

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE IN INDIA

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Introduction

Domestic violence is an extremely complex and vicious form of abuse, committed most often within four walls of the family house and /or within a particular deep rooted power dynamic and socio- economic structure, which do not allow even the recognition or acknowledgment of this abuse. Domestic violence¹ is defined as an act of omission or commission stressing the fact that omission can cause as much heat burn as acts of commission. Thus the section provides protection against any act, conduct, omission, or commission that harms or injures or has the potential to harm or injure, and it will be considered as 'domestic violence'. Again the act of omission or commission may be physical, mental, sexual, emotional or economical (2). Even a single act of commission or omission may constitute domestic violence. Now women do not have to suffer a prolonged period of abuse before taking recourse to the law. The legislation has widened the scope of domestic violence and can be broadly related to human rights. In a way it highlights the notion violence of silence also. The expansive interpretation of violence of violence is a critical breakthrough made by an ACT. In addition to this, the interpretation of the fact that whether the act would come under the ambit of domestic violence .or not has to be arrived attacking into consideration the overall facts and circumstances of the case³.

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1. Protection of Women against domestic violence Act 2005-Section 3.
2. Whenever one thinks of violence it is often confined to physical violence which is visible but the Act goes a step further extending its perception on other sort of injuries being suffered by women within home which is mental and hence considered subtle and imper ceptible.
3. Explanation II to section 3 of the Act reads "for the purpose of determining whether any Act, omission, commission or conduct of the respondent constitutes domestic violence under this section. The overall fact and circumstances of the case shall be taken into consideration."

Domestic Violence is violent victimization of women, within the boundaries of family, usually by men (or his family)⁴. A woman of any age, she be may a girl child, and unmarried, married or elderly women including a widow are such women with whom men have marriage like relationship. Violence can be both physical and psychological. It indicates threats or aggressive behavior towards her not only to her physical being, but towards her self-respect and self-confidence. Domestic Violence against women may be psychological, physical or sexual. Psychological violence is carried out with psychological weapons like insults, humiliating treatment, denial of human existence rather than physical attack. Physical violence includes all types aggressive physical behavior towards the women's body. Sexual violence could include both passive and active violence. It will also include cases of perversity. Victims of domestic violence may be husband or his family members. Domestic violence could occasionally be seen in other relations also like by parents, brothers or others in parent family⁵.

In India, there is unique situation of co-existence of all form of violence specially of elimination of women that is selective female foeticide, female infanticide, bride burning. The incidence of violence of all forms within family has also gone up. Even today various forms of violence against women are prevalent in our society, though many cases remain unreported due to one or other reasons. Women on many occasions are victimized by all sorts of discrimination, deprivations and obstruction in goal achieving and responses. These incidences may occur in the family, offices, industries or even public places. Inflicting and experiencing violence in many subtle forms causing and suffering mental pain in day-to-day life has become ways of our world in interpersonal relationships. The cruelty, the hate that exists in ourselves is expressed in the exploitation of the weak by the powerful and cunning. The worst part of problem is that women today are not feeling safe and secure even in the family. The concept of home, sweet home is no more, so far many women, who suffer violence against themselves by the members of the family whom is no safe place when it comes to aggressive behavior.

4. Sushma Sood, Violence Against Women, 1990 P.268

5. J. Krishnamurthy, Commentaries on Living 3 Series, Edited by Dr. Raja Gopal, 1977, P.166

In last many decades, there has been an alarming increase in the incidence of violence within and outside family. Today, we hear more about wife beating, dowry deaths, and sexual crimes. There are differences between the husband and wife resulting in increasing divorce. Human feelings are gradually evaporating and man resorts even to murder the wife if he does not get the expected dowry or some other reason. The growing dowry system is gradually making the baby girl unwanted. People are resorting to foeticide and sometimes, baby girls are even killed after birth. Women are ignored in house work and outside home. They are suffering innumerable tortures from their in-laws and husbands. The women, right from the moment of stepping into the husband's home tries to forget her own identity and adjust everything according to needs of new place and the people living in it. In spite of it, she is under a constant watch and is often criticized for many things. The society, the religion, her parents and in-laws everyone expects her to become her husband's shadow. The worst thing is that all this come as a rude shock to her after marriage, because the institution of marriage in our society is highly glamourized. Hence for women, 'the union of souls' turning into a nightmare is a truly horrifying and shattering experience. The mental violence may be committed in such a subtle manner that others will never come to know of it⁶.

