

DOMESTIC VIOLENCE

By,

Mr. MOHD ZAID

(Author)

B.A.LL.B(Hons.), 5th year

AMU, Aligarh

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INTRODUCTION

Your home is supposed to be the safest place for where, you're away from any harm. At times, some homes aren't just unsafe but, the breeding ground of abuse and torture. Your life saver can become your threat, garnishing you with daily doses of torment that is what we called as Domestic Violence. Women have traditionally been the largest victim group of domestic violence. Women of all walks of life are victims of domestic violence, regardless of age, religion, caste or class. But domestic violence isn't just limited to women. Men, children and the elderly can also become victims. Domestic violence occurs at all levels of society and at all strata of the population. Thus, The Protection of Women from Domestic Violence Act, 2005 was enacted by the Indian Parliament to more effectively protect the constitutional rights of women who are victims of all forms of domestic violence and other related incidents. So, this article is about one of the most important statute, the Women's Protection from Domestic Violence Act 2005.

WHAT IS DOMESTIC VIOLENCE?

A sequence of abusive conduct to perpetuate control and power over another in a domestic background within an intimate relationship can be referred to as Domestic Violence.

It is often assigned as Domestic abuse or intimate partner violence prevailing through consistent pattern of intimidation, coercion, humiliation, threat or physical injury to the victim. Domestic violence is not physical violence alone and it can happen to people in all walks of life despite of age, gender, sexual orientation, race, religion etc. The most common age of the abuse for both women and men is between 18-24 years and it occurs among married couples, cohabiting partners or relatives. There are certain misconceptions amid the general public regarding domestic abuse; besides physical bodily harm. It repeatedly comprehends emotional abuse, sexual abuse and economic abuse. A couple of abuse which involves name calling, distrust or numerous other strategies could be more difficult to detect as it doesn't leave marks, bruises or broken bones. Thereby, they are either brushed off or restrained by the victim as well as the abuser and those around them. There are diverse types of abusive behavior accompanying its own fatal consequences. It not only risks the life of the victim but causes a long term desolation of person-hood. As a well-informed citizen we are aware of the most pestilent and widespread form of violence recurring in India, it could be female feticide, dowry death and rape to child marriage.

Legally Speaking, **Section 3 of the Protection of Women from Domestic Violence Act of 2005** (DV Act), Provides that;

For the purposes of this Act, 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 person 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 her 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.

TYPES OF DOMESTIC VIOLENCE

Before going into the further details of the act it is important to understand the type of domestic violence. The **Explanation-1 of section-3 of DV act** provide the types of Domestic

Violence. However, in *Bhartiben Bipinbhai Tamboli v. State of Gujarat* 2018,¹ these categories were further clarified. It was believed that:

1) Sexual violence

Sexual violence is a sort of bodily force that includes any act in which a female is forced to have interaction in any undesired, dangerous, or demeaning sexual conduct. It includes calling her names, harming her by way of the use of gadgets and guns during intercourse, or even forcing her to have intercourse by means of a partner or intimate companion with whom she has consensual sex.

2) Physical violence

Bodily violence is the use of physical pressure against a female in order that she sustains bodily damage or injury. Bodily assault, criminal intimidation (threaten to motive damage), and criminal force (use force in opposition to someone to injure him/her) in the shape of beating, stomping, punching, abandoning the aggrieved celebration in a risky area, the use of weapons to intimidate her, pressuring her to leave her matrimonial home, injuring her youngsters, the use of bodily force in sexual situations, and so forth.

3) Emotional violence

Not all abusive relationships are violent and result in bodily harm. Many girls are subjected to emotional abuse, which is as detrimental as physical violence. It entails loud names -calling, accusing, separating, scaring, and showing domineering behavior, insulting or continuously criticizing her.

4) Economic violence

Monetary violence is defined as, a female now not being provided with sufficient money with the aid of her spouse to guide herself and her youngsters with the aid of buying garments, meals, medications, and so on. It additionally includes prohibiting girls from running. Aside from that, forcibly evicting her from her home through not paying her lease, denying her of financial assets to which she is entitled underneath any custom or law, and proscribing her get right of entry to to shared domestic assets additionally come below this

¹ R/SCR.A/5672/2016.

class. It additionally includes selling or alienating her movable or immovable belongings, jewellery, shares, stocks, and other objects in which she has a stake.

In the landmark case of *Lalita Toppo v. the State of Jharkhand and Anr.*² (2018), which was heard by the Supreme Court of India, the Complainant, who was not the Respondent's legally wedded wife, the Appellant was in a live-in relationship. When the couple got Separated, the Appellant demand maintenance form her spouse, the Gumla family Court giving him Rs 2,000 per month and Rs 1,000 for their children . The appellant applied to the High Court , which determined that the decision of the Family Court was wrong and decided in favor of the spouse. The appellant subsequently brought an action before the Apex court of India.

