

Family (Domestic) Violence - Cruelty, Battery, forced prostitution, kidnapping of own child, forced abortion, unwanted pregnancy, female infanticide, sex determination tests

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The Protection of Women From Domestic Violence Act, 2005-Some facts about Domestic Violence

- ➡ Almost every family witnesses Domestic Violence
- ➡ Almost 1/3rd of crimes against women registered annually are related to domestic violence or violence against women
- ➡ Crores of women suffer from violence in their homes but only about less than 5% report the same
- ➡ Less than 20% of accused are convicted U/s 498-A,IPC
- ➡ About 80% of families try to reconcile with husband & family

Laws rel . to Domestic Violence in India

- ➡ Laws are plenty
- ➡ **Crl.Law-** includes IPC, Cr.P.C., D.P.Act,1961, Commission of Sati Prevention Act.1987 & Pre-conception &Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act,1994,POCSO Act 2012 etc.
- ➡ **Civil Law-** includes Personal Laws of Hindus and Muslim etc, CPC, Law of Torts etc
- ➡ **Special Law-** Protection of Women From Domestic Violence Act,2005 (w.e.f.26-10-2006)

What is DV?

- Physical, sexual or psychological abuse directed towards one's spouse, partner, or other family member within household.
- Synonymous with Intimate partner violence(IPV)
- Occurs in all cultures, races, ethnicities & religions
- Popular emphasis is on woman as victim-Violence against Women(VAW)
- Includes dowry harassment, negligence to maintain and even marital rape

The Protection of Women From Domestic Violence Act, 2005

- Aims at more effective protection of rights of women who are victims of family violence
- Provides remedy under civil law intended to protect women from being victimized & to prevent occurrence of d.v. in society
- DV (s.3) - harm , injury, danger to health, safety , life , limb , well-being whether mental or physical of aggrieved person
- Includes causing physical, sexual, verbal, emotional & economic abuse

Important Definitions

- Aggrieved person - Any woman in domestic relationship [S.2(a)]
- Domestic Violence – [S.3]
- Domestic relationship – includes live-in relationship [S.2(f)]
- Respondent – includes a woman causing DV – [S.2(q)]
- Magistrate –JMFC/MM [S.2(i)]
- Protection officer – [S.2(n)]
- Service Provider – [S.10]

Procedure for obtaining relief

- ➡ Information to Police/P.O.- [R.4]
- ➡ DIR- [R.5]
- ➡ Application to Magistrate- [S.12]
- ➡ Service of notice- [S.13]
- ➡ Counseling- [S.14]
- ➡ Assistance of Welfare Expert- [S.15]
- ➡ Relief by magistrate- [Ss.17-22] etc

Relief Granted by magistrates

- ➡ Direction to undergo Counseling-S.14
- ➡ Protection order-S.18
- ➡ Residence order-S.19
- ➡ Monetary relief-S.20
- ➡ Custody order- S.21
- ➡ Compensation order- S.22
- ➡ Interim & ex-parte orders - S.23
- ➡ Alteration of orders-S.25

Role of Police

- ➡ Limited powers given to police
- ➡ Duty to inform complainant about right to obtain relief under Act, services of P.O.s & S.P.s, free legal aid, and file complaint u/s 498-A,IPC –S.5
- ➡ Duty to proceed as per law if info..received about commission of a cognizable offence- S.5 Proviso
- ➡ Action in case of emergency- R.9

Judicial Response to DV Act

U/Sec.17(1) of the Act -wife is only entitled to claim a right to residence in a shared household

- ➡ 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.
- ➡ The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra (Mother-in-Law). Hence it cannot be called 'shared household'. [S.R. Batra vs Smt. Tarun Batra on 15 December, 2000, Supreme Court per S.B. Sinha & Markandey Katju JJ]
- ➡ **Tarun Batra overruled by 3-judges Bench of SC dated 15th Oct.2020 in Satish Chander Ahuja V.Sneha Ahuja**
- ➡ Domestic relationship and domestic violence need to be considered so that this Act is not misused to settle property disputes.. Adil & Ors. vs State of Anr. on 20 September, 2010 (Delhi HC) See also Madras HC judgment in Rukmani vs Manonmani ... on 11 December, 2017

