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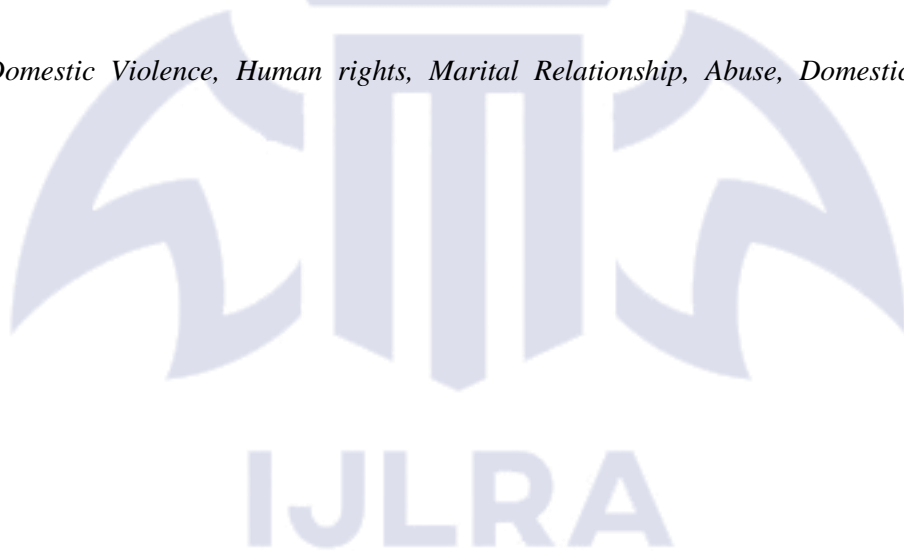
An Analysis on Domestic Violence Act In India

Authored By-Mahalakshmi Vaishnabi

ABSTRACT

domestic Violence is the abuser act of the partner faced by women in her marital relationship. In every household there the act is committed within the four walls, which unfortunately are not known to anyone and are swept under the rug. The domestic violence not only infringes the human rights but it causes injury to the women physically, emotionally, mentally . The graph of the cases of the violence is increasing day by day in such a way therefore there is an urgent need of strong iron hands to stop the rising of the cases.

Keywords:- *Domestic Violence, Human rights, Marital Relationship, Abuse, Domestic Violence Act, Section 489A.*



Introduction

Women have always been subjected to discrimination since time immemorial. Women are regarded to be the subordinate group in society and have been the common face in matters of violence like rape, acid attack, Domestic Violence, etc.

Domestic violence refers to violence and abuse that takes place during cohabitation or marriage. It is important to remember that domestic violence is not just physical, but any kind of behavior that seeks to gain power and control over the victim. It can affect people from all walks of life. It takes place when a member of the same family or household engages in aggressive or abusive behavior toward another.

Physical abuse is not the only form of domestic violence. Any action taken to exert dominance and control over the victim is included. People from all walks of life can be impacted by domestic violence.

Domestic Violence is a behavior where one partner commits violence against another leading to the threatening of life and may not always be in a physical manner, but also in many ways like emotional abuse, psychological ways, etc.

It is the worldwide silent pandemic, that has been faced especially by women, from the spouse, from their close relations, with whom, they are cohabiting.. The domestic violence includes elaborately all forms of actual abuse or the threat of violence and is also known as ‘intimate partner violence’ . Domestic violence leads to the infringement of the Human Rights of the women .

Domestic Violence

Domestic violence is abuse in which one partner uses force against another. Compared to men, women are the more frequent victims of these crimes. It is the oldest and most widely dispersed silent pandemic. Domestic abuse has negative impacts on not only women but also their families. Women are considered to be the homemakers, and they experience verbal, physical, and psychological abuse.

Domestic violence frequently targets women and children as easy prey. A horrific crime, domestic abuse affects women psychologically, physically, and emotionally. The dependence on men for financial support and illiteracy are two of the most frequent causes of marital violence.

Male-dominated societies play an important role in this matter. In India, dowry is also one of the main causes of violence against newlywed brides. Women are often physically attacked or made appalling remarks.

Moreover, children are often the victims of this inhumane behaviour. It is important to understand the double standards and hypocrisy in society

According to WHO, (World Health Organization)¹ at least one in five women have even physically or sexually abused by the partner at some point of time in her life. It is generally a part of pattern of an abusive behavior and control rather than isolates acts of physical aggression.

