

DOMESTIC VIOLENCE: THE DISASTROUS WEAPON AGAINST THE INDIAN WOMEN

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Violence against women constitutes a gross violation of women's fundamental rights, as guaranteed in the Constitution of India. It is also one of the most widespread violations of human rights. Known as 'gender-based' violence because it partly stems from women's subordinate status in society, it includes physical, sexual, psychological and economic abuse and cuts across boundaries of age, caste, religion and geographical area. It takes place inside the boundary of the house and outside in public spaces with manifestations ranging from the most universally prevalent forms of domestic and sexual violence, to natal family violence.

Violence against women takes many forms and not all include physical contact between the victim and the perpetrator. Examples include sexual harassment at workplace and indecent representation of women, in which women are targeted because of their "gender" and this emanates partly from women's subordinate status in the society. The person responsible for the violence is usually someone known to the victim, co-worker, friend, neighbour or even relative and family members. Hence, this discussion forays into the meaning of domestic violence and the need for enacting Domestic Violence Act of 2005.

CONCEPT OF DOMESTIC VIOLENCE

Society considers home as a secure place where individuals think and care one another and contribute to the development of one another. The constitution of India guarantees equal rights to women and equality before the law with them being considered to be on par with men in all aspects of life. However, the unfortunate reality is that women are discriminated in the society. This inequality is being reflected in the society which is composed of families and Women are victims of this gender bias as wives, sisters or daughters. Consequentially woman due to this gender discrimination experiences a state of insecurity throughout her entire life cycle.

DEFINITION OF DOMESTIC VIOLENCE

Violence against women has been an integral part of woman's existence as many a times, offence takes place within the environs of a home comprising of a family whose structure depends upon the society in which it is placed. In fact, cruelty became the part and parcel of domestic violence. However, there is no universally accepted definition of violence against women. Some human rights activists prefer a broad-based definition that includes "Structural Violence" such as poverty and unequal access to health and education. Others have argued for a more limited definition in order to not to lose the actual descriptive power of the term. In any case, the need to develop specific operational definitions has been acknowledged so that research

and monitoring can become more specific and have greater cross-cultural applicability. The United Nation's General Assembly Declaration on the Elimination of Violence against Women (1993) defines violence against women as “any act of gender-based violence that results in or is likely to result in the physical, sexual or psychological harm or suffering of women, including threats of acts such as coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. This definition refers to the gender-based roots of violence recognizing that

violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

(Urmila Bhardwaj, www.legalservicesindia.com)



Physical Violence

This elucidation broadens the definition of violence by including both physical and psychological harm done towards women as it includes acts in both private and public life. As such, the Declaration defines violence against women as encompassing, but not limited to, three areas: violence occurring in the family, within the general community and violence perpetrated or condoned by the State.

Traditionally domestic violence was mostly associated with physical violence. Now domestic violence is more broadly defined to include all acts of physical, sexual, psychological or economic violence that may be committed by a person who is a family member or a person who has been an intimate partner or spouse, irrespective of whether they lived together. In 1993, the United Nations

Declaration on the Elimination of Violence against Women identified domestic violence as one of contexts in which violence against women occurs, describing it as:

Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

(Pratima Sharma, 2006, 447)

In fact, domestic violence includes violence perpetrated by intimate partners and other family members. This can be manifested through the following kinds of abuses.

- a) Physical abuse such as slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder. It also includes traditional practices harmful to women such as female genital mutilation and wife inheritance i.e., the practice of passing a widow, and her property to her dead husband's brother.



Domestic Violence by Family Members

- (b) Sexual abuse such as coerced sex through threats, intimidation or physical force, forcing for unwanted sexual acts or forcing to indulge in sex with others.

- (c) Psychological abuse which includes behavior that is intended to intimidate and persecute taking the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away the custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.
- (d) Economic abuse includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs and controlling access to health care, employment, etc. Acts of omission are also included in this form of violence against women. Gender bias that discriminates in terms of nutrition, education and access to health care also amounts to the violation of women's rights. It should be noted here that although the categories above are listed separately, they are not mutually exclusive and go hand in hand (Guidelines – In cases of Violence against Women, 2013, 1).

