

An Analysis Of Law Relating To Domestic Violence In India

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Introduction

The literal meaning of the word domestic violence basically refers to any violent or aggressive behaviour of any person within the home as the word here is 'domestic' or in other words a violent quarrel between a couple which may force a female spouse to file for mental harassment basically under domestic violence act and other provisions of Indian Penal Code (IPC) and Criminal Procedure Code (CrPC). Basically from ages, domestic violence has been committed against women but in today's scenario men can also file for domestic violence which can come under the category of domestic abuse, family violence basically arising in the relationships such as marriage including relationships with family members, family friends etc. and it can be in various forms such as physical aggressions, sexual abuse, emotional abuses etc.

What constitutes domestic violence?

Section 3 of the Domestic Violence Act, 2005 states that domestic violence shall include: -

- (a) Threats to health, safety, life etc. whether mental or physical, including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) Harassment through any forms such as harms, injuries to the aggrieved person by coercing her or any other person related to any unlawful demand for dowry or other property or valuable security; or
- (c) Otherwise injuring or causing harm, through physical or mental means to the aggrieved person.

Against whom a case of domestic violence can be filed?

In the present day scenario, complaint can be filed against any adult male member who is in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act including the other family members such as mother-in-

law, father-in-law, brother-in-law etc. or any relative of the husband or male partner. But in a judgement of 2010 in the case of *KusumLata Sharma v. State &Anr.*¹, the Bombay High court held that a sister cannot file a complaint against her brother's wife, or her own sister. A mother-in-law if subjected to domestic violence by daughter-in-law cannot file a case against her daughter-in-law however she can file a complaint case against her son mentioning the name of the daughter-in-law as the agent of her son.

Present Laws

1. The Indian Penal Code Amendment of 1983

A special section, numbered 498-A², that officially made domestic violence a criminal offense was added to the Indian Penal Code in 1983. This section of the law specifically covers cruelty towards married women by their husbands or their husbands' families.

A helpful clause in this section allows women's relatives to make the complaint for them. This is extremely beneficial in cases where the woman is too afraid to speak up for herself, for reasons such as she could get caught by her husband or simply cannot leave the house.

One kind of cruelty that can be punished is behavior that causes a woman's death or serious injury, or pushes her to commit suicide. Another kind is the type of harassment relating to intimidating the woman or her relatives to give up her property.

Under the policy, acts of cruelty include, but are not limited to, the following:

- physical abuse;
- mental torture through threats to her or her loved ones (such as children);
- denying the woman food;
- locking her in or out of the house as punishment; and
- demanding perverse sexual acts against the woman's will.

Convicted offenders will be charged with up to three years of prison, as well as a hefty fine.

2. The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act is exactly what the title proclaims. This is the first law in India to specifically acknowledge every woman's right to be in a home without violence. In fact, it was seen as a major step forward in securing women's rights and more effective protection.

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It is a long and comprehensive law that details several important policies and procedures meant to help women.

First, it gives a specific definition of domestic violence: actual or threats of physical, mental, emotional, sexual, or verbal abuse, as well as harassment regarding dowry or property.

Women are given the right to seek protection against such acts, and their relatives can file a complaint for them against husbands who break the law.

Second, a woman's right to reside in their "matrimonial household" is clearly recognized. She cannot be evicted from it as she rightfully shares it with her husband.

If she is evicted, she has the right to seek monetary compensation and safe shelter, as well as free legal and medical aid.

Lastly, both NGOs and divisions of the Indian Government - such as the National Commission for Women - took the initiative to organize awareness seminars that could be easily attended by women who are affected by this act, e.g., women in high risk areas.

Violators of this law will either be mandated to compensate the woman financially, or will be served a restraining order to keep them away from the complainant.

3. The Criminal Law (Amendment) Act, 2013

As a response to the suggestions made by the Justice Verma Committee, a list of amendments to the Indian Penal Code, Code of Criminal Procedure, and the Indian Evidence Act was introduced in this 2013 Act.

The aim of the amendment was to provide harsher punishment for those criminals who committed abuse against women. Details regarding sexual assault and rape were clarified and added onto. For instance, "rape" was given a better and more exhaustive legal definition, to include non-consensual penetration using non-sexual objects, as well as non-penetrative sexual acts. Penalties for offenses such as rape, assault, and sexual harassment were increased.