Domestic violence is a form of gender-based violence that makes women suffer from Post Traumatic Stress Disorder (a mental disorder that usually occurs after a traumatic event.) and Battered Women Syndrome (a psychological condition that explains a pattern of behavior that appears in victims of domestic violence after severe, prolonged abuse) is a pattern of symptoms and indications that a woman has endured chronic relationship abuse from her male partner, whether it be psychologically, physically, or sexually.

Violence within marriages in India, is often associated with the dowry , a practice, where the spouse of the family members, demands money or property from the women's family . Dowry demands escalate into harassments, threats , and abuse , in extreme cases the women is killed or driven to suicide , freeing the husband to pursue another marriage and dowry . Most of the time , societies justify domestic violence as a form of control the wife.

Domestic Violence is referred as the silent crime , as women , are unable most of the time to raise her voice, due to shame, fear of further abuse on the themselves or on their children and lack of opinions.

Family honour , lack of support systems etc , the gravity of the problem together discourage women for reporting , or seeking help for inter- spousal abuse.

It is not always easy for a person to know that she is in an abusive relationship, as the abuser may hide his behavior or character in the early stages of the relationship. Often, controlling behavior and abusive behavior do not show up until the bonds of the relationship are strong.

¹ <https://www.who.int/>, World Health Organisation, (5th August 2022, 7:00pm)

Although all relationships are different, most abusive relationships have one thing in common: the abusive partner takes action to gain more control over the other person.

In addition to having a negative impact on the victims, domestic violence also has a significant negative impact on the family, friends, coworkers, other witnesses, and the community at large. Those who have witnessed domestic abuse as children are among those who are most impacted by this crime. Frequent exposure to domestic violence increases the likelihood that children will grow up to be victims and perpetrators of abuse in society because it not only exposes them to a wide range of social and physical issues, but also will lead to their belief that violence is a normal part of life.

The phrase "domestic violence" is defined in "Section 3" of the "Domestic Violence Act of 2005"² Domestic violence is any act, commission, omission, or behaviour on the part of the respondent that deprives their partners of their rights. Economic, physical, emotional, and mental abuse are a few examples. Section 498A of the "Indian Penal Code" (1860) defines matrimonial cruelty as "husband or relative of spouse of a woman subjecting her to cruelty."

Causes Of Domestic Violence.

The reasons for domestic violence are a subject of great debate. These include social theories that take into consideration the external elements in the perpetrator's environment, such as family structure, stress, and social learning, as well as psychological theories that include the personality and psychological traits of the perpetrator, as well as the victim. There isn't any approach to deal with it that seems to encompass all the scenarios, like most issues relating to the human experience.

There are various beliefs regarding what motivates someone to harm a close friend or family member, and there are growing domestic violence cycles (a repeated cycle of abuse) that pass down from one generation to the next.

This encompasses paranoid and passive-aggressive personality disorders among others. Mood swings, drug misuse, alcoholism, schizophrenia, bipolar disorder, and other conditions are also the conditions.

² THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Behavior

Most people possess an aggressive behavior that is common to all and this immoral or violent behavior plays a key role in violence

Mental Illness

Mental illness are a risk factor for domestic violence, which includes several personality disorders: paranoids and passive-aggressive. Bipolar disorder, schizophrenia, drug abuse, alcoholism, and mood swings are also dangerous factors. It is estimated that at least one third of all abusers suffer from some form of mental illness.

Social Depression

Social stress, due to insufficient money or other such family problems may contribute to tensions.

Who Are The Victims?

Victims are defined as people who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of their fundamental rights, as a result of acts or omissions that are in violation of criminal laws in effect within member States, including those who have been hurt physically, psychologically, or emotionally as a result of the abuser's actions or any other occurrence. Victims of domestic violence can be from any social, racial or ethnic group. Anyone relating to the victim [2(wa) of Crpc³], either family, friends, acquaintances etc can be victim.

Who Are The Evildoers?

The perpetrators also belong to any social and economic group, race or ethnic group. They may have been abused as children or may have witnessed parental or other family members abuse. They express the pattern of jealousy and control by being divisive, threatening, and intimidating behavior on their partners.

They may view their partner as an asset in their presence. The abuser not only cover the ambit of

³ Code of Criminal Procedure 1973. ACT NO. 2 OF 1974. [25th January, 1974.]

the definition of the evildoers but also the relatives, the family will be covered under the definition of the abuser or the evil doers.

Types Of Abuses

Physical Abuse: Direct physical aggression such as choking, slapping, punching, kicking, moving or pushing, which may involve the use of objects. Physical abuse includes throwing objects, refusing food, and destroying property.

Mental or emotional abuse: blaming or ignoring (“insulting”) a person, treating a person as inferior, calling that person’s behavior inappropriate, questioning their true selves, criticism, or threats of suicide. Perpetrators can also hide, spy on, or track the person, including monitoring emails and calls, and using GPS tracking.

