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### DOMESTIC VIOLENCE LAWS IN INDIA

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#### ABSTRACT

The current research paper describes about the laws against domestic violence in India. The paper begins with defining the act of domestic violence and what all constitutes as domestic violence. The paper then discusses the various types of domestic violence such as Physical abuse, mental abuse, Psychological abuse and sexual abuse. The paper then talks about the laws against domestic abuse which have been laid down in the Protection of Women from Domestic Violence Act, 2009. The salient features of the Act have been discussed along with the loopholes in the current system due to which the Act has not been able to be made properly effective. The paper concludes with speaking about the need of awareness among the women to enable them to speak against the infliction of domestic violence and the need of psychological aid for the woman to overcome the trauma of such violence. There is also a need of educating men from a young age to be respectful of the fellow beings, including women and not consider them as a means of discharging their inner frustration and rage

#### 1. Introduction

Domestic Abuse can be defined as a series of abusive actions between one person and another, or between the two persons, such as marriage and dating, families, friends, or coexistence, in close relation with each other. Domestic abuse contains acts such as "physical assault" or "threats; sexual abuse; mental abuse; power or domination; threats of violence; stalking; passive and concealed abuse (for example negligence). The deficiency includes domestic

violence. The extent, and length of such acts and other factors of domestic violence may or may not cause crime depends on local laws.”

The well known women rights activist Indira Jaiser always said the justice system "offers the victims of sexual violence no appropriate remedies. Criminal courts are unable to prevent women from being thrown out of their homes and are unable to discuss women and children's urgent needs during the trial. Jaising said that a new law is urgently designed to ensure the adequate response of the abuse and that women are safe when waiting for justice.”

Domestic violence has existed in the society since time immemorial. Though the world has achieved millions and reached zeniths, domestic violence has still not vanished from the surface of the Earth. The awareness regarding the same has increased undoubtedly, and more women raise their voice against the abuse than before, but there is still a long way to go before this social evil becomes completely dormant.

The rise in the number of women speaking against it is attributable to the rise in awareness regarding the same. Women are better educated and the enforcement agencies are better equipped to be able to deal with such situations. A lot of it has been possible because of the stringent laws in place which provide for strict punishments for the perpetrators of such acts and safeguard women from any further abuse while the case is still pending.

One of the main concerns regarding domestic violence is that still, not a lot of cases are reported to the police. This happens because of two reasons:

- i) The women are not educated and aware of their rights, especially in rural areas. They come to terms with it as a way of life as this is what they have often seen their mothers go through. They do not understand the effect the physical or mental abuse is having on their bodies and minds and go on about their lives, bearing the wraths of their husband or in laws.
- ii) Even if they are aware that they are being wronged and even if they understand that they can drag the abusers to the court, they do not see it to be practical as doubts such as where will they live while the case is pending or even, what will happen to their children surface in their minds.

## **2. Types Of Domestic Violence**

There are deep rooted thoughts and these thoughts have reasons which lead the abuser to be the way he or she is, that is abusive. This abuser has one sole purpose that is to take charge of the body and mind of the person he or she is abusing. These abusers do the same through many ways, such as: Mainstreaming, embarrassment, loneliness, intimidation, bullying, negation, and guilt. Many of the different places that your partner is exposed domestic violence:

1. Physical Abuse: this can be said the most common as well as the most horrific kind of abuse as this kind of abuse causes physical as well as mental harm to the victim. The acts of such violence include undesired physical contact, destruction of objects, physically harming the victim by throwing objects at them, causing harm to the pets.