Causes of Domestic Violence

In India, where there is no discrimination on grounds of caste, sex and where each human being has the right to participate in social process to create conditions of equality for the socially suppressed and disadvantaged sections of society, 'the dice is heavily loaded against women.' Female oppression continues from womb to tomb⁷. In particular, discrimination occurs within the family, where norms regarding women's secondary status are reinforced in children from birth. Women are viewed as dependants within the family, hence face severe restrictions. Sometimes the cultural beliefs, patriarchal social norms, superstitions and mind set that combine to produce discrimination patterns⁸.

6. Sushma Sood, *Violence Against Women*, 1990 P.227

7. Indira Nupur Kulsherstra, *Women's Studies in School Education: A new Perspective*(1989) P. 8

8. UNICEF report published in Nov 1995. titled *The Progress of Indian States in Child Survival Health, Primary Education*

Due to modern science and technology female infanticide has been replaced by female foeticide. Another reason for the dangerous phenomenon of female foeticide is the extreme low valuation of female life and the low status accorded to women in India. The reduction of birth rates in most of the Indian states has also contributed to intensification of son preference in the existing patriarchal society. Because of traditional gender bias, the cases of female infanticide occur and the girl child is denied equal opportunities in terms of food, clothing and education. Fear of sexual abuse of girl child also leads to female infanticide. Lack of religious education and degradation of moral standards also leads to such crime. Hence social and economic factors have been overemphasized in dynamics of child abuse.

Violence against married women is also a manifestation of gender discrimination. The specificity of violence in women involves an analysis of gender and its centrality to the family which has gender inequalities in day-to-day life. Domestic violence, battering, dowry, rape, suicide are the manifestations of gender inequalities within the family system. There are indications that any social structure which treats women as fundamentally of less value than men is conducive to violence against women. Violence against women in marital situation has more to do with the relationship of the husband and wife in social matrix. The cultural factors relating to marriage, status of women and per structure relationship between men and women in the society are important while describing violence against women in the family context. It may also have its origin in psychological factors like irrational, pathological behavior of abuser and the victim, which subsequently affect the interpersonal relationship of both the parties. The lack of awareness of the right and a general social belief in women's sub-ordination perpetuates a low self image in women and her inferior status. She is taught that marriage is the ultimate goal she has to achieve. All this conditioning gradually becomes the nature of Indian women⁹. Puberty, alcoholism, unemployment, frustration and poor role of modeling also contribute to violent behavior.

It is also seen that the patriarchal attitude of Indian society which perceives women as an object rather than a subject and gives her a low status in the society. Deep rooted ideas about male superiority enable men to freely exercise unlimited

9. Women's link Jan-Mar. PP- 43-44

power over women's life. Violence is thus a tool that men use constantly to control women as a result of highly internalized patriarchal conditioning which accord men the right to be their wives and thus ostensibly perform the duty of chastising them. The Indian women directly or indirectly encouraged to sacrifice her own needs, feelings or interests constantly for the needs of some other person or community like children, husband, family or community. The social conditioning results in the basic difference between how men and women view themselves and the reason for their violent interactions. In *Kuandalabala vs. State of A.P.*¹⁰. It was observed that 'Of late there has been an alarming increase in cases relating to harassment, torture, awaited suicides and dowry deaths of young innocent brides. The growing cult of violence and exploitation of young brides continues unabated there is constant erosion of the basic human values of tolerance and the spirit of live and let live. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime.

In the Indian society the situation of elderly is thought to be less severe considering the value system, culture and the still sustaining joint family system. However, the fast changing Indian social scenario leading to the degeneration of the joint family system, dislocation of cultural and family bonds and loss of respect for the aged indicate that family can no longer be a secure place for elderly. There are indications that the elderly population still depends on the family for economic and emotional support. The dependant position of elderly is a major cause of abuse. Stress is one of the major factors contributing to the abuse of the elderly. Social isolation and poverty experienced by the care takers are additional factors that increase the possibility of abuse¹¹.

