

## UNRAVELING THE DOMESTIC VIOLENCE LAWS IN INDIA

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### Abstract

Domestic violence or domestic abuse is the act of superiority and getting things done the way one likes in a household by the use of violence. Domestic abuse is a heinous act of violence and abuse in the family setup. The NFHS Survey which was conducted over a span of thirteen years from 2006 to 2019 clearly showcases that the amount of domestic abuse incidents is actually on the rise in India and consistently they are growing in numbers. The present legislation of the Republic of India precisely focuses to safeguard and prevent the female population from facing any kind of violent act domestically and protects them from abuse from male members of the society. However, the male segment of the population too faces emotional, economic, and physiological domestic violence predominately but it has not been addressed therefore protection of both is mandatory. Even after the honorable courts of India time and again reinstated the need for 60 days per case, the cases of domestic violence seem to stretch on for years and years on end.

**KEYWORDS-** domestic violence, Indian law, domestic abuse, protection of Women from domestic violence act 2005, dowry prohibition act 1961, Indian penal code 498a, social stigma against victims of domestic violence, support services

### Introduction

India is a land where family is seen as the utmost unit of respect and devotion for an individual throughout his or her lifetime. The domesticated lifestyle sometimes leads to quarrels and disagreements which are deemed

to be normal wear and tear of a household. But what if the individual's personal life and liberty are in danger? What if the idea of equality in the family turns over and the seed of oppression takes place? What if the mental, physical, and emotional well-being of a particular member or member is distorted by others, and what if the violation of any sort takes place in the presumed safe heaven called home? All this is a result of domestic violence.

#### I. Exploring the Complex Reality of Domestic Violence

Domestic violence is an act of asserting superiority and making the other follow one's own command in a household. It is often referred to as domestic abuse<sup>1</sup>. This is a sort of behavioral pattern which is present predominantly in the male members of the household where they try to gain control over the actions of females in a household relationship by the use of physical or verbal or any other sort of force. This violent act or abuse can be of any form, ranging from mental, physical, economic, sexual, and even psychological just in order to make the other person follows the whims and fancies of the abuser.

Intimate partner violence is used to terrorize, intimidate, hurt, or humiliate the partner in order to maintain power and control over the other individual. The Indian society setup is such that even today many parents

<sup>1</sup> United Nations, *What Is Domestic Abuse?* UNITED NATIONS (2020), <https://www.un.org/en/coronavirus/what-is-domestic-abuse>.

who marry off their daughters usually preach to them that the house where they are being weeded off to is the house which will be conducting their last rites (Jidhar doli jayegi udhar se hi arthi uthegi). This is one of the most prominent reasons that cases and reports are not filed in the police station on the outskirts of society because they believe in the thinking that society will disregard them if they try to even raise their voice.

#### A. Domestic abuse and violence

The act of violating or abusing a person in the household setting is referred to as domestic violence. In India the practice of domestic violence has always been fueled by the practice of giving dowry and even in the twenty-first century the act under the pretext of giving gifts is seen as legit. In the year 2022 itself, approximately 7000<sup>2</sup> reports on domestic violence have been recorded and the ones that went unreported are definitely more than the ones actually reported because the societal construct is such that women usually lose their voice after marriage.

#### B. Gender-based violence

The violence against a particular gender by the other in order to maintain the preconceived notion of superiority is gender-based violence. Since the world is presumed to be a patriarchal society generally, the men of the society turn to violent acts against females in order to maintain their orthodox mentality of supremacy.

According to the NFHS-4's Insights which is ORF's Occasional Paper No. 343 reported that approximately 730 million women around the globe have faced some sort of gender-based violence by

2022<sup>3</sup> which in itself is a very alarming rate.

This serious issue has come into the limelight plethora of times and global communities time and again have raised concerns over it but till today it is a prevalent offence in the mainland of society. The Platform of Action as well as the Beijing Declaration in the late twentieth century were the first to ignite the conversation on this topic. Further in 2015 when the United Nations Assembly adopted the Sustainable Development Goals and the 2030 Agenda, they again worked out plans and devised ideologies to conquer the social evil. Yet, the offence is still lurking in the dark corners of society.

