

## **Domestic Violence Against Women : A Judicial Perspective**

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### **Abstract**

*Domestic violence in any form is an obstacle to the achievement of the objectives of equality and development. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The longstanding failure to protect and promote the rights and freedoms women against domestic violence is a matter of concern all over the world. Violence against women - whether rape, dowry deaths, cruelty by husband or relatives, - is on the rise and despite of emerging laws and legislations to protect the rights of women, there is no let down in cases related to domestic violence.*

*In order to address the problem of increasing domestic violence, which has remained largely invisible in the public domain, the Protection of women from Domestic Violence Act was passed in 2005 to provide civil remedies to women in abusive/violent relationship. Though a plethora of laws have been enacted for the protection of women, they have remained on paper, for the large majority of women in this country are wholly unaware about the existence of these statutory provisions. In few isolated cases where women have become mere assertive about their rights, they have been subjected to social ostracism.*

*No doubt the Protection of Women from Domestic Violence Act, 2005 is proposed to fulfill many of the hopes, which women have articulated over the years. It is however the first ever-comprehensive acknowledgement of domestic violence. But women have to go a long way to achieve the objects of equality and empowerment by ensuring that every woman should lead a life free of violence and full of dignity from the very beginning to the end. There is a need for attitudinal change of the entire society particularly all the males who are seen as perpetrators of violence against women.*

**Keywords:** *Domestic violence women harassment violence law etc.*

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### **Introduction:**

These expressions of violence take place in a man -women relationship within the family, state and society. Usually, domestic aggression toward women and girls, due to various reasons remain hidden Domestic violence is defined as violence towards someone you are in relation with maybe your mother, father, brother, sister or in laws. The victim may not always be the weaker sex. When this violence grows gender biased and the females are subjected to the male atrocities it is termed as domestic violence against women. It is often seen that wives are tortured by their husbands and in laws but the horizon of domestic violence against women is broad enough to include abuse against a mother by her children, a sister by her brother, a daughter by her father or may be a grandmother by her grandchildren.

The term domestic violence is defined as : “Domestic violence and emotional abuse are behaviors’ used by one person in a relationship to control the other, partners may be married or not married , heterosexual, gay or lesbian; living together or separated or dating. “Domestic violence is towards someone who you are in relationship with be it wife, husband, son, daughter, mother, father, grandfather, or any other family member.

Merriam-Webster dictionary defined, domestic violence is: “the inflicting of physical injury by one family or household member on another; also a repeated or habitual pattern of such behavior.”

Adriana and Gomez have also talked about two basic forms of violence, that is; structural and direct. Structural violence arises from the dominant political, economic and social systems, in so far as they block access to the means of survival for large number of people; for example, economic models based on the super-exploitation of thousands for the benefit of a few, extreme poverty in opposition to ostentatious wealth, and repression and discrimination against those who diverge from given norms.

Dr Joanne Liddle modified this definition as “any physical, visual verbal or sexual act that is experienced by the person at the time or later as a threat, invasion or assault, that has the effect of hurting or disregarding or removing the ability to control one’s own behaviour or an interaction, whether this be within the workplace, the home, on the streets or in any other area of the community”.

Domestic violence includes harassment, maltreatment, brutality or cruelty and even the threat of assault - intimidation. It includes physical injury, as well as “willfully or knowingly placing or attempting to place a spouse in fear of injury and compelling the spouse by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse has a right to abstain”. Confining or detaining the

spouse against one's will or damaging property are also considered as acts of violence.

### **Domestic Violence in the Family Life:**

Domestic violence has been defined as "all actions by the family against one of its members that threaten the life, body, psychological integrity or liberty of the member. Indian Penal Code and Evidence Act, Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 and cases *decided by the apex court like the TANDOOR MURDER CASE* and the PUBLIC HANGING case have been discussed. *There is a comparison between the Indian scenario and the American counterpart in detail relating to topics such as*

- Types of violence
- Modes of violence
- Laws made
- Male and female abuse
- Statistic analysis

According to Visaria's (1999) survey in Gujarat, illiterate women face more violence than literate women. Relationship between abusive behaviour and level of education has been found to be statistically significant. Illiterate women and those with education up to primary level (class 4) tend to be more subjected to violence as compared to those who had received education beyond the primary level. However, one has to keep in mind that the percentage of literate women in Gujarat is overall only between 20% to 50%. In one district, Banns Kantha in Kutch, the total percentage of literate women is even lesser than 20%.

In contrast a study by Ahuja in his book violence against women (1998) shows that there is no significant relationship between beating and educational level of the couple. Educated women are beaten as much by their husbands as those who are illiterate or less educated. About one-fourth of the batterers (24%) in Ahuja's study were those who were moderately educated and about one-fourth (26%) were highly educated. However, he added that men whose educational attainment is low, are more likely to beat their wife than men who are better educated.

