



Criminal Law

*Handbook on New Dimensions of
Crime Against Women and Child*

Dr. Suresh Mani Tripathi
Dr. Shashi Kant Tripathi



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Crime Against Women and Child**

By : Dr. Suresh Mani Tripathi

Dr. Shashi Kant Tripathi

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4.

Gender Based Violence with Special Reference to Domestic Violence in India

Brajesh Kumar*

Traditionally, women have been seen as weaker sections in society. They suffer from exploitation, humiliation and discrimination both at home and in society. Gender-based inequality of women is prevalent in almost all countries of the world. Gender inequality is one of the biggest challenges for the society at the present time. Criminal behavior against women is increasing very fast. At present, the rise of criminal incidents against women is one of the biggest challenges in the criminal justice system. Gender equality is the cornerstone of human rights, so gender-based crime is also a matter of concern for human rights. Exploitation and oppression of women is a universal fact

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in the present perspective. Women have been abused, exploited and sexually harassed for centuries by being physically weak and financially dependent on men. Despite of many constitutional and legal protection day-to-day increase in gender-based criminal incidents against women is being seen. Woman is the most oppressed and suppressed class of people in India for whom suffering, torture, cruelty and inhuman degraded treatment has become their ultimate fate. They do not enjoy a status equal with the men in he society.

The Word Gender

“Gender was initially used synonymously with ‘women’ and ‘sexual differences’. Since the 1980s gender has become a more complex term of analysis. It implies knowledge of sexual difference as well as those socialization processes by which individuals construct themselves as gendered beings. Gender is thus no longer a biological category but a cultural category influencing varied other discourses of philosophy, history, science, anthropology, psychology, etc. The term has special implications in feminist theory. Till the 1970s the terms ‘gender’ and ‘sex’ were used interchangeably. The analyses and theories of cultural feminists, gynocritics, French feminists and postmodern feminists point out that ‘gender’ is the meaning that culture and socialization practices ascribe to biological differences. It constitutes a set of behaviors that is learned and performed.”¹

Concept of Gender Based Violence

Gender violence is one of the most prevalent human rights violations in the world. Gender violence is also known as sexual violence. Every day we see in

1. Mukhopadhyay Arpita, LITERARY/CULTURAL THEORY FEMINISMS, Orient Blackswan Private Limited, Hyderabad,pg 132.

the neighborhood and society that the wife is being beaten by the husband, the girls are being abused, the women is being tortured for dowry. Every day we hear about hateful incidents like rape. All these incidents happen in different places at the same time. This incident is one of the biggest examples of 'gender-based violence'. Gender-based violence or sexual violence refers to violence that is the root cause of any person's gender identity. Means any crime that is committed due to her being a woman is called sexual violence. The term *gender-based violence* refers to «any acts or threats of acts intended to hurt or make women suffer physically, sexually or psychologically, and which affect women because they are women or affect women disproportionately»² The UN Declaration on the Elimination of Violence Against Women states, «violence against women is a manifestation of historically unequal power relations between men and women» and «violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.»³

Although the condition of woman is talked about in the India, then it can be said that there has been a feeling of respect for women in ancient India. But on the other hand, there has been also injustice, harassment and pathetic state towards women. Since ancient times, women have been harassed, oppressed and despised

2. Richters, J.M. Annemiek (1994). *Women, culture and violence: a development, health and human rights issue*. Leiden, The Netherlands: Women and Autonomy Centre (VENA), Leiden University. ISBN 9789072631374. OCLC 905570045 . Read From Wikipedia, the free encyclopedia, https://en.wikipedia.org/wiki/Violence_against_women#Definition

3. «A/RES/48/104 - *Declaration on the Elimination of Violence against Women*». *United Nations General Assembly*. Retrieved 6 August 2014..Read From Wikipedia, the free encyclopedia, https://en.wikipedia.org/wiki/Violence_against_women#Definition

by the male society. But in modern time, the graph of violence and crime against women has increased very fast. Woman is the most oppressed class of people in India for whom suffering, torture, cruelty and inhuman degraded treatment has become their ultimate fate. They do not enjoy a status equal with the men in the society. They are socially and educationally backward and financially inferior. Their situation becomes pathetic and terrific when all types of violence is caused to them.