Now the question before the Apex court is that, whether a live-in partner can seek maintenance under the Domestic Violence Act, 2005?

Decision: The three-judge Bench of Supreme Court consist of- CJI Ranjan Gogoi, Justices U.U. Lalit and K.M. Joseph observed that a live-in partner will be obligated to even more relief than that envisaged by Section 125 of the Code of Criminal Procedure, 1973. Making reference to the provisions of the Domestic Violence Act, the bench noted that the petitioner in the case would have a remedy to seek maintenance under the DV Act despite the fact that she is not the legally wedded wife and thus not obligated to be maintained under Section 125 of the Code of Criminal Procedure.

LEGAL PROVISIONS FOR WOMEN

Before moving further with the legal provisions particularly provided for the women to penalize the wrongdoers for the crimes executed on them, it is mandatory to analyse the Constitutional Provisions for women, understanding Constitution as the Supreme law of land and all the other laws are derivate from the Constitution itself.

Since, we know that the Protection of Woman from the Domestic Violence Act(2005), elaborates that domestic abuse can take on sundry hues i.e., physical, emotional, verbal, sexual or economic violence hasn't been able to counter the risk of crimes. Therefore, the Indian Parliament modified the law in April 2013, extending its ambit to consolidate new categories of offenses and making punishments more rigorous.

² Cr Appeal No. 1656/ 2015, Judgment given in 2018.

There are certain Fundamental rights provided in the Indian Constitution for the Upliftment of women, it is delighting to note that Article 14, which lays out equality before the law and uniform protection to laws and Article 39 (A), advances legal aid and arrangements for restoring their conditions. The Supreme Court of India adopted a few measures to establish numerous track courts in the nation to deliver speedy justice for the crimes committed on the woman.

There are various amendments moulded in the Criminal Law such as, IPC, CrPC and other enactments to battle the crimes against women. A few of the provisions in IPC with disincentive punishment for sexual misdeed against women includes:

- Section 313, highlights miscarriage without women's consent.
- Section 304 B, emphasizes on deaths caused due to dowry.
- Section 498 A, focuses on the Crimes of a husband and relative of husband of women subjecting her to cruelty.

It is phenomenal to account that there are provisions compiled for women even in the Indian Evidence Act, under Section 114 (B), to draw impudence by the court concerning dowry death, mental and physical ruthlessness exhibited by her in-laws³. There has been a several amendments made in Code of Criminal Procedure (CrPC), regarding honour killing, sexual harassment of women at workplace, domestic violence and female foeticide as well. Accordingly, unbending implementation of laws is a mandatory task.

KEY DEFINITION OF DOMESTIC VIOLENCE ACT, 2005

For better understanding of the article it is necessary to look some of the basic terms which is used in the act.

a) Aggrieved person (Section 2 (a) of DV Act)

“Aggrieved person” means a woman who has a family relationship with the accused, that is, someone who has filed a complaint under the Law and said that she has suffered domestic abuse by the accused.

3. Prof. H.B.Das, *Legal Provisions in IPC and CrPC for Women*, ODISHA REVIEW, <https://www.google.com/url?sa=t&source=web&rct=j&url=http://magazines.odisha.gov.in/Orissareview/2016/Feb-Mar/engpdf/136141.pdf&ved=2ahUKEwiLqeernYPqAhUUOSsKHbJ8AWQOFjAAegQIBRAC&usg=AOvVaw0zD8PnWOBiPgOhYaBusb1a> (Last Visited June 24, 2023).

Thus following are the two essential conditions:

- The woman must be in a “domestic relationship” with the respondent
- She must make an allegation that she has been subjected to an act of domestic violence by the respondent.

A wife can be an aggrieved person even after judicial separation.⁴

b) Domestic relationship (Section 2 (f) of DV Act)

A relationship between two persons is treated as a “domestic relationship” if they live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship like marriage, adoption or are family members living together as a joint family.

In case of *D Velusamy v . D Patchaimmal*,⁵ the Supreme Court has held that the following requisite (common law marriage requirements) must be fulfilled and the parties must have lived together in a ‘shared household’ for their relationship to qualify as a “domestic relationship”

- The couple must hold themselves out to society as if they are spouses .
- They must be of legal age to marry
- They must be otherwise qualified to enter into a legal marriage , including being unmarried
- They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period.

c) Shared household (Section 2 (s) of DV Act)

It refers to the family in which the victim is alone or has any level of family relationship with the defendant. It includes tenants or homes belonging to joint families in which the defendant is included.

The Court in the case *Ravneet Kaur v. Prithpal Singh Dhingra*⁶ held that “*where the residence is a shared household, it does not create any embargo upon the owner to claim eviction against his daughter – in – law. A strained frictional relationship between the parties would be relevant to decide whether the grounds of eviction exist*”.

