Act No 6 of 2007)<sup>11</sup> was legislated in furtherance to the Child Marriage Restraint Act,1929 to prohibit solemnisation of child marriages, which invariable was to minimise the children from being exposed to Domestic Violence at Matrimonial home.

## **5. RELEVANT JUDGEMENTS PASSED FOR ESPOUSING THE CAUSE OF WOMEN SUFFERING FROM DOMESTIC VIOLENCE UNDER DOMESTIC VIOLENCE ACT**

The said Act also gave recognition to those who were subjected to violence while in live in relationship and accordingly although the nomenclature of the Statute was the said Protection of Women from Domestic Violence Act but it also included within its ambit the instances of intimate violence along with the domestic violence. The provisions of the said Act encompassed within its amplitude the various facets of the rights granted to women and also emphasized on the restrictions imposed on the respondents.

Under the said Act while deciding **Indra Sarma –Vs- V.K.V. Sarma**<sup>12</sup> the Apex Court was of the view that the definition of “domestic relationship” under the Section 2(f) of the said Protection of Women from Domestic Violence Act is

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<sup>8</sup> Received assent of the President on 13.09.2005 and published in the Gazette of India, Extraordinary, Part-II, Section1,dated 14.09.2005

<sup>9</sup> Received assent of the President on 19.06.2012 and published in the Gazette of India, Extraordinary, Part-II, Section1,dated 20.06.2012

<sup>10</sup> Received assent of the President on 25.03.2021 and published in the Gazette of India, Extraordinary, Part-II, Section1,dated 25.03.2021

<sup>11</sup> Received assent of the President on 10.01.2007 and published vide Notification No, S.O 1850(E),dated 30.10.2007

<sup>12</sup> (2013)15SCC75 Indra Sarma –vs- V.K.V. Sarma

exhaustive and restrictive. It also opined that domestic relationship under this Act means relationship that has some inherent or essential characteristics of marriage though not a marriage that is legally recognized.

The other factor which had created uncertainties amongst victims was the amplitude of Section 2(q) of the Act where “respondent” means any adult male person who is, or has been, in domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner. In **Hiral P. Harsora –Vs- Kusum Narottamdas Harsora**<sup>13</sup> the Supreme Court struck down the word “adult male” by holding to the effect that there it is not based on any intelligible differentia having rational nexus with the object sought to be achieved and proceeded to clarify that the definition of “respondent” under Section 2(q) of the Act shall include female relatives or non-adult relations also.

The other aspect which was a matter of concern amongst the victims who sought remedies under the said Protection of Women from Domestic Violence Act, 2005 was on the role of the police officer upon receipt of a Complaint under Section 5 of the Act . Once again the Apex Court clarified this aspect by inter alia holding to the effect in **Santosh Bakshi – Vs- State of Punjab**<sup>14</sup> that while dealing with the provision as laid down under Section 5 of the Act the Police Officer has to look into the complaint made under the Act and cannot simply file a report that no case is made out without proper verification, investigation, inquiry not only from the family members but also from the neighbours, friends and others.

While adjudicating **Krishna Bhattacharjee -Vs- Sarathi Choudhury**<sup>15</sup>, the Apex Court observed that judicial separation is merely a suspension of husband and wife relationship and hence unless there is a decree of divorce the “domestic relationship” as defined under Section 2(f) of the Act subsists and the “aggrieved person” under Section 2(a) continues to enjoy the status of wife.

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<sup>13</sup> (2016) 10 SCC 165 Hiral P. Harsora –vs- Kusum Narottamdas Harsora,

<sup>14</sup> (2014)13SCC25 Santosh Bakshi – vs- State of Punjab

<sup>15</sup> (2016)2SCC705 Krishna Bhattacharjee -vs- Sarathi Choudhury

## 6. AUTHORITIES WHICH PIONEER THE CAUSE OF WOMEN

- a) National Legal Service Authority constituted under Section 3 of the Legal Services Authorities Act,1987<sup>16</sup> to implement the intent of the framers of the Constitution of India under Article 39-A pioneers the cause for providing free legal aid to woman and children
- b) National Commission for Women constituted under Section 3 The National Commission for Women Act,1990<sup>17</sup> pioneers the cause of protection of women and betterment of their standard of living and to perform the same the legislatures have defined the amplitude of functions under Section 10 of the said Act and have also empowered the Commission with powers of a Civil Court to facilitate accomplishment of the purpose for which it was constituted.

