



Introduction to Domestic Violence - Part-2

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Concepts

Trigger Warning: *This guide contains information on physical violence and sexual violence which some readers may find disturbing.*

Why is this topic important?

In India, 1 out of 3 women is a victim of Domestic Violence (DV). However, many of them are unaware that they are being subjected to DV. We hope that the module will help women identify the signs or types of domestic violence, the punishments and reliefs under the law, the various authorities/support systems and their roles.

What is Cruelty?

In the context of domestic violence, cruelty includes the actions of torture against a married woman by her husband and his relatives. These actions can drive a woman to commit suicide or cause grave injury or danger to the life, limb and health (mental and physical) of a married woman. It also includes the unlawful demand of dowry from the woman and her family. Indian laws punish such harassment of a wife under the Indian Penal Code and protect women against violence through various special enactments.

What is the Law being covered in the module?

- Indian Penal Code, 1860.
- The Code of Civil Procedure, 1973.
- The Indian Evidence Act, 1872.
- The Dowry Prohibition Act, 1961.
- PreConception, Prenatal Diagnostic Techniques Act, 1994.
- Protection of Children from Sexual Offences, 2012.
- The Protection of Women from Domestic Violence Act, 2005.
- Judgments by the Supreme Court of India.
- Hindu Marriage Act, 1955.
- Special Marriages Act, 1954.
- The Muslim Women (Protection of Rights on Divorce) Act.
- The Indian Divorce Act, 1869.

Breaking Down the Concept



Signs of Cruelty: Section 498A

Any action that causes reasonable fear in the mind of a married woman that living with her husband will be harmful and injurious to her life constitutes cruelty. Some examples of cruelty include

1. Physical violence against the woman like slapping, biting, pulling her hair, beating, punching, kicking or causing injuries with or without a weapon, acid attacks, strangling etc.,
2. Continuous taunting and teasing,
3. Keeping a relationship with another woman and maintaining her child,
4. Coercing the first wife to give consent to the husband to marry another woman,
5. Depriving the wife and children with basic means of sustenance,
6. False attacks on the sexual conduct of the woman,
7. Calling a woman “barren” or humiliating her for giving birth to a girl child,
8. Not allowing the woman to work,
9. Depriving the woman and her child of basic necessities
10. Aggressively demanding explanations for expenditures,
11. Any unlawful demands for money including dowry demands

Sexual Assault against wife under the criminal law

Recently, a Karnataka High Court judgment held that a man can be punished for having sexual intercourse with his wife without her consent. However, the Indian Penal Code, 1860 does not punish such intercourse in a matrimonial relationship and holds it as a general exception to the laws on rape in India. Yet, in certain circumstances, the law punishes rape in a domestic relationship

