

LAWS RELATING TO DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA

Arvind Kumar

Advocate

MD University, Rohtak

Email- adv.arvind90@gmail.com

Abstract: Violence against women and dowry deaths have always been a serious problem in India. Domestic violence can take place in number of forms including physical, verbal, emotional, economic and religious aspects. The act of domestic violence towards women is a human rights violation as well as an illegal act under Indian law. Domestic violence occurs when a member of the victim's household commits a violent act. This includes current and former spouses, members of your direct family, extended relatives, and close family friends. When there is a close link between the offender and the victim, the phrase "domestic violence" is employed. They typically have a difference in power. The criminal depends on the victim. Abuse that is physical, sexual, or psychological can be categorised as domestic violence. Domestic violence has serious economic, social and health consequences – not only for women and children, but also for the wider family. It is a social evil that is all around us. It's high time that we stop ignoring it, and start equipping ourselves to deal with it.

Keywords: Domestic Violence against Women, Victim, Human Rights, Domestic Abuse

1.0 Introduction

Domestic violence in India includes any form of violence suffered by a person from a biological relative, but typically is the violence suffered by a woman by male members of her family or relatives. It could be defined as any act of gender-based violence that result in physical, sexual or mental harm or suffering to women.

According to the information collected by National Family and Health Survey-3, it is stated that, overall, one-third of women aged 15-49 have experienced physical violence and about 1 in 10 have experienced sexual violence; in total, 35 percent have experienced physical or sexual violence. This figure translates into millions of women who have suffered, and continue to suffer, at the hands of husbands and other family members.

2.0 Meaning of Domestic Violence Against Women

Domestic violence means physical violence and also called domestic abuse or family violence. It can be defined to include any threatening, abusive, or violent behaviour in the home, including between adults, children and other adult family members. It is violence committed by someone in the victim's domestic circle.

This includes partners and ex-partners, immediate family members, other relatives and family friends. It is used in for intimate partner violence, which is committed by a partner in an intimate relationship against the other partner, and can take place in heterosexual or same sex relationships, or between former spouses. It also involves violence against children, teenagers, parents, or the elderly.

Any act of gender-based violence against women that causes or is likely to cause them physical, sexual, or emotional injury or suffering, including threats of such actions, coercion, or arbitrary deprivation of liberty, whether in public or private, is known as domestic violence. Physical violence includes using physical force against the partner such as slapping, hitting, kicking, and beating.

- Sexual violence, including forced sexual intercourse and other forms of sexual coercion; Emotional (psychological) abuse, such as insults, belittling, constant humiliation, intimidation (ex- destroying things), threats of harm, threats to take away children.
- Controlling behaviour, including isolating a person from family and friends; monitoring their movements; and restricting access to financial resources, employment, education, or medical care.
- Economic violence, such as monitoring a person's access to money and keeping them financially dependent

3.0 Laws on Domestic Violence on India

Domestic violence and dowry death are pervasive in India. Also, I mean it's everywhere. We as a whole know about individuals in our families or among our companions who have eventually confronted Domestic violence, or have executed it. But how often have we looked away and done nothing because we don't have any idea what to do?

There are several Laws in India which directly deals with the protection of married women from her partner and her partner's family.

3.1 Protection of Women against Domestic Violence Act, 2005: This is an act of the Indian Parliament enacted to protect women from Domestic Violence. It prohibits a wide range of Physical, Sexual, Emotional & Economical abuse against women and all these are broadly defined under the Act. It provides security to women in a family from men in a family. The extent of the Act covers not only the protection of women who are married to men but also women who are in Live-in-relationship, just as family members including Grandmothers, Mothers, etc. A woman has right to be liberated from any type of violence under this Act. Under this law, women can look for security against Domestic Violence, Financial Compensation, right to live in their mutual house and they can get maintenance from their abuser in case they are living separated.

This law is to guarantee that women don't get kicked out of their own house and can support themselves if they have been abused. It also ensures the protection of women from their abusers.

3.2 Section 498A of the IPC (Indian Penal Code): This is a Criminal Law, which applies to husbands or family members of husband who are merciless to women. Under Section 498A of the IPC, harassment for Dowry by the family members of the husband or by husband is recognized as a Crime. This harassment can be of any type either Physical or Mental. Despite the fact that Marital Rape isn't considered as a Crime in India, forced sex with one's wife can be viewed as Cruelty under this Section. Section 498A has a vast scope. It also includes any and all intentional behaviours against a woman which force the women to attempt suicide or risk to life or grave injury or risk to limb or overall health. Here, health incorporates the physical and mental health of the women.

