



GENDER JUSTICE DOMESTIC VIOLENCE AND LEGAL PROVISIONS IN INDIA: CRITICAL PERSPECTIVE

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Received: November 24, 2015; Revised: December 03, 2015; Accepted: December 04, 2015

Abstract- The term 'justice' has been fascinatingly accepted and celebrated in all democratic societies in the world as a part of debate on the issue of development. Individual values such as liberty, equality and social justice, which are essential for human and social development need to be protected and implemented with right spirit. The term also has been associated with freedom from violence discrimination exploitation and humiliation and it advocates freedom of expression at core. However, injustice and discrimination based on caste, gender, religion and region are pervasive features of the civilized societies. Gender justice can be seen manifested when all sexually minority groups (within them, which are economically poor) are given free education, health and shelter along with their counterpart men. The importance of gender justice has been realized now and manifested through the agenda of United Nations. According to its secretary-generals, view (Ban-Ki-Moon) "social, political and economic equality for women is integral to the achievement of all Millennium Development Goals. Until women and girls are liberated from poverty and injustice, all our goals peace, security sustainable development stands in jeopardy". To ensure gender based injustices annihilated in house the government of India has come out with legislation's, which are becoming ineffective to the real victims of violence at grassroots level. So there is need to see it from critical perspective to make it more effective. So that understanding this issue from different perspective will help us to get gender justice done to women from weaker sections in India. In this paper attempt has been made to contextualize vision and mission of Mahatma Phule and Dr. Babasheb Ambedkar to approach the issues of domestic violence and gender justice in view of legal provisions available from critical perspective.

Keywords- Gender Justice, Domestic Violence, Critical Perspective, Patriarchy, Civil Society, legal Provisions, Human Societies.

Citation: Kendre Balaji, (2015) Gender Justice Domestic Violence and Legal Provisions in India: Critical Perspective. BIOINFO Sociology, ISSN: 2249-1678, E-ISSN: 2249-1686, Volume-4 Issue-2, pp-67-70.

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Introduction

The nature of human societies undergoing changes from ancient times until now because of internal and external forces. To understand the changing nature of relationship of individual and social groups' within and outside society has been the subject matter of studies for anthropologist and sociologist since disciplines come into being. In recent period, we live in global society, which has unique social and economic features because of new inventions, technological development, and spread of scientific temper. So there is need that the modern societies to be studied and understood with different concepts views and perspectives and in different contexts is need of ours because there cannot be homogeneous unified socio-cultural setting will exist in even global society but social inequality and poverty are the real concern for social justice agenda of whole world.

The ultimate aim of understanding social and economic development of modern societies in modern context from sociological perspective is to know whether the development process is inclusive or exclusive or else creating tension and conflict in social life for some section of society. If, the process of development itself discriminate and marginalize people or groups on the social ground such as religion, caste, race and gender needs to be re looked from different perspective because the discrimination and humiliation on the basis of ascribed status by the modern democratic state is not acceptable due to any reason it is violation of human rights and it has been unanimously recognized and accepted by all modern democracies in the world. However, the situation at grassroot level seems contradictory to these ideals of human rights, not all democracies in the world are free from these human right violation. Violations of human rights of religious minority, lower caste, women and poor people are every day phenomena. In this regard, it is true that every independent voice in democracy must be taken to the face value or counted because creation or production of critical knowledge should not be the monopoly of one individual or group or else it will lead us to anarchy

As we live in modern enlightenment period, the use of reason at public sphere to criticize irrational thought process shouldn't constitute crime in free societies but in real life its becoming difficult to claim freedom of expression as right. Attempt has been made to understand how caste based social inequalities are becoming more relevant in addressing issues of women empowerment and gender justice in Indian society. The issue of domestic violence is very complicated and mysterious which has become part and parcel of academic and non academic debates in Indian Society.

Nature and Extent of Social Inequality and Domestic Violence

The nature of domestic violence in other countries and societies is entirely different than Indian society simply because Indian society has caste system which is foundation of patriarchal social system, some may believes that it is not true because they are the culprit of this particular strategy or else they are the beneficiary of the system so to ignore this view will not cost anything.

