

A Legal Discourse on Domestic Violence in India

¹Gayatri Viswanathan

I. Introduction

A. Domestic violence

A cursory study of Indian statutes surrounding the rights of women shows that a lot of change have taken place in our relatively young legal system. The constitutional forefathers of India had in their hand the task of making law for a country where people will be free, equal and in peace after years of oppression. They had at their disposal a country that had been through famine², economic breakdown³ and bloody revolution⁴.

At a time when a married man and his wife were considered to be one legal entity - that of the husband - women had a difficult time getting aid in case of the abuse of their rights. For instance, the propounders of legal principles in the ancient Hindu system were openly against the notion of allowing women the rights accorded to men⁵.

India has been a country whose populace followed the patriarchal system of familial life. Women were denied compassion and integrity let alone legal rights. The time-line of our country has witnessed some harrowing traditions that have worked directly against the welfare and development of women. This coupled with the fact that the State was embarrassed to enter into the private territory of family life adds to the trouble that women had faced⁶.

In a judgment⁷, the Delhi High Court held that it was most inappropriate to bring constitutional principles into the private affairs of the home. Insisting that to invoke Articles 14 and 21 against one's legally wedded spouse would be akin to placing a bull in a china shop, the sensitive sphere of home was separated from the state-regulated spheres of the law.

This, however, did not discourage the

campaign for the protection from violence in homes.

It caught the attention of women's rights campaigners in India for it made women feel threatened in the one place where they should feel safe - home.

B. Law against domestic violence in India

On the 26th of October, 2006, The Protection Of Women from Violence Act, 2005 (henceforth DV Act) came into force with the aim of protecting the rights conferred to women by the Constitution when they are faced with abuse in a family⁸.

The foundation of the DV Act was influenced by the country-wide campaigns against dowry-related deaths. Young brides were harassed, tortured and very often killed when the demands for dowry were not met with. A lot of these brides were burnt to death and when the number of bride-burning incidents had reached a conspicuous number, the State decided to look into the matter. The dowry-prohibitive laws enacted in the country had helped to check the torture that women had faced after entering into a new marriage, but provisions were not made to counter the harassment that was not dowry-related. It is not a mystery that while abuse had arisen out of unmet expectations of dowry, that was not the sole reason for abuse. The scope of abuse-preventive law, therefore, had been narrowed unnecessarily in the criminal law system of India⁹. A fresh demand was placed to instate laws governing violence within a domestic set-up that would aid not only married women, but also women who were barred by the statute of limitations¹⁰ to file for dowry-related abuse, old women, unmarried girls, and women whose relationships came under the purview of

natal relationships.

II. The Protection of Women from Domestic Violence Act

The Act defines the aggrieved person as any woman who has been in a domestic relationship with and shares or had shared a household with the respondent against whom allegations of domestic violence have been contended¹¹.

Domestic relationship¹² is defined as the relationship between two persons who have lived or continue to live together in a shared household and are related by consanguinity, marriage or through relationships in the nature of marriage, adoption or are members of a joint family. By including relationships which are not legally solemnised marriages but those which are of the nature of legally valid marriages, the applicability and scope of the law increases. It gives relief to women whose societally-accepted marriages do not have legal standing.

Domestic violence¹³ is any act or conduct, commission or commission of which harms, endangers, and injures the well-being of the aggrieved person. It includes harassment for the purposes of gaining dowry¹⁴. The Act further categorises and defines abuse in physical, sexual, verbal and emotional, and economic terms¹⁵.

The Act also sets up the appointment of Protection Officers¹⁶ who were to act as the link between aggrieved women and the legal system. The legal system that had existed before were not accessible to women. Often, it was noted that instances of domestic violence were rationalised by police personnel who found it embarrassing to interfere in matters of family. It was noted that a woman who was being abused could be convinced by the police (or brute force) to rescind the complaint and mend ways to avoid making a mockery of her family. This is where the DV Act envisioned the Protection Officers helping the women. Among other things, they were required to get the women medically tested in order

to gather evidence of any abuse experienced. Furthermore, the duties and functions¹⁷ of such protection officers was to assist the Magistrate in ensuring that the DV Act was being implemented correctly. Reports were to be filed and data was to be collected to keep a track of instances of domestic violence.

A respondent¹⁸ was defined as any male who has shared a household with the complainant, or a relative of the aforementioned adult male. This could mean that women can also be included in the definition of respondent so long as they are relatives of the husband or the partner with whom the aggrieved party has a relationship. The provision had earlier specified that only adult males could be respondents in the case. It was later struck down by the Supreme Court¹⁹ on grounds that it was discriminatory and against the aims and objectives of the Act. This had made way for complaints being filed against female relatives and minors.

