



ILE

FORTNIGHTLY REVIEW

VOLUME 1 AND ISSUE 4 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE FORTNIGHTLY REVIEW

APIS – 3920 – 0035 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://fn.iledu.in/>

Journal's Editorial Page – <https://fn.iledu.in/editorial-board/>

Volume 1 and Issue 4 (Access Full Issue on – <https://fn.iledu.in/category/volume-1-and-issue-4-of-2023/>)

Publisher

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LEGISLATION RELATING TO DOMESTIC VIOLENCE AND ITS IMPACT ON WOMEN

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Best Citation – POKALA NEHA, LEGISLATION RELATING TO DOMESTIC VIOLENCE AND ITS IMPACT ON WOMEN, *ILE FORTNIGHTLY REVIEW (ILE FN)*, 1 (4) of 2023, Pg. 9-13, APIS – 3920 – 0035 | ISBN – 978-81-964391-3-2.

Abstract

This article mainly deals with the concept of domestic violence, its impact on women and legislation related to domestic violence in India. Domestic violence is a socio-legal aspect which has a great impact on society and it needs to be addressed. This article mainly concentrates about the role of legislation in prevention of domestic violence and if it fails to control the domestic violence then what is its impact on women. The article explains about the objective of makers behind enacting the Act, need for enactment, misuse of the Act. The article contains the concept of domestic violence, emphasizes the plight of victims of domestic violence, consequences, impact on women and legislation's relating to domestic violence.

The legislation's which protects the women from domestic violence are "Protection Of Women From Domestic Violence Act, 2005, Indian Penal Code, Indian Evidence Act, Code of Criminal Procedure." The role of these legislation's in delivering the justice. There is a serious need to address the issue of domestic violence as it is the violence which is not caused by any stranger but by the persons who are domestically related to the victim itself. Due to this many women may not raise their voice against the violence. This article contains loopholes, suggestions which can be taken in to consideration for effective implementation of the Act.

KEYWORDS – Domestic Violence, Women, Domestic Violence Act, 2005, Indian Penal Code, Indian Evidence Act, Code of Criminal Procedure.

I. Introduction

Domestic violence is defined as the violence which is caused by the one who has domestic relation with the victim and if the violence is caused by any stranger, then it does not come under the concept of domestic violence. There is a need to bring awareness among women about the Acts which have been enacted in order to provide protection to the women. Both men and women can be victims of domestic violence, but the legislation's in India mainly focuses on women. It is important to have the knowledge about the laws which are being in existence so that one can raise voice against domestic violence and awareness plays an important role in achieving the object of the Act. This topic helps to bring awareness about the

rights of women and the remedies which has been provided in order to protect the women.

"In India, **30%** women have experienced domestic violence at least once from the age of 15, and around 4 percent of pregnant women have even experienced spousal violence during pregnancy."⁶

The reason for choosing this topic is it gives the knowledge about the existing laws in India relating to domestic violence, it helps to analyze the legislation's, drawbacks, suggestions. It helps us to analyze the role of legislation's and its impact on women. How does domestic violence affects the women mentally and

⁶ Abanti Bose, The Protection of Women from Domestic Violence Act, 2005, IPleaders, <https://blog.ipleaders.in/the-protection-of-women-from-domestic-violence-act-2005/> (Last Accessed on 31st May, 2023 - 10:40AM).

physically can be known from the article. In this article I will explain about the concept of domestic violence in India, why women are major victims of domestic violence, impact of domestic violence on women, legislation's enacted in order to protect the interest of women, rights of women, drawbacks in the Act, suggestions which may help to make the legislation's more effective and the case laws relating to domestic violence.

II. Domestic Violence

Domestic violence includes mental, physical injury which is caused by the people who has domestic relation with the women. Domestic violence includes causing hurt, injury, beating, causing mental depression, honour killings, sexual assault by her husband or any person who is related to the women, cruelty, harassment. Domestic violence has more impact on the women because it is being caused by her own family members. It causes psychological trauma to women as the violence is being caused by her own members itself. It creates a sense of hopelessness, violates the human rights, fundamental rights, human dignity.

The main legislation's which have been enacted for the welfare of women and in order to protect the women from domestic violence are "**Protection Of Women From Domestic Violence Act, 2005, Indian Penal Code, Indian Evidence Act, Code of Criminal Procedure**". The main enactment which was enacted with an object of protecting the women from domestic violence is Domestic Violence Act, 2005. Before enactment of the Act, the domestic violence cases has been covered under Indian Penal Code.

The offence of domestic violence was covered under offenses against women under the penal code. Under section 498A of IPC most of the domestic violence cases were covered. However it was realized that there is need for enactment of the Act which expands the scope of domestic violence. The domestic violence

harms the women more than violence itself, it affects the personality of the women and faith in their own people. As mentioned, the Act only covers women but not men. In spite of the fact that there is a possibility of domestic violence against men also.

