

## Domestic violence: Cruelty within walls as a violation of human rights

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### Abstract

Domestic violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse can be physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound someone. Domestic violence can happen to anyone of any race, age, sexual orientation, religion or gender. It can happen to couples who are married, living together or who are dating. Domestic violence affects people of all socioeconomic backgrounds and education levels. The management of domestic violence essentially requires combined effort of law enforcement, social welfare and health care services. Although efforts have been made in this direction, the attended cases represent just the tip of the iceberg, as majority of the cases are not reported due to social pressures from family members or social stigma of defamation. Real change in these cases can only be brought about by changing the mindset of society through education and better law enforcement.

**Keywords:** domestic violence, law enforcement, abuse, social welfare, human rights

### Introduction

Violence against women is not a new phenomenon. All through the ages women have been the victims of violence. Violence against women is prevalent in all cultures, societies religious communities and regions. In Indian women have to bear the brunt of domestic, public, physical as well as emotional and mental violence. Violence against women is, to a large extent, linked to her status in society.

Violence against women increased many times during the Muslim rule. The Purdah system was introduced. Girls began to be married off at a tender age. In certain communities the new-born baby girls began to be killed. Polygamy took strong roots in the society. Rapes and forced marriages became common. They were kept confined to the four walls of their homes. All this brought them to the level of slave or cattle. Various obligations and restrictions were imposed on them, penalties and punishments were prescribed if a woman violated them. Thus the violence against women got a societal sanction.

Domestic violence, also known as domestic abuse, spousal abuse, battering, family violence, intimate partner violence (IPV), is defined as a pattern of abusive behaviors by one partner against another in an intimate relationship such as marriage, dating, family, or cohabitation. The most primitive idea that exists about woman shows her as a package of Evil doing and roots of all evils. That makes us wonder and question about how women have feared under the yoke of ancient civilization and culture. But what about today? Unequal status of women being offensive to human dignity and violation of women's right has emerged today as fundamental crisis in this globalization world. Despite social reform movement, constitutional and legal provision aimed at securing equal status for women, there is an increasing concern all over the world about the violence in the family. Domestic violence is violence that occurs within the private sphere, generally between individuals who are related

through intimacy and blood. It is worthwhile to mention that domestic violence, which is often recognised as a private matter of family, visualized the human right issue globally under the banner of the Universal Declaration of Human Rights (UDHR) 1948. These sacrosanct rights which emphasize upon a common standard of achievement for all people and all nation shall not in derogation with the idea of increasing demand for a decent civilized life basing upon inherent dignity of each human being, is well respected and protected <sup>[1]</sup>. The trespass on civilized life and human dignity manifested in domestic violence, has therefore eluded the human right concern. Domestic violence occurring as physical and psychological abuse defiles the very existence of the abused women victim and thereby contravenes the provisions of the Universal Declaration Human Right <sup>[2]</sup> and the protection of human right act 1993 <sup>[3]</sup>.

The protection of women from domestic violence Act, 2005 was brought into force by the Indian govt. From Oct 26, 2006. Primarily meant 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 law also extend its protection to women who are sister, widows or mother. Domestic violence under the Act, includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demand to the woman or her relatives would also be covered under this definition. Domestic violence is violation of women's human rights.

This article is about the positive and negative aspect of the domestic violence Act, 2005. Women has always been depressed by the men, and this act aims at providing empowerment to them from any kind harassment or abuse, But in peace of empowering them the legislation went too far and eventually in order to bring equal level they brought

men under scanner for the need to empower.

This paper primarily deals with various aspect of domestic violence act and brings to the light some serious shortcomings and loopholes of this Act, and also offers certain suggestions to plug those loopholes.

### **Death Trap For Women At Home**

Family violence is increasingly being recognised as a major problem with serious health and economic consequences both in India and other countries. In India the complex phenomenon of violence against women, within the family has been brought into the public domain through the concerned effort of NGOs legislators and various governmental bodies. These studies uniformly endorse the fact that domestic violence is physically and psychologically damaging, often with long term consequences, What however continue to poorly understood the impact such violence has on the mental health status of women affected. Any discussion on law has to begin with a decision on the constitution which provide the legal, social and political Matrix within which we interact with each other. Today, this Matrix has become so vitiated that marriage for many women is virtually deathtrap.

