

IS DOMESTIC VIOLENCE ONLY AGAINST WOMEN OR MEN TO SUFFER?

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Abstract

Domestic violence may include physical or verbal abuse towards another and among the family members and between the couple either married or unmarried. The perpetrator may be mostly Men and victim is women. Have to go through tough times and have to face throes. But now situation has changed. Now, the perpetrator may be Women and victims will be men. Thus now it's revolving around different- different aspects.

The implications and consequences are unwarranted and untoward. Nobody wants to face this kind of violence as they traumatize and dampens the health conditions of the person or victim. India being a patriarchal or male dominated society, included mainly the women victims, and they are being suppressed, subjected to cruelty and humiliation, and not a case of stunning, may also includes sexual abuse.

Marital rape is one of the domestic abuses against the men or women either, on which there are no prescribed laws and regulations due to which this is not even illegal and criminal act. Think when someone is humiliating you sexually without your consent even after being the closest family members. This will create a unforgettable scenario in one's mind.

Thus, we have laws against domestic violence, for women as victims, in Indian laws and had been recognized in 'Indian Penal Code' [IPC] also there are various acts like 'Protection of Women from Domestic Violence Act, 2005. Also it is not the case like where this type of violence takes place only in family, but also children can also be subjected to domestic violence. The term domestic violence has the wider ambit and put many wider aspects under its aegis.

Keywords : Women, Men, Domestic violence, marital rape, children.

Introduction

This act grants and entitles the women to have the security against such heinous crime happening and are being committed in the Indian society. This act prohibits and forbids any kind of violence against women, in the family by the spouse, or any unmarried women having live-in-relationship. Economic abuse, physical abuse, emotional abuse, emotional abuse, mental abuse, has been thoroughly defined in the act, and the act has been drafted scrupulously.

Taking into consideration every aspect in the terms of violence it has been broadly dealt with various situations and laid down detailed provisions regarding protection and safeguarding interest and right of the aggrieved. It also contains the procedural follow up while going for taking a legal remedy, who can file the complaint, against whom the complaint can be filled? These are the certain questions comes into the mind of the victim while going for asking a legal help. Thus this act is sufficed in itself mentioning everything.

India Penal Code [IPC], section 498A

Dowry had always been the issue in lime light after the ones marriage is completed. This the common issue nowadays, and day by day varying situations could be witnessed regarding dowry crimes. Husband and in laws of the married women are the main suspect under this section. This section talks about the offences, situation going against the women due to dowry issue, demand by in-laws.

Under this section it has been covered that, any harassment against women by husband or husband side, leading to any injury to the body, or any harm whether it is physical or emotional is a crime. As Marital rape is not recognized in Indian law, and its gives men a infallible right to have force sex with his wife.

But even force sex without woman's consent can be challenged under this section. Also any such act, which compels or induce women to take such actions due to which she can lost her life, or have the threat on permanent damage to her body, any limb or any other organ would also be considered as a crime. Also harms include both bodily and mentally.

Dowry Prohibition Act, 1961

This act, above mentioned two acts and provisions are totally interlinked to each other. Somehow all these three acts have nexus among them. This act was enacted in the year 1961, which claims the receiving of any gift, giving any gift, for the purpose of dowry, by the either party of the couple, or any other third party in respect to the marriage, will be punished. The motive behind enacting and enabling this act was to eradicate the practice of dowry in the marriages, and leash out this increasing crime.

Section 304B¹:

This section of IPC defines the Dowry Death, or serious injuries leading the life of the women to the serious stage, due to harassment and criminal act used by the husband or husband side against the women. And punishment defined for dowry death, committed by the accused, shall be punished for not less than 7 years of imprisonment, or could be imprisoned for whole life.

