
Domestic Violence And Family Courts

¹Preeti Chauhan

¹Research Scholar Home Science, Malwanchal University Indore, Madhya Pradesh, India

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Abstract

Both men and women commit and are the victims of domestic abuse. However, especially in our nation, women are the most frequent victims. According to reports, even in the United States, intimate partner violence accounts for 85% of all violent crimes suffered by women, compared to 3% of violent crimes experienced by men.⁽⁵⁾ Therefore, domestic violence in the context of India primarily refers to violence against women.

Key words: - Our society, Domestic Violence, victims of domestic abuse and Family Courts.

Introduction

Domestic violence burdens all facets of society and has a subtle but significant impact on a country's progress. In terms of law enforcement, healthcare, lost work, and general development, batterers cost countries a great deal of money. These expenses don't just harm the current generation; what starts as an attack on one individual has a ripple effect throughout the family and community for years to come.⁽¹⁾ Domestic abuse is a global problem that transcends racial, socioeconomic, cultural, and class barriers as well as national boundaries. This issue is not only geographically widespread, but it also occurs frequently, making it a common and acceptable behavior. Domestic abuse is pervasive, deeply ingrained, and seriously detrimental to the health and wellbeing of women. Its prolonged existence cannot be justified morally. Individuals, healthcare institutions, and society all pay a hefty price for it. However, no other significant issue relating to public health has received such a lack of attention and comprehension.⁽²⁾ "Domestic violence is more than just a disagreement. It is a pattern of one individual exerting coercive control over another. Abusers control their victims and force their will by using economic hardship, threats, mental abuse, and physical and sexual violence. (Susan Scheter, a pioneering figure in the fight to eradicate family violence)⁽³⁾

According to the Protection of Women from Domestic Violence Act of 2005, domestic violence is defined as any act, conduct, omission, or action that causes injury to, injures, or has the potential to cause harm to, another person. Domestic violence can be defined as even a single act of omission or commission, so that women do not need to endure a sustained period of abuse before seeking legal help. Children are covered by the legislation.⁽⁴⁾

According to India's National Family Health Survey-III, which was conducted in 29 states during 2005–2006, a sizable percentage of married women had experienced physical or sexual abuse at some point in their marriages. According to the poll, 37.2% of women nationwide "experienced violence" after marriage. The most violent state was shown to be Bihar, where 59% of married women were abused. Strangely, metropolitan families reported 63% of these instances rather than the state's most underdeveloped communities. Madhya Pradesh (45.8%), Rajasthan (46.3%), Manipur (43.9%), Uttar Pradesh (42.4%), Tamil Nadu (41.9%), and West Bengal (40.3) came in second and third, respectively.⁽⁶⁾

It has always been a problem for women to experience domestic violence. Women were usually seen as being weak, defenseless, and easily exploitable. Violence against women has long been regarded as a reality. Domestic violence may be started and continued due to cultural norms, religious beliefs, economic realities, and political factors, but ultimately, committing an act of violence is a decision that the individual chooses from a variety of possibilities. Although macro system-level factors (such as cultural and social norms) play a significant role in the etiology of gender-based violence in any nation, including India, individual-level factors (such as witnessing parental violence as a child, having an absent or unsupportive father, and being associated with delinquent peers) also have a significant impact on the emergence of gender-based violence. Differences in physical strength and size are partially responsible for the gender disparity in domestic violence. In addition, women are socialized into their gender roles in various societies around the globe. Women in patriarchal countries and those with fixed gender norms are frequently ill-prepared to defend themselves in the event that their partners turn violent. However, a large portion of the gap is explained by the way men's dependence on and fear of men lead to a cultural disarming. The majority of the time, husbands who beat their spouses believe that they are doing what is just, keeping the home in order, and disciplining their wives for being unruly, especially when it comes to not keeping their place.⁽⁷⁾

There is sufficient evidence to show that women who experience domestic abuse have greater rates of reproductive illness. In North Indian studies, the odds ratio of gynecological symptoms was shown to be raised when comparing wives who reported no domestic violence with those who had undergone physical and sexual abuse. It might be explained by the fact that violent males were more likely to have extramarital relations and have STDs, putting their spouses at risk of contracting STDs as a result. These men were also reported to use condoms less frequently.⁽⁸⁾

These increase a woman's vulnerability to HIV infection, and the fear of physically and psychologically violent male reactions deters many women from seeking information about it, discourages them from getting tested, and hinders them from seeking treatment.⁽⁹⁾

Studies in the northern state of Uttar Pradesh have also revealed that women who are married to violent males are much more likely to become pregnant unintentionally (OR = 2.62). In addition, studies have indicated that assaulted women have a doubled chance of miscarriage and a fourfold increased risk of having a baby that is underweight. Violence also contributes significantly to maternal fatalities in some areas. To meet the unique needs of abused women, reproductive health care that includes domestic violence support services is required.