#### II. The Pandemic effect

The impact of the COVID-19 Lockdown has been derogatory for the women in the household. The loss of jobs and people staying amidst each other under the same roof, 24into7 has led to more cases of domestic abuse. The global pandemic in its own way was a wake-up to humanity and legislation specific regarding the health and safety of women in the households. During the epidemic outbreak cases of domestic violence in regards to dowry, quarrels, and authority have been noted. The National Commission of Women during the pandemic even reported<sup>4</sup> a higher number of distress and help calls from women of all backgrounds since the act of abusing women domestically has crossed all boundaries and is not something caste or religion or race specific. It is now a global issue that has surpassed all boundaries and shown the world that men with orthodox patriarchal mindsets only wish to impose their authority and superiority over women in society.

<sup>2</sup> Ambika P et al., *Over 6,900 domestic violence complaints filed by women in 2022 | India News - Times of India*, THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/over-6900-domestic-violence-complaints-filed-by-women-in-2022/articleshow/96839600.cms>.

<sup>3</sup> Shoba Suri and Debosmita Sarkar and Mona, *Domestic Violence and Women's Health in India: Insights from NFHS-4*, ORF (2022), <https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india-insights-from-nfhs-4/>.

<sup>4</sup> NCW Report On Crimes Against Women, Most Under Emotional Abuse In 2022, SHETHEPEOPLE, <https://www.shethepeople.tv/top-stories/opinion/ncw-report-on-crimes-against-women/#:~:text=The%202022%20data%20of%20the>.

III. The Indian Law- A Safety Net

The NFHS Survey<sup>5</sup> which was conducted over a span of thirteen years from 2006 to 2019 clearly showcases that the amount of domestic abuse incidents is actually on the rise in India and consistently they are growing in numbers. The need is for stricter laws that are held as exemplary and prohibit others from inflicting violence on their better halves or any other member of the society.

The women in Indian households are often dependent on the man for their well-being and livelihood therefore they do not raise questions against them and silently bear the abuse inflicted by their in-laws or husband. This is all because they believe that if they complain and their husband leaves them then they won't have any sort of shelter available to them. However, the honorable court of India in the case of S. R. Batra and Anr. V. Smt. Taruna Batra (2007)<sup>6</sup> held that it is now time enough to bring about laws that guarantee women the right to residence in the matrimonial homes. It was declared by the court that the household after marriage with the husband is actually a shared household and the women have the right of residence in it.

The laws which empower the women and act as a shield for her in case of any sort of domestic violence or abuse are:

A. The Protection of Women from Domestic Violence Act of 2005

The PWDV Act of 2005 is set up in place to provide the complainant with immediate relief from any sort of abuse

which she was facing in the household by the husband or even by the in-laws. It is a bonafide legislation set in place by efficient lawmakers in order to enhance the level and type of justice given to a woman in society.

Under Section 3 of the act, domestic violence has been defined as any hurt or injury or any act which caused danger or was harassment is included. It states that the act even if committed for the first time, will be liable under the DV Act and the same goes for any omission. The act deals with the following types of abuses:

- Physical abuse where there is some sort of bodily injury or pain caused either by the use of assault, criminal force, and/ or criminal intimidation.
- Sexual abuse which violates the dignity of the individual. However, the case of consent for matrimonial sex by the partner is under hot fire for a long period of time.
- Verbal violence by words or actions.
- The emotional abuse culminates in itself the verbal abuse along with practicing isolation, controlling, insulting, humiliating, or criticizing harshly.
- Economical abuse as was held in the case of Saraswathy V. Babu (2014)<sup>7</sup> and states that stridhan is the right of a female member and any sort of financial or resource abuse is also domestic violence.

Under this act, the aggrieved person or complainant has to be a woman only since gender-based violence is predominant in society. The aggrieved woman has to be living or

<sup>5</sup> Jaleel Ahmad, Nizamuddin Khan & Arupendra Mozumdar, *Spousal Violence Against Women in India: A Social-Ecological Analysis Using Data From the National Family Health Survey 2015 to 2016*, JOURNAL OF INTERPERSONAL VIOLENCE (2019).

<sup>6</sup> Indian kanoon, S.R. Batra And Anr vs Smt. Taruna Batra (2006), <https://indiankanoon.org/doc/594165/>.

<sup>7</sup> Indian kanoon, Saraswathy V. Babu (2014) (2014), <https://indiankanoon.org/doc/127362139/>.

has lived in the same household and even the protection is extended to women who have been in invalid marriages like live-in. The respondents under this act can be the adult male who has committed the hideous act along with any family member or relative who has aided the event.