Legal & Judicial Responses

Portection under Indian Constitution

The constitution of India contains much provision for securing the gender justice. The preamble of the constitution of India promises 'to secure to all its citizens Justice - social, economic and political; equality- of status and opportunity.

10. (1993) 2 SCC 684

11. R.Hugman, Ageing and The Care of Older People in Europe 1994

The Constitution empowers the state to make special provisions for women and children even in violation of the obligation not to discriminate among the citizens. This power has been used to enact special laws for the protection of women, women workers in factories, mines and plantations and to provide maternity leaves to women workers in the organized sectors. The Constitution of India enunciates the general principle of right to equality and prohibits the state from denying to any person equality before law and equal protection of law¹². Equality of opportunities in public employment and office under the state is guaranteed by Article 16 of Constitution. This Clause has helped to ensure a significant position and its status to Indian women. In a landmark judgment in *Vishaka v. State of Rajasthan*¹³, the Supreme Court has laid down exhaustive guidelines to prevent sexual harassment of working women in place of their work. The court held that it is the duty of employer or other responsible person in work places or other institutions whether public or private to prevent sexual harassment of working women. The court also held that right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of the mechanism for its enforcement, is the responsibility of the legislation and the executive. The Directive Principles of State Policy embodying the major goals of welfare State also contain certain specific items affecting women while the provision of Article 38 directs the State to bring about a transformation of socio-economic conditions for the common good, another Article directs movement towards the achievement of an egalitarian and just social order, which would affect men and women equality. Article 39 holds out the promise of an equal right to adequate means of livelihood, equal pay for equal work, protection of health and strength of workers- men, women and children- from abuse and entry into avocations unsuited to their age and strength. Just and humane conditions of work and provision of maternity relief are directed by Article 42.

In *Yousuf, Abdul Aziz v. State of Bombay*¹⁴ the validity of Section 497 Indian Penal Code which punishes only male counter part in the offence of adultery which

12. Article 14 of the Indian Constitution

13. AIR 1997 S.C. 3011

14. AIR 1954 S.C. 321

exempts the women from punishment was challenged as violative of Article 14 and 15(1) of the Constitution. The petitioner contended that even though the women may be equally guilty as abettor only but the man was punished, which violated the right to equality on the ground of sex. The Supreme Court upheld the validity of said provision on the ground that classification was not based on the ground of sex alone. The Court obviously relied upon the mandate of Article 15(3) to uphold this provision.

Protection under Civil law

The Specific recognition of domestic violence is the concept of cruelty as ground for divorce and judicial separations. The meaning of cruelty differs in the various personal laws applicable depending upon the religion of the parties. There is no specific remedy to a spouse, who does not wish to move for a divorce or judicial separation. Further, domestic violence in a not matrimonial situation is not recognized. Civil remedies against domestic violence are to be found in the Specific Relief Act and Civil Procedure Code. The basic principle of general civil law is that an invasion of a right or a threat of such an invasion would entitle a person to a mandatory or prohibitive injunction as a means of preventing the enquiry. Other Civil laws relevant to situations of domestic violence are with respect to maintenance and custody and guardianship of children.

The Hindu Adoption and Maintenance Act provides for maintenance to be provide by a Hindu husband to his wife in case of desertion and cruelty¹⁵. The Act further lists out the factors to be taken into consideration while determining the amount of maintenance under the Act. In a family where domestic violence occurs, children are the worst sufferers. Children can claim maintenance from their father. In case the children are minor, application can be file by a mother. If women decide to leave her husband due to domestic violence she is very much concerned regarding the welfare of her children as they are worst sufferers of domestic violence. A women will have start legal proceedings for guardianship, if her husband is threatening to deny or has denied access to her children or if she wishes to prevent her husband from having access to them.

15. Hindu Adoption and Maintenance Act ,1956 S. 18

Protection under Criminal law

The incidence of domestic violence against women has been increasing over the years. Women are subjected to violence namely cruelty by husband or his relatives, dowry death, and grievous hurt. The criminal law offers two options that one is of prosecuting abusers for committing offences. If a woman is facing violence at home, she can approach criminal court, the abuser will be arrested. The second is a preventive measure by getting the abuser to executive bond for keeping the peace.