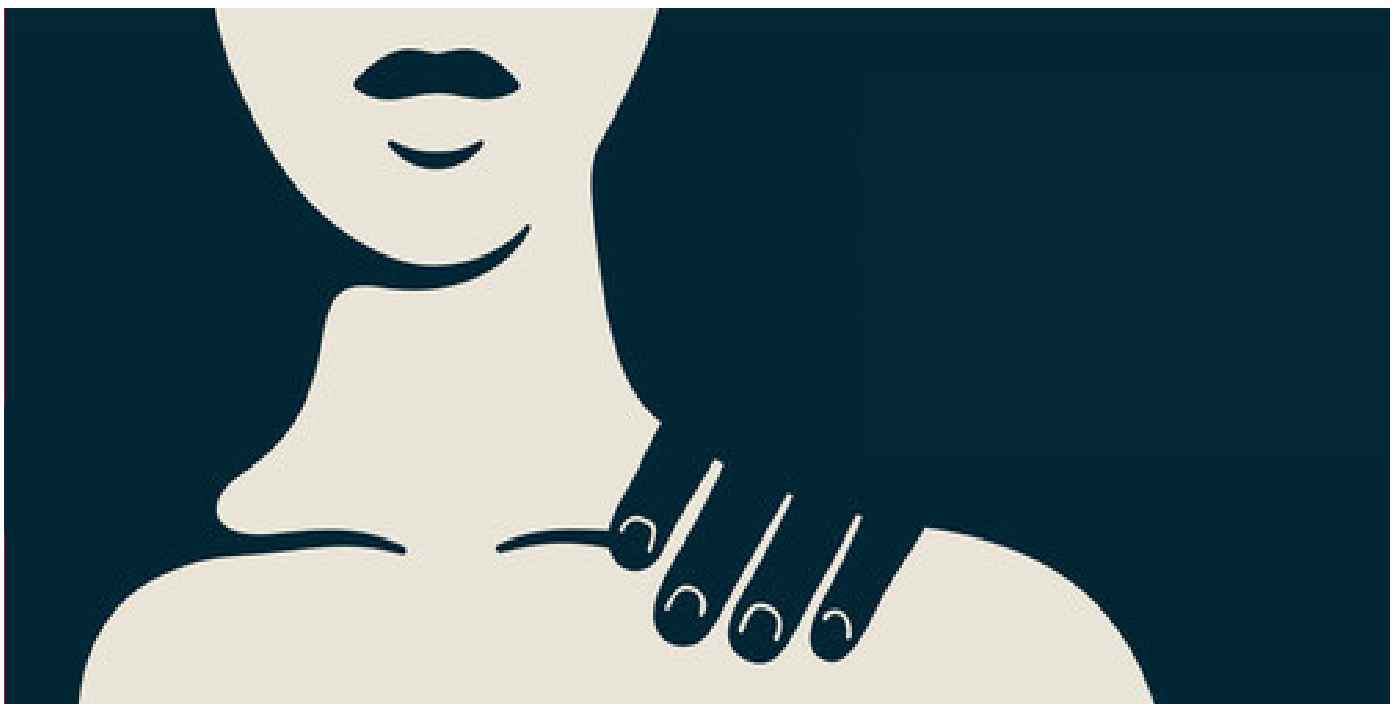
1. *Sexual intercourse with a separated wife without her consent:*

If a man engages in sexual intercourse with his wife without her consent, whether the wife is living separately under a decree of separation given by a court or otherwise, he can be punished with a jail term of up to seven years along with a fine.

2. *Sexual intercourse with a wife who is under the age of 18:*

Indian law punishes sexual intercourse by any person with someone under the age of 18 even if they share a matrimonial relationship. In such cases, the consent of the minor girl is irrelevant. If a man rapes his wife who is under the age of 18, he will be liable for punishment of jail term of at least twenty years along with a fine.

3. *Sexual violence by a relative or a guardian who is in a position of trust towards a woman is punishable with a jail term of at least ten years along with a fine.*



Who is the victim?

The Indian Penal Code only protects married women from cruelty. A woman in a live-in relationship cannot file a complaint against her partner or his family for committing cruelty against her. However, she can file a complaint under the general provisions of criminal law like assault, defamation, outraging modesty etc. Women who are related to the aggressor by blood, marriage, adoption or co-habitation can take protection through the civil remedies available under the Protection of Women from Domestic Violence Act, 2005. To know more about this law [click here](#).

Who is the aggressor under the criminal law?

The aggressor can be the husband of the woman subjected to cruelty or his relatives if they are the ones who subjected her to cruelty. **Ordinarily, the term 'relative' includes anyone who is related to the husband by blood, marriage or adoption; such as father, mother, daughter, son, sister, brother, nephew, niece, brother's wife, sister's husband etc.** Any person who commits cruelty can be punished with a jail term of up to three years along with a fine.





Remedies available under the law

In addition to the punishment of jail term to the aggressor, the court can also order the survivor's husband to maintain her and their children if he has sufficient means to provide for them. Such maintenance can be demanded by

- The wife from her husband;
- Children (legitimate and illegitimate) from their father;
- Father or mother from their son or daughter.