In India, most of the victims are women in cases of domestic violence. Due to which the laws are women centric in nature. In most of the areas, there is existence of gender inequality and women are vulnerable. Men are treated as superior to the women. All these are the few reasons which makes the women as victims of domestic violence. However, the conditions of women are being changed and they are fighting for their rights. Awareness about the laws will help them to take stand for themselves and they can come forward to punish the offenders.

III. Legislation

Before enactment of the Act, the domestic violence cases had been registered under section 304B and 498A of Indian Penal Code, and under provisions of **Dowry Prohibition Act, 1961**. "Convention on Elimination of All Forms of Discrimination Against Women [CEDAW]" is the main foundation for rights of women. Later, the need for a legislation which specifically deals with domestic violence was recognized and "**Protection Of Women From Domestic Violence Act, 2005**" was enacted. The main objective of this Act was to protect the women from domestic violence. The Act only treats women as victims and does not include men. It is often criticized for the same. The Act covers all the women who has lived under same roof, house hold with the abusers, women having relation with the abusers through marriage, blood, adoption and consanguinity. Under section 2(a) of the Act, the term aggrieved person has been defined which says, a women who is in domestic relation with the offender and who is alleged to have been subjected to any violence by the respondent.

“The definition of Domestic Violence as given under Section-3 of the Domestic Violence Act, 2005 - **Harms or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or Harasses, harms, injuries or endangers the aggrieved with a view to coercing her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or Otherwise, injuries or cause harm, whether physical or mental, To the aggrieved person.**”⁷

Under section 4 of the Act it is not required that only victim needs to file the complaint, but any person who has reasonable ground to believe that domestic violence has been happened against the women. Under section 22 of Act, the magistrate may order the respondent to pay the compensation, damages for the injury which includes the mental and emotional distress which has been caused to the women. According to “Section 32(2) Domestic Violence Act, 2005, the court concludes that the testimony of the victim (woman) is always true and there will be no need for any supportive evidence to prove that an offence has been committed.”

The Act also includes live in relations. Apart from this Act, the women can also approach the court under “**Hindu Marriage Act, 1955, the Special Marriage Act 1954, the Dissolution of Muslim Marriage Act, 1939**” as these Acts recognizes cruelty as one of the ground for divorce. Under section 113A of **Indian Evidence Act**, there is a presumption that if a women dies due to burns or due to any injury under

unnatural circumstances within seven years of marriage and there are proofs that she has been subjected to cruelty by husband or relatives of husband just before death, then the burden lies on the respondent to prove that the death is not dowry death. Section 125 of **Code of Criminal Procedure** deals with the “maintenance”. Under **Indian Penal Code** section 304B, 498A, 319, 320 which deals with dowry death, cruelty, hurt and grievous hurt also protects the women from domestic violence. **Dowry Prohibition Act, 1961** also protects the women from harassment regarding dowry. These are the few legislation’s which helps the women to come out of the social evil called domestic violence.

IV Impact on Women

Domestic violence has a major impact on women physically, mentally, socially, emotionally. Women are the major victims of domestic violence. It is even more dangerous because here the violence is caused by the one who has relation with the victim. If her own ones are treating her in such a way then it will have more impact on her. In many cases, women are not aware about the laws which has been enacted in order to protect the women. If there are aware also, many of them are hesitating to file the complaint as the offenders are their own family members. It gives them emotional trauma which eventually leads to depression.

Domestic violence is a sad reality in our society, it mainly occurs because of the patriarchal set up in the society. The thinking of the people should change. People should understand that women are not inferior gender whose role is only to accept their fate. Domestic violence violates the “fundamental rights of the women which are guaranteed under constitution of India.”

In the cases of domestic violence most of the women are being treated as inferior than men and there is clear presence of discrimination against the women. The constitution guarantees equality among citizens, but even

⁷ Debalina Chatterjee, Laws relating to domestic violence in India: Legal issues and challenges, Legalbites, <https://www.legalbites.in/laws-relating-domestic-violence-india-legal-issues-challenges/?infinite-scroll=1> (Last Accessed on 2 June, 2023 - 16:10 PM).

today women are being the victims of gender bias. For example, women are being tortured for giving birth to girl child, women are being beaten by the husband or his relatives for bringing less dowry. Domestic violence against women violates **article 14, article 15 of Indian Constitution**, which guarantees right to equality and protection against discrimination based upon gender, caste, race, religion, place of birth.

Domestic violence also violates **article 21 of Indian Constitution**. Under article 21, right to live with dignity was guaranteed.⁸ But causing domestic violence, beating her, harassing her is effecting her right to live and right to dignity. The dignity of the women is effected by domestic violence.

