

# Domestic Violence Act and Laws

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**Abstract:** *The domestic violence against women can be viewed in different forms, which will include Physical, verbal, economic, sexual, emotional abuse and the threats to commit the same. Bride tortured to death for dowry issues, a women abandoned by her husband for no reasons, such kind of news always appears in the papers. This issue is very grave and requires much importance than just one or two lines in the news papers. To understand the depth of this issue we need to look at the statistics of this crime. Statistics should be collected to show that violence against women actually exists and we as users should try to use these statistics to lay foundation for our argument as to the extent to which violence against women exist. According to statistics published by the National Crime Records Bureau (NCRB) in 2002 a total of 147,678 crimes against women were reported in 2002 compared with 143,795 during 2001. This represents an increase of 2.7% over the previous year and Shows an increase of 12.3% over 1998. These NCRB figures record crimes specifically categorized as "Crimes against Women", although women may additionally be the victims of other crimes, robbery, murder etc. The proportion of IPC Crimes committed against women towards total IPC crimes increased continually during past years .. The news is being published and that is it. After that it is never highlighted that what has happened to the case there after, because the men use their influence and get liberated always. It is very rare when a culprit of domestic violence gets punished for his crime. If we would leave the major issues like dowry death, and focus on the torture and harassment the tool will be increased much more. While physical injuries can be seen simply because they are visible and could be produced before people, mental and psychological injuries are not visible, though they cause equal or even greater damage. According to United Nation Population Fund Report, around two-third of married Indian women are victims of domestic violence and as many as 70 per cent of married women in India. Thus it is quite obvious that this crime is increasing in its magnitude day by day and influencing more and more destitute women and girls. It is very binding and obligatory at this point of time to creating public awareness, advocacy for better policy and legal framework and the need for necessary support services to end violence against Women and Girl and uncover this unseen pain.*

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## 1. Introduction

The right to be safe and live free from violence is a fundamental human right. But all the people are not lucky enough to enjoy this right. Home is considered as the safest place to dwell but not always. There are situations where violence creeps into homes making life miserable. The term used to describe this exploding problem of violence within our homes is Domestic Violence. This violence is towards someone who we are in a relationship with, be it a wife, husband, son, daughter, mother, father, grandparent or any other family member. It can be a male's or a female's atrocities towards another male or a female. Anyone can be a victim and a victimizer. There are varied consequences of domestic violence depending on the victim, the age group, the intensity of the violence and frequency of the torment they are subjected to. Living under a constant fear, threat and humiliation are some of the feelings developed in the minds of the victims as a consequence of an atrocious violence. This violence has a tendency to explode in various forms such as physical, sexual or emotional. Among these varied forms of domestic violence this paper will focus on the domestic violence in relation to women because women being a weak and vulnerable group are exposed more to this menace.

## 2. Indian Laws against Domestic Violence

Indian laws against domestic violence are irrational and discriminatory, and blatantly violate Provisions of the Indian Constitution and the Universal Declaration of Human Rights.

- The Universal Declaration of Human Rights proclaims that —everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law. But Indian laws against domestic violence presume that the accused is guilty until proven innocent and violate universal principles of fair trial.
- Article 21 of the Indian Constitution states that "no person shall be deprived of his life or Personal liberty except according to procedure established by law". But every year, over 1 lakh innocent persons (one innocent person every 5 minutes) are arrested under IPC Section 498A, including 4,000 innocent senior citizens (one innocent elderly person every 2.5 hours) and 350 children (one child per day) without evidence or investigation.
- The Universal Declaration of Human rights states that —all are equal before the law, and are entitled without any discrimination to equal protection of the law". Article 14 of the Indian Constitution declares that —The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But Indian laws against domestic violence blatantly deny protection to men against any form of domestic abuse, and every year, over 56,000 married men commit suicide due to verbal, emotional, economic and physical abuse and legal harassment.
- Indian laws against domestic violence are touted as tools for women's protection and Empowerment. But in the last four years alone, over 1,23,497 women have been arrested under IPC Section 498A alone, without evidence or investigation, not for committing any crime under law, but only because they were related to a man.

### 3. The Truth about Domestic Violence

Unbiased research on domestic violence the world over shows that:

- 1) Domestic Violence is not a gender issue.
- 2) Men and children are victims too.
- 3) Women are just as likely as men to commit domestic violence.
- 4) Women initiate domestic violence just as frequently as men do.
- 5) Men and children are less likely to report the incident when they are abused by their Wives/girlfriends and mothers respectively.
- 6) Women's organizations spread myths about domestic violence (e.g. Men are always the Aggressors and women are always the victims).
- 7) Media coverage is often biased (e.g. A young married woman committing suicide is Automatically reported as dowry death and a young married man committing suicide is attributed to financial/family problems or mysterious reasons).
- 8) Politicians and bureaucrats find no incentive in addressing domestic violence by women against men, children and fellow women.