This remedy is also available to a woman cohabitating with a man in a live-in relationship or divorced women.

In addition, the survivor has an option to avail of civil remedies under The Protection of Women from Domestic Violence Act, 2005. A married woman can avail of these remedies along with filing a criminal complaint against her aggressor. To read more about these remedies [click here](#).

If the survivor is not a married woman and wants to file a criminal complaint against torture by her family members, her partner or his relatives, she can file such a complaint under the general provisions of criminal law.

Please click on the links to know more about these offences

Personal law and What amounts to cruelty

Crime	Punishment
<u><i>Physical Violence (Assault)</i></u>	Jail time for three months or a fine of 500 rupees.
<u><i>Wrongful obstructing a woman's movement or confining her to a space</i></u>	Jail time for one month or a fine up to 500 rupees or both for obstructing a woman and jail time for up to one year or a fine up to 1000 rupees or both for confining her.
<u><i>Inappropriate sexual touching</i></u>	Jail time for a minimum of one year and a maximum of five years with fine
<u><i>Sexual remarks or threats</i></u>	Jail time for a minimum of one year and a maximum of five years along with a fine
<u><i>Forcefully removing clothes</i></u>	Jail time for a minimum of one year and a maximum of five years along with a fine
<u><i>Rape</i></u>	Jail time for at least ten years along with a fine.
<u><i>Clicking or spreading private pictures or videos without a woman's consent</i></u>	Jail time for up to three years or a fine of up to two lakh rupees or both.
<u><i>Stalking</i></u>	Jail time up to three years along with a fine.
<u><i>Acid attacks</i></u>	Jail time for a minimum of five years and can be extended to seven years, along with
<u><i>Defamation or spreading false information about a woman</i></u>	Jail time for up to two years and/or a fine.

<u><i>Demanding or accepting Dowry</i></u>	Jail time for up to five years along with a fine.
<u><i>Blackmailing (online and offline)</i></u>	Jail time for up to seven years or with a fine or both.
<u><i>Sex selection before or after the birth of the child</i></u>	Jail time for up to three years, along with a fine of up to Rs. 50,000.
<u><i>Forced Miscarriage/Abortion</i></u>	Jail time for up to ten years and/or a fine.

Cruelty as a ground for divorce in India

Cruelty has been recognised as a ground for divorce under the personal laws of various religions practised in India. The table below gives a sneak-peek into these laws.

Personal law and who can use this ground for divorce/legal separation and status of maintenance of the spouse

Personal law	What amounts to cruelty?	Who can use this ground to seek divorce/legal separation?	Status of maintenance of the spouse divorce/legal separation?
<u>Hindu law</u>	<p>An action amounts to cruelty under the Hindu law if it causes:</p> <ul style="list-style-type: none"> • danger to life, • injury to bodily or mental health, or • reasonable fear of such injury <p>to amount to cruelty as a ground for divorce. This includes sustained unjustifiable behaviour of one spouse, intentional or unintentional, which can actually affect the physical and mental health of the other spouse. Mere coldness or lack of affection does not amount to cruelty.</p>	<p>Either spouse can approach the court to get a divorce if either of them treats the other cruelly.</p>	<p>Either spouse can approach the court for maintenance if they have no means of subsistence and the other spouse is in a position to provide maintenance.</p>
<u>Muslim law</u>	<p>An action by the husband amounts to cruelty under Muslim law if he:</p> <ul style="list-style-type: none"> • causes physical or mental pain to his wife. • associates with women of evil repute or lead an infamous life. • forces his wife into living an immoral life. • gives away or sells off the wife's property or doesn't allow her to exercise her legal rights over her property. • Does not let the wife practice or profess her religion. • Does not treat the wife equally as his other wives in accordance with Quran. <p>lack of affection does not amount to cruelty.</p>	<p>A woman married under the Muslim law can approach the court to end her marriage using cruelty as a ground.</p>	<p>A woman can ask for maintenance from her husband after obtaining a divorce from her husband by using cruelty as a ground. The husband will have to maintain the wife post-Iddat period well. To know more about Iddat, click here.</p>
<u>Christian law</u>	<p>An action amounts to cruelty under Christian law if it causes danger to life or physical or mental health, or gives rise to a reasonable fear of such danger which can be meted out intentionally or unintentionally.</p>	<p>Either spouse can approach the court to get a divorce if either of them treats the other cruelly.</p>	<p>Only the wife can claim maintenance under Christian law. However, the amount can be reduced or removed completely on the decision of the court if a woman is guilty of cruelty against her husband.</p>
<u>Parsi law</u>	<p>An action amounts to cruelty under Parsi law if due to such an action the spouses can no longer be expected to live together. It could be mental or physical violence, which could be intentional or unintentional. Even a single act of violence of grievous and inexcusable nature can qualify as cruelty.</p>	<p>Either spouse can approach the court to get a divorce if either of them treats the other cruelly.</p>	<p>Either spouse can approach the court for maintenance. The amount cannot be more than 1/5th of the partner's income. Even if the wife is guilty of cruelty, the husband will have to pay for the wife's maintenance. However, the amount may be reduced.</p>