The base of social stratification in India was/is caste and gender instead; class is the base of social stratification in other developed societies. Gender as form of social stratification exist in all societies however, the nature of gender based social stratification in Indian society has unique caste dimension. It is fact that caste system is social problem in terms of social and economic development of India even today. Caste and gender are very much interlinked and interconnected concepts and need further explanation of relationship in terms of domestic violence issue in India. Fact of the matter is that patriarchy in India is based on caste hierarchy means it is hierarchical patriarchy which is the based on caste system. Unless and until we overcome the issue of caste, patriarchy cannot be abolished and it will exist which is biggest hurdle in gender justice project in India. Ultimately as Dr. Babasheb Ambedkar, 1917 [1] says 'annihilation of caste will solve almost of issues of justice in India including gender justice'. The ignorance

of this view will not lead us to the project of gender justice in India. Keeping in mind this fact paper aim to critically analyze the historical and existing provisions of laws to protect the women from domestic violence in India, like what were the laws against domestic violence earlier and what are the changes brought in the laws later on particularly after independence and after the new economic policies of development adopted in India because law making process has relation with social and economic changes taking place at global level.

According to, Wallerstein 1979:6 [2] 'It was with the emergence of the modern world-economy in sixteenth century Europe that we saw the full development and economic predominance of market trade. This was the system called capitalism. Capitalism and world economy ...are obverse sides of the same coin'. This can be explained logically in the context of making law in Indian society. The global society is not new phenomena. All human societies were interlinked even before modern capitalism come into being but the nature of inter-linkages was not restricted to capital alone but modern capitalism has intention to control market and emerge as imperial power and control economy, politics and culture of global society is in their DNA. This paper focus on the changes that has been brought up in domestic violence laws. Another question raised by feminist (upper caste) is that it focuses on how these laws are formed by patriarchal point of view as from the patriarchal point of view and women are not seen equal to men.

It is an attempt to understand whether these laws are gender sensitive or gender blind. In simple terms gender sensitive it means is the legislation system provides a bias justice to both men and women. In simple terms, gender blind it means is the legislation system is equal to both men and women. How these laws govern power relations between men and women. Domestic violence in general includes harm/injuries, which may injury health, safety, life of the aggrieved person. Some scholars believe that it has devastating physical, emotional, financial and social effects on women alone. It is an accepted fact in the present world that domestic violence in any household, relationship and living in partner and marriage should be treated as violation of human rights.

Violence in general is not new phenomena in human history. Religion and Caste based violence has been an integral part of human life since it came into being, but the use of brutal violence on selective basis by dominant individual or group to disempower other weak individual or groups and communities to establish domination and superiority has been sociological pattern. The nature of violence against women in all societies does not exist in uniform way but it has some pattern in every society. Indian society is considered as plural and diverse, unity in diversity is cherished and celebrated goal as constitutional goal, which has internal and external dimensions. Overtly unity in diversity has been the celebrated as ideal by almost all groups and communities in India but at ground level religions and caste groups never condemn internal violence (within group) such as domestic violence but unfortunately, all the time they talk about violence by other groups. No community or religion in India condemns violence against their women in reality. They don't believe the violence against women is violation of human right.

Religious ideologues think domestic violence is not part of social violence because they consider men are superior and women are subordinate to men. There is perception and acceptance to these ideas by some women in given society for many years they accept and live in that state of situation, on the other side their resistance was crushed immediately as and when it emerges in societal level because most of the societies were patriarchal. The fact of the matter is that system of patriarchy doesn't exist uniformly throughout India. There were and are communities who does not subscribe to patriarchy as divine social rule and protect female as their equal members of family, where as other communities accept patriarchy as divine rule though it is social construct created by few irrational people without any reason. This has been accepted and recognized by the Constitution of India and it offers legal remedies to abolish it. However, the nature and extent of domestic violence getting worse day by day. Attempt has been made to look at this issue seriously from sociological point of view.

Indian Society and Status of Women

Indian society is diversified and has different values, norms and patterns to follow in everyday life whether it is east, west, north and south and believes in

celebrating its ideal such as unity in diversity as unique feature of its democracy. There are different social- cultural patterns and set of identities (Caste, Tribe, Religion, Class) that are existing and that makes every region different from each other in terms of social, political, geographical and economic way. There are institutions that govern the society they are family, kinship, religion, education, economy and politics. Every individual is part of these institutions as its agency. These institutions form the basis of society. As these institutions form the structure of society. In the same way every individual has its own self, mind and identity, every individual in our society is identified on the basis of caste, gender, religion, state, race and class, and region.