In India we have no provision for protection of a complainant, not even under the Prevention of Dowry Act. A woman who has complained of harassment goes back to the very people against whom she has complained. What security can she possibly feel in such a situation, and how can she continue to act on her complaint? She obviously continues to be victimized often paying the ultimate price.

Frequent, unexplained injuries, reluctance to seek medical

treatment for injuries or denial of their existence, fear in the presence of certain family members, social isolation, disorientation or grogginess, especially in elders indicating misuse of medication and decline in physical appearance and personal hygiene indicating increased isolation and a lack of desire to continue living are some of the indicators of violence.

### **Dowry Harassment**

Dowry is a transfer of property from the bride's family to that of the bridegroom, at the time of marriage according to the present practice; dowry usually subsumes material gifts and cash paid to the bridegroom and his kin. This practice continues even after marriage. The dowry given at the time of marriage is not the only transaction as far as the daughter's marriage is concerned. There is a series of ceremonies associated with the girls in the family.

The Dowry Prohibition Act 1961 was amended in 1984, 1985 and 1986. Dowry deaths constitute a special category of death that was for the first time defined in a section introduced into the Indian Penal Code (IPC) In 1986, Section 304(B) stipulates that death of a woman within seven years of her marriage by burns or bodily injury with evidence of cruelty or harassment by her husband or his relatives in connection with a demand for dowry is 'dowry death' and punishable with imprisonment for not less than seven years. Three years prior to this, Section 498(A) was introduced in the IPC.

The first part of Chapter XVI of the IPC (Sections 299 to 311, which are offences affecting life) can also be invoked in case of dowry death or suicide. Under sections 299, 300, 301 and 304(A), culpable homicide, murder and death by negligence are crimes. Section 302 lays down punishment for murder: death sentence or imprisonment for life. Sections 113(A) (presumption as to abetment of suicide of a married woman) and 113(B) (presumption as to dowry death) were added to the Indian Evidence Act and can be invoked in cases of dowry murder or suicide. The Code of Criminal Procedure (mainly sections 174 and 175) lays down the procedure and principles of investigation into a crime.

### **Dowry Death and Related Judgement:**

**In Stale Of Punjab vs Iqbal Singh And Ors** Ahmadi J. decided the case where a woman set ablaze herself and her three children due to the exceeding dowry demand, beating from the in laws and marital discord. It was decided in the case that even if the husband drives the woman to circumstances that make her take a drastic step such as ending her life and if there is any involvement whatsoever of the in laws of the deceased the husband and the in laws are both held responsible. It

was held that: “If a married woman is subjected to cruelty of harassment by her husband or his family members section 498-A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304B IPC.”

**In Parveen Malhotra vs State** The facts were such that Shalini had a tiff with her husband and he said he would not return to home if she does not follow him to office. To this threatening she herself followed him to his office where she poured whisky on herself and in a spur of time a lighted matchstick set her ablaze.

**Sushil Sharma vs The State (Delhi Administration)** In the said case, Sunil Sharma who first shot his wife Naina and then burnt her in a Tandoor in a restaurant was sentenced to life imprisonment as per the judgement in later appeal of Sushil Sharma vs State (NCT) Of Delhi on 8 October, 2013

**In State of Rajasthan vs Lichma Devi** it was a bench of G. M. Lodha and G. K.. Sharma JJ which considered the appeal filed by state of Rajasthan against the acquittal of Lichma Devi, mother in law of the deceased Pushpa in what is alleged to be the most gruesome, heinous, cruel and barbaric murder by pouring kerosene oil and lighting fire on her and locking the kitchen from outside after ill treatment on account of her expectations of dowry. The court ordered public hanging and observed: “We are constrained to give this direction because of the increasing menace of dowry deaths, flood of cruelty to young helpless innocent brides who expect this protection for their natural inherent fundamental right of living as a human being under the Constitution of India which provides not only protection of social justice and equality to all but contains a special mandate for the duty towards the weaker sex “which was later withdrawn by supreme court orders<sup>41</sup> stating it should be carried with basic human dignity inside jail and that public hanging is neither possible nor feasible. It was held by the apex court that<sup>42</sup>

“Hanging in public involved “torture, cruelty and indignity,” and that executions should be carried out with “basic human dignity” guaranteed under the constitution.”

**In the case of Pawan Kumar & Ors vs state of Haryana** the deceased Urmila was burnt for dowry demand. She had earlier gone with complaints of maltreatment and putdowns to her parents but subsequently succumbed to a household quarrel and following so called accidental fire. In his judgement A. P.