Section 305 and 306²:

¹ Section 304B, IPC, 1860

² Section 305 and 306, IPC, 1860

This section of IPC defines the offence of abetment to suicide, against the deceased person. Former section defines the offence committed by the child, insane, delirious, or has committed suicide under the influence of intoxication or any person has abetted the suicide against such mentioned person herein. Latter section defines the act committed by any person, which compels other person to commit suicide shall be punished for not less than described imprisonment or could extend up to 10 years of imprisonment. Thus if any harassing means, use by the husband or the husband side, against the women, which influenced her to commit suicide, can be punished under the aegis of this section.

Section 340 and 349³:

Both the sections are of IPC. Former section talks about the wrongful confinement with criminal intention. So if any male spouse, whether married or living in live-in-relationship, wrongfully confines her female spouse, with the motive to extort or use any coercive action or to torture her physically shall be punished under this section. Latter section talks about the, force used by anyone against other which is criminal in nature, which causes motions, or disrupts the motion, or cessation to motion to other or by use of any other substance against someone.

Section 314 and 315⁴:

These both the sections, defines the punishment and indirectly states the feticide and infanticide. Section 314 states that if any person commits such act which intends to cause miscarriage of women, or causing to death to that women with criminal intentions or without any helpful cause, the person shall be punished for imprisonment which could extend till 10 years. Latter section i.e. 315 of IPC defines the act committed by any person against the women, with intention to prevent the child of being born, or does such act that kills the child before being born, or kills the child instantly after being born shall be punished with same punishment defined under section 314 of the IPC.

In the matter name *S.R. Batra .V/Smt. Taruna Batra*⁵ the apex court decided the clarified and ratified the definition of Shared Household given under section 2 [s] of the Domestic Violence act, 2005. Supreme Court said, that the definition is bleary and not very clear, and it clumsy to be clearly interpreted.

There is a clause in Constitution of India, which is article 20 which states that no law which has been drafted and enacted subsequent to the offence committed shall have retrospective effect. But Supreme Court in the case named, *V.D. Bhanot v/s Savita Bhanot*⁶, upheld the decision given by the Delhi High Court, in which retrospective effect was discussed regarding Domestic Violence Acts 2005. Delhi High Court said that, if the women has shred household with her husband before the enactment of the said act, she would be still entitled to be entertained or claim maintenance under the concerned act.

³ Section 340 and 349, IPC 1860

⁴ Section 314 and 315, IPC, 1860

⁵ S.R. BATRA SMT.v/s TARUNA BATRA, Appeal [civil] 5837 of 2006

⁶ V.D. BHANOT v/s Savita Bhanot, 2012 3 SCC 183

The objective of the Act lays down An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The Madras High Court in *Vandhana v. T. Srikanth*⁷, in one of the early cases since the enactment of the DV Act, observed that the Act was formulated to implement Recommendation No. 12 of United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1989 and which was ratified by India in June, 1993. Interpretation of the DV Act should conform to international conventions and international instruments and norms. The Bombay High Court in the case of *Ishpal Singh Kahai v. Ramanjeet Kahai*⁸, reiterated that the object of the DV Act is to grant statutory protection to victims of violence in the domestic sector who had no proprietary rights. The Act provides for security and protection of a wife irrespective of her proprietary rights in her residence. It aims at protecting the wife against violence and at the prevention of recurrence of acts of violence.

Domestic Violence in Male Domain

While moving towards domestic violence against men, it will raise many unanswered questions, in the mind of people. Generally, we have seen that, women are the only subject of DV and all the crimes happening around us. We always have believed and there have been many superstitions that, men do have masculinity, they have power physically, they can dominate others and thus, it would be naive of thinking that men can be ever subjected or victim of offences such as DV or molestation, rape.

But we have forgotten one thing that society has been developed, and every woman knows about her rights, and everyone is being treated equally with each other. Thus, women have developed more, and it's very eminent that these kind of offences could be committed against men also. Thus it has been learned by the legal jurist in India and also in international countries, that DV happens against men also, but the cases are being not reported, or can't be decided because of paucity of legislations in favor of male domain of the society. The DV could be commissioned against men in certain ways like:

- Slurring men, using slangs and abusive phrases, amounting to mental abuse
- Scratching upon the past incidents, this can lead to emotional stability, and called as emotional abuse.
- Showing oppressive behavior, being over possessive at every moment of life, and getting miffed of jealousy of recognition of the male in the society.
- Intervening with his enjoyment and precious moments with family and friends.
- Being an authority over controlling his finances and expenses, even if he is earning well.
- Using physical force, slapping, minor violence at frequent intervals in a day,
- Threaten to harm or sustain injuries to him or to his family members or to punish him, without any lawful and valid justification.