2. **Mental Abuse:** mental abuse can be caused by subjecting the victim to rebuke and saying hurtful things. The perpetrators of such abuse often give verbal threats to the victim and also to the people around, such as children.
3. **Psychological abuse:** such violence may be triggered by confining or reducing the victim's social connections, "preventing a victim from seeing friends and family, deliberately sabotaging the social connections of a victim, and segregating the victim from personal interactions."
4. **Economic abuse:** In this kind of abuse, the abuser has control over the flow of the money towards the victim. The victim is dependent on the abuser for her expenses and the abuser does not provide her with the same or makes her beg for it. Because of the prevalent culture, especially in the rural areas, women are not supposed to go out and earn of their in laws do not allow the same. This leaves them without any money of their own and makes them rely on their in laws for the same who end up abusing this position.
5. **Sexual Abuse:** This kind of abuse is highly common in domestic abuse. Marital rapes are symptomatic of abusive relationships between spouses or partners. Even consensual sex takes the form of force at times as the perpetrator gets taken over by the feeling of rage and power. It has been found that the women who are abused by their spouses or partners sexually stand a higher chance of getting seriously injured or killed.

### **3. Laws Against Domestic Violence**

Since time immemorial, domestic violence, especially subjected upon women by men, has been a part of the society. Earlier, it was an aspect of marriage that no one talked about but everyone new and every woman suffered. She accepted it as something that was a part of marriage and did not raise her voice against it. This was because of the lack of education and the lack of awareness and also because of the absence of laws regarding the same. Even though there are laws in place today and women are better educated, the matter is still a taboo and not talked about as often as it needs to be addressed.

The Protection of Women against Domestic Violence Act was passed in order to fill the void that existed with respect to the legislative action against the act of domestic violence in India. The Act does not restrict itself in granting protection to wives only but also stretches the same to sisters, widows and mothers. The Act addresses the progressive aspects of relationships by also including live in relationships within its ambit.

The Act also gives a wide interpretation to abuse and defines acts that could fall within its ambit and that are thus prohibited.

Many of the features of the Act are::

1. The Act includes the aggrieved person to be any woman the perpetrator has a sexual relationship. She does not have to be his legally wedded wife in order for her to be able to seek remedy under the Act. Other than that, she can also be the sister, mother, widowed relative or any other woman residing in the house of the respondent.
2. The definition of the respondent is as follows: "It can also be seen, therefore, that a defendant cannot be a man per se, but may be any relatives of a husband or a male wife." Any single, adult person who is or was in domestic

relationship with the accused, "but not for be free of scot, but to make his mother, sister and other relative, can also be charged in the case of husbands' or males' relatives."

3. Not only the woman who was indignant, but then any person aware of such domestic violence can file a FIR against the criminals. The Act defines as "anybody who has reason to suspect that" an act this has been committed or is committed. This ensures, on behalf of the person, this neighbors, social workers, relative etc. should all take action."

4. It has been observed that many times, the victims do not speak up due to the fear of getting banished from the house and they have nowhere else to go. For this reason, the Act provides that the court, if it deems necessary, can allot a part of the house for her personal use even though she enjoys no property rights in the house.

5. The Act allows the magistrate to take appropriate actions in order to prevent any further act of violence after the complaint has been made. The magistrate thus can prohibit the respondent from disturbing her possessions in any manner and can even prohibit the respondent from entering the victim's place of work or if the said victim is a child, from entering her school.

6. 6. The accused suspect could also be prohibited from communicating in any way to the victim. The correspondence involves directly, verbally, in writing, electronically or by telephone. The Court also has the right, under the statute, to forbid the respondent's entry into the victim's particular room or building.

7. In order to enforce it, the judge has the right to charge the defendant with monetary assistance and monthly payments. He may also be responsible for the loss of earnings, hospital expenses or any injury or harm caused by such violence to his land.

8. As mitigation for not only psychiatric injury but also psychological pain suffered by the claimant, the judge is required to pay the complainant.

9. The Act, for the sake of granting quick redressal to the victim, goes as far as allowing the court to reach the conclusion that "acts of inflicting violence were in fact committed by a sole testimony of the victim"

10. Because of the gravity of the Act, the court is required to ensure speedy justice for which, the first hearing has to be held within three days of the complaint and all such matters need to be decided within 60 days of the first complaint.

11. The Act calls out the state to allocate protection officers and a whole pre-defined machinery to carry out the functions laid down in the Act.