If a complaint of such nature is registered the central enactment authority which is the state government has been regulated by with the need for service providers under Section 5 who will assist the aggrieved women in such cases. Further, it is the duty of the Protection Officers to take the aggrieved to the First-class magistrate and assist her with free legal aid if need be. Also providing her with amenities of life like shelter and medical facilities is the most important work of the officers.

Sections 19 to 23 of the Domestic Violence Act provide reliefs of various types to the aggrieve women like the right to matrimonial residence, protection order, monetary and custody orders. All this is done in order to broaden the shelter of the safety of women in the male-dominated society and provide them with a getaway in case of any issues.

**B. The Dowry Prohibition Act of 1961**

Dowry or the giving of gifts in order to wed off one's daughter or sister is an old age practice in society and it has always been the driving force that has led to the creation of the heinous act of domestic violence and abuse.

The legislation soon after independence was able to understand the grave situation that a woman is in because of insufficient dowry or greedy in-laws. The past showcased how women were

tortured and abused physically, mentally, and/ or emotionally only in order to procure more goods from their families. This had to change therefore in the year 1961 the legislation bought out the Dowry Prohibition Act which clearly prevents the giving and taking of dowry in any marriage.

**C. The Indian Penal Code of 1860**

(i) Section 498A- This section criminalizes the act of domestic violence or abuse whether it be physical, emotional, mentally, or psychological. Any sort of sort inflicted by the husband or relative is criminalized under this particular section.

(ii) Section 304B- Under this section of IPC any sort of violent acts constituted in order to fulfill the dowry demand by the husband or the in-laws of the bride are deemed to be inclusive in a criminal offense which is thereby punishable.

**IV. The problems in laws and regulations**

**A. Limitations of DV laws**

The present legislation of the Republic of India precisely focuses to safeguard and prevent the female population from facing any sort of violent act domestically and protects them from the abuse from male members of the society. However, the male segment of the population too faces emotional, economic, and physiological domestic violence predominately but it has not been addressed. Moreover, the social setup does not allow men to come up and raise their voices against such injustice which further deteriorates their conditions.

**B. Loopholes in the law**

Even though the laws are for the protection of women but it has to the notice by the honorable court of India

in a few cases that the allegations against the men were wrong and baseless. Out of spite and revenge or just plain anger and sometimes even to extort monetary benefits from the male correspondences the females create a web of untrue allegations against them and then it becomes difficult for the male members and their families to prove their innocence. Also, sometimes due to links and monetary powers the voice of the woman is distorted and she is forced to face even more abuse as the authorities were unable to fulfill their own obligations.

C. Lack of awareness

The illiteracy level among females is far less than that of men therefore it becomes difficult to address the issue of domestic violence when they are unaware of it. The lack of awareness and resources is one of the biggest hindrances to women getting justice delivered to them.

V. Challenges Faced by the Victims

The female victims are often seen not raising their voices and believing that everything that they are facing is their destiny which makes it difficult for even them to act in their own protection.

A. Social stigma

The biggest evil of the society is society itself. The social construct is filled to the brim with the orthodox and patriarchal society. So, when a woman raises fingers at her husband or in-laws for the abuse they inflicted on her, society makes her a selfish character. She becomes the one who was unable to adjust and it is believed to be a fruit of her past lives that such a thing happened to her.

On the other hand, if she faces everything silently then the same society calls her weak and destines to

live such a life. Many people in such a situation would tell her that abuse is just the way of life and it is her everything now.

B. Time taking court proceedings

Earlier the issue was with the producer of law being too time-consuming and a domestic violence case taking ages to get any sort of judgment. However, with the coming up of the 2005 act it is now time bound to a 60-day trial and the need is to dispose of the case as early as possible.

However, even after the honorable courts of India time and gain reinstating the need for 60 days per case, the cases seem to stretch on for years and years on end. Times of India in 2014<sup>8</sup> did a case study that showcased the ground reality as the case of Shabanabanu Shaikh was taking years on end to get a verdict from the court.

### Conclusion

The crux of the argument is that the legislation needs to be stricter in the law-making and the execution of the laws should be done in such a way that every member of the society comes out as a benefactor from it. The women who face violence need to be heard and even the men in such cases should have the right to be heard and their problems should also be accounted for.

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