In particular, heavier sentences were declared for rapists, even including the death sentence for particularly disturbing cases, such as gang rape where the victim was left in a vegetative state after the crime.

New offenses that are punishable by law were introduced by the amendment as well. These include, but are not limited to:

- acid attacks (the act of throwing acid upon a woman with the

intention of disfiguring, maiming, or outright killing her);

- stalking;
- voyeurism (spying with prurient or indecent interest); and
- publicly and forcefully disrobing a woman

However, despite the commission's recommendations, the amendment failed to address the issue of marital rape. This exception basically assumes that marriage automatically means the woman will always consent to her husband's sexual desires. This notion implies that rape cannot happen within a marriage, when in fact it does, and even happens quite frequently to Indian women.

Gender Neutral Approach

The Supreme Court reached a verdict in *Hiral P. Harsora And Ors v. Kusum Narottamdas Harsora And Ors*³, striking down the words "adult male" from Section 2(q)⁴ of the Protection of Women from Domestic Violence Act 2005, thus paving the way for the law to be widened to include women and minors. This verdict effectively meant that women and minors, and not just men, could now be charged for committing acts of domestic violence.

The DV Act was initially conceived as a solution for the battered woman who first needed to secure herself against a violent situation with a "protection order" to restrain an abusive spouse or relative, a "residence order" to put a roof over her head, a "custody order" to secure the custody of her child and finally a "monetary order" to establish her financial security when it came to things such as medical costs and other monetary compensation. It was through this assurance of security that the woman could ultimately decide on what to do about her troubled relationship.

The DV Act was meant to be "different". Unlike other laws that require the user to reach out for assistance, this law conceived of a situation where the state would appoint "protection officers" who would coordinate with other service providers - doctors, legal aides, shelters, police and mental health professionals - to engineer a "coordinated reach out" to the victim. Section 11 of the DV Act required governments to give "wide publicity" to the law, sensitise stakeholders and set protocols to deal with situations of domestic violence.

The most important provision - which we expected the law ministry to strike down - was Section 31 of the DV Act, which made

breaching a protection order a criminal offence, and thus a cognizable and non-bailable crime.

The most striking feature of this law is, however, the exhaustive definition of 'domestic violence' and the various facets that constitute such violence-physical abuse, sexual abuse, verbal and emotional abuse and economic abuse-which leave nothing to chance or the vagaries of judicial interpretation.

The court's logic behind this verdict was based on the fact that the Delhi high court, in **KusumLata case**⁵, had already held that a mother-in-law could lodge a complaint against her daughter-in-law under the DV Act. The preamble of the DV Act also referred to "victims of violence of any kind occurring within the family" and that it was "obvious" that the perpetrators of violence could be "women themselves". The definition of "domestic relationship" too in the Act is very wide and covered female relatives.

While it is true that women face abuse from other women of the spouse's family, there are several unintended consequences that may result from the apparent gender neutrality of this provision. For one thing, given the disproportionate amount of power men wield in the Indian household, this could result in them having the ability to levy counter-cases upon the women. By placing the mother-in-law in the position of the aggrieved, the men could still effectively dispossess their wives from the home or turn the abuse complaint on its head. This was identified as a problem years ago, when the framing of the law was still under debate and ultimately resulted in the inclusion of the words "adult male."

There are other ways of ensuring that the female abettors of domestic violence do not go unpunished. For instance, in the past, a proviso was added to the definition of "respondent" in an earlier draft of this bill, which allowed women to file complaints against relatives of the men in addition to the abusive husband. This would allow joint cases of abuse to be prosecuted. It may also be argued that since overwhelmingly the abuse tends to be either instigated or supported by the husband, the cases where it was solely at the hands of the female relative could be handled on a case-by-case basis.

While it remains to be seen how much the fears of power abuse and retaliation will be realized with this change, it does certainly hint at a lack of understanding with respect to the complex nature of the phe-

nomenon of domestic violence in India and the asymmetries involved.

