



DOMESTIC VIOLENCE LAWS IN INDIA-AN ANALYSIS

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Abstract

Domestic violence against women refers to violence actions of any kind directed towards females in the vicinity of their homes. Abusing her physiologically, sexually, emotionally, or monetarily constitutes DV., or the threat of such violence, may be inflicted on her by someone intrinsically linked to her by matrimony or family relations with the goal of subduing her. Domestic violence breaches a woman's right to a decent life, her right to be free and secure, and her right to not be subjected to any kind of discrimination.

This research study aims at exploring the existing Indian laws India available to women via which she can find redressal and justice for her domestic violence grievance. It is also an attempt at exploring the lacunas in the existing laws dealing with domestic violence in India. The researcher has selected a doctrinal legal study strategy and has consulted a range of statutes, reports, books, and other written materials. The study's findings indicate that while there are some prospects for Indian women to hold office or advance their political engagement, there are still barriers they must overcome, such as illiteracy, proxy representation, and phantom decision-making authority.

Keyword- *domestic violence, dowry, suicide, Domestic Violence Act, 2005*

Introduction

More often than not, everyone has friends or family members who have experienced domestic abuse at some point or who have committed it. But how frequently have we averted our eyes and remained silent because we were at a loss for words?¹

¹ Bourgault, Shelby, et al. Violence Against Women and Children During COVID-19—One Year On and 100 Papers In: A Fourth Research Round Up. Center for Global Development, 2021.



The Indian legislation on domestic violence of 2005 has provisions, defining the explanation as to what a domestic violence(DV henceforth) entail. –Any act, omission, commission, or behavior of the respondent as stated in Section 3 of the Act:²

- Bodily, sexual, vocal, emotional, or monetary mistreatment that hurts or threatens the injured individual's wellbeing, security, existence, appendage;
- Harasses, threatens, injures, or risks the victim to coerce her or any member of her family into granting any invalid request for dowry, additional assets, or thing of value; or
- Having the effect of endangering the offended party or any of her family members by engaging in any of the behaviour described in clauses (I) or (II); or
- Or else hurts or instigates damage to the injured party, either physically or mentally.

Apart from the above mentioned acts, the Indian legislation has a number of laws that cater to the aggrieved women of domestic violence. In India, there are numerous laws against domestic abuse. The Dowry Prohibition Act of 1961³ (DPA henceforth) criminalized the giving/ receiving of dowries. Two new sections, Section 498A⁴ and Section 304B⁵, were added to the IPC in 1983 and 1986 respectively with an effort to strengthen the 1961 statute. The DV Act of 2005 is the most recent legislation. Domestic violence is defined by the DVA, it entails abuse of women, may it be physically, emotionally, sexually, verbally, or even financially.⁶

² Section 3, The Protection of Women from Domestic Violence Act, 2005.

³DPA, Indian law, which went into effect on May 1st, 1961, forbade the granting or accepting of dowries. According to the Dowry Prohibition Act, "dowry" is defined as "assets, commodities, or finances offered to the marital relationship by either spouse, by either side's relatives, or anyone in connection with the marital relationship."

⁴Sec.498A - Partner or family member of a woman who subjects her to cruelty — Anybody who subjects a woman to senseless violence, whether they are her husband or their relatives, should always be penalised with a maximum of 3 years in prison and a fine.

⁵ Section 304 B, IPC,1961- (1) A woman's death is referred to as a "dowry death" when it is proven that she was subjected to torture or abusive behaviour by her partner or any family member of her partner for, or in connection to, any demand for wedding gift within 7 years of getting married. In such cases, the partner or relative is presumed to have been responsible for her demise. (2) Anybody who commits dowry death confronts a mandatory term of 7 years in prison and a maximum penalty of life in prison.

⁶Ibid.

