

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 3

2024

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Domestic Violence: Women being Subjected to Increased Abuse and Its Legal Purview

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ABSTRACT

Women in India face a lot of issues and challenges, and married women are the most vulnerable category. Their rights and powers are not really respected and are misused to a great extent. Married women experience several cases of domestic violence which might be physical, emotional, sexual and even economic. Such violence against women occurs due to the alleged existence of patriarchy in the Indian society. Most domestic violence cases are due to dowry demands, which even lead to the death of the female spouse. But it is pertinent to note that a lot of these cases go unreported. Cases of domestic violence are in breach of the law. One can read at least one case of domestic violence in the daily magazine even in 2024. It violates certain provisions of the Indian Penal Code and the Protection of Women Against Domestic Violence Act, the latter being enacted exclusively for women who are victims of domestic abuse. In this research, the researcher highlighted relevant laws and precedents governing PWDV and identified gaps in implementation and lack of awareness as reasons for the effectiveness of PWDV legislation.

Keywords: *Women's Rights, Domestic violence, PWDV, Patriarch, gender disparity.*

I. INTRODUCTION

Domestic Violence is an offence in itself. In India, it is obvious that women in the domestic sphere are more vulnerable to violence and assault. When one enquires about where exactly it originated, it dates back to the period when patriarchy in India was at its peak. Patriarchy, again, is the “rule of the father”, where women had few rights over their male relatives. In order to overpower themselves, women were considered “Goddess” by the men and the latter eventually won over women with jewels, sweets and riches. This is how male society got control over their families at first and then society as a whole, which was subject to misuse, which occurs when the powers are not equally shared among the genders. It is pertinent to note that around 87% of the cases of marital violence where the victims are women, unfortunately go unreported.

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(A) Recent instances:

A 25-year-old woman was allegedly strangled on 23rd July 2019, by her husband and in-laws over dowry in Beta II. The man and other members of his family have been booked and are on the run. The woman was from Sameen Nagar in Bulandshahr. She had been living with her husband Sanjay and his family in Nat Madhaiya village since their wedding in 2015.

On 15th May 2024, an accused in a dowry case fled the country and the police are on a probe. The wife, who was newly married, filed a complaint against her husband alleging domestic violence.

On 9th May 2024, a 34-year-old woman named Gudiya Fayyum Khan was brutally assaulted by her husband, after he woke up and demanded breakfast from his wife in Kurla, Mumbai. The assault was so severe that she is now fighting for her life at Sion Hospital.

In another shocker in Assam, a man, identified as Zakirul Islam, allegedly set his wife on fire in the Podombori area of Maligaon near Udaigiri Path. The victim has been identified to be Sushmita Das. The complaint was lodged by the victim's family members at the Jalukbari police station on Thursday, April 3. According to the complaint, Sushmita was doused in kerosene and lit ablaze by Zakirul approximately seven days ago. She was taken to a nearby hospital for urgent medical treatment. However, Zakirul fled the scene, and despite numerous attempts to establish contact, he remains missing and has not been found yet.

In another recent incident in Ghaziabad, a 30-year-old man was sentenced to 10 years in prison, while his parents were handed 7 year term each, for burning his wife to death for dowry in February. The woman's family claimed that she endured harassment for nearly four years since her marriage in 2019 and gave birth to a stillborn a few months back due to the torture.

II. BREACH OF LAW

Section 42 of the Offences against persons act year states ,-

“Where any person shall unlawfully assault or beat any other person, two justices of the peace, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence, and the offender shall, upon conviction thereof before them, at the discretion of the justices, either be committed to the common gaol or house of correction, there to be imprisoned, for any term not exceeding two months, or else shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of 5 pounds; and if such fine as shall be so awarded, together with the costs (if ordered), shall not be paid, either immediately after the conviction or within such period as the said justices shall at the time of

the conviction appoint, they may commit the offender to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding two months, unless such fine and costs be sooner paid.”

Section 350 of the Indian Penal Code deals with criminal force,—

“Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”

Section 351 of the Indian Penal Code deals with assault, and states -

“Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

Section 352 of the IPC talks about the punishment for assault or criminal force otherwise than on grave provocation.—

“Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

Section 354 of the IPC deals with assault or criminal force to women with intent to outrage her modesty.—

“Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

The primary fundamental rights violated in an instance of a domestic violence are covered under article 21 of the Indian constitution which guarantees the right to life and personal liberty; right to privacy and right to live with dignity by stating, “No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India.”

Also, the right to be free of violence, which is also implied under the provision, is breached. In

Francis Coralie Mullin v. Union Territory Delhi, Administrator, AIR 1981 SC 746, the Supreme Court stated, that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

III. PWDV ACT, 2005

The Protection of Women from Domestic Violence Act herein referred to as the act defines domestic violence in a series of steps or classifications. For the purpose of act, domestic violence is defined as any conduct that is delivered in a habitual nature and encompasses various forms of assault, which make the life of the aggrieved or inflicted person miserable. The domestic violence act states that the victimised party is impeded from his or her personal liberties through perpetual violence or belittlement; the nature of the definition constitutes a feeling of depression by the aggrieved party even if the underlying conduct does not amount to physical ill-treatment. The act further defines domestic violence as any action, committed in the constraints of a relationship or marriage, as any action, which forces the aggrieved part to lead an immoral life or any action that delivers harm or injuries to the aggrieved person. The Domestic Violence Act emphasises that a domestic violence charge will not be heard if the pursuit of a course of conduct by the responding party was reasonable for his or her own protection or for the protection of his or another party's property.

