

Domestic violence against Women- A Legal perspective

B. Muthu Jeyakumari
Assistant Professor of Law
Government Law College
Tirunelveli

Introduction

“If we are to fight discrimination and injustice against women, we must start from the home for if a woman cannot be safe in her own house then she cannot be expected to feel safe anywhere.”

- Aysa Taryam

Women in the country are facing a more grave form of violence at home rather than outside the home. The four walls of her home have become a grave threat to the safety of women, but for the culprits it is the safest place to commit violence.¹ They are committed not by strangers but by their own family members whom she expects love, care, affection and protection. Interference into domestic privacy is considered as a greater evil than actual violence inflicted upon a wife. Violence against women is not limited to traditional forms of beating, rape or murder. It takes other forms too such as incest, domestic violence, sexual harassment, female foeticide and infanticide, trafficking in human beings, honor killings, female genital, eve-teasing and widow immolation. These constitute the violation of women's right to live with dignity and self-respect which are guaranteed under the constitution and human rights. This paper highlights the Constitutional, International provisions and important decisions of the Supreme Court and High Courts which have direct bearing on the women in the field of administration of justice.

Definition of Domestic violence:

In the British context, domestic violence is usually regarded as violence between adults who are (or have been) in an intimate or family relationship with each other, most often a sexual relationship between a woman and man. *The Women's Aid federations* define domestic violence as comprising a range of types of abuse. These include physical, sexual, mental and emotional or psychological violence. The perpetrator may be a woman's husband, boyfriend, partner, lover, ex-partner or ex-husband, friend, son, father, brother, uncle or other

¹ R. Revathi, *Law relating to Domesic Violence*, 4 (2000).

close family member. According to *Black's Law Dictionary*, Domestic violence means violence between members of a household, usually spouses, an assault or other violent act committed by one member of a household against another.² According to Britannica Encyclopedia, domestic violence refers to any abuse that takes place among people living in the same household, although the term is often used specifically to refer to assault upon women by their male partners.

Under the Protection of Women from Domestic Violence Act 2005, domestic violence means any act, omission, or commission or conduct of the respondent shall constitute domestic violence in case it –

- a. Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse or
- b. Harasses, harms, injures or endangers the aggrieved person into a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- c. Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- d. Otherwise injures or causes harm, whether physical or mental to the aggrieved person.

Explanation 1: For the purpose of this section –

1. 'Physical abuse' means any act or act which is of such a nature as to cause bodily pain, harm, or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
2. 'Sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman.
3. 'Verbal and emotional abuse' includes
 - a) Insult, ridicule, humiliation, name calling and insults or ridicule specifically with regard to not having a child or a male child; and
 - b) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
4. 'Economic abuse' includes:
 - a) Deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a

² Black's Law Dictionary, 1564 (1999).

- Court or otherwise or which the aggrieved person required out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- b) Disposal of household effects, an alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
 - c) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.³

The core of a definition of a domestic violence consists of all the acts that constitute violence.

Protection of women from Domestic violence under International Law:

In the past, violence against women occurring in home or between inmate partners is viewed as a private matter but not as an issue of civil and political rights. But now the International community has explicitly recognized that violence against women is a human right violation and the State is responsible for such violation. Under International law violence against women is a form of discrimination against women. Human rights Law enacted by the United Nations are relevant to domestic violence. It is pertinent to briefly discuss the achievements of the United Nations in the field of women's rights since 1945. These are

A) United Nations Charter 1945:

Prohibition against sex discrimination was first articulated in United Nations Charter, 1945. The *Preamble of the United Nations Charter* reaffirms 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. The Charter also recognizes that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect

³ Section 3, *The Protection of Women from Domestic Violence Act 2005*.

for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.⁴

B) The Universal Declaration of Human Rights, 1948

Although the Universal Declaration of Human Rights is not legally binding on the member states, yet it has contributed significantly in giving protection to women. It says, “All human beings are born free and equal in dignity and rights.”⁵ Everyone is entitled to all rights and freedoms whether we are rich or poor whatever country we live in, whether sex or whatever colour we are, whatever language we speak, whatever we think or whatever we live.⁶ Everyone has the right to life, liberty and security of person.⁷ It also states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.⁸ It also identifies housing as the necessary part of the right to adequate living conditions.⁹ It also states that we have a duty to other people, and we should protect their rights and freedoms.¹⁰ In some matters such as marriage rights, it specifies the ways in which men and women should be treated. It specifies men and women of full age, without any limitation due to race, nationality or religion has the right to marry and form a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.¹¹

C) The International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966

These covenants do not explicitly address domestic violence. They along with the Optional Protocol to International Covenant on Civil and Political Rights, articulate the State’s duty to protect fundamental human rights that are commonly violated in domestic violence cases. These include right to life, the right to physical and mental integrity, the right to equal protection of the laws and the right to be free from discrimination. It also states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹²

D) The convention on the Elimination of All Forms of Discrimination against women

This is the first convention that comprehensively underscores the rights of women. The Indian government ratified this convention in 1983. The significance is that it presents an

⁴ Article 1, *The United Nations Charter, 1945.*

⁵ Article 1, *The Universal Declaration of Human Rights, 1948.*

⁶ Article 2, *The Universal Declaration of Human Rights, 1948.*

⁷ Article 3, *The Universal Declaration of Human Rights, 1948.*

⁸ Article 5, *The Universal Declaration of Human Rights, 1948.*

⁹ Article 25, *The Universal Declaration of Human Rights, 1948.*

¹⁰ Article 29, *The Universal Declaration of Human Rights, 1948.*

¹¹ Article 16, *The Universal Declaration of Human Rights, 1948.*

¹² Article 7, *The International Covenant on Civil and Political Rights, 1966.*

opportunity and challenge to use the law to women's advantage. This convention is described as the Magna Carta of Women's human rights. The preamble to this convention declares that discrimination against women violates the principle of equality of rights and respect for human dignity. Gender based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general International law or under Human rights Conventions, is within the meaning of Article 1 of the convention. These include right to life; right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right to liberty and security of a person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard of physical and mental health; the right to just and favourable conditions of work. Article 2 states that 'violence against women' shall be understood to encompass (a) physical, sexual or psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence relating to exploitation. (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical sexual and psychological violence perpetrated or condoned by the state wherever it occurs.

