

Protection of Women from Domestic Violence Act, 2005

This Act was drafted after the issue of domestic violence was widely reported and brought to fore by women's groups in India and across the world. The Act in its preamble states that this act is being passed keeping in view Articles 14, 15 and 21 of the Constitution. This legislation is new in India but several countries have recognised this particular form of violence for several decades now. It must be seen as a major victory of women's groups to be able to bring this legislation. The term domestic violence for the first time has been defined by this act. The need for the Act was felt because there are no provisions in ordinary criminal law dealing with offences of this nature. The significance of domestic violence is that it is violence that women face within their homes at the hands of their family and not outside it. The ordinary criminal law takes into account crimes that place within and outside the home but do not provide for this nature of offence. This legislation was drafted only after it was brought to the notice of the State that the police do not register cases of domestic violence under ordinary criminal law.

It is also significant to note that this is not a purely criminal legislation. The distinctiveness of this offence is that the violence is between people who live together and their relationship is not terminated.

This legislation is different from ordinary civil and criminal law. The remedies provided are not the remedies provided by criminal law i.e. they do not only contemplate that the perpetrator will be jailed but that the women are protected. The entire focus of the legislation is on providing support to the woman who is facing violence rather than on the perpetrator. This is called a victim centric approach. The major difficulty with criminal law is that there is no place in it for the victim. Her needs and demands are not considered by the court and she is not heard. The focus of criminal law is on the accused and the need to prove guilt not to support the victim of violence.

Domestic violence is defined in the Act as comprising of

- any act, omission or commission or conduct;
- physical, mental, economic, sexual, verbal, emotional abuse;
- harassment for dowry;
- acts of threatening to abuse the victim or any member of her family.

The Act provides for protection officers and contemplates a range of relief's. This includes the right to reside in the shared household even though it does not confer on her a right of ownership over the property and is a right against dispossession. The law provides women with protection officers and service providers which are notified shelter homes and medical facilities

6.2.2 Pre-Natal Diagnostic Techniques Act (Regulation and Prevention of Misuse) 1994 (PNDT) Act

The preference for a male child is one of the worst forms of discrimination that women in India face. Since custom requires that sons are necessary for this life and the after life and women prohibited from economic activity. This preference for sons lies at the root of all discrimination that women face through out their life. The decline in the number of girls born raises serious concerns (Leela Visaria 2003). Although other efforts are on to mitigate this social perception and the killing of girl children before they are born must be considered as a heinous crime. The PNDT Act was passed after it was shown that the incidence of sex selective abortions was on the increase and that modern technology was being misused to abort girl children. The act was passed after several years of activism by several groups including health and women's groups. The Act provides for the regulation of the use of prenatal diagnostic technologies especially in relation to sex determination. The Act prescribes the procedure for registration of establishments which carry out these tests and for the cancellation or suspension of registration. The implementation of the Act is still lacking and a Public Interest Litigation was filed to ensure that states take steps to ensure the implementation of the Act. The Act has been amended in 2003 following the Public Interest Litigation and directions of the Supreme Court that there has been slow implementation of the Act.

1980: 119).

~~Do You Know?~~ and Property Rights of Women

Women In Islam

It is generally believed that women in pre-Islamic society were given an inferior status and they were treated as mere property and they were in a state of subjection of the nearest male patriarch who has rights over them. But Islam improved their status in many areas. Such as by restricting polygamy to four wives, by prohibiting female infanticide, by assigning a share of inheritance to women, by declaring mehr as a gift to the bride and by reorienting the Arable laws of marriage and divorce in favour of women. More specifically Islam contributed to the improvement of status of women in the following ways : (a) By stressing the need to respect and to give good treatment to a foster mother (b) by making woman the mistress of her own property in which the husband has no right to interfere except with her permission (c) by giving her the right of claiming divorce on certain grounds (d) by allowing her to hold any public office, including that of the head of an empire or minister or judge (e) by giving her freedom to remarry after divorce and (6) by encouraging her to study and acquire knowledge (Shushtrey, 1938: 674).

Sexual Harassment

Irrespective of the age, class or dress, women are harassed on the streets, while travelling in buses or trains, or at their workplace. Harassment can range from verbal lampooning and abuse with suggestive sexual overtones or physical manhandling, and fingering to 'accidental' jostling against women. This is probably one of the few crimes, which is committed in the broad daylight and is among the many crimes perpetrated on women which are completely ignored by the police and the public. Colleges are important site of sexual harassment with a lot of ragging and verbal teasing taking place on campuses. Terms like eve teasing and a general attitude of 'boys will be boys' makes sexual harassment out to be an innocent and frivolous activity. What this perverted pleasure actually means and does to women is seldom considered. In order to be out on the streets, women have to take precautions, be wary and constantly on guard. Sexual harassment is designed to create an environment of fear.