#### Domestic Violence Act for Women's Empowerment in India

Domestic Violence Act 2005 is the first significant attempt in India to recognize domestic abuse as a punishable offence, to extend its provisions to those in live-in relationships, and to provide for emergency relief for the victims, in addition to legal recourse.

#### Why A Legislation for Domestic Violence?

Domestic violence is among the most prevalent and among the least reported forms of cruel Behaviour. Till the year 2005, remedies available to a victim of domestic violence in the civil courts (divorce) and criminal courts (vide Section 498A of the Indian Penal Code) were limited. There was no emergency relief available to the victim; the remedies that were available were linked to matrimonial proceedings; and the court proceedings were always protracted, during which period the victim was invariably at the mercy of the abuser. Also the relationships outside marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence. It is essentially to address these anomalies that the Protection of Women from Domestic Violence Act was passed.

#### Who Are The Primary Beneficiaries of This Act?

Women and children. Section 2(a) of the Act will help any woman who is or has been in a domestic relationship with the respondent 'in the case. It empowers women to file a case against a person with whom she is having a domestic relationship 'in a 'shared household', and who has subjected her to domestic violence'. Children are also covered by the Act; they too can file a case against a parent or parents who are tormenting or torturing them, physically, mentally, or economically. Any person can file a complaint on behalf of a child.

#### Who Is Defined As Respondent By This Law?

Any adult male member who has been in a domestic relationship with the aggrieved person is the respondent. The respondent can also be a relative of the husband or male partner. Thus, a father-in-law, mother-in-law, or even siblings of the husband and other relatives can be proceeded against.

#### How Does The New Law Define Domestic Abuse?

The law says any act/conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered domestic violence. 25 Under this, the law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same. Even a single act of commission or omission may constitute domestic violence in other words; women do not have to suffer a prolonged period of abuse before taking recourse to the law.

#### How Does The Law Ensure That A Wife Who Takes Legal Recourse In The Event Is Not Intimidated Or Harassed?

An important aspect of this law is that it aims to ensure that an aggrieved wife, who takes Recourse to the law, cannot be harassed for doing so. Thus, if a husband is accused of any of the above forms of violence, he cannot during the pending disposal of the case prohibit/restrict the wife's continued access to resources/ facilities to which she is entitled by virtue of the domestic relationship, including access to the shared household. In short, a husband cannot take away her jewellery or money, or throw her out of the house while they are having a dispute.

#### What Are The Main Rights Of A Woman As Recognized By This Law?

The law is so liberal and forward-looking that it recognizes a woman's right to reside in the Shared household with her husband or a partner even when a dispute is on .Thus; it legislates against husbands who throw their wives out of the house when there is a dispute. Such an action by a husband will now be deemed illegal, not merely unethical. Even if she is a victim of domestic violence, she retains right to live in 'shared homes' that is, a home she shares with the abusive partner. Section 17 of the law, which gives all married women or female partners in a domestic relationship the right to reside in a home that is known in legal terms as the shared household, applies whether or not she has any right, title or beneficial interest

in the same. The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or partner. The law, significantly, recognizes the need of the abused woman for emergency relief, which will have to be provided by the husband. A woman cannot be stopped from making a complaint/application alleging domestic violence. She has the right to the services and assistance of the Protection Officer and Service Providers, stipulated under the provisions of the law. A woman who is the victim of domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under Section 498A of the Indian Penal Code. Sections 18-23

provide a large number of options for legal redressed. She can claim through the courts Protection Orders, Residence Orders, Monetary Relief, Custody Order for her children, Compensation Order and Interim/ Ex parte Orders.

If a husband violates any of the above rights of the aggrieved woman, it will be deemed a Punishable offence. Charges under Section 498A can be framed by the magistrate, in addition to the charges under this Act. Further, the offences are cognizable and non-boilable. Punishment for violation of the rights enumerated above could extend to one year's imprisonment and/or a maximum fine of Rs 20,000.

#### **4. Domestic Violence Act – Some Reflections**

A woman can be prosecuted under the Domestic Violence Act as failure to bring charges against women involved could encourage the men to instigate the female members of a family to commit violence, the Delhi High Court has ruled. "It is common knowledge that in case a wife is harassed by the husband, other family members may also join him in treating the wife cruelly and such family members would invariably include female relatives as well.