Concept of Crime Against Women

Although women can be hurt by any crime such as murder, theft, robbery etc, but only those crimes can be called gender-based crime, which are directly against women in particular. Gender-based violence can be broadly classified and studied into two main categories. (1) Violence during the life cycle of women. And (2) Violence defined under Indian statutes.

Gender-Based Violence During the Life Cycle of Women

Gender-Based Violence Visible at Different Stages Throughout the Lifecycle⁴

Lifecycle	Types of Violence
Prenatal	Pre- birth elimination of females Physical battery during pregnancy
Infancy	Female infanticide Differential access to care, nutrition, healthcare, education
Child-hood	Child marriage, Child sexual abuse, Child Prostitution, Differential access to care, nutrition, healthcare, education

4. Violence Against Women in India A review of trends, patterns and responses, April 2004, Prepared by the International Center for Research on Women(ICRW) for UNFPA India. Available at <https://india.unfpa.org/sites/default/files/pub-pdf/435.pdf>

Adolescence	Molestation/eve testing Rape Incest Sexual harassment in the work place Forced prostitution Trafficking Violence associated with pre-marital pregnancy, abortion Differential access to care, nutrition, health care, education Kidnapping and abduction
Youth and Adulthood	Domestic violence Marital rape Dowry related abuse and murder Coerced pregnancy Homicide Sexual harassment in the work place Molestation, sexual abuse, rape Differential access to care, nutrition, health care, education Desertion
Old Age	Abuse of the elderly (forms affecting women more than men) Abused of windows Threat of sexual violence Lack of access to care, nutrition and medical facilities

Gender-Based Violence Defined Under Indian Statutes

It is pertinent to study Indian statutes broadly in terms of crimes against women by categorizing into two parts. (A) The crimes under Indian Penal Code, IPC and (B) The crimes under the Special and Local Laws, SLL.

The Crimes Under Indian Penal Code, IPC:-

The Following Offenses are Mentioned Under it.

1. Rape, under sec. 376 of IPC.
2. Kidnapping and Abduction for different purposes, under sec. 363-373 of IPC.
3. Homicide for Dowry, Dowry Deaths or their attempts, under sec. 302/304-B of IPC.
4. Assault or criminal force to woman with intent to outrage her modesty, under sec. 354 of IPC.
5. Sexual harassment, under sec. 354-A of IPC.
6. Assault or use of criminal force to woman with intent to disrobe, under sec. 354-B of IPC.
7. Procuration of minor girl, under sec. 366-A of IPC.
8. Importation of girl from foreign country, under sec. 366-B of IPC.
9. Husband or relative of husband of a woman subjecting her to cruelty (Torture, both mental and physical), under sec.498-A of IPC.
10. Word, gesture or act intended to insult the modesty of a woman, under sec. 509 of IPC.

The Crimes Under the Special and Local Laws, SLL

Although not all the special and local laws are gender specific, however the gender specific laws which are assigned for crime statistics all over the country are the following.

1. The Protection of Women from Domestic Violence Act, 2005-

The intention of the legislature is clear behind the enactment of this Act by the preamble of the Act. The preamble of the Act expresses that "An Act to provide for more effective protection of the rights of women

guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.”⁵

2. Immoral Traffic (Prevention) Act, 1956
3. Dowry Prohibition Act 1961
4. The Child Marriage Restraint (Amendment) Act, 1986
5. Indecent Representation of Women (Prohibition) Act, 1986
6. Commission of Sati (Prevention) Act, 1987

Domestic Violence

The graph of harassment of women has gone up in today's artificial civilization. Different types of crimes are committed against women such as rape, kidnapping, dowry death, harassment, molestation, sexual intercourse, import of girls, immoral trafficking, indecent exposure to women, etc. But at the present time the cases of domestic violence against women has increased very fast. Women are victims of domestic violence before and after marriage. Today the domestic violence is one of the gravest and the most pervasive human rights violations. According to the World Health Organization, domestic violence is the most common form of violence against women across the globe. In addition, women are subjected to many forms of torture and cruelty, extending to murders, in a supposedly domestic environment. And because of most uncongenial and unbearable atmosphere in the matrimonial homes, many women are reluctant to live there lest they would lose their freedom to live with respect and dignity. Estimates published by WHO indicate that globally about 1 in 3 (30%) of women worldwide have been subjected to either physical and/

5. Preamble of The Protection of Women from Domestic Violence Act, 2005.

or sexual intimate partner violence or non-partner sexual violence in their lifetime. Most of this violence is intimate partner violence. Worldwide, almost one third (27%) of women aged 15-49 years who have been in a relationship report that they have been subjected to some form of physical and/or sexual violence by their intimate partner.⁶

According to Black's Law Dictionary⁷ "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". The most important aspect of the domestic violence is that it happens behind closed doors and is most often denied by the woman who has been the victim of crime.