Mishra J observed that:

“For more than a century, inspite of tall words of respect for women, there has been an onslaught on their liberties through “bride burning’ and “dowry deaths’. This has caused anxiety to the legislators,

judiciary and law enforcing agencies, who have attempted to resurrect them from this social choke. There have been series of legislations in this regard, without much effect. This led to the passing of Dowry Prohibition Act in 1961. In spite of this, large number of “brides burning and dowry deaths continued.”

### **Legislative Developments:**

**Protection of Women From Domestic Violence Act. 2005:** It is 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.

Section 3 of the Act defines domestic violence as any act, omission or commission or conduct of the respondent which harms, injures or endangers the health, safety, life, mental or physical, of the aggrieved person or causes physical, sexual, verbal, emotional and economic abuse to her or to meet any unlawful demand for any dowry.

One of the most important features of the Act is the woman secure housing. The Act provides for the woman’s right to reside in the matrimonial or shared household whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman. This is granted as per Section 6 and Section 17 as well as Section 19 of the Act.

The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment Section-20 of the act provides for Monetary relief.

### **The Dowry Prohibition Act 1961:**

“Dowry” means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by a other person, to

either party to the marriage or to any other person; at or before or after the marriage. This definition is given as per **Section 2** of the Act

**Section 3** of the Act provides Penalty for giving or taking dowry as any person who gives or takes shall be punishable with imprisonment extending to six months, fine extending to five thousand rupees, or both. **Section 4** of the Act provides for penalty for demanding dowry that anyone who demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as, any dowry, shall be punishable with imprisonment extending to six months, or with fine extending to five thousand rupees or with both. **Section 5** of the Act hold any agreement for giving or taking dowry to be void. **Section 8** of the act provides that every offence under this Act shall be cognizable, non-boilable and non-compoundable.

#### **PROVISIONS OF CRIMINAL PROCEDURE CODE 1973:**

**Section 125 and 126** of the CRPC provide for order for maintenance of wives, children and parents and its related procedure respectively.

**Section 174** of CRPC provides for the power of police to enquire and report on suicide, stating that when the officer in charge of a police station or some other police officer specially empowered by the State Government receives information that a person has committed suicide, or has been killed by another, or has died under circumstances raising a suspicion, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests.

**Section 198-A.** provides for the prosecution of offences under Sec. 498- A of the Indian Penal Code. It states no Court shall take cognizance of an offence punishable under Sec. 498-A of the Indian Penal Code (45 of I860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related id her by blood, marriage or adoption.

**Section 113-B** of Indian evidence act provides for Presumption as to dowry death. It reads as When the question is whether a person has committed the dowry death of a women and it is shown that **soon before her death such woman had been subjected by such person to cruelty or harassment for, or connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.**

**Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994:** also provides for curbing the evil of female foeticide which is more or less related to the evil of domestic violence as a woman is tortured day in and day out if

she is not able to produce a male child. To get rid of a girl fetus the husbands and in laws go to the extent of pre natal sex determination and abortion of fetus and this leads to declining sex ratio. **Section 27** reads that the offences under the act to be cognizable, non bailable and non compoundable.

### **Conclusion**

Domestic violence in any form is an obstacle to the achievement of the objectives of equality and development. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The longstanding failure to protect and promote the rights and freedoms women against domestic violence is a matter of concern all over the world. Violence against women - whether rape, dowry deaths, cruelty by husband or relatives, - is on the rise and despite of emerging laws and legislations to protect the rights of women, there is no let down in cases related to domestic violence.

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No doubt the Protection of Women from Domestic Violence Act, 2005 is proposed to fulfill many of the hopes, which women have articulated over the years. It is however the first ever-comprehensive acknowledgement of domestic violence. But women have to go a long way to achieve the objects of equality and empowerment by ensuring that every woman should lead a life free of violence and full of dignity from the very beginning to the end. There is a need for attitudinal change of the entire society particularly all the males who are seen as perpetrators of violence against women.

In the present scenario strict and stringent steps need to be taken out against the growing evil of domestic violence. Until and unless a woman raises her voice loud against the crime it is not possible to curb the abuse. But only the women's initiative not enough, it must be supported by laws, rules, regulations, and various supportive initiatives by the NGOs as well as governmental organizations.

Some of the steps (as per my rationalization) which can be taken to mitigate the rising crime of domestic violence can be:

- (a) Studies on prevalence, risk and protection factors as well as health consequences need to be carried out;
- (b) Basic support system needs to be established which may include:
  - i. Immediate medical assistance to the victim
  - ii. Counseling
  - iii. Shelter and emotional support
  - iv. Reference to medical workers and women's organization
  - v. Legislation and legal cells
- (c) Police needs to be more sensitive in handling domestic violence cases and must take them as seriously as any other crime.
- (d) Authorities should take steps to recognize domestic violence as public health issue.
- (e) A crisis support cell needs to be established in all major government and private hospitals with trained medical social workers.
- (f) Training programmes must be organized for health professionals in order.

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