The simple question can be asked to get proper understanding of the subject taken for critical explanation. Why domestic violence against women has become important today for some academicians and reformist or feminist? What is the nature and pattern of domestic violence exist in today's societies? Is the nature and scope of domestic violence exists uniformly in all communities and religions in India, if it is not then existing piece of legislation stand biased. If it exists uniformly, it is imagined view of law makers. Is it social issue or political issue in my view it is both. This issue is considered as one of the ill effect of patriarchal society. The analysis of power relation between women and men in gender violence research highlights that the symbolic organization of society is built upon and sustained by social practices and gender roles. In violence against women analyze the differences between various experiences is crucial, because these are constructed in different ways depending on the social, political and economic context. In everyday life gender codes are usually mixed with other attributes of analysis. The intersection approach has become important tool for understanding gender related injustices in contemporary societies. It points to considering simultaneously all the axes of subordination that women experience and incorporate. Intersectionality accounts for the form of inequality affecting the symbolic construction and shared representation of gender, race, sexual orientation, age, legal status, caste and culture. Gender, caste and culture are not considered as separate categories. A violent act is considered as gendered, homophobic or racist because it reflects the hierarchical construction of particular form of differences and identity categories associated with it.

It is viewed that during ancient period of history women enjoyed a high position even today some section of women enjoy high position, but gradually the position of women of some section degenerated into merely objects of pleasure meant to serve certain purpose. Why this must have happened? What are the probable causes? What kind of social, economic and political forces might have played important role in shaping the system of gender injustice and domestic violence need to be probed thoroughly. It is said that all women has / had no individual identity and recognition of basic human rights, why women were treated as things? Her placing in the society was not at par with other human beings is matter of factual investigation.

In Hindu *shastras* women has been branded just like animal or some objects of enjoyment. In *Manusmriti* the ancient Hindu codebook, the status granted to women is quite visible and was put to the lowest rung of humanity as equal with slaves, Dahiwalé 2005 [3]. As she was treated at par with the animals and slave of the proprietor. Why we choose to be ignorant of the historical situations, which were responsible for degradation of status of women. Who were the slaves? Only men, only women, or both the answer is both. Then who were the men? Were they were from upper caste the simple answer is no, they were not from upper caste (*Bhramin, Kshtriya, Vaishya*) they were from lower *Shudra* and *Atishudra* castes. Then what would have happen to the women of slaves, what would have been the situation of women from *Shudra* and *Atishudra* women and men? This kind of discussion never has considered important to understand the domestic violence issue in Indian society.

Mahatma Jyotirao Phule, the father of Indian social revolution has done pioneering work for the empowerment of women in Indian society but unfortunately his work is not that way acknowledged and respected and engaged because he was from *Sudra* community by upper caste men and women who dominate the agenda of social change in today's context, Gail Omvedt 1971 [4]. He was a philanthropist who first opened school for girls in Pune of Maharashtra state. He is also credited with opening first home for widows of upper caste and a

home for newborn abandon girl child's, so that they can be saved from female infanticide. The reason for not getting recognition real feminist man is simple that he comes from lower caste in Hindu hierarchy. The fact of the matter in this area is that the representation of upper-caste groups in academic circle is higher and they are well connected and they prefer to be ignorant about the seminal work of *Shudra* and *Atishudra* (Dasa) community reformers is the present state of academic work on gender issues in India. He believed that women should be at the center of all social activities and she should be respected above all and worked for the same cause throughout life.

Dr. Babasheb Ambedkar 1936 [5] writes that 'the Institutions do live, though for a long time they may remain unrecorded and as often as not customs and morals are like fossils that tell their own story'. He explains about how tradition of *Sati* and girl child marriages in Hindu society were honored and celebrated. It was justified by saying, "It is proof of the perfect unity of body and soul between husband and wife and of devotion beyond grave". Likewise, he talks about how the eulogy in honor of girl marriage is reported by Ketkar. *Sati* and forced widowhood are the traditions, which are mostly originated; in upper caste, communities so there cannot be justified saying they were part of whole Hindu society. He was the architect of constitution of India and was of the firm opinion that until and unless we defy the Hindu *dharma shastras*, nothing much can be changed in the name of *sanskaras*. The Hindu women are tied to bondage of superstitions, which they carry till their death. They are also responsible for inculcating certain wrong notions learnt through baseless traditions and preaching of the *shastras* in the budding mind of the offspring. The operation of caste both at the systematic level and at the functioning of the patriarchy. The growing caste/class divide in feminist political discourse make Dr. B.R. Ambedkar's view about women oppression, situation of social democracy, caste system and Hindu social order and philosophy significant to modern Indian feminist thinking.