Domestic violence is undoubtedly a human right issue and serious deterrent to development of society and civilization. 'Gender equality' is one of the basic principles of the Indian Constitution.⁸ So Article 15(1) of Indian Constitution specifically bars the state from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth, or any of them. The women in India have been socially and economically handicapped for centuries and, as a result thereof, they cannot fully participate in the socio-economic activities of the nation of footing of equality.

The United Nation's Committee on convention recommended all the participant states to legislate laws so as to protect women against violence of all kinds, especially those occurring within the family. India being a signatory in that convention has enacted

6. <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

7. Black, Law Dictionary, VII p.1564(1999).

8. Jain M.P., Indian Constitutional Law, Eighth Edition, LexisNexis, p.972.

the 'Protection of Women from Domestic Violence Act, 2005'. 'It is a landmark legislation in the legal history of India as it aims at in human progress by eradicating injustices on women which are going on unabated in the society. The Act is different from other Acts as it provides both civil and criminal remedies. Not only that, a State Government officer shall be at the door of the victim woman to render all assistance to her.'⁹ The Act, 2005 has been enacted as the United Nations Committee on convention on elimination of all forms of discrimination against women in its general recommendations recommended that state parties should act to protect women against violence of any kind, especially that occurring within the family. The Act was passed by the Parliament in August 2005 and assented to by the President on 13th September, 2005. But sec. 1(3) provides that the date of commencement of the Act shall be notified by the Central Government in the Official Gazette. The Central Government by a notification vide S.O. 1776(E), dated 17.10.2006 has given effect to the Act on and from 26.10.2006.

The Object of Domestic Violence Act

The purpose of the law on domestic violence is to enable women to negotiate non-abusive and non-violent matrimonial or other domestic relationship and to provide a civil remedy to women who are victims of violence of any kind occurring within the family, which is not available in the Criminal Law (sec 498A of the Indian Penal Code, 1860, concerning the husband or the relative of the husband subjecting a woman to cruelty).¹⁰

9. Gupta S.P. Sen, *The Protection of Women from Domestic Violence Act, 2005*, Kamal Law House, Kolkata, p.47.

10. Gupta S.P. Sen, *The Protection of Women from Domestic Violence Act, 2005*, Kamal Law House, Kolkata, p.14.

Main Features of the Act, 2005

Domestic Violence Act is a special statute through which the principles of social justice described in the Constitution are protected. It is social welfare legislation and also remedial statute. The Act have many features which can be studied as follows.

Detail Definition of Aggrieved person, Domestic Relationship, Shared household and domestic violence.

Aggrieved person- "means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;"¹¹

Domestic relationship- "means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"¹²

Shared household- "means household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;"¹³

11. Sec.2(a) of The Protection of Women from Domestic Violence Act, 2005.

12. Sec.2(f) of The Protection of Women from Domestic Violence Act, 2005.

13. Sec.2(s) of The Protection of Women from Domestic Violence Act, 2005.

Domestic Violence- Sec.3 of this Act define the expression "Domestic Violence".

According to sec.3- "For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

- ❖ harms or injures or endangers the health, safety, life, limb or wellbeing, 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
- ❖ 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
- ❖ 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
- ❖ otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation 1.—For the purposes of this section,—

- ❖ "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;
- ❖ "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- ❖ "verbal and emotional abuse" includes—
- ❖ insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not

having a child or a male child; and

- ❖ repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

“economic abuse” includes—

- ❖ 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;
- ❖ 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
- ❖ 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.”¹⁴

14. Sec.3 of The Protection of Women from Domestic Violence Act, 2005.

It section define of domestic violence in very broad sense. It definition include different kinds of abuse and violence under domestic violence like harms or injury related to health, safety, life. It could include harassing or hurting you or your relatives for dowry, money, or property. Here all acts are also include by which arise physical or mental pain. All kinds of abused are part of domestic violence like sexual violence, verbal and emotional abuse, economic abuse, dowry related harassment.