Just as women's sexual and physical autonomy and dignity is at stake on the street, so is it at work. Sexual harassment at workplace should be considered even more seriously because it often spells demoralization, loss of professional self-confidence and even unemployment. All women are potential targets but young, unmarried ones seem to be especially victimised. Women are made the targets of unnecessary physical contact, deliberate verbal abuse or, in no uncertain words, asked for sexual favours.

The situations in which sexual harassment takes place might differ but the effect it has on women is quite similar. Women who are harassed begin to doubt their definition as workers and human beings, are overwhelmed by feelings of frustration and powerlessness and turn defensive, fearful and, work-wise, inefficient. Sexual harassment has often been called 'psychological rape'.

There are three sections of the IPC, 509, 294 and 554, which deal with sexual harassment but most of the times the cases are not reported so the legal provisions cannot be utilized. For dealing the cases of sexual harassment at workplace there is no protective legislation passed till date (though it is under the consideration of the central government); only guidelines are there given by the Supreme Court in the judgement of the case Vishaka v/s the State of Rajasthan (August, 1997) prohibiting sexual harassment at workplace.

Prostitution and Trafficking in Women

The practice of prostitution (now referred to as sex work) and trafficking in women is also one of the most agonizing crimes against women. Despite various legal and constitutional provisions for gender equality, crime against women goes on without any check.

The Suppression of Immoral Traffic in Women and Girls Act (SITA) 1956 was the first sustained legal effort to curb this practice. It was passed with the basic objective to punish brothel keepers, procurers and pimps and prevent prostitution in or outside the vicinity of public places. The Act is applicable to both men and women. The main purpose of the Act was to abolish or reduce commercialized vice, and traffic in women and girls. There were, however, certain loopholes in the Act as it put certain restrictions on the sex workers, which forced them to live in unhealthy and degrading environment. Section 7(1) of SITA operated against the interest of sex workers while the partner could get away easily. This Act also led to a lot of police harassment.

The Act was amended in 1978 and again in 1986 and now is called 'The Immoral Traffic (Prevention) Act. Its objective was to do away with the shortcomings of the previous Act. This Amended Act also did not declare prostitution illegal. Section 2 of this Act makes the definition of brothel to include any place used for the purpose of sexual exploitation or abuse. Life imprisonment is the maximum punishment ordained when the offence is committed against minors and children.

There were some efforts to make prostitution legalized in India. In 1997 an international conference of sex workers was organized in Kolkata where efforts were made in this direction. Declaring sex work as legalised can solve some of this problem but it can also lead to institutionalization of prostitution increasing the complexity of the problem.

3.6.3.1 Equal Remuneration Act, 1976

The act was passed in the year 1975 which was being celebrated as the International Women's Year, and to implement Article 39 of the Constitution of India which provided for equal pay for equal work for both men and women. The Act provided for the payment of equal wages to men and women who were doing the same or similar work.

In *Messrs Mackinnon Mackenzie and Company Limited vs Audrey D'Costa and Another*, the court was considering the claim to equal pay on the basis of same or similar work. The facts of the case showed that women stenographers were paid differently from men on the ground that it was possible for men to work late and on holidays where women who were taken in only as personal secretaries were assumed not to be able to do this work and hence paid less than men. In this case the designations for men and women were kept separate, only women were recruited into jobs which were paid less and the jobs men were recruited for, even though the work done was similar or same were paid more. The court ruled that if same or even similar work is done by men and women, to pay them differently violated Article 14 of the Constitution. The Act however remains to be implemented in the informal sector, where perceptions of men being stronger and working longer influences the wages paid to women. The fact of women's socially inferior position also contributes to differences in wages. The categories of work that men carry on are by definition termed as more strenuous and the category of jobs termed as women's work are understood as less strenuous and hence paid less. For example ploughing, done exclusively by men, is deemed to be harder work than standing for hours and planting seedlings which is done by women and hence paid lower.

3.6.1.1 The Hindu Succession Act, 1956

Customary Hindu Law did not allow for women to succeed to property nor own property in their own name. According to Manu Dharma Shastra women needed to depend on their fathers, husbands and sons for their sustenance. Women did not have a birth right in their family property. Women were allowed right to maintenance/sustenance but property did not vest in them. The Hindu Code was seen as a major reform in Hindu law and for the first time gave women a right to succeed to property even though it did not grant full equality. **Amendments to the Hindu succession Act in 2005 now secure equal shares for women even in co-parcenary property.** Before this amendment only men could be co-parceners and men had a birth right in the co-parcenary property. The Act by deleting section 4 (2) of the Hindu Succession Act made women's right to inherit agricultural land equal to that of men.