⁴ Krishna Bhattacharjee v. Sarathi Chaudhuri, 2016.

⁵ AIR 2011 SC 479.

⁶ 2022 LiveLaw (Del) 151.

ESSENTIAL PROVISIONS OF THE DOMESTIC VIOLENCE ACT, 2005

Appointment of Protection Officers (Section-8 of DV Act)

Protection Officers are designated by the State Government. The abundance of Protection Officers may diversify from region to region counting on the stature and requirement. The powers and responsibilities which are to be practiced by the Protection Officers are laid down in authorization with the Act. The Protection Officers must be women as far as feasible and shall retain requisite credential and experience as may be stipulated under the Act.

Powers and functions of Protection Officers (Section-9 of DV Act)

The powers and roles of Protection Officers are:

- Officers help the Magistrate in order to release their obligations in accordance with the Act.
- Officer prepare a domestic violence incident report to the Magistrate after obtaining any such occurrence of domestic turmoil and must also deliver the documents to the police officer in charge of the police station having jurisdiction on to the occurrence.
- They are responsible to give rise to the application in the prescribed line up to the Magistrate if the disgruntled individual claims relaxation for disbursement of the protective order.
- Officers make safe that the aggrieved individual is delivered free legal aid under the Legal Services Authorities Act, 1987.
- Officers conserve a comprehensive account of all the aid and benefits providers procuring legal aid or counselling, sanctuary residences and medical aptitudes in a regional neighborhood within the jurisdiction of the Magistrate.
- Officers are accountable to bring the sufferer medically assessed, if she has endured any physical damages and dispatch such a declaration in the prescribed way to the Magistrate and the police station having jurisdiction.
- Officers unearth a stable accessible shelter dwelling for the victim if she needs and convey the elements of her housing in the prescribed tone to the Magistrate and the police station having jurisdiction.

- It is duty of Officer assure that the ruling of economic relief to the sufferers is adapted with under this Act.

Monetary reliefs (Section 20 of DV Act)

The Court can authorize the respondent to reimburse monetary remedy to the aggrieved person. Such expenditure is given rise to fulfil the costs incurred and losses mourned by the aggrieved individual and any offspring of the aggrieved individual as an outcome of the domestic violence. It comprises the following but is not constrained to the same that is to say, there may be distinct heads also enclosed in this order:

- i. The loss of earnings;
- ii. The medical expense;
- iii. The expense inflicted due to the havoc , damage or deportation of any property from the possession of the aggrieved person ; and
- iv. The maintenance for the aggrieved person as well as her children, if any.

Custody orders (Section 21 of DV Act)

Under Section 21 of the Protection of Women from Domestic Violence Act, 2005 when the Magistrate receives an application relating to domestic violence, he has the sovereignty to direct the custody of any child or children to the victim or the person making the application on behalf of the victim.

Jurisdiction and procedure (Section 27 of DV Act)

The court of Judicial Magistrate of the first class or the Metropolitan Magistrate of the area has the jurisdiction to hear cases under this Act. However, Section 27 of the Act states the following factors;

- The aggrieved person permanently or temporarily resides or carries out business in that area.
- The respondent resides, carries on business or is employed within the local limits of the area.

- The competent court will be liable to grant protection orders or any other orders as the case may be.

Procedure for Filling a Complaint regarding Domestic Violence (section 28 of DV Act)

- 1) Victims themselves , or anyone who has reason to believe that an act of domestic violence has occurred or may occur , may report this to a protection officer , service provider , or the police .
- 2) The victim or protection officer or other person working on behalf of the victim may apply to the judge by requesting one or more remedies from the Law ;
- 3) The judge sets the initial date of the hearing. Usually this date is within three days after the court receives the application.
- 4) The magistrate shall endeavour to rule on such claims within sixty days from the date of the first hearing.
- 5) The judge may order the defendant or injured person to receive counselling together or individually.
- 6) The remedies available under this Act may also be sought in civil, family, or criminal court proceedings involving victims and defendants, whether commenced before or after this Act enters into force.

IMPACT OF DOMESTIC VIOLENCE ON VICTIMS

It has been observed that domestic and family violence rips lives in two leaving a huge impact on one's personal, social and economic state.

Gender – based violence has never been an exemplar to us and has been best identified with the isolation of victims, exercising physical force, psychological and at times financial control over them. The survivors often face challenges after such horrific events. The individual will eventually take a length of duration to adjust in a safe livelihood. Several known effects of the physical abuse include cuts, broken bones, bruises, involuntary shaking etc. Apart from this, the emotional abuse has left an atrocious aftermath on victims, such as; fear, depression, low self-esteem or worse, suicidal thoughts. The victims are often abused spiritually by the perpetrators, this leads to hopelessness or inability to trust.