Domestic violence is a complex issue, which affects everyone of us. It reaches every corner of our society. It does not respect class, race, religion, culture or wealth. Although in a vast majority of cases, domestic violence is experienced by women and the perpetrator is male, we should recognise that men, children and the elderly can be abused, and that domestic violence also occur in gay and lesbian relationship. Recently a case was registered against stepfather, who has raped or sexual assulting his 14 year old daughter in Sonipat <sup>[4]</sup>.

A case of owner killing, a man killed his daughter, who had returned with her lover after 5 years to his parental village <sup>[5]</sup>.

A man in Karnal district in Haryana killed his wife by slitting her throat in wee hours <sup>[6]</sup>.

Aforesaid incident shows that present status of women in our society is very is insecure, even a 3 years old girl or a 60 years old age women is on death trap in every movement. This is the loophole of this Act. Which come into the force for the protection of women. In the Indian society especially in less developed areas the cases of domestic violence is very common. Overall one-third of the women age 15-19 have experienced physical violence and about in 1 in 10 have experienced physical or sexual violence. Even the large number of domestic cases are not reported and still hushed up matter in many households. A huge number of women rural India do not report domestic violence because they feel, it is their destiny.

### **Type of Domestic Violence**

All forms of domestic abuse have one purpose: To gain and maintain control over the victim. Abusers use many tactics to exert power over their spouse or partner as dominance, humiliation, isolation, threats, intimidation, denial and blame.

#### **A. Physical Abuse**

It also includes, “any action or conduct which can cause bodily pain, harm or danger to life, limb or health or impair the health or development of the person aggrieved, and include assault, criminal intimidation and criminal force” <sup>[7]</sup>.

Beating, slapping, hitting, kicking, puncturing and shoring are some of forms of instance of physical abuse.

#### **B. Sexual abuse or a threat of sexual abuse**

It includes, “any conduct of a sexual nature that abuse humiliate, degrades, or otherwise violates that dignity of a woman” <sup>[8]</sup>. Forced sex or even refusal to co-operate in contraception, can amount to abuse. Significantly, sexual abuse of a child (includes any action or conduct of a sexual nature that abuse, harms or violates minors) in a domestic sphere has also been covered under the Act.

#### **C. Verbal and Mental abuse**

It includes, “Insults, ridicule, humiliation, degrading or name calling.” (Including insults directed at a woman for not being able to have a child / a male child) and repeated threats to cause physical pain to any person whom the woman is connected within some form <sup>[9]</sup>.

- Preventing a woman or a child from leaving the house;
- Preventing a person from taking up a job;
- Forcing a woman to leave a job;
- Preventing a woman to meet a person in the normal course of events;
- Forcing a woman to marry when she does not want to or a person she does not want to and
- Threatening to commit suicide.

#### **D. Economic Abuse**

It includes, “deprivation or threatened deprivation of any or all economic and financial resources to which the woman is entitled under law or custom whether payable under an order of court or otherwise on which a woman require out of necessity. <sup>[10]</sup>”

- Not providing money for maintaining a woman and her children;
- Not providing food clothes medicine for them;
- Preventing a person from doing her job;
- Not allowing her to use husband’s salary;
- Taking away part of her salary;
- Forcing her out of the house she lives in;
- Preventing her from accessing certain part of the house;
- Not allowing her to clothes articles or things of general household use and
- Not paying rent if she is staying in a rented home.

This act provides for enforcement officer to facilitate filing of complaint by women victims of domestic violence and even allows third parties complaint without imposing civil or criminal liability provided acted in good faith <sup>[11]</sup>. The remedies under the Act are in the nature of ‘stop violence’ orders, which are granted by the courts on an application by the aggrieved person. The Act addresses the issue of long delays in court proceedings by requiring magistrate to decide on an application for an order under the Act within 60 days. Though it is primarily a civil law, it is necessary to clarify that the criminal law element is triggered of only on the beach of the order for relief granted by the court under the Act. Therefore, contrary to the apprehension that this Act would lead to indiscriminate on the lodging of any complaint, in reality it is only when a person violates the order passed by the court can he be arrested.

