

ILE JUDICIAL AND LEGAL REVIEW



VOLUME 1 AND ISSUE 1 OF 2023
INSTITUTE OF LEGAL EDUCATION



ILE Judicial and Legal Review

(Free Publication and Open Access Journal)

Journal's Home Page – <https://jlr.iledu.in/>

Journal's Editorial Page – <https://jlr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://jlr.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://jlr.iledu.in/terms-and-condition/>

DOMESTIC VIOLENCE – AN LEGAL ANALYSIS

AUTHOR - SHILPA CHAURSIYA, STUDENT AT THE UNIVERSITY OF DELHI, LAW CENTRE II, FACULTY OF LAW

Best Citation - SHILPA CHAURSIYA, DOMESTIC VIOLENCE – AN LEGAL ANALYSIS, *ILE JUDICIAL AND LEGAL REVIEW*, 1 (1) of 2023, Pg. 29-32, ISBN - 978-81-961120-0-4.

ABSTRACT

Domestic violence is a term which is present in society for a very long time. It is abusive behaviour towards women from men, but it is not gender specific. The general perception is it always happened with women but yes in modern-day society, it is shifted not totally but yes to some extent. It is abuse against the people like physical abuse, mental abuse, economical abuse and many more. It can happen to anyone related to gender, race, caste, religion etc. But in the past time, domestic violence happened with women in the relationships like husband-wife relations, and living relations. Violence by the partner can happen to anyone but domestic violence done by the husband and his family to the woman by giving many reasons the domestic violence is not acceptable by society and the Indian parliament came up with the act "THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005".

KEYWORDS: Domestic violence, domestic abuse, protection of women, women's protection from domestic abuse.

INTRODUCTION

Domestic violence or in the other words domestic abuse towards people either spouse, children, family members anyone. Domestic violence generally occurs when the person constantly controls their spouse through physical, emotional and sexual or economic or any other kind of abuse. The domestic violence act 2005 covers every aspect of domestic abuse. The act itself explains domestic violence under section 3. The aim and objective of this act are "To Protect the Rights of Women Those

Who Are The Victims of Domestic Abuse".²⁹ Under the domestic violence act 2005, only women have been protected under this act, not men, but that does not mean that if any domestic abuse is happening against men, they don't have any remedy against it. But the PROTECTION OF WOMEN FROM the DOMESTIC VIOLENCE ACT, of 2005, protected women's rights.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The nature of this act is partly civil and partly criminal because procedures are followed as given in CrPC and the remedy provided by the court like a victim can demand compensation or demand for punishment. This act somewhat achieved wanted to achieve.

What is Domestic violence?

The meaning of domestic violence is given everywhere but we can define the term as "Any physical force for hurting any person or any property".

Forms of Domestic violence:

- Physical abuse – this kind of abusive behaviour always resulted in physical injury to women by the husband and his relative.
- Mental abuse – this will result in mental harassment and mental illness.
- Sexual abuse – this is an extensive version of physical abuse in which forceful intercourse is done between them without the consent of anyone. It

²⁹ Preamble, Domestic violence act

may be done because they want a boy child but they get a girl child.

- Economic abuse – it means not providing the things which she wants and not giving economical stability and she has to suffer a lot for the money.
- Emotional abuse and many more

History of domestic violence:

As we all know, in the ancient time when women did not know about their rights and the patriarchal society was prevalent, only men were getting everything that they want and from there domestic abuse take form. But yes we cannot define the exact time of domestic violence but to some extent, we can say as it is a behaviour of a person, so it changes from time to time and person to person. Generally, we always think that it is done between husband and wife but in this kind of situation only the husband and wife are not involved the whole family and to some extent the society and relatives also involves.

Domestic violence act 2005

Section 2³⁰ of the protection of domestic violence act explains that this act will apply only to WOMEN who are in a domestic relationship with the respondent and there should be an event of domestic violence and that particular woman called an aggrieved person. In that particular section, the word woman is generally a wife of the respondent but this act specifies that the woman is not only a wife it could be a mother, sister or daughter. They can also claim for domestic violence petition before the court.

Here the respondent means any person which means that it may be male or female like mother-in-law or sister-in-law but before the amendment of ***Hira Lal p Harsora Vs. Kusum S Harsora***³¹ the respondent will be any adult male person. Now that person shall be in a domestic relationship with the victim and the aggrieved person claims the relief against that person.

This act will apply to those relations where we have the relation of consanguinity, marriage and relation in nature or marriage which means living relations. These are the domestic relations.

Under section 11 of the Domestic violence act government is duty-bound to aware people of this act and domestic violence and its consequences, so there was a movement that was **GHANTI BAJAO**³² in which the women generally talk about their domestic abuse.

For claiming the remedies under this act either the aggrieved person or people officer or any other person can claim by filling an application before a magistrate under section 12 of said act, for providing the remedies magistrate first look upon the "Domestic Incidence Report". They can claim for remedies either compensatory relief, monetary relief, medical, custody, residence etc. And under the same section, the application should be disposed of within in 60 days after the first hearing, it is not a mandatory provision but should follow.

Section 16 of this act set a bar that the proceeding shall be held in camera because there is a personal affair between husband and wife which should be held or solved in camera so there shall be an in-camera proceeding.

There are 5 types of relief orders:

1. Protection order
2. Residence order
3. Monetary relief
4. Custody order
5. Compensation order

These orders are explained in the sections of this act section 18 explains the Protection order, section 19 is about the residence order, section 20 talks about the monetary order, section 21 is about the custody order and last is section 22 which explains compensation orders.