Social Isolation: Isolate the victim from family and friends. Prohibit or prevent contact with them and insult family and friends.

Financial Abuse: Maintaining control of household finances or restricting access to bank accounts, salaries, or pensions, giving "little money", hiding assets, making them unable to work, interfering with discussions or meetings, stealing.

Child abuse: physical and sexual abuse, neglect, child verbal and emotional abuse.

Adult abuse: similar to child abuse but directed at adults.

Neglect: often a failure to meet the basic physical or mental needs of the caregiver, such as a child. This may include failing to protect them from physical harm or injury or preventing them from receiving medical care. It can also be the neglect, or non-response, of another person's basic emotional needs. Anyone in a community can be impacted by domestic abuse irrespective of their status, income, gender, age, colour, or culture. The majority of the perpetrators are men, while the majority of the victims are women and children.

Anger, both verbal and physical, is a hallmark of conflicts between victims and their relationships. The frequency of violence in media, such as movies, TV shows, and video games, directly affects the culture of violence.

Domestic Violence In India

It has been stated that India possess a patriarchal society , which means that India possess a male dominating society. Domestic violence in India includes all forms of violence perpetrated by biological relatives, but usually includes violence perpetrated on women by male family members or relatives.

The domestic violence takes place in many ways like during the birth of a girl child most of the times the mother is abused in the mental, physical and emotional way by her in-laws as well as her partners.

Another feature of India's patriarchal society is the paying of dowries. Despite being illegal since 1961, this practice is still practiced in India today, and, shockingly, dowry cases have increased significantly in recent years. As well as gender difference and women's role in reproductive decisions, there are significant connections between strong patriarchal family systems and limited women's competence and agency. It has a close relationship with elements like starvation that fuel leading to the domestic violence.

In India, domestic abuse against women occurs every minute. Recent years have seen a sharp rise in domestic violence instances, particularly during pandemic lockdowns. And it is climbing to the point where it may soon cross the graph's highest last line.⁴

A research found that in India, 27% of women have experienced abuse since the age of 15. Violence against women occurs more frequently in rural than in metropolitan regions. The number of domestic violence cases that have been reported is increasing, and there has been a significant shift in that number.

Commission of crimes in India takes place every 1.7 minutes, while they become victims of domestic abuse every 4.4 minutes, according to the Crime in India Report 2018.. It is also at the forefront of violence against women, according to the report. According to the data, 89,097 cases of crimes against women are registered throughout India in 2018, with more than 86,001 cases registered in 2017. In 2021, the complaints shot up to 44% which means to 11,084 compared to 7,715 in the previous year.

⁴ National Crime Records Bureau

Legal Provisions On Protection From Domestic Violence In India

Many laws have been seen coming out in order to protect from violence . in order to curb down from the violations of rights of the women to make the life smooth and violence – free.

Domestic Violence under Constitution of India

According to Article 21⁵, taking away the life, liberty is violation or infringement to human right , The Delhi High Court had to determine whether a person may be found guilty in this particular case under both Section 4 of the Dowry Prohibition Act and Section 498A of the Indian Penal Code. The Court ruled that a person might be found guilty under both Section 4 of the 1956 Dowry Prohibition Act and Section 498A of the IPC without risking a second conviction. According to the court, Section 4 of the Dowry Prohibition Act and Section 498A of the IPC are separate laws since in Section 4 of that law, merely demanding dowry is illegal, whereas in Section 498A, cruelty perpetrated against a newlywed lady.⁶

According to the Supreme Court's ruling in Francis Coralie Mullin v. Union Territory Delhi, Administrator⁷, any conduct that damages an organ or intellectual property, whether temporarily or permanently, is prohibited by Article 21⁸.

The term of physical abuse in the Act, which includes domestic violence⁹, incorporates this right. (therefore there is a penalty under the Act). Acts or unavoidable behaviors that physically hurt, injure, endanger the health, limb, or development of the wounded person are considered to be physical abuse. In addition, the definition of domestic abuse in the Act encompasses the same acts of physical violence as well as particular acts of physical violence as indicated in the Indian Penal Code¹⁰.

2. Right to dignity (Article 21): In several cases, the Supreme Court upheld its stance and rendered decisions in line with this proposition, emphasizing that the right to life encompasses the right to life with dignity. The right not to be offended will also be included. Both sexual harassment and emotional abuse fall under the categories of what is meant by the right to life.

