
DOMESTIC VIOLENCE AND ITS EFFECT ON CHILDREN IN INDIA

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ABSTRACT

In India domestic violence is not very new to the society, one or the other way most of the person have experienced domestic violence in their life.

And most us experience this especially during our childhood. It is an age when a child grows mentally and physically and assume to be correct whatever we see at that age. For example, a family where children see their parents fighting may do the same in future when he/she may get married. Thus, there will not be no end this. Therefore, governments and with the help of NGOs, are trying reduce this domestic violence in different ways to make India's life to be peaceful and happy in future.

Whenever we think as a law student about domestic violence, the two things that come in our mind are two major legislations, there are protection of women from domestic violence act, 2005 and section 498-A of the penal code. But concept of domestic violence is not limited to these two legislations instead it is a wide concept. Where this article will be discussing about major aspects of domestic violence in India and its effect on children.

INTRODUCTION:

A happy family life is like heaven, and to attain it one must keep quality time with their family and maintain a good family relationship. As it is very much right said by our ancient sages that:

यदि रामा यदि च रमा यदि तनयो विनयगुणोपेतः।

तनये तनयोत्पत्तिः सुरवरनगरे किमाधिक्यंम।।

English Transliteration-

Yadi Rāmā yadi cha Ramā yadi tanayo vinayogunopetaḥ.

Tanaye tanayotpattiḥ suravaraganagare kimādhikyam̄m.

Which means, “Of what good resides is haven, when an individual is blessed a wife (Rama here means wife) who is virtuous like Lakshmi (the goddess of wealth), and a son who is endowed with humanity and plenty of other good qualities.

But even after so many years, there are plenty of cases on family/domestic violence, from divorce to brutal murder of wife and children and other types of domestic violence has become common incidents in countries like India.

This has affected the various sections of society and society at large. Especially it has affected the children of all ages, mentally and socially. As they are the future generations and incidents related to domestic violence will lead them to negative conclusions and will really act as threat to the survival of a country with peace and harmony.

Domestic violence prevails in India, because of practice of different religious views, beliefs and rituals by people of different religions. For example, if we consider dowry system, where a bride’s father is made sole responsible for conducting and spending money for daughter’s marriage and also are made to give huge dowry to groom and his family. Where, after marriage the bride is treated worse than a servant and are harassed in order to obtain the dowry. And we are familiar with day to day incidents related to dowry deaths in newspapers and other social media. May be this is the reason why many communities of religions even today, do not want a girl child to be born in the family because they don’t want to spend their money

On daughter's education as well as their marriage, may be this is also the reason for increasing female feticides in India. Thus, there is a necessity to change the mindset of the communities and spread awareness on the same.

And domestic violence not only includes women as victim of this, but also effects children especially adolescents. Thus, the government has taken several steps to prevent domestic violence. What is your view about domestic violence in India? Have you ever come across any situations where you felt that you have been victim of domestic violence?

WHAT IS DOMESTIC VIOLENCE?

In simple words, we can define domestic violence as a violence as a violence committed by some person in the victim's domestic circle. This includes partners and Ex-partners, immediate family members, other relatives and family friends.

The term domestic violence is used when there is a near relationship between the offender and victim. Where victim is dependent on the offender and can take the form of physical, sexual or psychological abuse, or any other types of abuse that comes under domestic violence.

According to section 3 of protection of women from domestic violence act, 2005, defines domestic violence as: -

For the purposes of this Act, 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 with 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 I.-For the purposes of this section, -

(i) "physical abuse" means any act or conduct 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;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule especially 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. (iv) "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 court or otherwise or which the aggrieved person requires 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, any 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.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

Therefore, it is clear from section 3 of domestic violence act,2005 that what all violence are of domestic in nature and what commission or omission of acts.

TYPES OF DOMESTIC VIOLENCE

Most of the people in society, assume that domestic violence, means a situation, where the abusive partner physically hurts the victim. However, physical harm is only one form of abuse and there are various types of domestic violence, and in spite of physical it also includes emotional, sexual, financial or psychological.

Let's discuss one by one,

PHYSICAL ABUSE:

It is one of the most common and recognizable form of domestic violence. It involves the use of force against the victim, causing injury (a punch or a kick, stabbing, shooting, choking, slapping, forcing you to use drugs, etc).

Mere injury can also amount to domestic violence even if it is not severe one, for example, a person kicks the other person a few times, causing only minor injury which need not lead to hospitalization of the victim, still kicking would constitute domestic violence.

In the case *Sandeep Mohan Varghese vs Anjana* on 15 September, 2010, it was held that the husband was guilty of **physical cruelty** against wife.

EMOTIONAL ABUSE:

Emotional abuse refers to the act of causing destruction of the victim's self-worth, and is continuously insulted, humiliated or criticised severely. It might be difficult for many people to understand this type of domestic violence since, it appears on the surface to be quite common in unhealthy relationships.

However, in most states, mere emotional abuse alone cannot be compelled to bring a domestic violence action unless the abuse is so constant and so important that the relationship can be stated extremely coercive. In short, evidence of emotional abuse is combined with other abuse including physical, financial, sexual or psychological to bring a domestic violence action.