In order to combat the increasing incidence of torture of women by their husbands and relatives, the legislature enacted S. 498A of IPC and S.113A of the Indian Evidence Act. In order to convict a person for a crime under S. 498A of IPC, the prosecution has to prove that the accused committed acts of harassment or cruelty as contemplated by the section and that the harassment or cruelty was the cause of suicide¹⁶. Many women have been killed by their husbands and relatives out of greed for more dowries. To deal with this problem, the offence of dowry death was included in IPC and legislature has also enacted the Dowry Prohibition Act 1961. As the earlier law was not sufficient to check dowry death, the legislature introduced provisions under S 304 B in IPC. and S 113 .B in Evidence Act. These provisions were introduced so that the person committing inhumane crimes on married women could not skip liability as Evidence of direct nature is not readily available. Dowry deaths occur within the four walls of the house, therefore the concept of deemed dowry death was introduced in 1983. There can be no direct evidence available for the offense of dowry death, therefore the course must rely upon circumstantial evidence and infer from the material available.

Domestic Violence sometimes may drive women to suicide. In such cases, it may be difficult to make the abuser responsible for the death under the provision of dowry death, but one may use the provision that provides punishment for abetment of suicide. If a woman has been harassed and subjected to mental cruelty , and has committed suicide because of this mental cruelty, the person who harassed the woman is liable for commitment of suicide. If a husband re marries during the subsistence of first marriage or if he was already married when he got married , he would be

16. State of Maharashtra v. Ashok Chote Lal Shukla(1997) II SCC 26

guilty of bigamy. Whether he is guilty or not depends on the religion that he belongs. Relevant provisions regarding bigamy are content under S. 494 and 495 IPC. If husband is having a sexual relationship with other women, he will be guilty of offence of adultery.

Protection under Domestic Violence Act

Domestic violence is defined as an act of omission or commission or conduct of the respondent shall constitute domestic violence if it harms or injures or has the potential to harm or injure. It may be physical, mental, sexual, emotional or economical¹⁷. The Act stipulates the appointment of functionaries such as protection officers and service providers to assist the complainant woman in assisting the court and other support services and assisting the court during the course of proceedings and in the enforcement of orders. The protection officers are to be appointed by the State government for each district by notification in official gazette and are required to do all duties entrusted to it under the Act¹⁸. The appointment of service providers¹⁹ are based on registration. This provides recognition and legal protection to voluntary association such as NGOs and other registered bodies that work on women's right and provide support to women facing violence. The Act for the first time gives recognition to the right to reside²⁰. For right to secured housing for matrimonial / shared house hold²¹. Whether or not she has any title or right in the household, there by guarding her against illegal disposition. Apart from this, it creates certain other civil rights i.e. some declarative rights such as right to protection against domestic violence and some substantive rights such as right to maintenance, right to compensation, right to custody of children, right to medical expenses etc. Keeping with objectives of the law and the rights recognized, women is entitled to protection orders²². Directing to stop violence, residence orders²³ as to prevent disposition or allow for restoration in case the women has already been thrown out, monetary relief²⁴ enabling the aggrieved women to meet the expenditure incurred

17. Protection of Women Against domestic violence Act 2005, S.3

18. Id S. 9

19. Id S. 10

20. Id. S. 17

21. Id S (5)

due to the violence and even include maintenance, compensation orders conferring damages for the mental agony suffered and custody orders²⁵ enabling the aggrieved to have temporary custody of children so as to guard her against any form of harassment over the issue of custody of children .