The shared household is defined, simply, as any property on which the aggrieved party has lived or is presently living wither with the respondent or singly. There is no necessity for the aggrieved party to have any rights, title or interest in the property. The concept of residence was brought about with this law when it took into account the overwhelming possibility of property being attached to the husband or male partner's name rather than the woman's. Historically, there has been lack of legal rights to property for women and thus, almost all assets are in the name of the husbands who control the premises. Apart from the larger aim of ensuring that women are not abused, and even if they are, they are given legal recourse, the Act sought to protect women from dispossession. It was very common for men to let go of their wives in the event of an altercation - either physical or legal. It was to ensure that women were not made destitute and without means of survival that this provision did not insist on the aggrieved party

having claim on the shared household.

In *S. R. Batra And Anr v. Smt. Taruna Batra*²⁰, the Supreme Court interpreted this provision. The aggrieved party had filed a complaint under this Act and had moved Supreme Court for right against dispossession from the household in which she lived with her husband. It was found that the household was not in the name of the husband but in the name of the husband's mother.

The shared house was not a part of the joint family property and nor was it in the name of the respondent. Thus, it was found that the aggrieved party did not have right against dispossession despite having lived there during the subsistence of the marriage. The Supreme Court held that since there was no express provision dealing with the shared household not being in the name of either parties of the suit, the Court could not exercise the right of legislating. In a previous judgment²¹, it was held that unlike England, which had a piece of legislation²², India did not have any provisions detailing the matter.

III. International stance on domestic violence

A report by The Thomson Reuters Foundation in 2013 studied the legal framework created to tackle the issue of domestic violence. 24 countries²³ were a part of the survey which had sought to look into the way of dealing with abuse within domestic setup and the approaches taken by the courts in recognizing such abuse and providing recourse.

The positive aspect of the issue was that all jurisdictions were keen on tackling the issue and were working towards some means of aiding victims. At the time of the publishing of the report in December 2013, only 14 of the 24 countries had specific laws on domestic violence while the rest had incorporated the issue within the criminal legal system. In some of the countries²⁴ surveyed, the law insisted on the cohabitants being members of the same family while a wider

approach was taken in other countries²⁵. The widest approach taken in some countries²⁶ gave the right to aggrieved ex-partners who are no longer living with the abuser to approach courts.

When compared with India, there exists a separate piece of legislation to look into the domestic violence which is separate from the criminal legal system. There is no mandate made which requires the aggrieved party to be in a legally recognised relationship with the abuser such as marriage. Further, there is no insistence on the partners to be cohabiting at the time of filing the complaint.

The nature of the legal system concerning domestic violence in the countries surveyed is both criminal and civil. Punishment is awarded and so is compensation. Offenders are also recommended to avail behaviour- corrective classes. Since these are not made mandatory, the onus is put on the offender to volunteer to these classes - something which has not received overwhelming support.

All the countries surveyed here are in the process of either instating a comprehensive code surrounding domestic violence or are revamping the existing laws in order to meet the new demands of citizens and comply with international jurisprudence on the subject. In the backdrop of this evolution, India has a fairly sound code that is being tested in its hierarchy of courts with each new complaint filed.

An assuring feature of some of the countries is the existence of third-party aid given on a voluntary basis to victims who are apprehensive of approaching the doors of the law. There are also government-aided bodies which function as helpers in recognising abuse, filing complaints and giving legal, medical or psychological aid. India has, by law, create the posts of protection officers whose primary aim is to ensure that the DV Act is complied with.

IV. Domestic violence and men's rights

The bone of contention between feminists and men's rights activists is the statutory lack of recognition for the male victims of abuse. The stance which gives aid to women alone applies not just to domestic violence but also to sexual abuse and rape. While a majority of men's rights activists undermine the plight of women in order to justify their demands for men's right to legal aid, many feminists agree that the law is tilted unfairly in the advantage of women.

The DV Act is not unconstitutional because it is based on the constitutional principle of taking added measures to ensure the safety of women in the country. Moreover, it has been mentioned time and again that women have generally been at the receiving end of abuse and violence. This is not to negate the existence of male victims who are abused by other men or women as well, the DV Act was made specifically to help women.

The issue with having criminal laws and specific laws centred around the ideology of women as victims makes it all the more difficult for men to get legal aid when they find themselves battered. A stand was taken by the Karnataka High Court which allowed a husband's petition to file for domestic violence under the DV act with the wife mentioned as the respondent²⁷. This has been Justice Anand Byrareddy heard the petition by Mohammed Zakir against dismissal of his complaint filed under the Domestic Violence Act against his wife and her relatives. The Court took cognisance of the Supreme Court case of Hiral P Harsora vs Kusum Narottamdas Harsora²⁸ wherein the term 'adult male' was struck down from Section 2 (q) as being violative of Art 14 thereby ensuring that female relatives of the respondent could also be respondents within the DV Act. However, there was incorrect analysis of the Supreme Court judgment whereby respondents could be females, but petitions could not be males²⁹.

On 28th April, 2017, the order was withdrawn

whereby men were allowed to file suits under DV Act. Despite having good intentions, the order had to be pulled back because it was not in keeping with the statute.

