

DOMESTIC VIOLENCE AND LAWS RELATING TO PROTECTION OF WOMEN

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Introduction:

Domestic Violence is an infringement of all rights of the woman, which she suffers from her own family. With Independence women were granted with equal status. The legislature put forth a full-scale attempt to raise the status of woman in the different fields through various enactments. Provisions of compulsory Education, raising of eligible age for marriage and prohibition of child marriage, the Adoption Act, 1956, Dowry Prohibition Act, 1961, etc., are all in favour of woman and to protect them. Yet, the law alone isn't sufficient to bring a radical change. With urbanization and industrialization, exploitation of woman had become a serious threat to our general public and society. Despite the increase of legislations on different fields, so as to improve the socio-economic and political conditions and status of woman, even then, the aged-old violence against women like sati, dowry demand and dowry deaths, female infanticides, eve-teasing, acid attack, honour killing, etc are still in existence. In fact, with technologies new way of violence against women are taking place, for instance, triple talak over WhatsApp, etc. Even, the passing of the Dowry Prohibition Act and considerably after a few amendments to the I.P.C., Cr. P. C. and the Evidence Act, the offence of dowry deaths or in other words offences against women has not decreased.

Cruelty is an act committed with the intention of causing suffering to the opposite party and is not limited to wife. In the case of *Parveen Mehta v Inderjit Mehta*² it was held that the behaviour of one spouse towards the other, which causes reasonable apprehension in the mind of the other that it is not safe for him or her to continue the matrimonial relationship with the other.

Meaning of D.V

Domestic Violence at home is an incredibly terrible and complex type of abuse, committed within the four walls of the house and social structure, which don't allow the acknowledgment of this abuse and recognition of the victim, to provide with care. And this leads to difficulty in identification of the prevalence of domestic violence. Violence against women is the violation of the rights of the women and inequality towards women.

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² AIR 2002 SC 2582.

The violence against women is defined by The United Nations General Assembly as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."³

The Elimination of all forms of violence against women which was adopted by the UN in the year 1993 has defined and recognized violence against women under Article 1 of the Declaration as "Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".⁴

The range and scope of acts which may be a form of domestic violence differs in from person to person. Violence is an unjust exercise of force and includes both willfulness and malicious temper of mind with which an act is done, as well as a high degree of pain inflicted⁵, usually with the accompaniment of vehemence, outrage or fury.

Violence against women is a centuries old phenomenon which has been executed for the sake of religion, social traditions, rituals and customs. The violence or cruelty may be in various forms, like child marriage, sati, ban on widow remarriage, etc. one of the reasons of the cruel behaviour towards women in general is due to the defiance of the generalized role model of the women in all phase of her life.

Violence against women is a widespread problem, with physical, sexual, emotional, psychological and economic consequences for girls and women⁶.

Domestic violence and International Laws

At International level there are various instruments to curb and control violence against women.

The UN in its founding Charter supported the rights of women with is Article 1 which states "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for

³ United Nations General Assembly Declaration on the Elimination of Violence against Women (1993)

⁴ The Declaration on the Elimination of All forms of Violence against Women adopted by G.A. of the U.N. on 20th December 1993

⁵ Comm. v. McClellan, 101 Mass. 34

⁶ S. Gill, A. and Rehman, G. "Empowerment through activism: responding to domestic violence in the South Asian Community in London, Gender and Development", 12(1), Oxfam Journal, 75-82 (2004).

human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”

Various international instruments which protects women’s rights are summarized as under:

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)
- Equal Remuneration Convention (1951)
- Convention on the Political Rights of Women (1952)
- Convention on the Nationality of Married Women (1957)
- Discrimination (Employment and Occupation) Convention (1958)
- Convention against Discrimination in Education (1960)
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)
- Declaration on the Elimination of Discrimination against Women (1967)
- Declaration on the Protection of Women and Children in Emergencies and Armed Conflicts (1974)
- Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) and Optional Protocol to the Convention (1999)
- Declaration on the Elimination of Violence against Women (1994)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2003)
- UNESCO
- The Universal Declaration of Human Rights, 1948 states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁷

Apart from the above mentioned international instruments there are regional instruments too that made efforts to protect women from domestic violence like African Charter on Democracy, Elections and Governance⁸, African Charter on Human and Peoples’ Rights⁹, Protocol to the African Charter on the Rights of Women in Africa, American Convention on

⁷ The Universal Declaration of Human Rights, 1948 Article 5

⁸ Art. 8(2), 29, and 43

⁹ Art. 18(3)

Human Rights¹⁰ American Declaration of the Rights and Duties of Man¹¹, Arab Charter on Human Rights¹²

Laws Relating to Domestic Violence in India

Apart from the International instruments, the legislature of the Country has also taken steps to protect and grant equal status to women. While in India beginning from the Constitution to Civil as well as Criminal Laws, there are provision to protect and safeguard women from violence in public as well as private life. The Supreme Court too has played a major role in bringing reforms by checking the validity of personal laws that violates women's rights by declaring those practices as unconstitutional.

The Constitution of India under its Article 14 has guaranteed equality and has prohibited any discrimination between men and women on grounds of any religion, race, caste, sex or place or birth by the State. Further Article 21 has guaranteed right to live with human dignity.