It is now well recognized that 'Dr. Ambedkar's ideology of women empowerment provides a powerful source of inspiration to formulate a feminist political agenda which simultaneously addresses the issues of caste, class and gender in the contemporary socio-political set up which will keep conservative and reactionary values in many respect particularly on gender relations'. The writings and speeches of Dr. Ambedkar show that values of Indian should develop and how they would modernize its political and social institutions. Dr. Ambedkar saw women as the victim of oppressive, caste based and rigid hierarchical social order. He also suggests strategies for emancipation from oppression. He found their emancipation in Buddhist values, which promotes equality, self-respect and education. Dr. Ambedkar believes that Buddha treated women with respect and love and never tried to degrade them like *Manu* did. He taught women Buddha Dharma and religious philosophy. It was mainly Hindu culture and social customs, which stood in the headway of 'Women's empowerment. He did not believe in the idea that caste system in India is simply 'Division of Labour' it is also division of labourers. Civilized society undoubtedly needs division of labour but in no civilized society is division of labour into watertight compartment. It is an hierarchy in which the divisions of labourers are graded one above the other. In no other country is the division of labour accompanied by this gradation of labourers. So he says caste is monster that crosses your path. You cannot have Social political economic reform unless kill this monster. Then ultimately who is the custodian of this ideology of caste or who uphold the sanctity of *Shastras* they are Brahmins it is the issue of their power and prestige. So put dynamite to these *Shatras* is the ultimate step to eradicate caste and ultimately Brahminical patriarchy and gender discrimination.

Like Dr. Ambedkar, the National Policy for the empowerment of women 2001, also admits the underlying causes of gender inequality are related to social and economic structures and practices. Consequently, the access of women particularly those belonging to weaker section including SC/ST/OBC/minority. To education, health, and productive resources among others is inadequate therefore, they remain largely marginalized, poor and socially excluded. Since, Dr. Ambedkar himself was a victim of oppression and equal rights are more useful than anybody else theory based on mere observation for the feminist movement to strengthen its strategy for approaching the systematic challenges and contradictions in a more pragmatic way to bring women to the mainstream.

The common sense perception of the society envisages home as a place providing for love, protection, care, affection, tenderness, warmth, compassion and solidarity among its members. The researches carried out by most of the early sociologists also collaborate with this perception. However, this perception now proves to be wrong in view of the increasing violence and untold incidences taking place within four walls of homes. The victims of domestic violence happen to be the members of the family such as the wife, the husband, the son, the daughter, the mother, the father, the grandparent or any other family member having close relationship with the accused. A distantly related member of a family committing violence on any one of these family member also amounts of domestic violence if it occurs behind the closed doors of the family. The violence can be termed as male/ female atrocities, towards another male/female an elder to a younger/ vice-versa. The violence among the persons concerned has been manifested as physical, sexual/emotional and held as an intrinsic part of Indian culture since ancient days.

Contentions Issues at legal level

When British entered in India, they found this society so peculiar in terms of its social and cultural practices. They realized on circumstantial evidence that Indian society doesn't have common characteristic like class and gender differential identity but it has caste. They misunderstood the caste reality of this country through the mediators. They felt that there is need of drastic changes in social system level but unfortunately, they were opposed to that by some Hindu fundamentalist saying British will corrupt the Indian society through the conversion. However, the role of Britishers in social reform agenda cannot be ruled out or ignored completely on the basis of mere suspicion that they were outsider and had no intention to reform but to rule India. They promoted ideas like Freedom of education to all sections of society despite of caste, gender, creed, community and religion. This has helped to evolve social attitude of women and marginalized groups of Indian society. It has brought out tremendous change in the status of women too. According to the ministry of law and justice of government of India for safeguarding the women against cruelty, the Indian Penal Code 1860 was amended in 1983 and inserted section 498A which deals with matrimonial cruelty to a woman. Matrimonial cruelty in India is a cognizable, non-bail able and non-compoundable offence. The main objective of 498A Indian Penal Code is to protect a woman who is being harassed by her husband or relatives of husband.

In the last twenty years of criminal law reform, a common agreement made against laws relating to violence against women in India has been that women misuse there laws. In many judgments, the court has not considered mental cruelty caused to the women but has concentrated only on any sign of physical cruelty. If evidence does not show that the woman was physically harassed, then the court does not look into the case. What the court does is call the woman hypersensitive or of the low tolerance level and having an unstable mind. The constitution of India not only grants equality to women but also empower the state to adopt measures of positive discrimination in favor of women for neutralizing the cumulative socio, economic, education and political disadvantages faced by the women. Fundamental rights among others ensure equality before the law and equal protection of law prohibits discrimination against any citizen on grounds of religion, race, caste, sex and place of birth and guarantee equality of opportunity to all citizens in matters relating to employment.