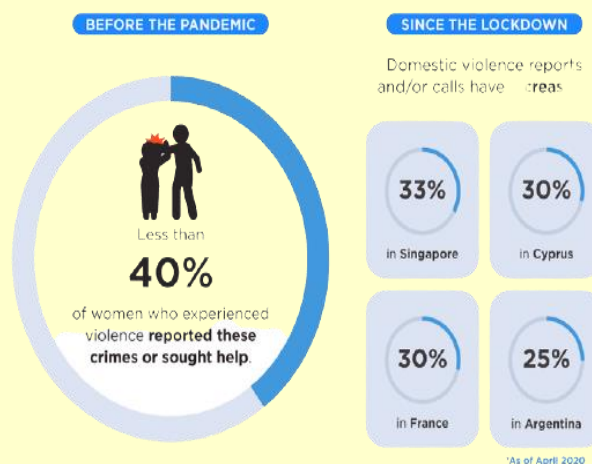
## 7. THE IMPACT OF COVID-19 IN THE DOMESTIC VIOLENCE CASES<sup>18</sup>

Covid-19 pandemic resulted in a marked increase in the incidents of domestic violence across the globe and India was no exception to that. During lockdown, women were confined in their homes, often in the constant presence of the abuser, thus facing continual abuse

and control over their daily life.

There is a preliminary evidence to conclude that domestic violence during the COVID-19 increased globally. The restrictions imposed to curb the spread of virus resulted in an increase in violence. There was an increase in new violence incidents as well. A graphical

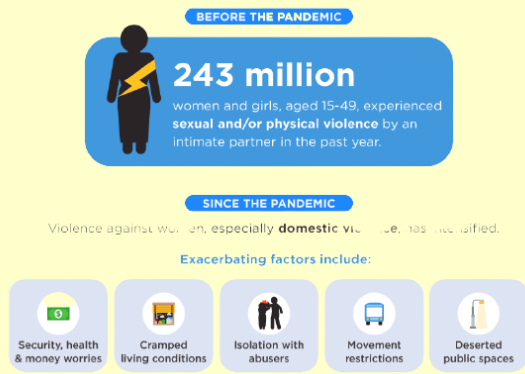
representation in this regard may elucidate the proposition as above-



<sup>16</sup> Received the assent of the President on October 11,1987 and published in the Gazette of India, Extra., Pt – II, S.I, dt October12,1987,pp,1-12

<sup>17</sup> The Act received the assent of the President on 30.8.1990and came into force on 31.1.1992, vide Notification no.S.O.99(E) dated 31.1.1992

<sup>18</sup> [https://en.wikipedia.org/wiki/Impact\\_of\\_the\\_COVID-19\\_pandemic\\_on\\_domestic\\_violence](https://en.wikipedia.org/wiki/Impact_of_the_COVID-19_pandemic_on_domestic_violence)



Prior to the pandemic, less than 40 percent of the women who experienced violence sought help of any sort. Now, quarantine and movement restrictions further serve to isolate many women trapped with their abusers from friends, families and other support networks.

And, the closure of non-essential businesses means that work no longer provides respite for many survivors and heightened economic insecurity makes it more difficult for them to leave. For those who do manage to reach out, overstretched health, social, judicial and police services are struggling to respond as resources are diverted to deal with the pandemic.

## 8. CONCLUSION

It is a fact that remedies, protections, statutes, penalties, authorities all has its existence but execution of the rights at the right time can only be possible if the victims can voice their cause and protest the attempt at the very threshold. Today the world has learnt to walk together and the list of achievers belonging to the so called dominated gender can almost be evaluated to claim themselves more than equal. However, this cursed concept of domestic Violence though exists but by extending a bit of courage and displaying a quantum of firmness it is the Women themselves who can erase this curse out of our ever developing society and then we all together can claim that we the homo sapiens are indeed wise men.

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