A majority of women affected from domestic violence might experience isolation from their loved ones, ongoing deterioration, and terrible health conditions and deprived from work. The mental health of the victim seems to be at greater risk pushing them to undergo brutal episodes of anxiety, depressions or low self-esteem. It is understood that many women are severely beaten up by their spouse or other relatives. This clearly emphasizes that women are considered to be weak by their abusers and are being constantly abused at their own house, ultimately treated like an object. One in three women and one in four men experience some or other form of domestic abuse⁷.

The effects of the laceration can vary generally person to person, on account of survivors' retaliation to pressure, age and the severity of abuse. On an average, three women in a day are killed by either a current or a formal male partner according to the National Coalition against Domestic Violence⁸.

IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

Children and young people are obliged to be raised in a healthy and nurturing environment. In a house, where domestic or family violence endures, the home turns hazardous for them and leaves an impact of terror in their head about what might happen to them and their loved ones.

Nowadays, home is far from save heaven for children but for those who are exposed to domestic violence suffer a range of severe and lasting effects. They are more likely to become a victim of child abuse. As we the general public, are enlightened by the precarious effects of domestic violence, consider a child; who is lately be held by this prevailing issue, as a result restraining his physical and mental development, eliciting him to face various diseases. If the child continues to breathe in the same domestic setting he is likely to become anti – social, further dragging his future at stake. This would create a rift eventually challenging them to form a chain of the same as experienced by them.

7. Community & Justice, *The effect of domestic and Family Violence*, NSW GOVERNMENT, https://www.facs.nsw.gov.au/domestic-violence/about/effects-of-dv&ved=2ahUKEwiLx9z2jv_pAhWDjeYKHS6TDYQFjAKegQIAhAB&usg=AOvVaw044KRVQ_kTgTiGEG389-yH&cshid=1592062496249 (Last visited June 25, 2023).

8. *National Coalition Against Domestic Violence*, Battered women's Justice Project, https://www.bwjp.org/resource-center/resource-results/national-coalition-against-domestic-violence.html&ved=2ahUKEwif34yZj__pAhUEheYKHeNsDh4QFjAVegQIExAB&usg=AOvVaw0VKpzVEutLivN-GYqs2JwH (Last visited June 25, 2023).

Almost all the women who encounter violence have children in their care. Living with domestic violence can cause a child psychological harm like anxiety, depression, emotional trauma, eating and sleeping pattern disruption. They even experience physical symptoms like headaches and abdominal aches triggering them to manage stress and low self-esteem.

LANDMARK JUDGMENT

CASE: Arnesh Kumar v. State of Bihar⁹

The wife alleged that dowry was demanded from her and that she was driven out of the matrimonial home on non-fulfilment of such demands. The husband applied for anticipatory bail which failed. Therefore, by special leave petition, the husband approached the Supreme Court.

Decision: In this case, the Court observed that the fact that Section 498A, IPC is a cognizable and non-bailable offence, it is more often than not is used as a weapon rather than shield by disgruntled wives. It results in harassing the husband and his relatives by getting them arrested under this Section and it is more disturbing to see bedridden grandfathers and grandmothers being arrested without a prima facie case. Thus, the Court laid down certain guidelines which the police officer must follow while arresting under Section 498A, IPC or Section 4 of the Dowry Prohibition Act, 1961 and that such arrest must be based on a reasonable satisfaction with respect to genuineness of the allegation. Moreover, even the Magistrates must be careful enough not to authorise detention casually and mechanically.

CASE: *Vimlaben Ajitbhai Patel v . Vatslaben Ashokbhai Patel and ors.*¹⁰

In this case , the Court held that when it comes to maintenance of the wife under the Domestic Violence Act read with the Hindu Adoption and Maintenance Act , 1956, It is a man's personal duty to provide for his wife . Her mother - in - law's property cannot be subject to seizure , nor can a duty of support to her wife be imposed on this property during her husband's lifetime .

⁹ (2014) 8 S.C.C. 273.

¹⁰ AIR 2008 SC 2675.

CONCLUSION

In a society like India's, where violence is deeply lodged, building awareness is an essential task. A campaign should be established where one woman is allowed to share, exchange and cooperate with other to deal with different issues prevailing at home, in public sector or at work to become practical and get influenced from others experience. Women in several regions of India have campaigned for liquor bans, stating drinking encourages domestic violence and rapes leading to deprivation from social life and men squandering family income. The target of uplifting the status of the women can be attained only by boosting public consciousness and by constructing a nation consensus of the rights and bloom the future of a girl child at the threshold.

Hence, Social support and Political will is important for empowering the woman so as to give her a rightful position in the society.