Personal law and custody of children

Personal Law	Custody of children
<u>Hindu law</u>	<p>Both parents have equal rights in the custody of the child. The court takes into account various factors for deciding custody, including</p> <ul style="list-style-type: none">• the desire of the child,• the availability of an appropriate environment for the adequate upbringing of the child, and• the means a parent possesses to give the child a good future.
<u>Muslim law</u>	<p>While the father is considered a natural guardian under Muslim law, in the cases of cruelty by the husband, custody is usually given to the mother. However, the courts have the discretion to award the custody of a child to his father if that is beneficial for the child.</p>
<u>Christian law</u>	<p>Both parents have equal rights in the custody of the child. The court takes into account various factors for deciding the custody of a child, including</p> <ul style="list-style-type: none">• Parents' maturity and judgment• Their mental stability• Their ability to provide access to schools;• Their moral character• Their ability to provide continuing involvement in the community• Their financial sufficiency and• Their relationship with the child.
<u>Parsi law</u>	<p>The custody can be given to either the husband or the wife depending on the best interest and preference of the child.</p>

Processes and Work by Authorities

1. Who can file a criminal complaint against cruelty?

A survivor of domestic violence or any person related to her by blood, marriage or adoption can file a complaint under Section 498A of the IPC. For example, a woman's maternal uncle can file a criminal complaint against that woman's husband and his family. If no such relative is available, the State Government can notify a public servant to file the complaint on behalf of the survivor.

2. When can a criminal complaint be filed?

The survivor or relatives must file a complaint within three years from the date on which the act was committed. If the events took place continuously over a period of time, the period of three years for filing is counted from the date on which the last act of cruelty took place. For example, if a couple was married in 2017 and the demands of dowry were being made till 2020, a woman can file a complaint up to three years from the day in 2020 when such demands were last made. However, the court also has the power to hear the case after the period of three years, if it is satisfied that it is necessary to do so in the interest of justice.

3. Can a compromise be reached between the parties after filing a case under Section 498A?

The court does not have the power to record a compromise between the parties once a complaint has been filed for cruelty under Section 498A. However, in the interest of a genuine compromise and for maintaining peace in a matrimonial relationship, the court can quash the case or reduce the punishment of the aggressor.

Spotlight: SAKSHAM

Project “Saksham” is an initiative by the Mumbai Police Force along with “M-Power” to mentally empower victims of crimes against women, victims of crimes under the POCSO Act, victimized minors, and juvenile delinquents and also to provide the proper legal guidance and counselling. Under this project, a “Women Safety Cell” will be set up in every police station and the Mobile-5 patrol vehicle in every police station in Brihanmumbai will be named and known as the “Nirbhaya Squad”. A Woman Assistant Commissioner of Police / Woman Police Inspector from each Regional Division will act as the Nodal / Supervising Officer of Nirbhaya Squad. Every police station will fix hotspots for crimes against women. If a woman travelling alone at night asks for help, the right help should be provided to take her to a safer place. Counselling centres will be set up at the regional division level as well as counselling centres at each circuit level. Along with this, the Nirbhaya Squad will conduct workshops on self-defence for women/girls in schools, colleges and staying at women’s hostel. Also, a complaint box called “Nirbhaya Box” will be kept there.