⁵ Indian Constitution, 1950

⁶ Inder Raj Malik v. Sunita Malik, (1986)

⁷ **1981 AIR 746, 1981 SCR (2) 516**

⁸ Supra note 4

⁹ Protection of Women from Domestic Violence Act, 2005, No. 43 OF 2005

¹⁰ Indian Penal Code, ACT NO. 45 OF 1860. 1. [6th October, 1860].

The idea that emotional abuse counts as domestic violence is a commendable aspect of this statute. The recognition of a woman's sexual abuse as a form of infidelity is justified, especially as such sexual harassment is not considered by the Indian Penal Code¹¹ as a crime.

Royappa v. State of Tamil Nadu¹², any illegal action is considered to be a violation of Article 14 as well. This principle is important in establishing free will in the exercise of State power and in ensuring that no citizen is subject to any discrimination. At the same time, it preserves the State's authority to legislate for a particular class of people.

National Commission for women established under the Protection of Human Rights Act¹³ is the statutory body that provides voice on the women's issues as well as also provides the advise to the government regarding the policies for the women's development .

Domestic Violence Act 2005

Who Can Avail Remedies Under Domestic Violence Act, 2005?

Section 2(a) of the Act defines an aggrieved person as a "woman" who is or has been in a "domestic relationship" with the perpetrator and who alleges to have been subjected to any act of domestic violence by the perpetrator.

Against Whom A Remedy Is Available?

Section 2(q) of the Act defines respondent as persons who can be treated as perpetrators of violence against women. The definition is not limited to adult male persons but also includes women and non- adult males. The "Relative" of husband or the male partner include females. Legislature never intended to exclude female relatives from the ambit of complaints which can be made under the Domestic Violence Act 2005.

Remedies Under Protection Of Women Against Domestic Violence Act, 2005¹⁴

The major remedies available under the act are as follows:

1. Right To Reside In A Shared Household (Section 17& 19)

Domestic violence occurs when a woman is physically or verbally ejected from her home while still in a marital relationship. By forbidding the respondent from evicting or excluding the aggrieved person from the common household, Section 17(2) protects the women. According to Section 17(1), regardless of whether she has any rights, titles, or beneficial interests in the shared

¹¹ Supra note 8

¹² 1974 SCC 555

¹³ 1993 ACT NO. 10 OF 1994 [8th January, 1994.]

¹⁴ Act No. 43 of 2006

household, every woman in a domestic relationship (marital relationship) has the right to live there. Similar to this, the relief of residence orders under Section 19 of the Act, which prohibits the respondent or the perpetrator from taking the aggrieved person's possessions from the shared household or interfering with them in any other way. Restraining the respondent from alienating or disposing off the shared household or encumbering the same;

Restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

Directing the respondent to secure the same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same,

2. Protection Orders (Section 18)

Under section 18 of the Act, the aggrieved party can sought for the protection from the court against the abuser which the following cases example in case the abuser tries to commit any of the following act:-

Committing Domestic Violence Act

Aiding or abetting in the commission of acts domestic violence or the act that may hurt the aggrieved person 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 in order to create fear in the mind of the aggrieved person;

Attempting to communicate in any form, with the aggrieved person, including personal, oral or written or electronic or telephonic contact causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence.

3. Monetary Reliefs (Section 20)

In the compensation, in order to meet the expenses losses suffered by the aggrieved woman along with her child of the aggrieved person as a result of the domestic violence it will be included the loss caused to the aggrieved woman on account of the destruction, damage or removal of any property from her control;

The remedy of maintenance as stated under the Section 125, Criminal Procedure state that the monetary relief or the compensation must be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved woman is accustomed.

4. Custody Orders (Section 21) empowers the magistrate to grant temporary custody of any child or children to the aggrieved person, with or without the visitation rights to the respondent.

5. Compensation Orders (Section 22) the magistrate is empowered to direct the payment of compensation and damages for injuries- both physical and mental injuries¹⁵.

Criminal Law

Indian Penal Code (1860)¹⁶

Dowry Death-section 304-B Indian Penal Code¹⁷ if in case the married women dies from burns or body injuries within the seven years of her marriage. Punishment for the dowry death will be the imprisonment with the term of not less than seven years but may extend up to life imprisonment.

As is the case in India, the government and the authorities are trying to protect women by all means. The Protection of Women in Domestic Violence Act, 2005,¹⁸ and many amendments to the Criminal Law have been made in various acts to curb down the acts that violate the dignity and dignity of women.

According to a recent study, 70 percent of Indian women, or victims, have been the victims of domestic violence. Domestic violence was first introduced by the Indian Penal Code,¹⁹ section 498 (a) where a woman's husband and a relative of the husband abused her.