Thus, domestic violence can generally be described as a happening when an adult in a relationship misuses the power by controlling. It is the establishment of control and fear in a relationship through violence and other forms of abuse. It is a cruel and an inhuman treatment where the abuser tortures and controls the victim by calculated threats intimidation and violence.

CAUSES FOR DOMESTIC VIOLENCE

A common saying in Indian society is that daughters are somebody else's treasure. Because of the instilled indoctrination of such kind, a girl child grows up with the insecurity that when she becomes a youth, she will be married and sent off far away from her home. She is told that her other home will be equally comfortable and secure. However, this is not always the case. The cruel truth is that whether at her home or at her in-laws house, a girl is often given lesser importance. To begin with her birth is not always an occasion to celebrate. As she grows her desires are suppressed because she is a daughter. At her in-laws home, she is made to live in fear of reprimand in case she does not live up to the role of the 'ideal wife'. Even when she is oppressed against and atrocities heaped upon her, she normally remains silent because she does not wish to destroy the peace of the house. There is a glorification of her *silence* which adds to her suffering and she is always ordered to 'adjust'.

A woman in an abusive relationship does not normally exercise her right to register a complaint. Fear, shame and concerns related to negative family outcomes make women who experience domestic violence to remain silent. It is important to understand domestic violence in the context of social inequalities rather than on the dynamics of individual relationships. The structural inequalities in society have created a power differential between women and men with discrimination between male and female being so deep that families normally imbibe and absorb these prejudices in an unconscious manner. The male does not consider acts of violence against a woman as being a crime. Rather he takes it as a normal occurrence and a projection of his manhood. On the other hand, a woman also does not realize she is in an abusive relationship because while some relationships are clearly abusive from the outset, abuse often starts subtly and gets worse over time. As a result she develops an inferiority complex, starts losing her self-confidence and starts blaming herself for her miserable existence. She blames herself for the violent behavior of her partner and tells to her own self that she deserves it. When the woman assumes a passive role, the man's aggressive tendencies get further aggravated and he starts believing that he can indulge in violence and get away with it. Thus, when family which is

meant to provide security turns violent it is the women who always suffers. (Charu Walikhanna et al. 1-2)

EFFECTS ON THE WOMAN

Women who are victims of domestic violence live in fear, unable to predict when the next attack will come. They often blame themselves for the abuse, or deny it is taking place. They may ignore it, hoping it won't happen again. Abused women can develop post-traumatic stress which includes a range of symptoms as below:

- Sleeplessness, numbness, nightmares
- Panic attacks, feeling helpless
- Self-esteem is worn down
- Loneliness, loss of mental balance
- Sense of isolation and increasing dependence on the abuser
- Over time she starts to believe the insults and criticism
- Loss of physical and mental health
- Unable to build meaningful relations with her children and others
- Agitation, Anxiety and Depression
- Tendency to get angry without reason
- Loss of trust in others.

In addition to these, domestic violence may also result in serious injury or death if the victim does not leave the relationship. (Charu Walikhanna et al. 1-2)

MANAGEMENT OF DOMESTIC VIOLENCE:

The response to domestic violence is typically a combined effort between law enforcement, social services, and healthcare. The role of each has evolved as domestic violence has been brought more into public view. Domestic violence historically has been viewed as a private family matter that need not involve the government or criminal justice. Police officers were often reluctant to intervene by making an arrest, and often chose instead to simply counsel the couple or ask one of the parties to leave the residence for a period of time. The courts were reluctant to impose any significant sanctions on those convicted of domestic violence, largely because it was viewed as a misdemeanor offense. (Boyle A., et al., 2005, 9–13)