In order to protect the women, **Domestic Violence Act, 2005** was enacted. But still many women are suffering from the domestic violence. If the violence was caused by the offender by verbal abuse, then in such cases she may not able to get justice. Even though the Act says the justice should be served within 90 days, in many cases women are still waiting for the justice even after years of filing the complaint. Domestic violence affects the mental status of the women, in many cases if she files complaint against her husband, his husband's family will disown and even her own family disowns her. She has to face the social stigma through out her life. Special care needs to be taken towards the rehabilitation of the victim. More than physical pain, she has to go through more emotional trauma in cases of domestic violence. Awareness needs to be created among the women about their rights and steps needs to be taken for proper implementation of the legislation's which has been enacted in order to protect the women from domestic violence.

V Case Laws

⁸ Harini Sudersan & Niruphama Ramakrishnan, The Domestic Violence Act: Constitutional Perspectives, Legal Service India, <https://www.legalserviceindia.com/articles/dmt.htm>, (Last Accessed on 2nd June 2023 - 10:00AM).

*Hiral P. Harsora V Kusum Narottamdas Harsora And Ors*⁹

The facts of the case were Kusum along with her mother has filed a complaint against Pradeep, brother, wife of her brother and her sisters under the Act. For three years nothing happened due to the same, again in the year 2010, two different complaints were filed by Kusum and her mother against same respondents. An application was made before magistrate to discharge respondent 2 to 4. It was moved on the ground that under section 2(q) of the Act, the complaint can only be made against Adult male and respondents 2 to 4 not being adult males they need to be discharged. The court in this case has held that the word adult male will be deleted as it is against to the article 14 of the constitution.

*Lalita Toppo V. The State Of Jharkhand & Anr.*¹⁰

The facts of the case were the appellant is a unmarried but live in partner of the respondent. She filed an application under Domestic Violence Act, 2005 for maintenance. The same was rejected by trial and appellant court on the ground that, there is no provisions under "section 125 of CrPC", which provides maintenance to unmarried one. The Supreme Court held that provisions under the Domestic Violence Act, 2005 entitles even women in Live in relations to approach the court in order to get the maintenance. The Act is not restricted to only married women but it entitles women who is in live in with the respondent to claim for maintenance. The only essential is that they should have lived under same household, and should share domestic relation to claim under the Act.

*Binita Dass V. Uttam Kumar*¹¹

The facts of the case were an application under "Protection of women from Domestic Violence Act, 2005" along with the application of interim

⁹ *Hiral P. Harsora V Kusum Narottamdas Harsora And Ors*, 2016(10) SCC 165.

¹⁰ *Lalita Toppo V. The State Of Jharkhand & Anr*, Criminal Appeal No(s). 1656/2015

¹¹ *Binita Dass V. Uttam Kumar*, CrI. M.A. 14463/2017.

maintenance under section 23 of the Act. The same was rejected by the trial and appellat court on the ground that the applicant has the capacity to earn and she has the required qualifications to earn the money on her own. The High Court of Delhi held that the fact that she is currently earning needs to be seen but not her capacity to earn needs to be seen. Qualification and her capacity to earn cannot be a ground to dismiss the application of interim maintenance.

Inder Singh Grewal v. State of Punjab & Ors.¹²

In this case, the court held that the “complaint under the Act needs to be filed within one year from the date of incident”. However, the Supreme Court has reversed the above decision in the case of,

Kamatchi v. Laxmi Narayan.¹³

In this case the Supreme Court has held that “an application filed under section 12 of the Act is not a complaint as per section 2 of the CrPC, the application of section 468 of the CrPC over section 12 of the Act is not permissible, and hence the rule/ law of limitation of one year is not applicable to the applications filed under section 12 of the Act.”

VI. Conclusion

Domestic violence is a social evil and it needs to be addressed. The legislators has enacted Act called Protection of women from Domestic Violence Act, 2005, in order to protect the women from domestic violence, however there is no decrease in the domestic violence. These are the few **suggestions** which may help to achieve the goal of the makers. The justice needs to be served as fast as possible with out any delay. The Act should be gender neutral, it only protect the women from domestic violence but it should be made gender neutral. Awareness must be created among the women about the Act. NGO’s and other Government institutions should conduct activities for the welfare of the women. Camps must be done in

remote villages and there is a need to conduct survey regarding pending domestic violence cases in each state. If any officer is refusing to file the domestic violence case, then strict action must be taken against those officers. Strict punishment must be given to the guilty, so that there may be reduction in cases of domestic violence.

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7. Inder Singh Grewal V. State of Punjab & Ors, [2011] 12 SCC 588.
8. Kamatchi V. Laxmi Narayan, 2022 Livelaw (SC) 370.

¹² Inder Singh Grewal V. State of Punjab & Ors, [2011] 12 SCC 588.

¹³ Kamatchi V. Laxmi Narayan, 2022 Livelaw (SC) 370.