There were very limited remedies available to the victims of domestic violence before 2005 since the existing legislation did not recognize domestic violence as an offence equal to other criminal offences. One could not sue their spouse for the act of committing "domestic violence". Rather, one can initiate divorce proceedings on the grounds of cruelty or any other provision, which deems fit for the petitioner. This depicts that the victims had to approach under legislations whose scope was limited to even recognize the concept of domestic violence. Emergency relief was not an option to the then-victims. Notably, legal relationships outside the institution of marriage, such as live-in relationships and other domestic relationships, were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not out of choice but of compulsion. Having regard to all these facts, the parliament thought fit to enact the Domestic Violence Act. The Domestic Violence Act, which was finally enacted in the year 2005, sought to exclusively protect women and female children of a household and empower their available rights. The definition of an aggrieved person under the Act is so wide that it is taken within its purview even women who are living with their partners in a live-in relationship.

The Domestic Violence Act not only covers those women who are or have been in a relationship with the abuser but it also covers those women who have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. Even those women who are sisters, widows, mothers, single women, or living in any other relationship with the abuser are entitled to legal protection under the Domestic Violence Act. There should be a marriage or marriage - like relationship established. The latter includes live in relationships inside its purview. The aggrieved party must only be a woman and the accused must only be male adults, since the sole purpose of this legislation is to protect the vulnerable gender in the society against violence by their husbands, fathers, in-laws and other male relations. There must be fulfilment of cohabitation, shared responsibilities, sexual relationship etc, which are required for a domestic relationship. It includes physical, sexual, verbal, mental, emotional or economic abuse by the respondent. These categories were further clarified in the case of *Bhartiben Bipinbhai Tamboli v. State of Gujarat and Ors*, MANU/GJ/0025/2018.

A wider meaning to an “aggrieved person” under Section 2(a) of the Domestic Violence Act was conferred by the Supreme Court in the case of *D.Veluswamy v. D.Patchaiammal*, AIR 2011 SC 479, wherein the Court enumerated five ingredients of a live in relationship as follows:

1. Both the parties must behave as husband and wife and are recognized as husband and wife in front of society.
2. They must be of a valid legal age of marriage.
3. They should qualify to enter into marriage eg. None of the partners should have a spouse living at the time of entering into a relationship.
4. They must have voluntarily cohabited for a significant period of time.
5. They must have lived together in a shared household.

The apex court, in *Indra Sarma vs VKV Sarma* , opined that not all live in relations include the status of a “marriage-like relationship” and it has to satisfy duly the parameters of a live in relationship With regard to the status of a Keep, the Court in the case further clarified that if a man has a “keep” whom he maintains financially and uses mainly for sexual purpose and/or a servant it would not be a relationship in the nature of marriage. The Court held that under Section 17(1) of the Act wife is only entitled to claim a right to residence in a shared household, and a “shared household” would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. As read earlier, section 2(q) of the DV Act, 2005 mandates only male adults to be a respondent.

This arouses questions in scenarios where the victim has been assaulted or subjected to any kind of violence by her female relations such as mother in law or sister in law. However, the Supreme Court in the case of *Sandhya Wankhede vs. Manoj Bhimrao Wankhede* (2011) 3 SCC 650 put to rest the issue by holding that the provision to Section 2(q) does not exclude female relatives of the husband or male partner from the ambit of a complaint that can be under the provisions of the Domestic Violence Act. Hence, a complaint of domestic violence by a female victim is still valid if she accuses her women relations as well. This was held in the case of *Archana Hemant Naik v. Urmilaben I. Naik &Anr.*, 2009 (3) Bom Cr 851).

To answer the query of maintenance, in a case taken up by the Supreme Court i.e. *Vimlaben Ajitbhai Patel v. Vatslaben Ashok bhai Patel and ors*, (2008) 4 SCC 649, the court in its judgement said that it is in the husband's own discretion to maintain his wife after she gets divorced on the grounds of domestic violence. While the husband's property can be lawfully attached as part of the maintenance, it cannot be the case with the property of the mother in law.

So, in cases of domestic violence, the court is supposed to provide relief orders to the victim, which arises upon an application to the judicial magistrate. The order can be in the form of custody orders, protection orders, residence orders or monetary relief. In the case of *V.D. Bhanot Vs. Savita Bhanot* AIR 2012 SC 965, held that DV Act is retrospective, that is, the Domestic Violence Act entitles the aggrieved person to file an Application under the Act even for the acts which have been committed prior to the commencement of the Domestic Violence Act.

The UNGA (United Nations General Assembly) adopted the UN Declaration on the Elimination of Violence against Women in 1993, which advocates against violence on women. Article 3(b) of the declaration provides for right to equality, article 3(c) guarantees the right to liberty and security of a person, article 3(e) states that women are entitled to the right to be free from all forms of discrimination, article 3(h) provides for the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 14 of the CEDAW ensures equal rights to family benefits, financial credit, and participation in recreational activities.

IV. CONSTITUTIONAL VALIDITY

The Domestic Violence Act 2005 is constitutionally questioned as well. A few of them may claim not, since it is exclusively for women and does not provide rules for violence against men. It has to be noted that the proportion of domestic abuse against women is far more than domestic violence against men. Also, the Indian Constitution, under article 15, prohibits discrimination on the grounds of sex. However, in article 15(3), it empowers the Government to make special provisions for women and children. Hence, the DV Act is constitutionally valid under article 15(3).

Overall, domestic violence is a heinous crime and various domestic households are vulnerable to such acts. The DV act, one can firmly say, has come up at the right time to deliver justice to women and children who were not able to voice out their struggles and traumas. It has indeed widened the scope of law and has given exclusive powers to the female section of the society, who experience several instances of violence against them in a domestic relationship. However, one cannot say that domestic violence has totally come to a halt after the implementation of the Domestic Violence Act; it is still very much prevalent in the country, especially, in the rural regions of India, where women are not really aware of the rights actually available to them. Any law, before its effective implementation, considers awareness at the most.