⁷ 2007 SCC Online Mad 553

⁸ 2011 SCC Online Bom 412

- Unknowingly aversion because of personal reason against men

Statistics show that, 1000 men studies out of which, 52.4% men have experienced gender base violence at their home or any other place, in India. 51.5% men, has faced domestic violence or intimate partner violence in their homes. That included both physical as well as emotional violence. And not forgetting, 10.5% men have faced gender based violence through their intimate partner in homes, which is slightly different to that of DV.

Thus it has been recorded in the usual course that, most ubiquitous form of violence, if being committed against men in Indian society, is physical and emotional abuse, which can be totally co-related to the points mentioned above. There could be any reasons behind the erupting violence matters against male and this is percolating in various organs of the society and also at the grassroots society, with untoward pace. This could be the factor behind the cracking of societal foundation, and could dampen the coming generation and their life lessons.

The reasons hidden and settled for DV in male domain are:

Gender pre determined facts and stereotypes in society:

It is usually notices that India is seen as the male dominated society, and runs behind the authorities of men. Thus, men being victim of this kind of violence, are silent and not reporting the issues, because of the societal thinking and norms. It is very much settled that women could be only sufferer of these evils, and thus all Indian laws have been settled in favor of female domain.

Emotional and family pressure:

In India we mostly follow the concept of patrilocal, where married couple lives with the family of the husband only. Thus fearing of getting insulted, and loosing the earned respect, if the incident would be reports, is one of the major cause behind this huge underreporting of the incidents, at such colossal level.

Financial issues and unemployment:

Not having sufficient bank balance in their accounts, poor income means, which could miffed the women or spouse of the person. Thus this is one of the reasons, why women commit the DV against men because of the insufficient money, which can't help to even fulfill the basic needs. Also the high unemployment rates amid men has been noticed from some past months, due to which many have lost their well settled jobs, and many could find new one. This creates mental instability in mind and disrupts the thinking process of the individual. And thus unresponsive person in the daily course of households would be creating the situations where DV can happen very certainly.

Effects of violence on men

Any unreported and unaccepted violent incidents may make men weaker from inside, as managing everything from officials work to taking responsibility from pin to car of house establishment. Being a bread earner, working as a official in offices, being scolded by superiors, and thus again getting into the negative atmosphere can dampen and deteriorate the health conditions in very bad manner. WHO in 2002 has stated that denial of these incidents may lead to more plunging of men, into drugs, smoking, alcoholism, increased sexual desires and high blood pressure. Also it has been noted that more suicidal rates are found amid married men, married women only thinks of committing of suicide, whereas more number then women thinking commit the suicide.

Legal issues

The very saddening and dejecting issue in the Indian legal field is that, despite of recording cases of DV and other incidents of violence against men, doesn't make any step forward to secure the interests and rights of men. Rather protecting the men against this crime, we can see other concept like Legal Bias towards safeguarding only women. The laws like Dowry Prohibition Act, and passing on of section 498A by the Supreme Court in the past years proves this and this is the living evidences that, men are the only predators and made up of iron, which cannot face any harm by the family or society.