TREATMENT OF INJURIES CAUSED BY DOMESTIC VIOLENCE

Medical professionals can make a difference in the lives of those who experience abuse. Many cases of spousal abuse are handled solely by physicians and do not involve the police. Sometimes cases of domestic violence are brought into the emergency room, while many other cases are handled by family physician or other primary care provider. Medical professionals are in a position to empower people, give advice, and refer them to appropriate services. The health care professional has not always met this role, with uneven quality of care, and in some cases misunderstands about domestic violence. (Gerbert B, et al. 1999, 578–584)

LAW ENFORCEMENT:

In 1893, Domestic violence was recognized 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. Four types of cruelty are dealt with by this law, they are –

- Conduct that is likely to drive a woman to suicide
- Conduct which is likely to cause grave injury to the life, limb or health of the woman
- Harassment with the purpose of forcing the woman or her relatives to give some property.
- Harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.

The punishment is imprisonment for up to three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf. The above section relates to the criminal provisions of a more stringent offence. The civil law does not however address this phenomenon in its entirety. There was a need of provision in law with more pliable remedies to offer within the broader framework of civil and criminal laws. Thus there was a need for a law to be enacted keeping in view the rights guaranteed under the Constitution to provide for a remedy under civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

BACKGROUND FOR ENACTING DOMESTIC VIOLENCE ACT, 2005

In this 21st century, where we see the position of status of women has changed drastically. No more she is confined to the four walls of her household. However there still exist some areas wherein the situation is not like.

To overcome these problems there was a need for a law. There have been many attempts by the legislature in the past to bring in enactments for the protection of the rights of women. Despite of these legislations there is no legislation which particularly deals with rights of women against domestic violence. But what renders women powerless now is that in the absence of legislation defining a marital household. As understood in general sense, domestic violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law. Despite the apparent neutrality of the term, domestic violence law should ideally put a stop to violence, give protection against future abuse and use punitive measures to combat continued domestic violence.

In 1992, Lawyers Collectively drafted and circulated a Bill on domestic violence. This was widely circulated amongst women's groups and organizations including the National Commission for Women. In 1994 National Commission for Women came out with its draft Bill on domestic violence, which was vehemently criticized by women's organizations. By this time, most women's groups were united towards the need for a law on domestic violence. And they saw this as a way in which the State would issue a statement, recognizing that half its citizenry faces a peculiar kind of gender-based violence.

In 1999, the Lawyers Collective came out with its draft law on domestic violence after nation-wide consultations with many women's groups. Drafted in accordance with the UN Framework for Model Legislation on Domestic Violence, this bill had the broad support of the women's movement to its major provisions. After much pressure from women's groups, the

Government of India introduced a Bill on domestic violence in the Lok Sabha, titled ‘The Protection from Domestic Violence Bill 2001’.

By the time various deliberations were going on, great need was felt to such legislation in effect. The above mentioned defects were rectified and thus the act was finally passed. Ministry of Women and Child Development had issued a notification to bring it into force from 26th October, 2006. The Act was passed by the Parliament in August 2005 and assented to by the President on 13th September, 2005. But implementation was pending as detailed consultations were required with the State and other agencies for framing rules.

The Ministry has simultaneously issued another notification laying down the rules framed for the implementation of the Act. These rules may be called “The Protection of Women from Domestic Violence Rules, 2005”. These rules provide for, among other things, appointment of protection officer, service providers and counselors. Action can be taken in the event of the respondent breaching the protection order passed by the Magistrate in favour of the aggrieved woman, which is also provided in these rules. (www.legalserviceindia.com)

THE DOMESTIC VIOLENCE ACT, 2005

The Government of India taking cognizance of the situation wherein millions of women were being victimized of domestic violence passed the Protection of Women from Domestic Violence Act, 2005. This is an Act of the Parliament of India which aims to protect for effective protection of the rights of women guaranteed under the Constitution who are victims of any kind occurring within the family and for matters connected therewith or incidental thereto. The Act came to action from October 26, 2006 soon after it got the assent from the President.