12. The Act provides for the Magistrate to take the guidance of welfare experts if the need arises.

#### **4. Drawbacks Of The Current System**

1. It has been often observed by the victims and welfare experts that the police officers and the magistrates are not well aware of the provisions of the Act and their rights and duties laid down in the same. Because of the lack of sensitization among the enforcers of the Act, women are often re victimized at the hands of the machinery.

2. The women suffering domestic violence, if decide to take action, have two routes. The first was the court of divorce, and even the second was the referral under the Domestic Violence Act to the judge. The presence of these two different routes makes the process more tedious and confusing.
3. The Act stands a good possibility of being misused by women in order to create nuisance or undertaking revenge for something not related to domestic violence. The onus of proving that there was in fact no commission of domestic violence also stand with the respondent.
4. In all states the rule has not been enforced in the same way. In the form the Act was applied, there are huge inconsistencies. 3,687 Protection Officers were nominated by Maharashtra, just 27 by Assam and 25 by Gujarat. Andhra Pradesh had 100 million rs to introduce the PWDVA, while other nations, such as Orissa, were far behind. This is not surprising to note that the largest amount of cases identified were also spent in the enforcement of law in term of financial and personnel. Between July 2007 and August 2008, Maharashtra has filed 2,751 lawsuits, while Orissa can accommodate only 64 from October 2006 to August 2008.
5. “Advocates and security officers found numerous PWDVA shortcomings, including the failure of the Act to require the criminalization of violence, the lack of real provision for appeals to postpone the granting of women's relief, the failure to give the government concrete private property to a household (only grant).”

## **5. Conclusion**

The Domestic Violence Act, as far as the framing is concerned, is an efficiently framed enactment. The Act properly defines all the acts that can likely fall within the ambit of domestic violence and includes mental violence in addition to physical violence. The Act also does not simply assume that the perpetrator of such violence can only be a male but also provides for prosecution of other relatives of the male, be it males or females. The Act further does not limit the ambit of the victim being the wife or other sexual partner of the male but can also be the mother, sister or a widowed relative.

The Government is required to take steps for spreading awareness among the women in relation of this Act and making them aware that can be of immense help in freeing the women bearing the torments of domestic violence. The women need to be enabled to get out of their houses and speak against the suffering they are being subjected to. This needs to be done through awareness drives and campaigns calling out women to show strength and raise their voices against the wrongs they are being subjected to.

There is still a lot of work to be done by the government in order to see that the cases brought to the police and then to the court are disposed of efficiently. Any kind of violence, be it physical or mental, puts a lot of trauma on the victim and has long lasting psychological effects.

It is very important that the women who have to endure domestic violence seek psychological help to help these women to deal with the trauma effectively and to enable them to overcome it and see it as a hurdle crossed rather than let it be something that will push them back down every time they try to rise above it.

Women in the rural areas are neither aware enough nor do they have the resources to seek mental help. The government needs to facilitate these women with adequate means such as counsellors who would help them overcome the grief associated with domestic violence so that they do not see their future as an abysmal cause but rather work towards the betterment of it and the betterment of her children if she has any.

Mental health, like the physical health, is crucial for the wellbeing of an individual and like any physical trauma on the body requires the attention of a doctor, mental trauma, caused by acts such as physical violence also requires the attention of a counsellor and must not be neglected.

Other than the need of psychological attention, girls need to be educated about the domestic violence and they need to be made aware that they do not need to tolerate any act of domestic abuse. They need to be conditioned that they should not accept domestic violence in any form and must raise their voice against it.

It has been observed that the parents teach their daughters to be submissive tell them to bear the harshness of her in laws and not raise her voice against it as that might lead to the husband leaving the wife. Such parents shall be made vehemently aware of what they are doing with their daughter and that they are putting the life of their daughter in jeopardy.

Moreover, we need to teach young men that women are not theirs to be abused and have the right to be treated with dignity. They need to be conditioned with a very young age to not be aggressive and to respect the fellow beings. The taboos such as “sensitivity is not a trait of brave men” need to be done away with. The society needs to un-learn that men is the better, the higher sex and equality among men and women needs to be promoted. The day it will be imbibed within the minds of the people that women are not inferior than men, the cases of domestic violence will decrease dramatically.

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