

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 2 | Issue 1

2020

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at editor.ijlsi@gmail.com.

Another Pain by another Stain in the Society - Domestic violence

KRITIKA MUNDRA¹

ABSTRACT

Domestic violence is a major concern of the country. Irrespective of where people live, such kind of violence has become prevalent in urban, rural and metropolitan areas. This kind of violence can be said to be physical, psychological as well as sexual. The primary reasons for the act of violence against a woman is the sociological and psychological behaviour. Poverty, Lack of job opportunities, drinking, dominating nature of the partner, economic hardships, are some of the main reasons. Dowry is also one of the basic and major concern of such kind of violence. Talking about the violence against husband in India, if we have a look in any legislation relating to domestic violence, there is no provision relating to the protection of husband against the physical, mental as well as mistreatment by their wives or this in-law. We can say that the legislation is somewhat gender biased, as many women uses these legislations as a weapon to blackmail their husband and in-laws and threat them in doing something which may affect their reputation. Whenever there is a talk about domestic violence, we presume that it has to be done by a husband against their wives. But no one thinks of the opposite happening that is, the husband being tortured by the wife. In todays generation, we need to change our thinking and stop those woman who uses these protective legislation for their own benefit.

I. INTRODUCTION

Domestic violence is one of such kind of violence, whose prevalence can be seen and noticed from the ancient time. The kind of violence which is committed by a person who is in close relation with the victim is termed as domestic violence. It may include partners, ex-partners, family, friends, and close relative, generally on which the victim is somewhat dependant.

Domestic violence has become a major concern of the country. Irrespective of the people who live in rural areas, such violence has become prevalent even in urban and metropolitan areas. It can turn to be physical, psychological as well as sexual.

The dictionary meaning of domestic violence is an aggressive act or behaviour at home which

¹ Author is a Student at Amity University, Kolkata, India.

involves violence against the other spouse or the partner or the family member. As per the United States Department of Justice Office on Violence Against Women, the definition of domestic violence is a pattern of abusive behaviour in any relationship that is used by one partner to gain or maintain control over another intimate partner.²

It has been seen and noticed from various case laws that domestic violence victim can include anyone regardless of his sex, age, race, gender or religion.

When we talk about Domestic violence in India, we can clearly state its emergence since the early 1970's and 80's. The violence initially increased due to the want to dowry from the women during marriage and her not being able to bring the wanted dowry to the in-law's house. Initially, there was no specific law relating to domestic violence. S-498A of Indian Penal Code which dealt with cruelty by husband or his relative, governed all the domestic violence case against the women. But the Indian Legislature saw the want of a more definite law relating to domestic violence as S-498A was applicable only to married women and it did not provide any kind of compensation or relief to the victim. So, the legislature brought in a new Act, named 'Protection of Women from Domestic Violence Act, 2005', which came into force from 26th October, 2006.

S-3 of this Act provides for the definition of domestic violence. It states that any act, omission or commission or conduct of the respondent shall constitute domestic violence.

Due to the present scenario of COVID, and almost 90 countries who are in lockdown situation, the domestic violence rate has shot up, not only in India but across the whole world. But even before this Pandemic, domestic violence was one of the major human rights violations. For the past one year, there are approximately 243 million women and girls who have become a victim of domestic violence across the world. Now, because of this pandemic, this number would increase to a great extent. This number can be just said to be approximate as there are a large number of cases that goes unreported. The women are afraid of making the report by going to the police and this scenario which the whole world is going through has made the reporting even more difficult.³

According to the Protection for Women from Domestic Violence Act, domestic violence means harming or injuring a woman who is in a domestic relation. This act includes both actual abuse as well as threat of abuse. Any harassment against a woman due to the demand of unlawful

²<https://family.findlaw.com/domestic-violence/what-is-domestic-violence.html>, last visited on 01st August, 2020.

³<https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>, last visited on 01st August, 2020

dowry is also covered by the Act. The Domestic Violence Act protects the wife as well a female live in partner from violence by the husband or the male live in partner. S-2(a) of the Act provides definition for 'aggrieved person'. The section states that where any woman who was or is in a domestic relation with the respondent and who alleges to have been the subject of any kind of domestic violence while being in the relation. The Act not only provides shelter for those women who have been in a relation with the respondent but even those who have lived together in a house and are somewhat related either through marriage or through the relation that arises out of marriage.

II. CAUSES OF DOMESTIC VIOLENCE

Talking about domestic violence, we cannot just think of 1 or 2 causes of such kind of violence. There are various kind of causes behind the increment in the cases of domestic violence against a woman.

a) Sociological Behaviour:

One of the primary reasons for the act of violence against a woman is the sociological behaviour in which both the plaintiff and the respondents coincides. Poverty, Lack of job opportunities, drinking, dominating nature of the partner, economic hardships, are some of the main sociological reasons. The people who have a habit of drinking or is psychologically disbalanced due to the economic hardships, generally beat their wives or children to satisfy his growing anger.