Judicial Response to the Act of 2005

- ➡ U/Sec. 2 (q) of the Act reads as under: "**Respondent**" means any adult 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 the 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".
- ➡ *"Respondent" as defined under Section 2(q) of the Act includes a female relative of the husband". [Sou. Sandhya Manoj Wankhade V. Manoj Bhimrao Wankhade [2011] Insc 113 (31 January 2011)]*
- ➡ Complaint of DV is maintainable against Woman also

Domestic Relationship-Whether includes Live-in Relationship

- **D.Velusamy vs D.Patchaiammal** on 21 October, 2010, Supreme Court of India, Per M Katju, T Thakur JJ
- The SC held that a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :-
 - (a) The couple must hold themselves out to society as being akin to spouses.
 - (b) They must be of legal age to marry.
 - (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
 - (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.
- 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.
- See also **S. Khushboo vs. Kanniammal** (2010) 5 SCC 600

V.D.BHANOT v. SAVITA BHANOT [2012] INSC 100 (7

February 2012)

-in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order U/Ss 18, 19 and 20 thereof.
-that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005
- couple has no children. Incidentally, the Respondent wife is at present residing with her old parents, after she had to vacate the matrimonial home, which she had shared with the Petitioner at Mathura, being his official residence, while in service. After more than 31 years of marriage, the Respondent wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for a sum of Rs.6,000/- p.m. awarded by the Magistrate

Marital rape is offence in Certain cases

Exception 2 to Section 375,IPC says that a husband can have non-consensual sex with her wife who is between 15 and 18 years of age.

- Since Child under POCSO Act 2012 denotes any child below 18 years, marital rape of wife between 15 and 18 years is an offence
- The minimum age for the consensual sex is 18 years.. **Independent Thought v. Union of India (2017) 10 SCC 800**
- **Karnataka HC judgment on Marital Rape-Hrishikesh Sahoo v. State of Karnataka & UOI** etc [23rd March, Justice M. Nagaprasanna]-allowed the rape charge against a husband to stand despite the exception under Section 375,IPC saying the institution of marriage cannot confer any special male privilege or license to assault a woman...While Justice Rajiv Shakti held Exception 2 to Section 375 of the IPC as unconstitutional, Justice C. Hari Shankar disagreed with him.
- “A brutal act of sexual assault on the wife, against her consent, albeit by the husband, cannot but be termed to be a rape. Such sexual assault by a husband on his wife will have grave consequences on the mental health of the wife, it has both psychological and physiological impact on her. Such acts of husbands scar the soul of the wives. **It is, therefore, imperative for the law makers to now “hear the voices of silence”.**
- **Delhi HC judgment on Marital Rape-RIT FOUNDATION v. THE UNION OF INDIA-** division bench of two judges of the Delhi high court delivered a split verdict in petitions seeking to criminalise marital rape on Wednesday, May 11,2022

Domestic Violence Act prone to Misuse, says Madras HC

The Hindu, June 19, 2015


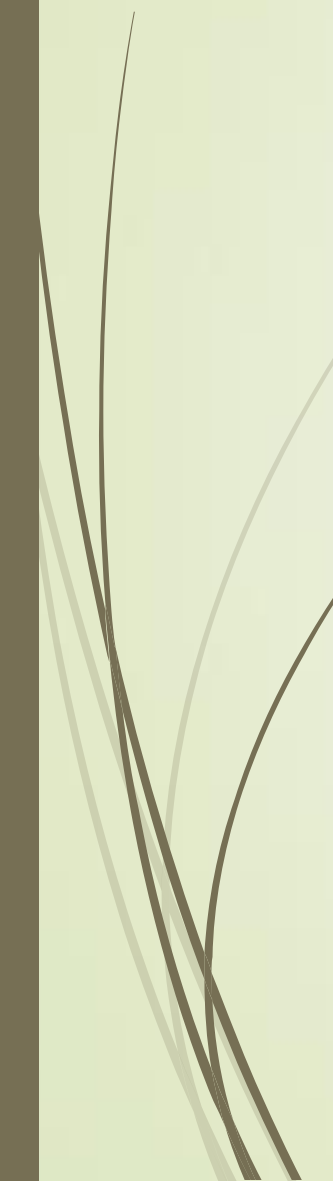
- Petitioner (wife) - lodged complaint against husband and in-laws who had countered it with another case lodged against her and her parents. Subsequently, she came to know that her father-in-law, a government schoolteacher, was about to be promoted as Headmaster.
- Hence, she made a representation to the Virudhunagar District Educational Officer to withhold the promotion since he was facing a criminal case and filed the writ petition seeking a direction to the officer to dispose of her representation within a stipulated time.
- Holding that the petitioner had no right to seek such a direction to the employer of her father-in-law, the judge imposed a cost of Rs.5,000 on her.
- The judge also said that a similar trend of misuse was observed in the case of Section 498A (a woman being subjected to cruelty by her husband or his relatives) of the Indian Penal Code. It forced the Supreme Court to term such misuse as 'legal terrorism.'