Abuse of the law

Whatever are the honest intentions of the legislature, it is seen that the provisions of the act is misused and abused by the so-called victims. In other words, the provisions of the act does not afford the accused to explain his stand for the simple reason that even if the woman is living separately from him, she can still accuse her husband or anyone claiming under him of continuing to threaten her and so on. Since the provisions of the act have a presumptive value, most of the time, the accused is left defenseless.

As such, most of the time, the accused is at the receiving end and as the provisions are in addition to whatever is in existence, this will amount to subjecting the accused to multiple jeopardy. As a result, the accused has to not only pay for maintenance but also is liable to pay the said compensation under the "Hindu Marriage Act".

The present act most of the time is used to harass the husband or any other member claiming under him and to see that he yields to the illegitimate demands of the so called victim instead of vice versa. Many a time, aged parents and other relatives are falsely accused of physically and mentally torturing the so-called victim, thereby causing unwanted tension, which may result in ill health of the aged parents and physical and mental distress to the family members of the 'accused'. Although this act is devised to protect the interests of the 'victim', instead it causes untold pain and misery to the 'accused' and his elderly family members. According to many legal experts, this act although has some honest intentions of protecting the victim, it has caused more harm than good due to its misuse, misapplication and misinterpretation of the act. When a person is accused under the provisions of the act, no matter what may be the outcome of the prosecution, the social stigma remains, thus affecting the future prospects of the 'accused'.

Thus again, the accused is tormented by the society even if the accusation is proven wrong. Poor and uneducated women may have borne the torture of the husband's family, but today many well-educated women are using this act for unlawful purposes. They falsely accuse their husbands and in-laws so as to gain substantial wealth by means of compensations. With such wrong intentions, these selfish women are ready to jump at the smallest opportunity and file a case. Such misappli-

cation and misuse of the law is one of the main causes for the destruction of many families. The act may need revision in order to prevent such misuse and misapplication of the act. The true intention of this act was to protect domestic violence victims from further pain and to thus relieve them from their misery and not to cater to the selfish needs of people who would not mind accusing their own family of committing atrocities for the sake of gaining financial benefits. Thus, only genuine victims of domestic violence must be identified and given assistance; and such greedy complainants must be stopped from ruining families.

Conclusion

While the Indian government has made significant efforts in reducing the largely unchecked epidemic of violence against women, there is still a long way to go. Merely passing laws meant to protect women from abuse is obviously not enough to achieve success. Even after the 2013 amendment, horrific crimes such as gang rapes continue to happen, and happen publicly. The numbers have even continued to rise, though this may be because of increased awareness among women, resulting in greater reporting of domestic violence overall.

A necessary step in moving forward lies in changing the overall mindset of society towards women. There needs to be more education on how to treat women as equals, instead of as lesser beings that deserve to be punished for the tiniest mistakes. If the Indian government can combine proper enforcement of their existing laws with thoughtful gender education programs, we could be looking at a safer and brighter future for Indian women in the next few decades.

References

Statutes -

1. Constitution of India.
2. Indian Penal Code.
3. Protection of Women from Domestic Violence Act, 2005.
4. Indian Evidence Act.

Books -

1. David Finkelhor, Richard J. Gelles, Gerald T. Hotaling, Murray A. Strauss, "The Dark Side of Families: Current Family Violence Research," 1983, Sage Publications.
2. Geetanjali Gangoli, "Indian Feminisms: Law, Patriarchies and

- Violence in India", 2007, Sage Publications.
3. Savitri Goonesekere, "Violence, Law and Women's Rights in South Asia", 2004, Agasthe Publications.

Online References -

1. <http://www.mainstreamweekly.net/article1936.html>
2. <http://ncw.nic.in/acts/TheProtectionofWomenfromDomesticViolenceAct2005.pdf>
3. <http://www.dnaindia.com/india/report-domestic-violence-act-can-t-be-used-against-sister-or-sister-in-law-centre-1994963>
4. <https://www.quora.com/Is-domestic-violence-violence-against-women-and-children-rooted-in-gender-inequality>
5. <http://spuwac.com/ngos-involved-in-combating-violence-against-women/>
6. <http://www.clarkprosecutor.org/html/domviol/domvic.htm>
7. <http://www.legallyindia.com/easyblog/section-498a-of-ipc-its-use-misuse-html>