Abuse that takes the forms of physical, emotional, sexual, financial, or psychological assault is categorized as domestic violence. The violence may take the shape of an assault, threats, stalking, or other cruel treatment of the victim. Whatever shape the abuse takes, its fundamental goal is always to make the victims fearful.⁽¹⁰⁾ Domestic abuse cases are occasionally split up into two separate cases inside the legal system. One incident might require a criminal court hearing, while another might require a family court hearing. In this section, we'll examine the distinctions between criminal court and family court as well as the relevant procedures that take place in each system. Witnessing domestic abuse can cause major emotional, behavioral, developmental, or intellectual issues in children.

Children and teenagers who grow up in homes where domestic violence is prevalent are:

- more likely to try suicide and more likely to use violence in the community or at school in reaction to perceived threats
- more prone to using drugs
- more likely to engage in criminal activity, notably sexual assault, more prone to resort to violence to boost their reputation and sense of self, and more likely to grow up to harm others.

Family Law

Family Court counsellors, who work closely with the Family Court, work with married couples who are divorcing, especially those who are already or will soon be embroiled in child custody battles in court. Children from families in crisis who are seen by the counselors typically suffer negatively from family breakup and much more so from any surrounding conflict. Depending on their stage of development and place in the family structure, the effect on them may emerge as violent behavior, general anxiety, psychosomatic problems, or manipulation and 'acting out'. To diffuse the situation and divert attention away from the children, it is imperative that the entire family structure be examined. This can only be done with the close collaboration of all specialists working with the family.⁽¹¹⁾

Child custody, divorce, property division, and other domestic disputes are handled by the Family Court, a court of law. When going through a separation or divorce, partners in a marriage or common-law relationship have the option of involving a family court to settle the issues at hand. When two people have been living together for a long time and may even have children together, but they are not legally married, that relationship is referred to as a common-law one. When a person with the legal authority to marry a couple conducts a ceremony, a marriage is said to have been legally created. Disputes are the issues that need to be settled by Family Court.

A court of law that is part of the civil law system is a family court. The non-criminal area of law known as civil law is also sometimes referred to as private law. Private members of the public's rights and obligations are addressed by this type of law. Individuals' rights are safeguarded, and court-requested remedies are provided. Family Courts hear issues or conflicts involving individual members of the public. The Ontario Court of Justice (OCJ) and/or Superior Court of Justice (SCJ) hear the cases.

The courts utilize legal tests to establish the degree of proof necessary for a matter during a trial while selecting the approach to settle legal difficulties. Legal criteria are applicable in court situations because they fairly settle issues. Whether the case is criminal or civil in nature affects the calculation used to calculate the level of proof. It is crucial to define the terms "burden of proof" and "standard of proof" at this point. The party who has the burden of proving the matter in court is identified by the burden of proof. The responsible party is obligated to substantiate their claims using a predetermined level of proof. They must therefore adhere to the proof standard. The degree to which a side must support their position is how to best define the standard of proof.

The burden of proof in a Family Court rests with the party asserting the claim. A balance of probabilities is used as the standard of proof in Family Court. The legal standard that governs civil disputes is this. According to this legal standard, it is necessary for the judge to rule in favor of the party whose claim is backed up by facts and evidence. As a result, the argument's weight has a higher likelihood of being correct than that of the opposing party. Family Court deals with disputes between individuals; as a result, the court's power to determine the case's resolution must be founded on the

remedy that the parties are requesting. The court may grant many remedies, including a divorce, a division of the family's assets, and child custody and visitation.

Helping Others

The victims of domestic abuse are helped by a Family Court Support Worker (FCSW) if that is a topic of contention. Every court jurisdiction in Ontario has access to FCSWs. These people have the necessary training to assist victims of crime in the following areas of the judicial system:

Educating the public about the legal system; aiding in the preparation of court cases; directing victims to community resources and services;

assisting in the preparation of safety plans; and, if necessary, accompanying the victim to court appearances.

Most partners must decide on the following typical issues:

Children - if the partners have kids, concerns with child support, custody, and visitation may need to be taken into consideration;

property, assets, and debts; it can be necessary to divide the assets and liabilities;

After a separation or divorce, one party may be required to provide a financial contribution to the other partner;

Divorce: If the partners are married, they might think about filing for divorce, which is typically approved by the courts after a year of legal separation. A court order that formally dissolves a marriage is necessary for this.

Safety: If a partner or their children have been the victims of family violence, particular plans must be taken into account.

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Mail Id.- preettk1@gmail.com