Who is beneficiary under the Act?

All women are entitled to benefits under this Act who may be mother, sister wife or partners living in a shared household. The relationship may be in nature of marriage or adoption.

Who can file a complain?¹⁵

Any women who alleges to have been subjected to any act of domestic violence by the offender or any person may file a complaint on her behalf. A child is also entitled to relief under the Domestic violence Act. The mother of such a child can make an application on behalf of her minor child.

Against whom can a complaint be filed?¹⁶

The complain may be filed against any of the following-

- ❖ Any adult male member who has been in a domestic relationship with the women.
- ❖ Relatives of the husband or the male partner.
- ❖ Include both male and female relatives of the male partner.

15. <http://ncw.nic.in/sites/default/files/Chapter04.pdf>

16. <http://ncw.nic.in/sites/default/files/Chapter04.pdf>

Women's Rights under Domestic Violence Act-

The following right are granted to a woman who is a victim of domestic violence under this Act-

- ❖ Right to reside in a shared household :- According to sec. 17 of this Act, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in same. The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.
- ❖ Right to claim monetary relief :- According to sec. 20 of this Act, the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance of the aggrieved person and her children including maintenance under, or in addition , to section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force.
- ❖ Monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
- ❖ Right to Compensation and damages - According to sec. 22 of this Act, in addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed

by that respondent.

- ❖ Right over stridhan or any other valuable property
- ❖ Right to issuance of various orders under this Act¹⁷. An aggrieved person has right to get following orders issued in her favor through the courts once the offence of domestic violence is prima facie established namely;
- ❖ Protection Order¹⁸, Custody Order¹⁹, Interim and exparte Order²⁰

Mechanisms to protect the interest of women under Act:-

Under the Domestic Violence Act, 2005 the following mechanisms protect the interest of women in addition to police and court--:

- ❖ Protection Officer – Section 4. Of the Act provide that any person who has reason to believe that an act of domestic violence has been or is being committed, such person may inform the concerned Protection Officer. Sub-section (2) lays down that the person who is providing the information in good faith shall be exempt from any civil or criminal liability for giving such information.
- ❖ Shelter Homes – Section 6. Of the Act provides that the person in charge of shelter homes shall be bound to provide shelter to the aggrieved person on being requested by the aggrieved person or, on her behalf by a Protection Officer or a service provider.
- ❖ Medical Facilities – Section 7. Of the Act provides

17. Sharma Sonu, Kansal Reena, "Reflections on Gender Based Violence With Special Reference to Protection of Women From Domestic Violence Act, 2005: An Analysis" Nyaya Deep the official journal of NALSA, Vol xvi. Issue 3, July 2015, pg-72.

18. Section 18 of Domestic Violence Act, 2005.

19. Section 21 of Domestic Violence Act, 2005.

20. Section 23 of Domestic Violence Act, 2005.

that the person in charge of the medical facility shall be bound to provide medical aid to the aggrieved person if requested by her or on her behalf by a Protection Officer or a service provider.

- ❖ Service providers – Section 10. Of the Act provide Service providers. The object of the service providers is to protect the right and interests of women by any lawful means including providing legal aid, medical, financial or other assistance.²¹

Conclusion

Men and women are the two main poles of development of the society. Both have equal rights in society, but before long time women have been victims of violence in their own homes by her closed relation. The Prevention of Domestic Violence Act 2005 is being seen as a ray of hope to prevent domestic violence against women. In a country like India, where there is a patriarchal society, there is a commendable law in protection of women from domestic violence. Prior to this Act, all situations of domestic violence within the family were resolved under the victim's personal law or the Indian Penal Code. After the enactment of this Act, it has facilitated access to justice in case of domestic and sexual violence against women. The Act provides civil and criminal remedy to women simultaneously. Also the Act provides social, economic, physical, mental and health protection to women against domestic violence. As well as it has been successful in gaining access to civil and criminal remedy for domestic violence through simplified procedures.



21. Gupta S.P. Sen, *The Protection of Women from Domestic Violence Act, 2005*, Kamal Law House, Kolkata, p.169.