HARASSMENTS TO HUSBAND BY FIR BY WIFE

Complaints were filed against the husband to the police. After police enquired it was found that the allegations were baseless and this resulted in cruelty against the husband. In the case of Vinod Kumar Sharma v. Nutan Sharma⁹, Court observed that Wife and at her command and occasion, likewise submitted questions against the behest to the businesses i.e., to state Central Social Welfare Board. The grumblings to the businesses and furthermore prompted holding of a gathering cum-request against the spouse. The business, in any case, didn't make a move against the spouse, on the grounds that the business was not fulfilled about the form and result of the grievances which was filed against him and were found baseless. Court held that, *In normal case such complaints would be a harassment to a person against whom such complaints are made. She made complaints or got the complaints made to the employer and the police which were found to be baseless on enquiry. The cruelty of the wife being established the husband would be entitled to a divorce on that ground. Divorce granted.*

Spouse used to call her Sikh husband 'Sikhra' and she used to serve him beef during feasting time and she used to put false allegations on him and used to defame him in front of his friends and colleagues. In the case of Ms. Idris Paintal v. Dr. Avtar Singh Paintal¹⁰, court observed that Specialist who was likewise investigate researcher, researcher, who had the degrees in M.D., Ph.D., D.Sc., FRS and FAMS and FMA wedded with Christian woman, Teacher in Delhi College, wedded on 5.2.1949 under Special Marriage Act. He asserted that attributable to the idea of his effort, he was occupied with, he invested the majority of his energy in the lab doing different analyses regarding his examination. His significant other

⁹ 1986 (1) DMC 484 (Del).

¹⁰ AIR 1988 Del .121.

began with quarreling, irritating, and criticizing him in the friend networks, family members, society and the staff individuals. She composed letters to him just as to others which were abusive. He asserted that his significant other dishonestly credited extra-conjugal association with his collaborator. No individual has given declaration of having seen the spouse and an in flagrante delicto. No proof that any individual had appear them in nearness with one another or had seen the said Dr. A having physical intimacy with Dr. A. Court held that: *Making false and frivolous allegation by the wife against the husband to his employer, which are known to be false, amounts to Cruelty. As well as, adopted attitude by wife is not welcoming the relatives of the husband, would amount to cruelty in law, serving beef by wife to the husband against his protest, also amounts to cruel act and repeatedly calling a Sikh husband as 'sikhra' also amounts to cruelty.* 3. Spouse submitted bogus questions against him and he confronted extensive cautiousness enquiry. Demonstrations of wife held added up to lawful brutality. In *Usha Gupta v. Ramkumar Gupta*¹¹, Court observed that as a result of the bogus grievances by the spouse and her dad against the behest held up to the Head administrator and the Business, the husband and his dad needed to confront an extensive carefulness enquiry and procedures before the Official Judge, which enquiry continued for number of hearings and running more than six months and due to this outcome of which, the husband endured mental and physical distress because of superfluous badgering. High Court held that, *The acts of wife amounts to legal Cruelty and the meaning of legal cruelty have to be adopted from the English cases.* Raydon on Divorce (11th Edition) said:

“The conduct complained of must be serious. It must be proved that one partner in the marriage, however, mindless of consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure and that misconduct had caused injury to health or a reasonable apprehension of such injury to health or a reasonable apprehension of such injury. There are two sides to be considered in a case of cruelty; from the complainant’s side, ought this complaint to be called to endure the conduct; from the defendant’s side, was this conduct excusable.”

REFUSAL TO LIVE WITH HUSBAND AND CHILD

Spouse not just declined his organization to live with him as his significant other yet additionally would not keep kid and youngster kicked the bucket. It was held that nothing can be more unfeeling than this frame of mind of spouse. In *Gurucharan Singh v. Sukhdeo Kaur*¹², Court observed that the spouse S went out, abandoning their two months newborn child youngster and wouldn’t return or even to keep the kid with her because of which the kid passed on. The demise of such a baby youngster amounts to distress to the dad. Nothing is more shocking than the passing of a youngster before guardians. The demeanor of mother is by all accounts without every single human inclination. Regardless of whether, she didn’t have cheerful relations with spouse. Not just she would not go with her significant other for residing as his better half, yet additionally wouldn’t keep the kid, nothing could be more remorseless than this frame of mind of spouse. High Court held that,

¹¹ 1984 (2) DMC 288(Del).

¹² AIR 1979 P&H 98.

The wife's conduct amounts to cruelty such as to entitle the husband to a decree of divorce.