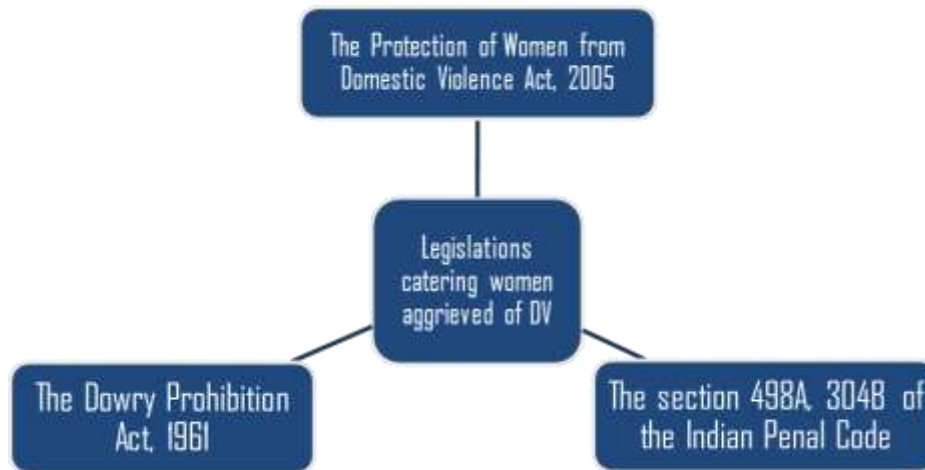


Fig 1.1 Indian legislations for domestic violence

Source:Joseph (2020)

Literature Review

According to the 2020 report by World Health Organization, the concept of –domestic violence⁷ and concluded that most frequently refers to violence committed within a married partnership, where one party, typically a man or his family, employs a pattern of physical abuse and other frightening behaviors to exert dominance and control over the other spouse, usually a woman. As was already established, victims of this form of assault are typically women. The majority of women faces this as a common household issue and decides to remain silent out of respect for their families’ reputation. According to Azad (2021)⁸, the government and the authorities attempt to protect women in every way they can because the crime is widespread in India. Numerous laws that act to violate a woman's modesty and dignity have been amended by the DV Act, and

⁷ Malik, Sana, and Khansa Naeem. *Impact of COVID-19 Pandemic on Women: Health, Livelihoods & Domestic Violence*. Sustainable Development Policy Institute, 2020.

⁸ Heron, Rebecca L., Maarten Eisma, and Kevin Browne. "Why do female domestic violence victims remain in or leave abusive relationships? A qualitative study." *Journal of Aggression, Maltreatment & Trauma* 31.5 (2022): 677-694.



additional criminal legislations. Maintenance is defined as a particular phrase in Section 3(b)⁹. However, notwithstanding some important rulings, the issue of whether the wife should receive maintenance under the Domestic Violence Act of 2005 is still frequently disputed. This is due to the fact that it has been regarded as one of the most crucial elements under the wife's allegation of domestic violence. Under section 2(k)¹⁰ of the Domestic Violence Act of 2005, the phrase –maintenance is referred to as –Monetary Relief,¹¹ and it is further defined under section 20(1)(d)¹¹ of the same Act.

Hague (2021)¹² concluded that all women who live in a shared home, whether they are mothers, sisters, wives, widows, or partners, are covered by the DMV Act. However, Walzer (2020)¹³ stated that women have the right to lodge a direct complaint to the protection officer along with the same report to police officer of the concerned station.

The aforementioned submissions can be used to determine the following aims:

- To investigate the domestic violence laws that are in place in India.
- To explore the lacunas in the existing laws dealing with domestic violence in India.

⁹ Section 3 (b) –Maintenance entails (i) in all situations, provision for food, clothes, shelter, schooling, and healthcare attention and medication; (ii) in the context of a single daughter, appropriate associated expenses to her marriage.

¹⁰ Section 2 (k), DMV Act- "Monetary relief" refers to the amount of money Magistrate could order the respondent to pay to the harmed party to cover costs and compensate for damages sustained as a result of the domestic violence at any point throughout the hearing of the application for any remedy under this Act;

¹¹ *Ibid.*

¹² Babakhani, Atieh, and Susan L. Miller. "—I Felt I Was Screaming Under the Water! Domestic Violence Victims' Experiences in Iran's Police Departments and Criminal Courts." *Violence against women* 28.10 (2022): 2398-2423.

¹³ Drieskens, Sabine, et al. "Domestic violence during the COVID-19 confinement: do victims feel more socially isolated?." *Archives of public health* 80.1 (2022): 1-11.



The hypothesis for the study is as follows:

H1 : The Indian legislation has adequate laws dealing with domestic violence of women

H2 : The Indian legislation has significant lacunas in the existing laws dealing with domestic violence.