The Domestic Violence Act, 2005 can be summerized as follows:

- ❖ The women victim has been referred to as the ‘aggrieved woman’ and the aggressor as the ‘respondent’. (Section 2(a) and (q))
- ❖ IF a woman in a ‘domestic relationship’ is subject to violence within the family, then she can file a complaint under the Act.
- ❖ An aggrieved woman or a Protection Officer or any other person on behalf of the aggrieved woman may present an application to the Magistrate seeking relief. (Section 12)
- ❖ The act makes provisions for the appointment of Protection Officer, Service provider and Counsellor. The Rules provide for action to be taken on breach of Protection Order passed by the Magistrate in favour of the woman. The woman is entitled to protection and assistance. Section 5 not only lays down the duties of a Police Officer, Protection Officer, service provider but also her right to avail of services of service providers and Protection Officers, free legal services under the Legal Services Authorities Act, 198 and her right to file a complaint under section 498A of the Indian Penal Code, Wherever relevant. (Section 5)
- ❖ The aggrieved woman as the right to Shelter and Medical facilities (Sections 6 & 7)
- ❖ The Act has provision for Counsellors (Section 14/Rule 14) and Assistance of Welfare Expert (Section 15)
- ❖ Proceedings are to be held in camera at the discretion of the Magistrate or if either party to the proceedings so desires. (Section 16)

- ❖ Every woman in a domestic relationship shall have the right to reside in the shared household. (Section 17)
- ❖ The Magistrate after giving the aggrieved woman and the respondent an opportunity of being heard may pass a protection order in favour of the aggrieved person. (Section 18)
- ❖ The Magistrate may pass orders for grant of monetary relief to the aggrieved woman. (Sections 20)
- ❖ There is provision for interim relief for the aggrieved woman. (Sections 23)
- ❖ Provision for Appeal to the Court of Session within 30 days from the date on which the order made by the Magistrate is served on the aggrieved woman or respondent. (Section 29)
- ❖ Protection Officers and Service Providers deemed to be public servants. (Section 30)
- ❖ Breach of protection order or an interim protection order by the respondent shall be an offence under the Act punishable with imprisonment which may extend to twenty thousand rupees or with both. (Section 31)
- ❖ Penalty for not discharging duties as Protection Officer i.e., imprisonment upto one year or fine which may extend to twenty thousand rupees or with both. (Section 33). (Protection of Women from Domestic Violation Act, 2005)

Over the years, the scope of the Domestic Violence Act has been widened up. For instance, whereas the primary aim of the law was to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the latest decision by the Madras High Court says that complaints under Protection of Women from Domestic Violence Act, 2005, need not be made only against men. (The Hindu, 2014)

The Madras High Court held that the legislation does not insulate women from being accused of offences mentioned under it, the protection for a woman also is against another women like sisters or mother-in-law. This is quite new interpretation for the law which has traditionally been providing protection to women living in a household such as sisters, widows or mothers from men but was silent about the violence from the women in the house.

The Domestic Violence Act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic and according to the law harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition – this part is in addition to the Dowry Prohibition Act which is already available for women. Thus the victims of dowry harassment have been given additional protection in the Domestic Violence Act.

WIDENING THE SCOPE OF DOMESTIC VIOLENCE

As has been mentioned above the scope of ‘domestic violence’ has been widened to great extent in the Act as it includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic right from the day of her marriage. Worth to mention is threatening the woman by not giving her food or goods of day to day requirements too can be domestic violence. Additionally, if the man is harassing the woman for dowry or demands the same from her relatives, it would amount to domestic violence.

The Protection from Domestic Violence Act, 2005 is available for those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household. The cohabitation may be consanguinity, marriage or a relationship in the nature of marriage or adoption. Widening the scope, the legislators also included the women living together as a joint family like sisters, widows, mothers, single women etc.



Sexual Harassment

RIGHT TO SECURE HOUSING

A lot of women were facing a dilemma when they were forced from their in-laws house and were unable to claim property rights at their parental property before the amendment of the Hindu Succession Act, 2005. However, not just the Hindu Succession Act ensures women a part in the ancestral property but the Domestic Violence Act 2005 also ensures the woman's right to secure housing as it provides for the woman's right to reside in the matrimonial or shared household. Interestingly, the right to reside in matrimonial or shared household is going to exist whether or not she has any title or rights in the household.