In a famous case **Trimbak Narayan Vs. Kumudevi Trimbak**,⁴ the husband had suffered a loss due to the loss of his job and as a consequence he underwent mental disbalance and was hospitalised. After getting discharge from the hospital, the husband came to his matrimonial house. One day when he was sleeping with his brother in law, he tried to kill him by strangulating him. The very next day he even tried to kill his son in the same manner. Though he did not use violence against the wife physically, he did it mentally.

b) Historical Factors:

Another reason for violence against the women is the historical background or the orthodox nature of her in-laws. The in-laws fail to change with the change in time and some still believe in the male superiority, which causes a kind of mental pressure and mental abuse against the woman and she is more mentally tortured if a girl is born.

⁴AIR 1967 BOM 80, (India)

In a case of **Gopal V. Mithilesh**,⁵ the wife was an educated woman. She was a medical graduate. She was married off to an orthodox family, where she was not allowed to work. She was forced not to work because no woman in their family worked. She accepted this and everything went well. But she was constantly nagged by her mother in law. She was mentally tortured.

c) **Dowry:**

One of the most basic reason for domestic violence is the want of dowry by the husband's family. Dowry or commonly known as 'Dahej' is a payment either in cash or in kind which is given by the bride's family to the groom's family. The amount to be paid is generally fixed by the groom's family. It was generally given to help in wedding expenses; however, it later began to be used as a surety that the in-laws will not mistreat the bride. Although, dowry has now become illegal but even though it still continues in some part of the country. The groom's family generally demand those things which are very expensive or which the bride's family might not be able to give. If the bride fails to bring the dowry as per the requirements of the groom's family, she would then be subject to mental as well as physical abuse.

A new Act named as Dowry Prohibition Act, 1961, was introduced to stop the innumerable deaths resulting from the want to dowry and the non-ability to give the amount of dowry. This Act prohibits the custom of giving and taking of dowry from either sides and even punishes those who demands dowry.

In **Shanti V. St. of Haryana**,⁶ the court stated that the word dowry is not defined in any act except in Dowry prohibition Act, 1961. It is defined in S-2 of the Act defines the word dowry. It means that- "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 parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include, dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."⁷

S- 304 B of Indian Penal Code talks about Dowry death. The word dowry has the same meaning as S-2 of Dowry Protection Act, 1961 and has to be read with S-304B in cases relating to Dowry death. In **Kamesh Panjiyar V. St. of Bihar**,⁸ the body of the wife or the victim in this case,

⁵AIR 1979 All 316, (India)

⁶(1991) 1 SCC 371 (India)

⁷As per S-2 of the ACT.

⁸(2005) 2 SCC 388 (India)

was found beside her brother, lying in veranda, in the appellant's house with blood percolating from her mouth, and there were marks of violence around her neck. It was clear from the scenario that the victim was murdered the previous night by strangulating her to death. It was evidentiary proved by the testimonies that it was a case of dowry death as it was not a death from normal circumstances.

The court even stated that there has to be a relation between the death and the dowry related assault and harassment, the time interval between the two should be fair and that would depend from cases to cases.⁹

III. VIOLENCE AGAINST THE HUSBAND

If we have a look in any legislation relating to domestic violence in India, there is no provision relating to the protection of husband against the physical as well as mental mis-treatment by their wives or this in-law. We can say that the legislation is somewhat biased, as many women uses these legislations as a weapon to blackmail their husband and in-laws and threat them in doing something. Whenever there is a talk about domestic violence, we presume that it has to be done by a husband against their wives. But no one thinks, that the wife can do some acts of cruelty towards the husband.

Cruelty means an act which causes, harms or affects the mental health or physical well-being of a spouse. It may be done either by a wife or by a husband. Mere trivial quarrels between a husband and a wife does not amount to cruelty. It should actually affect the mental and the physical peace. The act must be more than trivial quarrels. It should be more serious than day to day wear and tear of married life.¹⁰

Cruelty is a branch of domestic violence. Cruelty forms a ground for divorce under Hindu Marriage Act, 1955. S-13 of the Act states about divorce and various grounds of divorce. There is no specific definition of cruelty. The court depending from facts to facts develop there own meaning of what amounts to cruelty.

In a famous case law **Naveen Kohli V. Neetu Kohli**,¹¹The appellant that is Naveen Kohli got married to Neetu Kohli on 20th November,1975. During the course of their marriage, the wife had given birth to 3 sons. According to the appellant, the wife had a very bad temper and she used to quarrel all the time. She even misbehaved with his parents and because of this he even

⁹*Satvir Singh v. State of Punjab*, (2001) 8 SCC 633 : 2001 Cri LJ 4625 (India)

¹⁰[http://www.legalservicesindia.com/article/1900/Cruelty---as-a-ground-for-Divorce.html#:~:text=To%20constitute%20cruelty%2C%20the%20conduct,and%20tear%20of%20married%20life%22.,last visited on 4th August,2020](http://www.legalservicesindia.com/article/1900/Cruelty---as-a-ground-for-Divorce.html#:~:text=To%20constitute%20cruelty%2C%20the%20conduct,and%20tear%20of%20married%20life%22.,last%20visited%20on%204%20August%202020)

¹¹AIR 2004 ALL 1 (India)

had to leave his own house and live in a rented house. On May 1994, the appellant along with his wife and children went to his in-law's house to attend golden jubilee of his father in law. While he was there, he saw his wife indulging in filthy manner and in a compromising position with another man. Soon after this, the appellant started living separately. He filed a case of divorce with the respondent on the basis of cruelty. The trial court had given decision on the favour of the husband. It was proved that the appellant was mentally as well as physically tortured by the respondent.

