



# LEGAL REGIME TO CONTROL DOMESTIC VIOLENCE IN INDIA

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**Abstract--**While going through history, we finds that during every era women face violence in one form or in other such as sati Pratha, ban on widow remarriage, child marriage etc. Right to equality was not recognised before constitution of India came into existence. Domestic violence is a worldwide prevailing problem. In India domestic violence was recognised as crime under section 498-A of Indian Penal Code 1860. Here domestic violence includes cruelty mental or physical committed by husband or relatives of husband. Dowry death is also made punishable u/s 304-B of IPC. The United Nations committee on convention on elimination of all forms of discrimination against women in its general meeting has recommended that state parties should act to protect women against violence of any kind especially that occurring within family. In order to provide a remedy in civil law for the protection of women from being victim of domestic violence India enacted the Protection of Women from Domestic Violence Act 2005. Act provides that actual abuse or threat of abuse or abuse that are physical, sexual, verbal, emotional, or economic. It covers those women who are or have in relationship with abuser and both parties have lived together in a shared household related by consanguinity, marriage or adoption. Act also provides right to secure housing. There are also other laws which provide protection to women against domestic violence. But graph of domestic violence is continuously increasing. Government and NGOs are taking various initiatives to protect women from domestic violence. Public awareness is also needed but it is also finds that in some cases miss use of these laws also take place.

**Key Words:** domestic violence, abuse, violations.

## INTRODUCTION

While tracing the history of women through the ages one finds that except for a short period during *Rigveda* when they enjoyed equality, freedom and place of honour mostly their position has been of inequality and subservient. During medieval period their condition were worst compared to other periods, sati, parda, ban on widow marriage were most prevailing type of violence against women (Kant, 2003). After independence we adopted democratic setup of governance and the constitution guarantees fundamental rights to women including right to equality (Article 14), right against exploitation (Article 23), right to life (Article 21), government can enact special laws for women protection and safety under Article 15 (3). If violence is committed against women in most cruel manner and they are physically, mentally and sexually harassed by their own relation then how can such women, who remain constantly under fear, enjoy the fruits of independence?

Here we are concerned about domestic violence one of the form of violence against women. Domestic violence in India includes any form of violence suffered by a person from a biological relative, but typically is the violence suffered by a woman by male members of her family or relatives (Martin et al., 1999; Ellsberg, 2008). Domestic violence was recognised as offence u/s 498-A in IPC 1860 in 1983. Its objective is to protect a woman who is being harassed by her husband or relatives of husband. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human right issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination against Women in its general recommendation has recommended that state parties should act to protect women against violence of any kind especially that occurring within family. In order to provide a remedy in the Civil Law for the protection of women from being the victim of domestic violence and to prevent the occurrence of



domestic violence in society the India enacted The Protection of Women from Domestic Violence Act 2005.

#### SALIENT FEATURES OF SEC 498-A OF IPC

Sec 498-A provides that whoever being the husband or the relatives of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Cruelty for the purpose of this section is means

- (a) A wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health (whether mental or physical) of the woman.
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Thus the main emphasis is to give protection to woman in case of dowry death (Sec 304-B IPC). In V. Seevetha vs State by Inspector of Police & Another<sup>1</sup> court held that the meaning of relative would depend upon the nature of the statute. In principle includes a person related by blood, marriage or adoption.

#### THE PROTECTION OF WOMAN FROM DOMESTIC VIOLENCE ACT 2005

This act gives broad horizon to domestic violence to woman. The salient features of the act are as:

- The Act provides the wider definition of “domestic violence”. It includes actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demand to the woman or her relatives also covered under definition.
- It covers those women who are or have in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in nature of marriage or adoption. In addition, relationship with family members living together as a joint family is also included. Even those women who are sisters, widows, mothers, single woman or living with the abuser entitled to legal protection under act. It also enables the wife or the female living in a relationship in nature of marriage to file complaint against any relative of husband.
- It provides for the rights of woman to secure housing (nowhere earlier provided).
- It provides that the magistrate can pass protection order in favour of aggrieved person.
- It provides for appointment of protection officer and registration of non-governmental organisation as service provider to provide assistance to the aggrieved person for her medical examination, obtaining legal aid, safe shelter etc.