Thus, the Domestic Violence Act is not just about protecting women from domestic violence but also about providing them right to shelter and right to live with dignity which has been ensured to them under the Article 21 of the Constitution of India. The Domestic Violence Act has been quite successful as a lot of women have come up to file the criminal cases against the perpetrators and many of them even got swift justice. (<https://www.kaanoon.com>)

RELIEF MEASURES PROVIDED BY THE COURT TO THE AGGRIEVED WOMAN:

The Court can pass the following orders in favour of the aggrieved women:-

1. ORDER OF COUNSELLING:

Under Section 14- the Magistrate may, at any stage of the proceedings, direct the respondent or the aggrieved person, either singly or jointly, to under-go counselling with any member of a service provider.

COUNSELING FOR PERSON AFFECTED:

Due to the extent and prevalence of violence in relationships, counselors and therapists should assess every client for domestic violence (both experienced and perpetrated). If the clinician is seeing a couple for couple's counseling, this assessment should be conducted with each individual privately during the initial interview, in order to increase the victim's sense of safety in disclosing domestic violence, in the relationship. In addition to determining whether domestic violence is present, counselors and therapists should also make the distinction between

situations where battering may have been a single, isolated incident or an ongoing pattern of control. The therapist must, however, consider that domestic violence may be present even when there has been only a single physical incident as emotional/verbal, economic, and sexual abuse may be more insidious.

COUNSELING FOR OFFENDERS:

The main goal for treatment for offenders of domestic violence is to minimize the offender's risk of future domestic violence, whether within the same relationship or a new one. Treatment for offenders should emphasize minimizing risk to the victim, and should be modified depending on the offender's history, risk of reoffending, and criminological needs. It has been demonstrated that domestic violence offenders maintain a socially acceptable façade to hide abusive behavior, and therefore accountability is the recommended focus of offender treatment programs. Successful completion of treatment is generally associated with old age, higher levels of education, lower reported drug use, nonviolent criminal histories, and longer intimate relationships. Anger management alone has not been shown to be effective in treating domestic violence offenders, as domestic violence is based on power and control and not on problems with regulating anger responses. Treatment of offenders involves more than the cessation of abusive behavior; it also requires a great deal of personal change and the construction of a self-image that is separate from former behavior while still being held accountable for it. (Pankaj Chhikara, et al., 2013, 73-75)

2. PROTECTION ORDER:

Under Section 18 the court can prohibit the respondent from the following –

- (a) Committing any act of domestic violence
- (b) Aiding or abetting in the commission of acts of domestic violence;
- (c) Entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) Attempting to communicate in any form, whatsoever with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) Alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) Causing violence to the dependents other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) Committing any other act as specified in the protection order.

3. RESIDENCE ORDER:

Under Section 19 the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order as follows -

- (a) restraining the respondent from dispossessing or in any other manner disturbing the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) Directing the respondent to remove himself from the shared household;
- (c) Restraining the respondent from alienating or disposing off the shared household or encumbering the same.

- (d) Restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
- (e) Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same.

4. MONETARY RELIEFS:

Under the Sections 20 and 22 the Magistrate may direct the respondent to pay 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 and such relief may include, but not limited to –

- (a) The loss of earnings;
- (b) The medical expenses;
- (c) The loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) The maintenance for the aggrieved person as well as her children.

5. CUSTODY ORDERS:

Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child. (Charu Walikhanna et al. 8)

Any of the above relief can be granted on an interim basis, as soon as you make a complaint of domestic violence and resent application for any of the relief before the Court.

To conclude, despite efforts made by various sections of society and the Government to curb the menace of domestic violence against women, there is a rise in domestic violence. This can be curbed by (a) educating women about her rights (b) community screening for domestic violence (c) providing adequate assistance to the victim (d) by offering safe shelters, crisis intervention, advocacy, and education and prevention programs (e) provision of strict laws and punishment for offence of domestic violence. Thus it is necessary that every strata of society must contribute to ensure a violence free life for every woman.

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