Other common unfair practices in family relations

- ➡ Forced prostitution- by family members
- ➡ Kidnapping of own child - parental kidnapping - a game of tug-of-war over children?
- ➡ Forced abortion- MTP Act
- ➡ Unwanted pregnancy
- ➡ Female infanticide
- ➡ Sex determination tests
- ➡ Failure to maintain wife, children and aged parents

Forced abortion- MTP Act ,1971

- **Sec.3. When Pregnancies may be terminated by registered medical practitioners.-**
- (2)a pregnancy may be terminated by a registered medical practitioner,- (a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty (four) weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that,-
 - (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or
 - (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

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- **Explanation 1.**-Where any, pregnancy is alleged by the pregnant woman to have been **caused by rape**, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.
 - **Explanation 2.**-Where any pregnancy occurs **as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children**, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.
 - (3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), **account may be taken of the pregnant woman's actual or reasonable foreseeable environment**.
 - (4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian. (b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.

X vs The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr

SUPREME COURT OF INDIA -DR. DHANANJAYA Y. CHANDRACHUD; J., A S BOPANNA; J., J.B. PARDIWALA; J. September 29, 2022

- Medical Termination of Pregnancy Act, 1971 - All women are entitled to safe and legal abortions (Para 56) - There is no rationale in excluding unmarried women from the ambit of Rule 3B of MTP Rules which mentions the categories of women who can seek abortion of pregnancy in the term 20-24 weeks. (Para 121)
- Medical Termination of Pregnancy Rules, 2003 - Rule 3B (categories of women who can seek abortion of pregnancy of 20-24 weeks) - A narrow interpretation of Rule 3B, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution. Prohibiting unmarried or single pregnant women (whose pregnancies are between twenty and twenty-four weeks) from accessing abortion while allowing married women to access them during the same period would fall foul of the spirit guiding Article 14
- Purposive interpretation given to Rule 3B to include unmarried women whose pregnancy arise out of consensual relationship. (Para 121) Medical Termination of Pregnancy Act 1971 - Section 3(2)(b) - Termination of a pregnancy till twenty-four weeks of women if it causes risk of injury to the mental health – unwanted pregnancy can be construed as injury to mental health. (Para 62, 63, 64)
- Marital Rape - Rape includes 'marital rape' for the purpose of MTP Rules - Rule 3B(a) -Survivors of sexual assault or rape or incest shall be considered eligible for termination of pregnancy up to twenty-four weeks – Supreme Court holds that meaning of rape must be understood as including marital rape, solely for the purposes of the MTP Act – Woman need not seek recourse to formal legal proceedings to prove sexual assault, rape or incest. (Para 70, 75, 76)

Medical Termination of Pregnancy Rules, 2003 - Rule 3B(b) - Rule 3B(b) includes minors within the category of women who may terminate their pregnancy up to twenty-four weeks – the RMP need not disclose the identity and other personal details of the minor in the information provided under Section 19(1) of the POCSO Act. (Para 81)

- Medical Termination of Pregnancy Rules, 2003; Rule 3B(c) -Women going through a change of marital status during the ongoing pregnancy shall be considered eligible for termination of pregnancy – distinction between married and single women is not constitutionally sustainable – benefits in law extend equally to both single and married women. (Para 90, 92)
- Marital Rape - Exception 2 to Section 375 of IPC - Exception 2 states that sexual intercourse by a man with his wife is not rape, unless she is below 15 years of age – Supreme Court leaves the constitutional validity of marital rape to be decided in appropriate proceedings but states that for the purpose of MTP Act, meaning of rape includes marital rape. (Para 74, 75, 115) 2 Protection of Children from Sexual Offences Act, 2012; Section 19(1)
- When a minor approaches a Registered Medical Practitioner for a medical termination of pregnancy arising out of a consensual sexual activity, an RMP is obliged to provide information to concerned authorities – Supreme Court states that the RMP need not disclose the identity and other personal details of the minor in the information. (Para 79, 80, 81)



Conclusion



Thank You

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