To uphold the constitutional mandate, the state has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to women. Although women maybe victims of any of the crimes such as murder, robbery, cheating, the crimes, which are directed specifically against women, are characterized as crime against women.

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirement. Some acts made by the government of India which have special provisions to safeguard women and their interests are:

'The family court Act 1954'. 'The Hindu succession Act 1956 with amendment in 2005'. Dowry prohibition Act 1961. 'The medical termination of pregnancy Act

1971'.

'The prohibition of child marriage Act 2006'.

It is believed that there is common perception among the feminist that all parts of the world such as rural sectors, the towns, the cities and the metropolis are equally affected by domestic violence. The violence is directed towards and committed among those who have the familial relationship among themselves viz wife, husband, son, daughter, mother, father, grandparent or any other member of the family such as the uncle and aunt in case of a joint family. Even the servants are subjected to domestic violence-but learned and educated feminist doesn't want to talk about the agenda of caste eradication which is base of patriarch society and patriarchy does not exist uniform in all communities i.e. tribal, caste, gender neutral law and eradication of caste are two important suggestions to eradicate violence in Indian society. Now it seems that domestic violence has become a normal practice in the present day society. As one turns to any newspaper he is shocked to find the reports carrying the death of a bride due to the torture for dowry, a school going kids succumbing to the injuries after being beaten up by his father, an elderly man being killed over property dispute, harassment done to someone in one's neighborhood/in the city etc.

As a result of continuous efforts of women organization and national commission for Women to give justice to women in India the ministry of Law and justice brought in the Protection of Women from Domestic Violence Act, 2005, GOI, 2005 [6]. An act to provide for more effective protection of the rights of women, guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. At the very outset act defines the Domestic Violence as abuse in terms of physical abuse, Sexual, Verbal and emotional and economic abuse and empowers authority in place to investigate as per law procedure prescribed in law. The very aim of this law is to protect the right of woman as citizen of this country. However, like all other important laws which aims to weaker sections of society are misused by some people. This law is strict and not gender neutral is being misused by some disgruntled women have been noticed by the courts in India. The Madurai bench of Madras high court imposed a cost of Rs. 5000 on a women who was found to be harassing her father -in- la, a government school teacher , and warned people against filing "petty and frivolous cases" under the domestic Violence Act', TOI.2015 [7]. It proves that the law, which is made to protect real victims of domestic violence, is misused. This is the tip of iceberg but there are thousands of cases are there of misuse which are not reported, male are made easily victim in such cases this defeat the purpose of law and social justice. So that there should be transparent and objective method of investigation in which includes both side family members participation needs to be involved along with police and judiciary for real understanding the issues related domestic violence.

Conclusion

Violence against women in all types of societies widespread and complex phenomena. Law made in view of economic liberation policy does not plays effective role in eradicating violence among the people or groups who were deliberately kept outside from their property rights. The crucial role in addressing the issues of lower caste women in India feminist from upper caste have consistently attempted to campaign for laws that address all the needs of the upper caste women survivors of the violence. The study threw up the vast complexities involved in the issues of making and implementation of law, which seeks to change socially acceptable behavior that is violence against women in the family and private sphere. The study showed that violence against women is extreme and harms a woman well-being in general and mostly vulnerable women of victims of caste based discrimination. The socialization girl child in family is also big factor contributing in increase of domestic violence practice. According to Leela Dube 1988 [8] such false socialization of girl in Hindu society is real concern for getting gender justice in India.

There is view that and author also believes that when caste and poverty based inequalities are reduced in Indian society the status of women in general will be strengthened. At this time, it becomes the duty of the state to facilitate and strengthen the process of making law, which protects the interest of poor and marginalized communities' women. The solution lies in the fact that women

empowerment approach to combat violence against women should be well integrated and interwoven into in all policies and programmes of the government. Women should be treated equal partner not only at public places but also at societal level by making them liberal and independent individual. There is also on truth or other perspective to understand violence by men is that men are also biologically so insecure and intolerant and need some training to understand gender issues. The gender justice is done only by making appropriate laws, which will really protect and ensure dignity of men from lower castes and women is equally respected and accepted.

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