The protection of women in the fight against domestic violence, 2005²⁰ as an act came into effect on October 26, 2006, by the Parliament of India. This action is different from section 498 (a) of the Indian Penal Code²¹ because it gives a broader definition of the definition of domestic violence.

There are also various provisions made for the Protection of Women from Domestic Violence under various forms, such as Section 304 (b) of the Indian Penal Code²², for cruelty, which also falls under the definition of domestic violence.

¹⁵ *Punishment For Domestic Violence In India*, LawCorner, (November 4, 2021) <https://lawcorner.in/punishment-for-domestic-violence-in-india/> (last visited on 3rd August , 2022, 8:00pm)

¹⁶ Supra note 9

¹⁷ ibid

¹⁸ Supra note 7

¹⁹ ibid

²⁰ Supra noted 14

²¹ ibid

²² ibid

The amendment to the Criminal Law, 2013,²³ was a milestone in this topic, as it amended other sections of the Indian Penal Code, The Code of Criminal Procedure Code²⁴, and Indian Evidence Act²⁵.

Under the amendment, the principles of sexual harassment and rape were clarified and added, and fines and penalties were made more severe. Under the 2013 Amendment²⁶:- Acid attacks, traps, female genital mutilation etc, were made punished under the law.

Conclusion

Domestic Violence is a series of violence and is a very old crime, against every woman since time immemorial. This is the time for the ultimate break of the chains of this cycle of Domestic Violence so that the next generation can enjoy a better and more cohesive life.

Domestic violence, often known as "domestic violence" or "intimate partner violence," is characterized as a pattern of conduct employed in any kind of relationship to acquire or maintain control over a close partner. Harassment is the act of influencing another individual through physical, sexual, emotional, financial, or psychological pressure. This includes any conduct that intimidates, intimidates, intimidates, is dishonest, hurtful, humiliating, suspicious, or harms someone. No matter a person's ethnicity, age, gender, or religion, domestic violence does exist. Any relationships, including marriage, cohabitation, and dating, can experience it. People from all socioeconomic and educational levels are affected by domestic abuse.

Therefore it an urgent need to combat the violence and should be the strong as well as effective strategies to prevent domestic violence .

In response to the increased number of domestic abuse cases, government and legislation have devised a number of policies that offer education and equal opportunities to guarantee economic independence. Additionally, legislation is being modified to foster gender equality.

Campaigns to prevent domestic violence are also very important.

As a way to teach the public about these rights under family law and provide comprehensive information on how to get help campaigns can also alter the public's beliefs and ideals regarding the prevention of these problems.

²³ THE CRIMINAL LAW (AMENDMENT) ACT, 2013. No. 13 OF 2013. [2nd April, 2013].

²⁴ Supra note 3

²⁵ [Act No. 1 of 1872]

²⁶ Supra note 19

Education can help to teach the morals that contribute to domestic violence. Campaigns to raise public awareness may promote a crime that is permitted by the law. By advocating, the women will be able to get an education and become aware of their rights and the protection they will receive. They will be able to encourage others to leave the darkness and enter the light thanks to the campaign.

Campaigns can enlighten participants about services that are available to them and how to defend themselves. In addition, they have access to everything, visible and unseen.

1. One of the reasons why crime occurs but is not reported and is overlooked is that Indian women do not know their rights. Some do; they are smart and educated, but some are not. As a result, the government should get in touch with the department to understand more ways to increase legal awareness, advocacy and education.

2. Legal aid should promote the awareness among the women in order to give them a safeguard as well as support to help them come out from the violence .

3. Law enforcement personnel, particularly female police officers, should receive sufficient training in gender response skills and techniques so they can effectively deal with crimes that are committed.

4. Women should be made aware of their rights and encouraged to take part in the institutions of justice established by the government.

5. There should be the courts like courts mobile courts and the transformation of gender critical courts, to encourage women to come forward and report crimes against them by bringing them out of the shadows.. Uneducated and rural women domains do not have the courage to come to court .Therefore mobile courts should be established

6. Informal and community-based dispute resolution processes—These should concentrate on minimising gender-based discrimination to lighten the load on the legal system. It is necessary to appoint intelligent leaders to treat the victim women fairly. Cities must be the ones to establish it, not the federal government.

7. there is a need of strong and rigid laws along with the punishments that would include all kinds of acts as well as its origination that acting as iron hands to eliminate the domestic violence.

With the following , there is the hope that the graph of domestic violence cases will be decreased and will be helpful in elimination of the domestic violence –‘the silent old pandemic’.