Though the Act is civil in nature, since it categorically states that criminal procedure code would apply to the proceedings²⁶. It empowers the existing Criminal Judicial System to deal with the applications under the Act. It means, the competent court can grant relief and orders as per the Act. The Magistrate has been confirmed with the wide powers. To ensure that cases are disposed off in efficacious manner, he can secure the services welfare experts, protection officers, service providers, police officers for the purpose of assisting in discharging the functions. While disposing the case he can punish not only the respondent for committing a breach of order but also the protection officers for not discharging the duty²⁷. The jurisdiction is also conferred on civil court and family court in certain cases. Application for relief may be filed by aggrieved person or a protection officer or any other person on behalf of the aggrieved before the Magistrate on prescribed form²⁸. There is no limitation prescribed for filing the application. From the order of the Magistrate an appeal may lie to the Court of Session within 30 days from the date on which the order is served on aggrieved or respondent. The Magistrate shall give opportunity to both parties to be heard about the application and shall also consider the domestic incidence report. Again, it is specifically stated that in order to determine what constitutes domestic violence the court shall consider the facts and circumstances of the case. The onus would be on the respondent to bring material on record to disprove the arguments of the aggrieved. Under the Act the offender can be punished with imprisonment of either description for a term of one year or fine of Rs. 20,000 or both. The offenders may also be charged under S. 498 A of IPC or Dowry Prohibition Act 1961.

22. Id S 18

23. Id S. 19

24. Id S. 20

25. Id S. 21

26. Id S 28

27. Id S. 33

28. Id S 12

In *Bhagwan Das v. Kartar Singh*²⁹ the court held that the suicide was due to demand of dowry soon before death, S. 304 B of IPC can attract whether it is a case of homicide or suicide. In *Kailash v. State of M.P.*³⁰ wife died under suspicious circumstances. Court held that even if death is not caused by burns or bodily injury if it happens in unusual course and apparently under suspicious circumstances that can be brought under the purview of S. 304 B IPC. Again in *Ram Badan Sharma v. State of Bihar*³¹ there was persistent demand of dowry and because of not fulfilling it, wife was subjected to harassment, humiliation and continuous beating by husband and in-laws. They were convicted under 304 B of IPC.

The matrimonial home is the household a woman shares with her husband, whether it is rented, officially provided, or owned by her husband or his relatives. A woman has the right to remain in the matrimonial home along with her husband as long as she is married. If a woman is being pressurized to leave her matrimonial home, she can ask court for an injunction or restraining order protecting her from being thrown out. Thus, apart from the criminal remedy the existing civil remedy is in the form of injunction. The Act is significant in the context because for the first time the term domestic violence has been widened from the culture specific restriction on dowry deaths and penal provisions to positive civil rights of protection and injunction. The Act has delinked domestic violence from mere dowry related offences. The complexities of two separate issues, domestic violence and women's right over property were sufficiently deciphered in the present legislation. Although the Act reflects the need for civil law it has taken a co coordinated approach³².

Conclusion

The problem of domestic violence is as old as the institution of family. The worst forms of verbal, physical, psychological and sexual violence are committed in their homes. The denial of food, turning a woman out of house, confining her in house and denying access to minor children constitutes mental torture. The other form of torture is repeated physical violence. To check the domestic violence, the

29. AIR 2007 SC 2045

30. AIR 2007 SC 107

31. (2006) SCC 2855

32. P.K. Dass, *The protection of women from Domestic Violence Act and Rules, 2007* P. 5

Protection of Women from Domestic Violence Act was passed in 2005 because the criminal law was not enough to deal with complex issues involved in domestic violence. The Act recognizes the need for relief to be granted as a basic minimum to provide women with violence free India from which they can negotiate their future in the position of equality that means the nature of relief is quick, temporary and permanent way out to domestic violence still remains in the realm of personal laws under which a woman would have to decide on whether or not to continue the relationship. Thus, the Act marks the foremost but significant step towards achieving a target of equality.

The Act is criticized on the ground that it strikes at the very root of the family and marriage which has been in time immemorial considered sacrosanct. Another criticism of the Act is that it recognizes no legal relationship by bringing within its ambit; relationship is the nature of marriage. Here it should be noted that such an inclusion has been made to extend protection to women who happen to fall in such relationship, these sorts of relations are often seen now a days. To them there exists no support since all the protective provisions are available for women who are legally married.

There is no doubt that given in hypocritical, patriarchal and insensitive nature of the society, the Act would definitely be instrumental in putting an end to all the degradation meted out to women. Women, who have for decades being silent victims of oppression, will now have a better chance of fighting the injustice without the slightest of hesitation. The role of judiciary as law enforcement instrument, towards protecting women involves the identification of rights in a beneficial manner wherever possible.