#### OTHER LEGISLATIONS GIVING PROTECTION TO WOMAN AGAINST DOMESTIC VIOLENCE

- Hindu Marriage Act 1954 (right to judicial separation u/s 10, right to declare marriage void or voidable u/s 11 & 12, right to divorce u/s 13 and right to maintenance u/s 25).

<sup>1</sup> (2009) 3Cri L.J. 2974 (S.C.).



- Hindu Succession Act 1956: Sec 14 provide absolute right to property to a woman.
- The Dowry Prohibition Act 1961
- Immoral Traffic Prevention Act 1956
- The Maternity Benefit Act
- Prenatal Diagnostic Technique (Prohibition of Sex Selection Act 1994)
- Indian Evidence Act 113-A, 113-B
- Criminal Procedure Code 1973 Sec 125 to 127 provide right to maintenance

#### EFFECT OF DOMESTIC VIOLENCE

The adverse effects of domestic violence are so destructive that spoil the whole life of a woman so participation of woman in progress, development and global goal of women empowerment seems an impossible task. The various effects are list below:

- Anxiety
- Chronic depression
- Chronic pain
- Death
- Dehydration
- Dissociative states
- Malnutrition
- Drug and alcohol dependence
- Eating disorders
- Emotional over-reaction to stimuli
- Health problem
- Panic attack
- Poor adherence to medical recommendation
- Repeated shelf injury
- Shelf neglect
- Sexual dysfunction
- Somatisation disorder
- Strained family relationship
- Suicide attempts
- Inability to adequately respond to the needs of their children

#### TOOLS TO PREVENT DOMESTIC VIOLENCE

- Improve the status of woman within society
- Changing perception
- Education to woman
- Easy access of woman to law and order
- Moral support to victim
- Efficient laws, policies and schemes and their effective implementation

**LANDMARK JUDGMENTS OF INDIAN JUDICIARY ON DOMESTIC VIOLENCE**

In Inder Raj Malik & Others vs Mrs Sumita Malik<sup>2</sup> case the court held that Sec 498-A is distinguished from Sec 4 of the Dowry Prohibition Act because in the later more demand of dowry is punishable and existence of element of cruelty is not necessary whereas Sec 498-A deals with aggravated form of the offence.

In Satish Kumar Batra & Other vs State of Haryana<sup>3</sup> court held that merely because there is possibility of misuse of the offence of cruelty to wife u/s 498-A of IPC is not a ground to hold this provision as unconstitutional law.

Pawan Kumar vs State of Haryana<sup>4</sup>

Koppisetti Subbharao Alias Subramanian vs State of A.P.<sup>5</sup> court held that the protection of Sec 498-A is not limited to cover only those persons who have entered into legally valid marriage means protection extend to live in relationship also.

**SURVEY AND REPORTS ON DOMESTIC VIOLENCE IN INDIA AND OTHER COUNTRIES**

According to National Crime Records Bureau (2012) the dowry deaths during 2001 were 20381 which increased with a rate of 673 per year and reached 24418 during 2012 (Fig 1). The figures of cruelty by husband and his relatives against woman are more horrible which is evident from Fig 2. The cases of cruelty against woman during 2001 were 109467 which increased at the rate of 8546 per year and reached at 197762 during 2012.