In the case of **Prakash vs State of Rajasthan**, the court focused on the impact of abuse on the

children of sensitive age. It observed that a child, who puts his faith in his elders to protect him, falls prey to the uncontrolled libido of the adult. The psychological effects of such betrayal haunt this child throughout his life. Sometimes, this abused child who is wronged, becomes a mal adjusted citizen and rebels against the society and state. The duty is of the state and the society to protect children and promote him in his

life thereafter. These cases invite for creative investigations and judicial sensitivity. The minor victim may initially not speak up, but it is up to the family of such victim to take care of his emotional well-being. The courts should be able to make this victim comfortable enough to speak, and not intimidate him. The necessary guidelines have been given by the supreme court in several cases

SEXUAL ABUSE: -

It is a most common form of domestic violence. It involves not only sexual assault or rape, but also includes harassment such as unwelcome touching and other demeaning behaviours. Many victims are not aware of how broadly sexual abuse is interpreted. For example, if a person has ever been coerced into not using contraception or undergoing an abortion, then that person may have actually been sexually abused, which is termed as reproductive coercion.

In the **State of Punjab vs Gurmit Singh & Ors**, the Hon'ble Supreme Court has laid down the following:

1. The anonymity of the minor victim (name, address etc.) should be maintained in all cases throughout the criminal proceeding. The name and other details should be withheld even while providing the charge sheet to the accused. The idea is to save further embarrassment of the victim of such an offence.
2. The court laid emphasis on Sec 327 of the Code of Criminal Procedure, 1973, which provides for the trial of certain offences to be conducted on camera, which shall aid the victim of such offence to give her testimony comfortably. Presence of the Media or public in general may make the victim uncomfortable and shy while giving her statement.

In addition to the above-mentioned rules, the court in the case of **Sakshi vs Union of India** the following was laid down:

1. The video tape of the child's interview can be used by the court only in the presence of a child support person.
2. In order to get a candid account of the complained offences, the victim should be allowed to testify through a closed-circuit television.
3. A minor victim can be cross examined only by the judge on the basis of the written questions submitted by the defender.
4. A child should be allowed for sufficient breaks, as and when required by them, while giving their statement.

FINANCIAL ABUSE: -

Of the types of domestic violence financial abuse is perhaps the least obvious. Financial abuse may take place in different forms, such as a husband preventing his wife from obtaining an education or a job outside the home. This type of abuse is very common particularly when families have pooled their money into joint accounts and where there's little or no family, support system to help. Also, the victim is totally dependent on their partner for money, where the victim has no access to money except through the abusive partner and is completely at the mercy of the abusive partner.

PSYCHOLOGICAL ABUSE: -

Psychological abuse is basically an all-together term for intimidating, threatening, or fear-causing behaviour. This behaviour must be constant and significant. Like emotional abuse, psychological abuse may not, on its own, be enough to bring a domestic violence action unless it is very severe.

A wide variety of behaviours fall under the concept of psychological abuse. Some of the common examples include:

- Preventing the victim from talking to people unless they have "permission";
- Preventing the victim from leaving the house;
- Threatening the victim with violence or
- Emotional blackmail for doing something the abusive partner doesn't agree with.

Therefore, it is clear that a person can cause harm not only physically but also mentally, emotionally, sexually as well as financially to constitute domestic violence.

DOMESTIC VIOLENCE AFFECTING

CHILDREN IN INDIA AND MEASURES TAKEN TO PREVENT IT

The children of today will make the India of tomorrow. The way we bring them up will determine the future of the country. Children are like buds in a garden and should be carefully and lovingly nurtured, as they are the future of the nation and the citizens of tomorrow. Only through right education can a better order of society be built up.

Domestic violence in India as well as globally, has spoiled the childhood life of number of children in the past several years. Which has impacted severely the younger generations psychologically. It has affected children of all ages.

In **Rangesh vs State by inspector of Police**, the court observed that child abuse is increasing at an alarming rate at schools. According to reports of the National Commission for Protection of Child Rights (NCPCR), the cases of child abuse have tripled over past three years from 21 states:

1. 34 complaints in 2007-08
2. 68 complaints in 2008-09
3. 95 complaints in 2009-10

But slowly people are getting awareness about the ill-effects of causing domestic violence and are undergoing counselling conducted by various NGOs and also central as well as state governments are making initiatives to enhance child development and promoting children to attain maximum education as possible. Especially, girl child is being provided with several initiatives like 'beti bachao, beti padao' scheme, free education to single girl child, etc. and government enacted laws like The Protection of Children from Sexual Offences Act, 2012 was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process. Also, there are child welfare committees where it is considered that A sexually abused child is considered as "child in need of care and protection"

under Juvenile Justice (Care and Protection of Children) Act, 2015. Police officer should therefore inform the Child Welfare Committee about every case under the Act within 24 hours.

Following is case law where the judge has come into particular conclusion: -

In the case of **Childline India Foundation v. Alan John Waters and Ors**, the Supreme Court issued elaborated guidelines with respect to child abuse. These are briefly as follows:

1. The DPSP provided under the Indian Constitution provides policies specifically for protection of children, to ensure that children of tender age are not abused or forced by economic necessity to indulge in activities unsuited to their strength.
2. Art 45 states that the State shall provide for early childhood care and education up to the age of 14 years to all children. It also realises the importance of dignity and personality of individual and provides for free and compulsory education by the state for children (up to 14 years of age).
3. The Juvenile Justice Act was enacted to provides for care and protection of neglected and delinquent juveniles and the establishment of special courts for the disposition of delinquent juveniles.

CONCLUSION:

Therefore, domestic violence is violent or aggressive behaviour within the home, typically involving the violent abuse of a spouse or partner. There are several kinds of abuse such as physical, psychological, financial, sexual and emotional, where physical and sexual abuse are most common incidents that are occurring in India. Domestic violence has affected the life of especially children both mentally and emotionally. And to prevent domestic violence in the country several government schemes, parent counselling, rules and regulations on curbing domestic violence, etc, are being implemented throughout the country. Thus, gradually the country is putting maximum efforts to control the spread of domestic violence and other related issues effecting family and society at large.

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