A statutory body was established in January 1992 as the National Commission for Women, which was established under the National Commission for Women Act, 1990. The object for the Act and the statutory body is to protect the rights of women and all related matters.¹³

Criminal laws and Domestic Violence

In India, the Criminal law and the offence or crime are mainly death under The Indian Penal Code 1860. It a substantial law which defines various offences, and it is supplemented by various other special legislative enactments, which defines and punishes specific offences

Under The Indian Penal Code

The IPC has not given a direct definition of domestic violence, but it can be inferred through various section such as

- Section 299- Culpable homicide
- Section 300- Murder
- Section 304B- Dowry Death,
- Section 306-Abemtent to suicide
- Section 313-316Forcing wife to terminate her pregnancy

¹⁰ Arts. 1(1), 6(1), 27(1)

¹¹ Arts. 2 and 7

¹² Arts. 3, 4, 10, 33, 34, 41, and 43

¹³ THE NATIONAL COMMISSION FOR WOMEN ACT, 1990 (ACT NO. 20 OF 1990), s. 10.

- Section 321 hurt
- Section 322 r/w 323 grievous hurt,
- Section 326 grievous hurt by dangerous weapons'
- Section 327- voluntarily causing hurt to extort property
- Section 349- wrongful restraint
- Section 375- Marital rape
- Section 498A- Cruelty by Husband or relatives

Under Special laws

The definition of domestic violence is not present directly under the IPC as seen above. But in special laws the term domestic violence is been recognized. In this part of the Article some details of the special laws are covered.

The Dowry Prohibition Act, 1961 has criminalized the giving and taking of dowry¹⁴, which is one form of the domestic violence practiced since many centuries. With the enactment of the Commission of Sati Prevention Act, 1987 an age old tradition of sati was declared to be a crime and is punishable under section 5 of the Act. Determination of Sex and then forcing the female to undergo termination of female foetus¹⁵ is called female infanticide. It is also one form of the Domestic violence practiced against women. To curb and control the illegal act the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act,1994 was passed.

Civil Laws and Domestic Violence

Under civil laws, domestic violence is not dealt directly but it deals with it indirectly and without defining it. These legislations have given women rights and protected them from the cruel and abusive behaviour of the spouses. Civil law relating to marriages have given a wider scope to the spouse with respect to Cruelty. Various legislation has made cruelty as a ground for severing the marital bond. The Dissolution of Muslim Marriage Act, 1939 have made cruelty as a ground for the divorce under section 2(viii). The Hindu Marriage Act, 1955 has also made cruelty as a ground for divorce¹⁶ as well as judicial separation¹⁷. Further, The Special Marriage Act, 1954 under Section 27(1)(d), the Indian Divorce Act under Section 10 and the Parsi Marriage and Divorce Act under Section 32(dd), have made cruelty as one of the grounds for divorce.

¹⁴ Dowry Prohibition Act, 1961, s. 3

¹⁵ The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, s. 4

¹⁶ The Hindu Marriage Act, 1955, s 13(1)(i-a)

¹⁷ The Hindu Marriage Act, 1955, s. 10

It is important to note here, that though the word cruelty is being used under the civil laws, the Acts have not given the detail of the nature of the cruelty or defined cruelty. The term may be understood as mental and physical harm,¹⁸ and the acts which affect the life, the health, or even the comfort of the party aggrieved, and give a reasonable apprehension of bodily hurt¹⁹. Further the Supreme Court has stated '*Cruelty*' therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party.²⁰ Thus, Domestic violence would certainly qualify as cruelty under these statutes.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Till 2005, the word domestic violence was not defined under law and it was limited to physical abuse by the partner in the marriage. However, with the enactment of the the Protection of Women from Domestic Violence Act, 2005, the word domestic violence was given an expansive meaning, which recognized many prospects that can lead to domestic violence against women. The Act says that any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce him or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause(a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

For the purpose of section 3 :

¹⁸Cruelty, West's Encyclopedia of American Law, edition 2. (2008). Retrieved Feb 9 2020 from <https://legal-dictionary.thefreedictionary.com/Cruelty>

¹⁹ Cruelty, A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier.. (1856). Retrieved Feb 9 2020 from <https://legal-dictionary.thefreedictionary.com/Cruelty>

²⁰ Savitri Pandey vs Prem Chandra Pandey, AIR 2000 SC 591: (2000) 2 SCC 765

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes-
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) "economic abuse" includes-
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
 - (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonable required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
 - (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.²¹

²¹ The Protection of Women from domestic violence act , 2005, s. 3

This Act has not only ensured the security of women from the domestic violence but also from gave women the right to claim maintenance and right to custody over children, which has broken the age old tradition of considering the child as the husband's property²². Another innovative reforms brought by PWDVA, 2005 was woman's "right to shared household" which ensured that women has access to the marital home even if the property may not be in her or her husband's name to prevent the husband and his relatives to throw out a women in case of any conflict.

Conclusion;

Despite having international conventions as well as the law of the country, in the times of this pandemic there has been an increase of domestic violence world-wide, the major reason for this is the locking of the victim with the accused without any means of any support. India is also among them and the data realised by the National Commission for Women (NCW) has been shocking as it has shown a rise in this gender-based violence towards women from 116 between 2-8 March to 257 between 23 March to 1 April, 2020. Violence is a part that exist is all society whether rich or poor, city or village and violence in matrimonial relationship has been a subject that exist since ages. But this violence has affected and taken many lives though there exist many international as well as national laws. Major changes in execution of the law and reforms are required. The reforms of spreading awareness and gender sensitization should begin from the school level. The police and judiciary must be made alert and adopt various means to protect women amidst the national emergency like Covid-19. The policy makers in government should understand the urgency of the issue and direct essential services to address violence against women.

²² Suneetha, A., & Nagaraj, V." Adjudicating (Un)Domestic Battles" 40(38), *Economic and Political Weekly*, 4101-4103 (2005).