Material and Methods

For this study, the researcher employed a doctrinal research methodology. In addition to the information from secondary sources, national law, judicial decisions, and other primary data sources were evaluated. The core of the doctrinal method of study was the legal precedent, constitutional amendments, and other legal sources.

Results and discussions

In accordance with the first objective of the study, the current Indian legislations dealing with DV in India

- **Indian Penal Code, 1860¹⁴**

The most significant substantive criminal statute to enforce changes with regard to cruelty against essentially married women is the Indian Penal Code, 1860. Section 498A addresses various issues related to cruelty and is as follows:

¹⁴ *Supra* 4

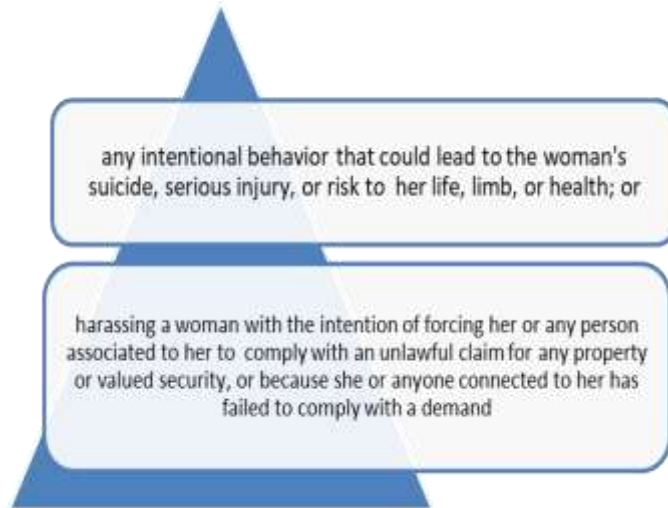


Fig 1.2 essentials of section 498A under IPC

Source:Hague(2021)

This provision states that a married woman who experiences mistreatment from her spouse or in-laws may initiate a lawsuit against them. Therefore, for the sake of this section, it is crucial to comprehend what is meant by cruelty. It was held by the Apex Court in the matter of *Inder Raj Malik v. Sunita Maliak*¹⁵ that the definition of –cruelty ll can be found with the description, which, among many other things, it proclaims that it is cruel to harass a woman in order to coerce her, her family, or any relevant entities into granting a request for assets or a financial instrument. This section includes the following categories of cruelty:

- Cruelty through frivolous lawsuits
- Cruelty caused by a recurring need
- Abuse in extramarital relationships
- Intimidation for a non-dowry demand
- Cruelty in rejecting the infant girl
- False accusations of cruelty toward chastity
- Removing children from custody

The definition of cruelty as per this section contains any cruel deed so severe that it puts the women in risk and is so severe that it could result in suicide. It is also significant to mention that

¹⁵ 1986 (92) CRLJ 1510



the Supreme Court established in the case of *Kaliyaperumal v. State of Tamil Nadu*¹⁶ that brutality was an indispensable element in criminal offences that fall under IPC sections 304B and 498A

- **The Dowry Prohibition Act, 1961¹⁷**

The Dowry Prohibition Act's provisions primarily address dowry-related matters and associated crimes largely. When a daughter marries, the handover of father's property is referred to as a "act of dower." It is a method of providing the bride's family with a set sum of money, assets, gold, etc. to help them out financially.

The Act contains a number of sections that deal with the term "dowry," as well as clauses that deal with the penalty for the crime of dowry as well as the officers responsible for looking into such situations. The Act also grants some authority to establish guidelines for offering as well as taking dowries. Nevertheless, in reality practically all matrimonies happen under the guarantee of the families of both partners, particularly the bride.¹⁸

The first Dowry Prohibition Act was modified to add sanctions for requesting dowry, publicising offers of money or property, and trying to establish least and highest punitive measures for giving and accepting dowry. An equivalent 1983 reform to the Indian Penal Code established specific criminal offences for dowry - related brutality, dowry death, and aiding in suicide. When evidence of dowry demands or dowry harassment could be presented, these legislations penalised violence towards women.

- **The DV Act, 2005¹⁹**

According to the Preamble of the Legislation, this Act is intended to more effectively defend the rights of women, who are victims of abuse of any kind occurring within the household, in addition to matters pertaining to or instrumental to such abuse, have been guaranteed

¹⁶ 2004 (9) SCC 157

¹⁷ *Supra* 3

¹⁸ <https://www.britannica.com/event/Dowry-Prohibition-Act>.