FALSE ALLEGATIONS OF DEMAND OF DOWRY

Spouse requesting cash for her folks and on refusal quarreling with him as well as left him and put bogus charges of interest of share likewise made by her. It was held that she treated him with cruelty. In *Prakashchandra v. Radharani*¹³, Court observed that the gatherings were occupants of I and were hitched on 19.4.1980 as per 'Hindu' ceremonies. Because of their wedding, they had likewise a child. The appealing party spouse claimed that the wife constantly treated him with savagery. She demand saving cash for installment to her folks and on refusal consistently fought with him. She communicated her inconvenience by unpredictable beating of the youngster. By virtue of her combative propensity, he, on his exchange from B to I had to live separate from his folks. She, nonetheless, kept squeezing requests for cash for her folks and on his refusal as before she fought with him lastly abandoned him on 25.9.1981, following 60 minutes, she returned with their folks and uncle and persuasively removed the youngster. The misrepresentation of her guard that the spouse used to request endowment of Rs.1000 and a gold chain is uncovered by the reality she needed to concede that wife never referenced about the supposed requests in any of the letters sent by wife to her dad. The high court is really qualified for draw an unfriendly deduction by non-generation of letters and non-assessment of her dad, however alive and accessible. High court held that,

Wife treated her husband with cruelty and she has not been able to substantiate her defense story. The husband has discharged his part of the burden that she treated him with cruelty and deserted him for more than the statutory period of two years. Since, she did not justify her separate residence, the husband is entitled to a decree for divorce on both grounds viz cruelty and desertion.

CHARGE OF IMPOTENCY

Creation of wild crazy and outlandish claims of impotency and absence of masculinity. It added up to savagery. In *Nirmala Jagesha v. Manohar Jagesha*¹⁴, court observed that the spouse documented separation appeal on 7.9.1981 on ground of savagery, renunciation and charging she is experiencing mental issue. He cited some sporadic conduct of the spouse, as-finding a good pace brushing teeth, more than once asking about where the cleanser and towel were, however they were placed at a similar spot each day, failure to lay bed-sheet appropriately, powerlessness to cook nourishment, extravagant for going out to the film house and claimed that she was hesitant and cold in sex and expressed that he could engage in sexual relations with her solitary twice during the principal spell of 40 days and once in her spell of 10 days. In composed Proclamation, she denied all the claims and explicitly argued that it was the spouse who was barren and couldn't consummate the wedding and he is masculinity. The spouse drove the proof with respect to her pitilessness, abandonment and mental issue while she not analyzed herself. The spouse has not built up that the wife has been experiencing

¹³ 1986 (2) DMC 376(M.P).

¹⁴ AIR 1991 Bom 259.

constantly or irregularly any psychological issue yet he is responsible for announcement of separation on condition of mercilessness, because of a wife's having made wild, crazy and unjustifiable claims in the Composed Explanation. High court held that,

(i) Cruelty in the matrimonial law means conduct of such type that petitioner cannot be reasonable to expect to live with the respondent. (ii) It would follow that the old English law concept of danger is no longer applicable in India. (iii) The making of wild, reckless and baseless allegations of impotency and lack of manliness itself amounts to cruelty in the matrimonial home.

Conclusion

Although the major objective of this law, being to protect the women against domestic violence has been secured, certain portions of the law still remains to be developed. This law provides civil remedies to the victims of domestic violence. Before enactment of this law, in order to seek any civil remedies such as divorce, custody of children, injunctions in any form or maintenance, a woman only had the option of taking recourse to the civil courts. Therefore, the DV Act has certainly brought about the required and necessary change in the system.

Although the Act provides exhaustive remedies to counter the issue of domestic violence certain terms and its interpretation needs to develop. The Act falls short in providing any relief to the male members in the community who are subjected to domestic violence, being one of the areas where the law falls short. However, it also needs to be considered that no crime can be abolished from the society completely, it is only with stringent reforms and mechanism that it can be curbed.

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 Section 340 and 349, IPC 1860
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