



Know Your Rights

Laws against Domestic Violence and Abuse

What specific provisions of law deal with domestic violence?

In 1983, domestic violence was recognised as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman. Four types of cruelty are dealt with by this law:

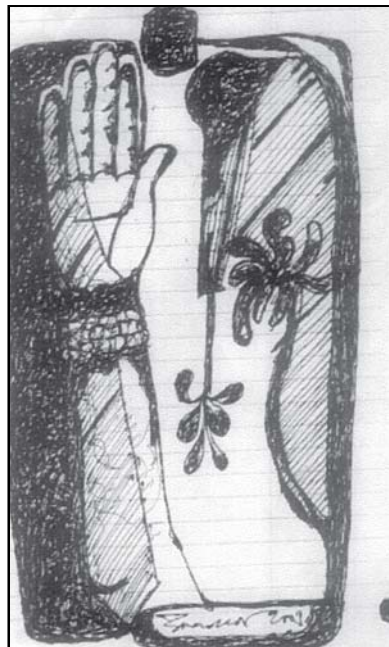
- conduct that is likely to drive a woman to suicide,
- conduct which is likely to cause grave injury to the life, limb or health of the woman,
- harassment with the purpose of forcing the woman or her relatives to give some property, or
- harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.

The punishment is imprisonment for upto three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf.

What are the forms of “cruelty” recognised by the Courts ?

- a) Persistent denial of food,
- b) Insisting on perverse sexual conduct,

- c) Constantly locking a woman out of the house,
- d) Denying the woman access to children, thereby causing mental torture,
- e) Physical violence,
- f) Taunting, demoralising and putting down the woman with the intention of causing mental torture,
- g) Confining the woman at home and not allowing her normal social intercourse,
- h) Abusing children in their mother’s presence with the intention of causing her mental torture,
- i) Denying the paternity of the children with the intention of inflicting mental pain upon the mother, and
- k) Threatening divorce unless dowry is given.



What is a “matrimonial home”? What rights do women have in their matrimonial home?

The matrimonial home is the household a woman shares with her husband; whether it is rented, officially provided, or owned by the husband or his relatives. A woman has the right to remain in the matrimonial home along with her husband as long as she is married, though there is no definite law regarding this right. If a woman is being pressurised to leave the matrimonial home, she can ask the Court for an injunction or “restraining order” protecting her from being thrown out. This can usually be obtained quite easily. It is generally advisable not to leave the matrimonial home; it is easier to get a court order preventing a woman being thrown out than to get an order enforcing her right to return to it once she has left or been thrown out.

What is an ‘Injunction’ and how does it apply to domestic violence cases?

An injunction is a court order directing a person to do or not to do something. A woman has a lot of flexibility regarding what she can request the Court to order. For instance, if she is being stalked by somebody (including her husband), she can obtain injunctions against the person coming near her home or place of work, or even telephoning her.

Distinction between Civil and Criminal Law

The distinction between civil and criminal law is a basic part of the Indian legal system. Civil laws deal with the rights and obligations of people and what is needed to protect them, while criminal law deals with offences and their punishment. In a criminal offence, the State takes upon itself the responsibility to investigate and collect evidence (through the police), to fight the case in court (through a public prosecutor) and enforce the punishment. Robbery, murder and kidnapping are examples of criminal offences. Criminal offences are dealt with by the Indian Penal Code (IPC).

The procedure by which a criminal trial is conducted is quite different from the processes involved in a civil trial. An important difference is that the “standard of proof” required in criminal cases is much higher than in civil cases. Since criminal law is centrally linked with issues of punishment, allegations and facts must be proved “beyond reasonable doubt”, so that innocent people are not punished. In civil cases, the courts scrutinise the “balance of probabilities” before deciding in whose favour to make a judgement.

However, there are some situations in which both civil and criminal law apply. Inflicting physical violence on a wife or daughter-in-law as well as subjecting her to cruelty—physical, mental or emotional—in a marriage is not only a civil offence and provides ground for divorce (a “matrimonial offence”), but is also a criminal offence under the Indian Penal Code, for which a person can be imprisoned. The laws dealing with marital abuse have been made very stringent through amendments in the Indian Penal Code and the Evidence Act.

What can be done in the case of dowry-related harassment or dowry death?

Section 498-A of the Indian Penal Code covers dowry-related harassment. As with other provisions of criminal law, a woman can use the threat of going to court to deter this kind of harassment. The Indian Penal Code also addresses dowry deaths in section 304-B. If a woman dies of “unnatural causes” within seven years of marriage and has been harassed for dowry before her death, the Courts will assume that it is a case of dowry death. The husband or in-laws will then have to prove that their harassment was not the cause of her death. A dowry death is punishable by imprisonment of at least seven years.

When filing an FIR (First Hand Report), in a case where a woman is suspected to have been murdered after a history of torture due to dowry demands, the complaint should be filed under section 304-B rather than

under section 306, which deals with abetment to suicide. Section 306 should be invoked when a woman commits suicide because of dowry-related harassment.

Can you refuse to have sex with your husband? Is there a law on marital rape?

Since India does not have a law on marital rape, even if a woman’s husband has sexual intercourse with her without her consent, he cannot be prosecuted for rape. However, excessive and unreasonable demands for sex, or demands for unnatural sex have been considered forms of cruelty and may entitle a woman to a divorce.

If a woman is judicially separated, her husband cannot have sexual intercourse with her without her consent. If he does, he can be prosecuted under section 376-A of the IPC. Note that consent under pressure (e.g. because of threats to injure or to stop paying maintenance) is not considered valid.

What can a woman do to prevent domestic violence?

One option is to get the woman’s husband to execute a “bond to keep peace”, or a “bond of good behaviour” through the Executive, Magistrate who can order the husband to put a stop to domestic violence. The husband can also be asked to deposit securities (i.e. money or property) that will be forfeited if he continues to act violently. □

Note: In the recent years, there have been lots of complaints and allegations regarding the abuse and misuse of these laws by unscrupulous families and the inability of genuine victims of violence to get redressal despite such strong laws in the woman’s favour. A detailed account of why and how these laws lend themselves to abuse and why victims don’t get justice, is available in the article: “Laws against Domestic Violence : Underused or Abused?” in MANUSHI No 120, pp17-24