"If restricted interpretation is given...the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members," a Bench comprising justices A K Sikri and Ajit Bharioke said. Interpreting the provisions the Act, the court said that 'relatives' included not only male but also female members of a family.

"Various provisions in the Domestic Violence Act provide for clinching circumstances indicating that female relative was clearly in the mind of the legislature when it comes to filing of the complaint/application by a wife or a female living in a relationship in the nature of marriage," the Bench said. The judgement was passed on the plea of a woman challenging order of a trial court initiating proceedings against her in a case of alleged domestic violence. Turning down the plea of accused that female members of a family cannot be charged under the Act, the bench said though the provisions are not clearly drafted it did not stop the court from arriving at interpretation. "No doubt, the provision is not very satisfactorily worded and there appears to be some ambiguity in the definition of 'respondent' as contained in the Act."But then, courts are not supposed to throw their hands up in the air expressing their helplessness. We, thus, hold that the expression 'a relative' in the Act includes female relative as well," the Bench said.It said "merely because amplitude of 'respondent' in a case where a wife or female living in a relationship akin to marriage initiates the proceedings is widened, would not be a ground to hold that such a provision is ultra vires."

#### **5. Domestic Violence Act Not Backed Up**

Since its enactment, the Protection of Women from Domestic Violence Act is hampered by Limited awareness and inadequate budgets. Women's groups at the national consultation on the Act regretted "the lack of commitment

on the government's part to effectively implement it". Crucial factors that aid the implementation of the Act - appointment of protection officers (POs) and counsellors; training of police and judicial officers and awareness generation and publicity - have been neglected, the meet found. Ranjana Kumari, Director of the Centre for Social Research (CSR), said: "This is a path breaking civil law but it needs support systems in place to deliver justice to the victims of domestic violence. (The lack of these owes to) the callousness of the authorities towards women, the lack of initiative to spread awareness about the Act and the lack of adequate budgetary allocation."Only 14 states have separate budgetary allocations for the Act. Most states are yet to appoint POs, who are often the first ' points of contact' for victims of domestic violence. The CSR, during countrywide consultations, found that even when POs were appointed, they were at times unaware of their duties or the legal remedies available to the victims. Another drawback is the lack of publicity. The CSR found that people were aware only of the dowry law and didn't understand the significance of this Act. Even emergency helpline numbers for victims haven't been publicized effectively. Praveen K. Bharti of NGO Unman said: —This is one of the most progressive laws as it covers all domestic relationships of women...but women are scared.

The external reasons for indulging in domestic violence are many:

- Incompatibility between couples
- Alcoholic husband
- Inferiority complex due to differences in professional success of spouses
- Poor performance in school by children
- Behaviour issues of children
- Maladjustment between in laws
- Disregard for the in laws

The reasons may be many more... it can even be endless. But could there be a universal cause for this behaviour?

Indulging in violence is nothing but the manifestation of one's animal instincts. An individual finds a need to exhibit his/ her animal instincts when he/ she is unable to work on his emotions .Then he/ she feels the need to be in control of others. This feeling causes him or her to become violent. While most of us focus on physical violence, I would like to highlight on mental and emotional violence. This is very much prevalent in educated well to do families where sarcasm, criticism, humiliation , blame, suspicion and so many other methods are used to inflict mental violence on one another. Mental and emotional violence have far more damaging consequences on an individual. This is prevalent amongst families where the members disrespect one another and have no feelings of love for one another. This also takes place when parents are extremely demanding of their children and do not recognize their potentials in a particular field. This kind of violence is so subjective that many a time the victim suffers for years without anyone else even knowing about it. Mental and emotional violence can have lifelong damaging consequences on one's personality.

## 6. Need for Stringent Laws

In 1983, domestic violence was recognised as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman. The main legislative measures at the national level for the children who become a victim of child labor include The Child Labor Prohibition and Regulation Act -1986 and The Factories Act -1948. The first act was categorical in prohibiting the employment of children below fourteen years of age, and identified 57 processes and 13 occupations which were considered dangerous to the health and lives of children. The factories act again prohibits the employment of children less than fourteen years of age. The Government of India passed a Domestic Violence Bill, 2001, —To protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto\* An act called Protection of Women from Domestic Violence Act, 2005 [ DVA, 2005 ] also has been passed. This Act ensures the reporting of cases of domestic violence against women to a Protection Officer who then prepares a Domestic Incident Report to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction.

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