3.3 Dowry Prohibition Act, 1961: This is a Criminal Law that punishes the giving and taking of Dowry. The tradition of dowry itself is banned under the Dowry Prohibition Act, 1961. According to this law, gives, takes or even demands dowry, they can be imprisoned for a half year (i.e., for 6 months) or they can be fined up to Five Thousand Rupees.

4.0 Punishment Against Domestic Violence:

There are various guidelines or provisions being made for protection of women against Domestic Violence under the statute such as Section 304B of Indian Penal Code relating to dowry death.

Under Section 313-316 of Indian Penal Code female infanticide has been made punishable which implies forcefully ending the pregnancy of a women.

Other Sections of Indian Penal Code dealing with these matters are Section 305-306 related to Abetment of Suicide and 340, 349 of Indian Penal Code respectively wrongful confinement and wrongful restraint.

A complaint can also be lodged under Section 498A of Indian Penal Code for Cruelty which also falls under domestic violence.

5.0 Important Cases:

5.1 Ajay Kumar v. Lata @Sharuti: The present appeal arose from a judgment of High Court of Punjab and Haryana whereby a petition against the judgment of the Additional Sessions Judge, Panipat was dismissed. An interim order for maintenance to the respondents under the provisions of the Protection of Women from Domestic Violence Act, 2005 was confirmed.

5.2 Smt. Haimanti Mal v. State of West Bengal, 2019: The petitioner submitted a request to the court according to Sections 18, 19, 20, and 22 of the Protection of Women from Domestic Violence Act, 2005. Learned Magistrate rejected the wife's request for financial relief while partially granting the plea on the contest and ordering the opposing party to pay each of the two young children Rs. 4,000/- per month in monetary relief.

5.3 Kamlesh Devi v. Jaipal 2019: After going over the Act's provisions, the learned Judicial Magistrate Ist Class, Narnaul, concluded that none of the witnesses on file had proven a fact to the effect that the respondents and the petitioner shared a home and that the respondents had inflicted domestic abuse upon them. The court below also ruled that no allegations of violence of any type have been made about the shared household's grounds.

6.0 Who can file a complaint?

- Any woman who alleges to have been subjected to any act of domestic violence by the offender or any person may file a complaint on her behalf.
- A child is also entitled to relief under the Domestic Violence Act. The mother of such a child can make an application on behalf of her minor child (whether male or female). In cases where the mother makes an application to the court for herself, the children can also be added as co-applicants.

6.1 Under act against whom can a complaint be filed?

- Any adult male member who has been in a domestic relationship with the woman.
- Relatives of the husband or the male partner.
- Includes both male and female relatives of the male partner.

6.2 Where to apply for orders or reliefs (section 27):

Under the act the relief is available to be filed in the court of judicial Magistrate of first class or Metropolitan Magistrate. Being the aggrieved person, can file such an application at any of the following places:

1. Where aggrieved person, permanently or temporarily reside;
2. Where aggrieved person, carry on business;
3. Where aggrieved person, are employed;
4. Where the opposite party resides;
5. Where the opposite party carries on business;
6. Where the opposite party is employed;
7. Where the cause of action has arisen, say where the incident of domestic violence has taken place.

7.0 Reliefs and Orders which a Magistrate may pass under the Act:

7.1 The Magistrate may

1. Direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling.
2. Direct that the woman shall not be evicted or excluded from the household or any part of it.
3. If considered necessary, the proceedings may be directed to be conducted in camera.
4. Issue Protection order, providing protection to the woman.
5. Grant monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence.
6. Grant custody orders, i.e., temporary custody of any child or children to the aggrieved person.
7. Grant compensation/damages for the injuries. Including mental torture and emotional distress caused by the acts of domestic violence committed by that respondent.
8. Breach of any order of the Magistrate is an offence which is punishable under the law.

8.0 Conclusion:

Domestic Violence increases rapidly day by day specially in Lockdown. It is one of the most appalling kinds of harassment endured by the women in our surrounding today and we are not raising our voice against this violence seriously. All the laws are left in the papers only and reality is apart from this. Survey shows that maximum percentage of victims of Domestic Violence are female but men are also suffering from this problem. We are not raising our voice seriously because we thought we are safe but we are wrong because Domestic Violence can take places with anyone, despite the fact of race, religion, creed or caste. If the problem of Domestic Violence is not dealt with adequately, this kind of abuse will keep on existing in all classes of society without an end. So, as a citizen and young generation of India, we have to stand together and make strict laws to protect the victims of Domestic Violence.

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