

“Domestic Violence”

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The term “domestic violence” is used when there is physical abuse, emotional abuse, verbal abuse, sexual abuse between the victim and the offender who share a close connection with each other. In India, most of the case of domestic violence is in connection with the dowry system, due to which the **Dowry Prohibition Act** came into force on 20th May, 1961. Earlier this Act, the system of dowry was considered to be a part of ritual, however, the groom’s family with mala fide intention used to demand more gifts and money in the name of ritual from the bride’s family and if they are unable to fulfil their demand then it would lead to the dissolution of marriage. And the bride used to bear the torture of the groom and his family due to the social stigma attached with the dissolution of marriage which is still prevailing in the modern era. The Hon’ble Supreme Court has laid down in **Pawan Kumar v. State of Haryana**¹ that ingredients necessary to attract Section 304-B IPC are: 1) death of a woman is either by burns or by bodily injury or otherwise than under normal circumstances; 2) it should be within seven years of marriage; 3) it should also be shown that soon before her death she was subjected to cruelty or harassment by husband or any other relative of husband; 4) such harassment or cruelty should pertain to demand for dowry.

Before the introduction of the Protection of Women from Domestic Violence Act, 2005, women could approach the courts under **Indian Penal Code (IPC)** in case of domestic violence and it can also be seen that IPC never used the term domestic violence but similar classes of offences have been explained in terms of cruelty with woman. It is laid down that Section 498-A IPC was introduced with the avowed object to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives². A Two-Judge Bench of the Supreme Court³ has held that even a second wife can file a complaint under Section 498-A. In this connection, following words of Arijit Pasayat, J. (talking in terms of Sections 498-A and **304-B IPC** and **Section 113-B** Evidence Act, 1872) assumes importance: “... The legislature has taken care of children born from invalid marriages. **Section 16** of the Marriage Act, deals with legitimacy of children of void and voidable marriages. Can it be said that the legislature which was conscious of the social stigma attached to children of void and voidable marriages closed its eyes to the plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship? If such restricted meaning is given, it would not further the legislative intent. ...” (Para 18, **Reema Aggarwal v. Anupam**⁴, The above said Para was quoted with approval in **A.Subash**

¹ (1998) 3 SCC 309

² ², Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561

³<https://www.scconline.com/blog/post/2018/12/03/law-for-laymen-section-498-a-ipc-and-allied-sections-cruelty-to-women/>

⁴(2004) 3 SCC 199)

Babu v. State of A.P.⁵, wherein the Supreme Court held that Section 498-A is attracted even in the case of allegation of cruelty to second wife.

The main scope of the Protection of Women from Domestic Violence Act, 2005 is to provide protection to wife and also women who are in a live-in relation from domestic violence and this Act also provides protection to women living in a household such as sisters, widows or mothers. The Supreme Court with reference to definition of shared household under **Section 2(s) of the Domestic Violence Act** stated that the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting requires to be interpreted in a sensible manner⁶. It is also observed by the court that all the live in relationship cases of domestic violence does not fall under the provision of Section **2(f) of the Domestic Violence Act** unless it fulfils certain conditions⁷ This Act is applicable to all the women in India irrespective of their marital status and any aggrieved party can file a complaint against domestic violence. It also promotes the right of women that is guaranteed under **Article 14 and 15** of the Indian Constitution. This Act also ensures the right guarantees under **Article 21** which is right to life and personal liberty. In **Chameli Singh v. State of U.P.**⁸, it was held that right to live with human dignity is also a Fundamental Right guarantees under Article 21.

A married woman who is a victim of domestic violence can also seek divorce under Section 10 of the Hindu Marriage Act, 1955. There are various grounds under which a married woman can seek for divorce and Section 13 of Hindu Marriage Act deals with the grounds of divorce. The Supreme Court held that the word "cruelty" is used in Section 13(1) (i) (a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. Physical violence is not absolutely essential to constitute cruelty. A consistent course of conduct inflicting immeasurable mental agony and torture may constitute cruelty. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party⁹. However, cruelty is one of the grounds which already had its place in the Indian Penal Code. Section 498-A IPC states that if a woman is subjected to cruelty by her husband or any relative of a husband then that person shall be liable to be punished with an imprisonment which may be for a term of 3 year or he shall also be liable to pay fines. The Supreme Court had expressed that "cruelty" has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which adversely affects the other. The cruelty may be mental or physical, intentional or unintentional"¹⁰

⁵ (2011) 7 SCC 616

⁶ S.R. Batra vs. Smt. Taruna Batra (2007) 3 SCC 169

⁷ D.Velusamy vs D.Patchaiammal AIR 2011 SC 479

⁸ 1995 Supp (6) SCR 827

⁹ Naveen Kohli Vs. Neelu Kohli [AIR 2004 All 1]

¹⁰ A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22

With the outbreak of COVID-19, the cases of domestic violence are increasing in an alarming rate. On one hand where people are fighting against this deadly virus and on the other hand there is an increase in the number of domestic violence. According to certain news report, it is said almost all the complaints of domestic violence is being filed by literate and upper classes of people. And the cases of domestic violence in urban areas are more than the rural areas. Moreover, not all the cases are reported and there are several helpline numbers given by our government as well as NGOs to ensure the safety and security of the victim from domestic violence. Now the question is “Is it because of the lockdown that there is an increase in the cases of domestic violence or is it another way of showing frustration or is it because of lack of morality or is it fear of being tagged as a divorcee by the society or is it because of dowry?” Thousands of questions can be put forwarded by different people but no one could find a single suitable answer for sudden increase in domestic violence.

With such cases, one of the question that arise in our mind that is, why there are cases which are unreported till date and what is the reason behind it. Many scholars have different ideology regarding this matter and some blame the social stigma and some blame the conditions. The emotional trauma that a victim goes through cannot be imagined or understand by normal people. In our Indian Constitution, all the people of India are given equal right and protection under **Article 14** and no person shall be discriminated on the basis of caste, creed, sex, race, religion under Article 15. It depicted that all person should be treated equally and law always works for the justice of both man and woman. However, we have also seen several fake cases which have been reported against the husband and the wife was found guilty for accusing her husband and in laws for domestic violence. In the case of *Rajesh Sharma & Ors. v. State of U.P.*¹¹, The Supreme Court issued a slew of directions to prevent misuse of **Section 498A** (IPC). The core issue that arose in the appeal related to the need to check the alleged tendency of woman filing complaint under **Section 498A** (IPC) to rope in all family members in settlement of matrimonial dispute. Therefore the law always follows the procedure which needs to be taken for the purpose of delivering the justice.

Domestic violence is a serious offence which can also lead to death and the offenders of such offences fall under the ambit of criminal case under Section 498-A (IPC). Moreover, the offenders are imposed with heavy penalty and imprisonment for such crimes. The Supreme Court explained the expression “cruelty” in the following words: “Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical, of the woman is required to be established in order to bring home the application of Section 498 A of IPC¹².”

From all the facts and the statements that have been mentioned in this article, it can be understood that the problem regarding domestic violence need to be deal with proper care and attention. One can seek the guidance and help from counsellor and NGOs dealing with such

¹¹ [Arising out of Special Leave Petition (Crl.) No.2013 of 2017]

¹² *Noorjahan v. State* [(2005) 6 SCC 281]

matters. The matter is sensitive in nature and those who are the victims need emotional support and care. Moreover, all we can do as a general being is to support them and be a good listener in the times of need in order to help them out from all those abuses that they have been through.