Soon after this, the respondent appealed in the High Court. There was a finding recorded by the high court that the husband had immorally cohabitated with another lady. Thus, the plea of divorce was dismissed.

But the husband then further made an appeal to the Supreme Court of India. The Supreme Court held that in this case, there was no doubt that the appellant was a subject of mental cruelty by the respondent. The respondent had filled many cases against the appellant to put him behind the bars and mentally and physically torture him. The court made it clear that to constitute cruelty it is not only necessary that it has to be physical cruelty. Hence, the court set aside the decision given by the High Court and dissolved the marriage between the parties according to the Hindu Marriage Act.

In another case of **Surbhi Agrawal V. Sanjay Agrawal**,¹²The wife in this case made false and unfounded allegations that she was being tortured by her husband and in-laws because she had brought less dowry. She basically wanted her husband should start living separately from his parents and in order to separate him from his parents, she gave many groundless allegations against her in-law's. Later it was found that all these allegations were false and all these conduct by the wife amounted to cruelty against the husband.

In **M.K. Malhotra V. Kriti Malhotra**,¹³The wife used to harass her husband. The husband used to work in government sector. The wife alleged that he was very greedy. There was a baseless allegation that he demanded huge amount of dowry and also used to beat her. The wife made a complaint to the prime minister for the Acts of cruelty by her husband. Because of this complaint, there was a departmental inquiry against the husband. But there was no wrong allegation proved against the husband. It was found that the allegation made was false. This amounted to mental cruelty against the husband and was a ground of divorce.

¹²AIR 2000 MP 139 (India)

¹³AIR 1987 DEL 266 (India)

In **Krishanpal Singh V. Smt. Bimla**,¹⁴The wife in this case, sold many articles of the house even though her in-law's didn't had any financial problem. Because of her this attitude, their was a degradation of the reputation of the family. She even had a habit of using filthy and non-acceptable languages against her husband and even against her in-law's. She used to call her husband by various names like gambler, badmas, womanizer, etc. When this matter went up to court, it was found that the husband was innocent in this case and the wife had caused a lot of mental tension and cruelty towards her husband.

In **Ramlalli V. Soney Lal**,¹⁵there was no friendly and genial relation between the wife and the mother in law. The wife in this case had committed murder of her mother in law. This obviously amounted to cruelty against her husband and was a ground for divorce and even a criminal case was initiated against her.

In **Anil Bhardwaj V. Nirmalesh**,¹⁶The wife refused to have sexual intercourse with the husband. Whenever attempts were made by the husband to have sexual intercourse with the wife, she refused to have the same by saying that she was not being treated properly by her neighbours and even the in-law's. The husband filed a case of cruelty and ultimately for divorce. The case of dismissed by the trial court. But when the matter went to the High Court it was held that refusal to have sexual intercourse without any specific reason amounted to cruelty.

In **Usha V. Vimal Kumar**,¹⁷The wife used to fight with her husband all the time. She even slapped him on one of the occasions. She had no respect for her in-law's and didn't beave properly with him. She even abandoned her husband. It was stated by the court that the term cruelty means that there has to be some harsh conduct against the other partner and the conduct should be such that it has become impossible for both the parties to continue the marriage. It was also made clear that to constitute cruelty it is not necessary that it has to be physical one.

IV. CONCLUSION

Thus, through the various points discussed, we can see that how the laws are biased and how we discriminate between men and women. Cruelty and domestic violence go hand in hand. Cruelty forms a part of domestic violence. But we live in a country where, people who hear about domestic violence, the only thing that runs in our mind that it was done against a woman. No one things about the opposite.

¹⁴1987(2) HLR 480(India)

¹⁵DMC 1990 (1)p, 518 M.P (India)

¹⁶AIR 1987 DEL 111 (India)

¹⁷DMC 1987(1) p. 164 MP (India)

Cruelty has now become a ground of divorce as per S-13 of Hindu Marriage Act, 1955, which is the only remedy left with the husband. The meaning of cruelty, though not defines properly, depends upon case to case and how the courts interpret the case. Anybody, both woman and the husband can reach the court to get divorce on the basis of cruelty.

To conclude, we can say that we just need to change our prospective towards this thinking and open and broaden up the concept of domestic violence and cruelty.