¹⁹ *Supra* 3

constitutional protection. The law²⁰ specifies that, Women who are aggrieved have a right to information about the resources that are offered, including free legal assistance from the Protection Officer, etc. The victimised woman may be given a place to live and access to medical services. In accordance with Section 16 of this Act, the complaint processes may be conducted in camera.

Special features of the Act:

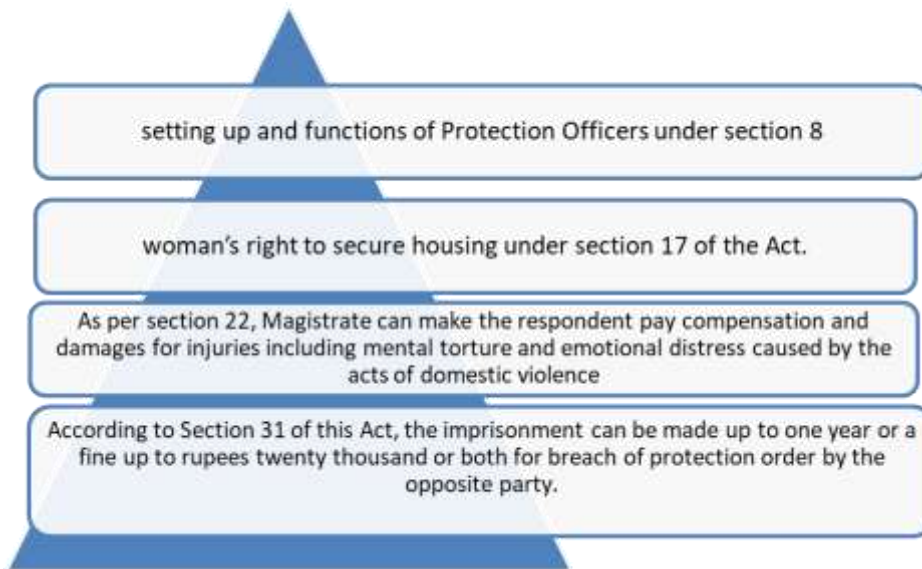


Fig 1.3 Features of the DMV Act, 2005

Source: Hague (2021)

In accordance with the second objective of the study, the lacunas in the Indian legislations dealing with domestic violence

Need for awareness- Domestic violence against women is a straightforward illustration of this, but in terms of justice, victims are less aware of the provisions of this Act. According to the Act, the victim can go immediately to the Protection Officer for justice, but it has been shown that very few people have done so in cases of domestic abuse. Most often, victims talk to the police first about the case, and then they talk to the protection officer. Protection Officers are lax in

²⁰ Section 4 of the DMV Act.



their work standards. They manage the cases solely for their own benefit and not to demonstrate their abilities.

Vexatious legislations- The woman has abused the law in her treatment of defenceless males, which is clearly unjust before the law. The DV Act makes the assumption about all victims being female. Only a woman may make a complaint against a male under this law. This law gives men no rights.

Sole burden of proof on the man- If a woman reports that her husband has verbally and emotionally abused her, she is not required to provide any evidence. A Magistrate may take action to safeguard the woman from any future acts of violence, no matter how little, in accordance with Section 18 of the Domestic Violence Act.

Conclusion

As a result, India's Law against Domestic Violence became an admirable piece of legislation. It considers and recognises more extensive forms of DV against women. Before enactment of this Act, regardless of victim's gender, all instances of domestic abuse within the family had to be prosecuted as IPC offences that corresponded to the specific acts of violence. This posed a challenge whenever the survivors were youngsters or women who've been dependent on the attacker.

Possible reforms in the legislations-

Inadequacy- The current legal framework is insufficient to address the issue of domestic abuse. In order to prevent women from abusing the law, both men and women should have equal protection under the law.

Need for awareness- The government and NGOs must raise public awareness about the Domestic Violence Act so that rural residents are aware of it and women from all social groups step forward to take advantage of its solution.

Rigid Implementation of laws- The actual application of the regulations appears to be having issues. In many districts, current government employees who are ill-equipped to handle the situation are given this duty in instead of hiring protection officers. As a result, they fail to fulfil



the majority of the Act's requirements, which prevents victims from fully utilising the law to their advantage.

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