Apart from the domestic violence act, under section 125 of the code of criminal procedure,

³⁰ Domestic violence act 2005

³¹ (2016) Indian kanoon

³² Bell Bajao. (2023, January 21). In *Wikipedia*. https://en.wikipedia.org/wiki/Bell_Bajao

women can claim compensation easily. And if a woman is seeking compensation for any other activity then they have to tell the court so that can subset the value of compensation.

Under this act the procedure of the code of criminal procedure is applicable this is mentioned under section 28 of the protection of women from domestic violence act 2005.

Section 31 of the domestic violence act 2005 is a penal provision and says that if the respondent is breaching the order of the court and does not pay the compensation then a penal procedure can be initiated against him and the penalty can exceed 1 year of imprisonment or a fine of 20 thousand or both can be implemented.³³

Section 36 says that the act is not in derogation of any other law it is in addition to the laws. And only the central government can make the rules and laws for its actions and this is mentioned under the section of the domestic violence act 2005.

The procedure of filing the petition under the domestic violence act 2005

There are two ways for filing a domestic violence case:

1. Wife can file the complaint under section 12 before a magistrate.
2. Service provider or protection officer can also apply.

In one of the leading causes of 2022 supreme the court, the court held that the Domestic incident report "DIR" is not necessary for women for filing a case under this act. She can directly file the complaint before the magistrate. And wife can file the case any time for the case of domestic violence, there is no limitation period. Then the magistrate will issue summon against, those who live in the shared household. The jurisdiction of filing the case of domestic violence for the wife is where she is living or where the cause of action arises or another place is the temporary or permanent employed

place of the wife, section 27 explain all about this.

In the case of ***Rajnish Vs Neha***³⁴ the supreme court can ask for the affidavit of both. Then they will reply to the application. Then further proceedings of the court will start like evidence and cross-examination. The wife also claims a protection order or any interim order if she thinks that there is a threat to her from the husband's side. That order can be passed by the court without giving the notice to the respondent. The case will move for final arguments and then the judgment.

Inderjir singh Grewal Vs. state of Punjab case 2010³⁵ court said if there is a case of domestic violence and that case is within 1 year and the woman didn't file the complaint so the complaint will be barred by the limitation period.

In a further case of 2016 SC quashed the judgment of ***Inderjit Grewal*** by saying that the limitation period of 1 year after arising cause of action is not valid because domestic abuse is a continuing behaviour of the person there is no limitation period for filing any complaint.

Kamakshi Vs Lakshmi Narayn 2022, SC said that the 1 year prescribed under section 468 of CrPC, for filing the case is applicable only on the offence which is prescribed under the domestic violence act. And offences are mentioned under section 31, which says breach of a protection order. Under this section, the complaint can file a complaint within 1 year for breach of the order. This is all about the complaint for breaching the order, not for the domestic abuse against women but the person. In the present case, the wife filed the complaint after 10 years and the court accepted that complaint by explaining that section 468 of CrPC is not applicable to the complaint it is applicable only in the breach of order y the respondent.

Prabha Tyagi Vs. Kamlesh Devi 2022, SC said that DIR is not mandatory in the case of a

³³ Domestic violence act 2005.

³⁴ (2020) Indian kanoon.

³⁵ (2011) Indian kanoon

complaint by a woman. DIR means Domestic investigation report which is not mandatory for filing the complaint.

Sanjay Bachubhai sahrma Vs. Pranalinaben 2022 Gujarat High Court, in this case, the court denied the right to residency for the woman, because the wife hid many things from the court, she didn't come with a clean hand before the court so the court set aside the order of right to resident against the wife.

Suggestions

1. The root cause of this abusive behaviour is the upbringing of the boy and sometimes the girls as well, so we need to change societal behaviour.
2. Most of the time those who are illiterate those committed this kind of behaviour but yes this is not the way to say sometimes we can also see this kind of abusive behaviour in the literate family as well.
3. So change is needed in the behaviour of men as well as in women as well
4. strong legal action must be taken against the person who is doing all this.
5. Gender equality is all where but we never teach children how to behave so the first and foremost step should be taken within the family.
6. This kind of behaviour is not inherent behaviour, it is learned by the people with whom we surrounded us. This theory is given by Edwid Sutherland in his article on CRIMINOLOGY and the other one is differential association theory, in which he explained how the person develops criminal behaviour and starts behaving like the same.

CONCLUSION

As domestic violence is related to the behaviour of the person towards others and behaviour or is not normal behaviour it is the abusive behaviour of the person. Indian parliament initiated a step to stopping this by an act of domestic violence act and that act is to some

extent achieved but not much, so we need a big change for saving the women from this criminal behavior because it is done not by the husband of that lady it is also done by the family of the husband as well. The main issue of this problem is the lack of awareness about the right of women to the women against this. So very women as know all this, because the constitution also provides rights to them and the other law where they can claim their rights are also available to them. Women are still treated as secondary things and only fir sex and for giving birth, especially to male children and if they are unable to give birth to a male child then again all this will start against them. In New Delhi, a 2010 study found that 66 % of women reported experiencing sexual harassment between two and five times during the past year.

REFERENCE

1. The Protection of Women from Domestic Violence Act, 2005.
2. Code of Criminal Procedure, 1973
3. Hira lal P Harsora Vs. Kusum S Harsora (2016), Indian Kanoon
4. Rajnish Vs Neha (2020), Indian Kanoon
5. Inderjir singh Grewal Vs. state of Punjab case (2010), Indian Kanoon
6. Kamakshi Vs Lakshmi Narayn (2022), Indian Kanoon
7. Sanjay Bachubhai Sharma Vs. Pranalinaben (2022), Indian Kanoon
8. Bell Bajao. (2023, January 21). In *Wikipedia*.
https://en.wikipedia.org/wiki/Bell_Bajao