Legal Response to Domestic violence under Constitutional Law

The preamble to Indian constitution secures to all its citizens justice – social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity to promote among them all fraternity, assuring the dignity of individual and the unity of the nation. The Constitution of India adopted a land mark step in this direction by guaranteeing full equality and liberty to woman and prohibiting trafficking. To realize these goals, the Constitution guarantees certain fundamental rights and freedoms. Article 14 to 18 of the Constitution guarantees the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and equal protection of laws. Article 15 to 18 of the Constitution lays down specific principles. Article 15 prohibits discrimination on grounds of religion, race, caste sex or place of birth. Article 15 (3) specifically provides that prohibition of discrimination on grounds of religion, race, caste, sex or place of birth as contained in Article 15, shall not prevent the state from making any special provisions of women and children. Article 16 guarantees equality of opportunity in

matters of public employment. Article 17 abolishes untouchability and Article 18 abolishes title.

In *Air India Vs Nargesh Mizra*,¹³ the Supreme Court struck down the Air India Regulations of Air Hostesses relating to termination of services on the first pregnancy, as violative to Article 14 of the Constitution.

Personal liberty is considered as the most important of all fundamental rights. Article 19 guarantees to all the citizens both men and women the 'right to freedom of speech and expression'. Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Right to life is considered as the most important fundamental right. But the birth of a girl is not considered as a matter of pleasure even today in many parts of India. Therefore the state is under an obligation under Article 21 not only to protect the life of unborn child from arbitrary and unjust destruction but also not to deny its equal protection under Article 14 of the Constitution of India.

The Statement of Objects and Reasons declared that Protection of Women from Domestic Violence Act, 2005, was being passed keeping in view the fundamental freedoms guaranteed under Articles 14, 15 and 21 of the Constitution. The right to life has been held to include the following rights which were reflected in the Protection of Women from Domestic Violence Act, 2005 are as follows:

- 1) The right to be free from violence: In *Francis Coralie Mullin Vs Union Territory of Delhi, Administrator*,¹⁴ the Supreme Court states, any act which damages or injures or interferes with the use of any limb or faculty of person, either permanently or even temporarily, would be within the inhibition of Article 21 of the Constitution of India. This right is incorporated in the Protection of Women from Domestic Violence Act 2005 through the definition of physical abuse.
- 2) The right to be dignity: In *Ahmedabad Municipal Corporation Vs Nawab Khan Gulab Khan*,¹⁵ the Supreme Court held that right to life included in its ambit right to live with human dignity. The right to dignity includes right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facets of the right to life find mention under the definition of sexual abuse and emotional abuse.

¹³ AIR 1981 Sc 1829

¹⁴ (1981) 2 SCR 516

¹⁵ AIR 1997 SC 152

- 3) The right to shelter: In *Chameli Singh Vs State of UP*,¹⁶ the Supreme Court held that right to life would include right to shelter. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless.

The state shall provide free and compulsory education to all children of the age of 6 to 14 years of age under Article 21- A of the Constitution. Article 45 mandates the state to make provision for free and compulsory education for the children below the age of 14 years. Article 23 of the Constitution prohibits trafficking in human beings and forced labour. Traffic in human being means selling and buying men and women like goods and includes immoral traffic in women and children for immoral and other purpose.

The Directive principles of State policy contained in Part IV of the Constitution incorporate many directives to the state to improve the status of women and for their protection. Article 39 (a) directs the state to direct its policy towards securing that the citizen, men and women, equally have the right to an adequate means of livelihood. Article 39 (d) directs the State to secure equal pay for equal work for both men and women. Article 39 (e) directs the State not to abuse the health and strength of workers, men and women. Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. Maternity benefit Act 1961 was implemented on the basis of this directive. Article 44 of the Constitution directs the State to secure for the citizens a uniform civil code throughout the territory of India. In the *Shah Bano case*,¹⁷ the Supreme Court expressed its deep regret that Article 44 has remained a dead letter. Article 51 A declares it a fundamental duty of every Indian citizen to renounce practices derogatory to the dignity of women. Thus the spirit of gender equality, dignity and justice pervades the entire frame work of our constitution.

Conclusion

Despite so much of legal protection under International and Constitutional regime, gender justice appears to be a myth in India. It may be noted that fundamental rights and directive principles enshrined in the Constitution of India for making women equal to men have remained pious hopes. The majority of women are still far from enjoying the rights and opportunities guaranteed to them by the Constitution of India. On the other hand, the increasing incidents of practices like dowry indicate a further lowering of the status of women.

¹⁶ AIR 1995 SC 55

¹⁷ AIR 1995 SC 945

Works cited

- Dr. Babita Devi Pathania, “Law relating to Domestic Violence”, 2013, pp. 21 to 68
- M. Shenoy, “Domestic violence Issues and Perspectives”, 2007, pp 1-24
- Preeti Misra, “Domestic violence Against Women Legal Control and Judicial response “,
2007, pp 266 -279.
- Aruna Goel, Manvinder Kaur, Ameer Sultana, “Violence against women Issues and
Perspectives”, 2006, pp 42-45.
- R. Revathi, “Law relating to Domestic violence”, 2000, pp 4-5.