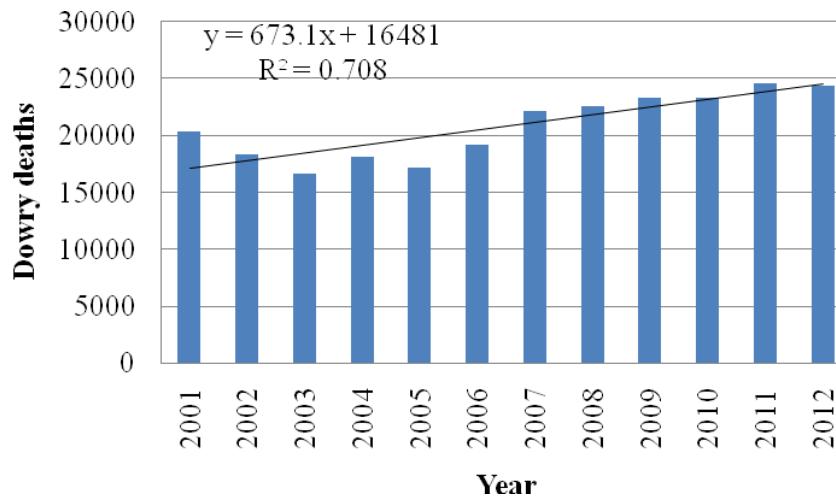


Fig. 1: Dowry deaths in India

<sup>2</sup> 1986 Cri. L.J. 1510 (Del.)

<sup>3</sup> (2009)2 Cr. L.J. 2447 (S.C.)

<sup>4</sup> 2001 Cri. L.J. 1679 (S.C.)

<sup>5</sup> (2009)3 Cri. L.J. 3480 (S.C.)

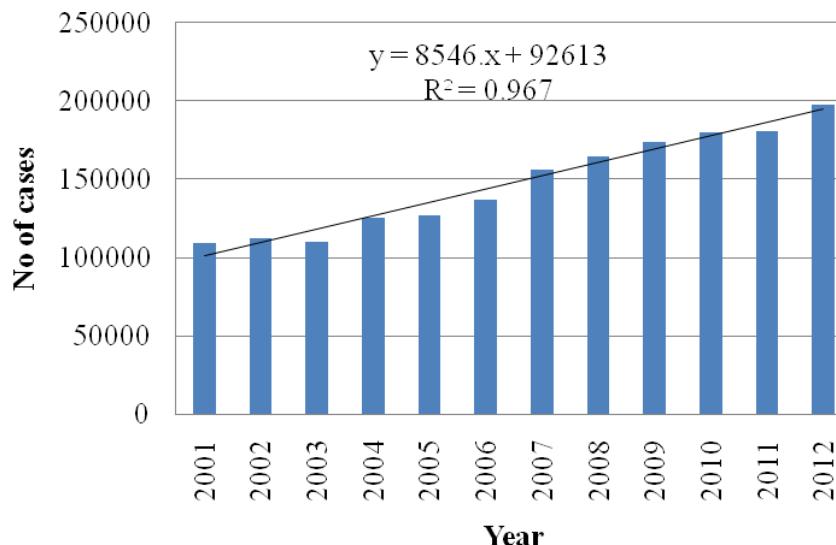


Fig. 2: Cases of cruelty by husband and his relatives against woman in India

According to a National Family and Health Survey in 2005 (Sunita and Kamla, 2009), total lifetime prevalence of domestic violence was 33.5% and 8.5% for sexual violence among women aged 15-49. The instance of violence was reported to be lowest among Buddhist and Jain women, and highest among Muslim women in India.

A 2014 study in The Lancet reports that the reported sexual violence rate in India is among the lowest in the world, the large population of India means that the violence affects 27.5 million over women their lifetime.<sup>6</sup>

According to National Crime Records Bureau report (2014) the total crime against women reported in 2013 were 309546 and out of which domestic violence is at top with 38 percent (Fig 3). About once every five minutes an incident of domestic violence is reported in India. The southern city of Vijayawada reported the highest rate of domestic violence and lowest in Kollam.<sup>7</sup>