An important feature of the Protection of Women from Domestic Violence Act is that it provides protection to a whole gamut of the aggrieved women <sup>[12]</sup>. facing violence

includes mothers, daughters sisters, wives, womens who are victims of bigamous or fraudulent marriages as well as relationship of cohabitation. Likewise the respondent under the definition given in the Act is “any male adult person who is, or has been in a domestic relationship with the aggrieved person” but so that his mother, sister and other relatives do not go scot-free, the case can also be filed against relatives of the husband or male partner<sup>[13]</sup>. Besides this, it is also covered all domestic relationship in a ‘shared household’. A shared household is a very broadly defined to include on where the abused person lives single with the abuser<sup>[14]</sup>. The most importantly this Act gives to women the right to reside in the shared household. The most significant element of this right to residence is the fact that this right is not affected by the property relation or ownership patterns of the house.

A person guilty of practicing any one of these forms of violence can be tried under Section 18 and 19 of the Act. Under the two section, a magistrate can issue a protection order<sup>[15]</sup> that will entitle the woman to her stridhan, jewellery and clothes and bar the offender from operating joint bank accounts or lockers without the court permission. According to Hindu customs, stridhan is the exclusive property of women, which includes money, property, jewellery or a share in the family business given to a woman as daughter, sister, wife or daughter-in-law. No one in the family can touch stridhan unless the women gifts it<sup>[16]</sup>.

In 1983, 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:

- 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. A law was enacted keeping in view the rights guaranteed under the article 14, 15 & 21 of 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.

Some practical steps to put a check on domestic violence against women have to be taken. Law-enforcing machinery must be trained and made sensitive to the issue. Women must orgainse themselves in groups and raise a collective voice against this violence. Every public-minded person and the media must contribute the spreading a civilized attitude in society. Women must help themselves and each other in the fight against violence.

But actually this is a social issue affecting everyone. In a democratic society violence against an section cannot be condoned. Attitude of the society is required to be changed if women are to live in the world as free human being without fear. It is very essential to live a digniful life.

### Conclusion and Suggestions

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:

- Educating women about her rights.
- Community screening for domestic violence.
- Providing adequate assistance to the victim.
- By offering safe shelters, crisis intervention, advocacy, and education and prevention programs.
- Provision of strict laws and punishment for offence of domestic violence.
- Protection officer must be trained and made available during night time and on public holiday.
- Mass awareness campaign must be launched to spread awareness among the targeted groups.

I am not against this Act, but i wish there could be more transparency in it, it must not be limited to women, rather it must be made equal both sexes, no discrimination must be made indeed by it. Article “14 right to equality” as well as Article 21 of the constitution is violated. So I wish that the legislation must look to it.

To conclude it is therefore necessary that every strata of society must contribute to ensure a violence free life for every woman.

### References

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3. Section 2(d) of the Protection of Human Right Act, 1993, “Human Rights means the rights relating to life, liberty, equality and dignity of the individuals guaranteed by the constitution or embodied in international convents and enforceable by courts of India”.
4. The Tribune, 18 Feb 2018
5. The Hindu, 24 Feb 2018.
6. The Hindu, 24 Feb 2018.
7. Id. Explanation 1(i) to Section 3.
8. Id. Explanation 1(ii) to Section 3
9. Id. Explanation 1(iii) to Section 3
10. Id. Explanation 1(iv) to Section 3
11. Id. Section 4(1)
12. Id. Section 2(a)
13. Id. Section 2(q)
14. Id. Section 2(s)
15. Id. Section 18. A protection order may contain an order prohibiting the respondent from disposing the aggrieved person or in any other manner disturbing possessions, entering aggrieved person’s place of work or if the aggrieved person is child, it school.
16. Id. Section 19(g)