V. Conclusion - the evolution of domestic violence laws

The DV Act is a rather progressive piece of legislation enforced in India. The Act is wide enough to accommodate women who are in relationships that are of the nature of marriage. These relationships do not have the legal validity but are socially-accepted as marriages. In the aftermath of the criminalisation of bigamy for Hindu men by the Hindu personal law³⁰, many women had approached the Court for legal remedy.

Seeing as restoration of marriage was not mandatory until the recently made recommendations by the Law Commission³¹, the majority of women were on the side of the law which did not guarantee protection. These cases still persist where Hindu men marry for a second time while their legal marriages are still subsisting. If the DV Act had restricted itself to help only legally recognised domestic relationships, many women would not have had the avenue to ask for remedy in cases of domestic violence.

The provision for counselling³² at the direction of the Magistrate has caused a stir in the minds of those who contend that to keep the alleged abuser and victim in the same room would cause more harm than good. The law during its conception was rather narrow in terms of defining aggrieved parties and respondents. As the courts interpreted the statutes, it was allowed to expand in its applicability.

Despite getting retracted, the decision of Karnataka HC to initially allow the husband to file under the DV Act was bold and progressive. It can be interpreted as advancing the intention of the legislature to keep the household free from

abuse - irrespective of the genders of the abusers and victims.

(End Notes)

1. The author is a second-year student at Symbiosis Law School, Pune.
2. The Bengal Famine of 1945 was known to have killed nearly two million people. E. Wayne Nafziger, *Economic Development* 226 (2012).
3. Team Firstbiz, *From 1947 to 2014: How the Indian economy has changed since independence*, Firstpost (Aug, 15 2014 10:40:08 IST), <http://www.firstpost.com/data-business/from-1947-to-2014-how-the-indian-economy-has-changed-since-independence-1983853.html>.
4. The result of the largely peaceful fight for freedom was that British India got divided into India and Pakistan. This partition had horrifying consequences with millions dead on both sides of the border.
5. Manusmriti (Manu Code of Law) details the ways in which women were inferior to men. It further prescribes, among other things, harsh methods of treating women and ensuring their perpetual subjugation.
- 6.
7. *Harvinder Kaur v. Harinder Singh* AIR 1984 Del 66.
8. Preamble of The Protection of Women from Domestic Violence Act, 2005.
9. S. 304, Indian Penal Code, 1860.
Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
- 10 There was a statutory limitation of 7 years for the filing of complaint for dowry death. Women could file under S. 498A of for everyday abuse but not under s. 304B once seven years had lapsed since solemnisation of marriage.
11. S. 2 (a), The Protection of Women from Violence Act, 2005.
12. *Supra* 10, at S. 2 (f).
13. *Supra* 10, at S. 3.
14. *Supra* 10, at S. 3 (b).
15. *Supra* 10, at S. 3 (d) i-iv.
16. *Supra* 10, at S. 8.
17. *Supra* 10, at S. 9.
18. *Supra* 10, at S. 2 (q) :
"Respondent" means any male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.
19. *Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors* (2016) Civil Appeal No. 10084 of 2016.
- 20 (2007) 1 DMC 1 (SC).
21. *B.R. Mehta v. Atma Devi and Ors.*, [1987] 4 SCC 183.
22. The Matrimonial Homes Act, 1967, applies in the UK.
23. The 24 jurisdictions were Cambodia, China (PRC), Czech Republic, England & Wales, France, Germany, Hong Kong, Indonesia, Japan, Laos, Kenya, Malaysia, Mongolia, Myanmar, North Korea, Poland, Russia, Rwanda, Singapore, South Africa, South Korea, Taiwan, Ukraine and Vietnam.
- 24 In France, Indonesia, Laos, Mongolia, Myanmar, Malaysia, Singapore, South Korea and Vietnam, the aggrieved party was to be a member of the family of the abuser in order to file a complaint under domestic laws on violence in the household.
25. In Cambodia, the Czech Republic, Germany, Poland, Rwanda and Ukraine the only requirement is that the offender and victim are cohabiting at the time of the abuse.
26. England & Wales, Kenya and South Africa had laws which allowed a member of a now defunct domestic relationship to get legal recourse.
27. LiveLaw News Network, *Husband Can Initiate Proceedings Under DV Act Against Wife, Her Relatives: Karnataka HC*, LiveLaw, (April 25, 2017, 10:43 PM IST) <http://www.livelaw.in/husband-can-initiate-proceedings-dv-act-wife-relatives-karnataka-hc-read-order/>.
28. *Supra*, at 18.
- 29 "If the said sub-section is read after deleting the expression 'adult male', it would appear that any person, whether male or female, aggrieved and alleging violation of the provisions of the Act could invoke the provisions under the Act. In that view of the matter, the petitioner's complaint could not have been trashed on the ground that the Act does not contemplate provision for men and it could only be in respect of women," the court said.
30. Hindu Marriage Act, 1955.
31. Legal Correspondent, *Make registration of marriages compulsory*, TheHindu (July, 04, 2017 21:56 IST) <http://www.thehindu.com/news/national/make-registration-of-marriages-compulsory/article19210742.ece>.
32. *Supra* 10, at S. 14.