<sup>6</sup> [www.thelancet.com](http://www.thelancet.com) Vol 383 March 8, 2014

<sup>7</sup> <http://ncrb.nic.in/>

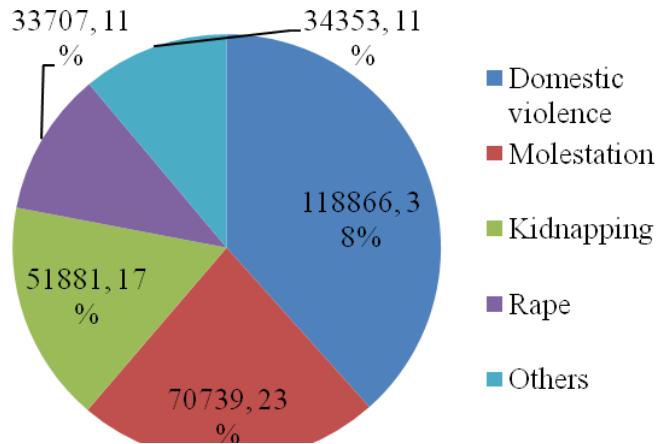


Fig. 3: various crimes against women during 2013

Although India's dowry death rate per 100,000 is lower than equivalent rate for Pakistan and Bangladesh, it is a significant social issue in India.

According to Unicef's Global Report Card on adolescent (2012), 57 percent boys and 53 percent girls in India thinks that husband is justified in hitting or beating his wife.<sup>8</sup> Thomson Reuters Foundation has conducted a global perception poll of experts to highlight the five most dangerous countries for women<sup>9</sup> which ranked India 4<sup>th</sup> in the list as given below.

| Rank | Country     |
|------|-------------|
| 1    | Afghanistan |
| 2    | Congo       |
| 3    | Pakistan    |
| 4    | India       |
| 5    | Somalia     |

According to Human Rights Commission of Pakistan 791 honour killing (form of domestic violence) took place in Pakistan in 2010.<sup>10</sup> The World Health Organization states that globally, about 38% of murders of women are committed by an intimate partner.<sup>11</sup>

#### MISUSE OF LAWS RELATING TO DOMESTIC VIOLENCE

Earlier there is widespread hesitancy amongst the Indian women who experience domestic violence to report or prosecute against such crimes. Domestic violence was often not handled as a legitimate crime or complaint, but more of a private or family matter. But now this trend has changed. Section 498-A IPC and the Protection of Domestic Violence Act 2005 were introduced to protect women from Domestic Violence. But these laws become

<sup>8</sup> Sinha, Kounteya (2012-04-25). "57% of boys, 53% of girls think wife beating is justified". New Delhi: The Times of India.

<sup>9</sup> <http://www.trust.org/trustlaw/womens-rights/>

<sup>10</sup> Mariya Karimjee, 2011. The Global Post

<sup>11</sup> WHO (October 2013). Violence against women: fact sheet no. 239. World Health Organization.



the most misused laws in India and accounts for the most suicide cases among men in India. It is reported that every 9 minutes a man commits suicide in India due to this. Taking this in account Supreme Court of India in Arnesh Kumar vs State of Bihar<sup>12</sup> held that anti-dowry laws are misused at a large extent and directed the State to give instruction to their police authority not arrest the person against whom complaint under the anti dowry laws are filed until the investigation is completed. This seems to be positive step of judiciary giving protection against misuse of domestic violence laws.

#### CONCLUSION

Violence against the women is not a recent problem but prevailing since the ancient era such as sati, parda, ban against widow remarriage etc. It is not only confined to India but prevail to all over the world with varying intensity. In India, after independence our constitution granted various fundamental rights such as right to equality, right to life and liberty to women but these rights seems meaningless when she suffered violence in every field of her life. Domestic violence was introduced as a crime in 1983 and also given protection under civil law by the enactment of 'Protection of Woman from Domestic violence Act 2005'. There is no doubt that these are helpful in protecting women from domestic violence but lacking part is the effective implementation and that's why the graph of domestic violence is continuously growing over the years which is a shame to our civilized society. The misuse of these laws is also a serious concern now a day.

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<sup>12</sup> (2014) 8 S.C.C 273