Test your knowledge

Answers in Yes/No

1. I am a working woman, can I still get maintenance from my husband? If he fails to provide me with maintenance, can I file a domestic violence complaint against him?
2. I am constantly told by my in-laws that my parents didn't buy them a bigger car at my wedding. Is this cruelty? Can my in-laws be punished for making such statements?
3. My husband left me. Is this cruelty?
4. My husband is in an extra-marital affair. Can I file a case against his girlfriend?
- 5.

Support Systems in Mumbai

Legal Support

Legal Aid Authorities

1. National Legal Services Authority: National Legal Helpline- 1516
2. Maharashtra State Legal Services Authority: Toll free Helpline Number:1800 22 23 24; Tel.: 022-22691395
3. District Legal Services [List](#)
4. Contact numbers of different stations [list](#)
5. Mumbai Cyber Station- +022 26504008
6. Mumbai Police Women Helpline- +022 22633333, 103
7. Maharashtra State Commission for Women: Helpline- 155209; Contact No.- +022 26592707
8. Child-line: 1098
- 9.
- 10.

Helplines

1. Domestic Violence against Women: 7217735372 (WhatsApp Number) by National Commission for Women
2. National Commission for Women Helpline: 7827170170; WhatsApp- 7217735372
3. Central Social Welfare Board -Police Helpline: 1091/ 1291; (011) 23317004
4. All India Women's Conference: (011) 43389100/43389101/43389102/43389103
5. Maharashtra State Human Rights Commission: +022 22092857
6. Ask SHEROES: Find the online chatting service [here.](#)
7. Women Helpline (Domestic Abuse) : 181
- 8.

Complaint Portals

Domestic Violence complaints can be lodged online in the [portal](#) of the National Commission of Women. On clicking the tab for [registration](#), you will have to fill in your personal details such as name, address and sex, and give a description of the incident. On doing this, you will get a receipt number which you can use for monitoring the status of your complaint. Additionally, you can approach Mother Dairy booths, pharmacists and chemists throughout the city to complain about domestic violence since the Delhi State Legal Services Authority has been collaborating with them since the beginning of the COVID-19 pandemic.

Non- Legal Support

Shelter Homes

1. Shantighar: 08828365666
2. Urja Trust: 9819806266 / +022 24124397
3. Shelter Don Bosco: +022 24150562
4. Bombay YMCA- Sharan Shelter : +022 28500277
5. Rescue Foundation - For Girls & Women: 0982021070

Medical facilities

1. Female Beggars Home, 1st Fl.R.C. Marg, Opp. Jain Mandir, Chembur(E) Mumbai-400071, contact no.: 9702962025
2. Chatrapati Shivaji Maharaj Hospital Kalwa (W), Thane 400605 BARC hospital, contact no.: 7977386300
3. One Stop Centre, Mumbai City, Old Building, KEM Hospital, Acharya Dade Marg, Parel, Mumbai-400012, contact no.: 9653660408

Activities & Reading

1. My husband does not let me send my daughter to school. Can my husband be punished for cruelty?
2. Can I ask for a protection order from my relatives while I have filed an FIR against them?
3. My sister-in-law doesn't talk to me. Is this cruelty?
4. I am divorced, however, my former husband threatens to hurt me. Can he be punished?

Resources & Handouts

01

Text based

<https://nyaaya.org/topic/domestic-violence/>

02

Video based

<https://nyaaya.org/videos/protections-under-the-domestic-violence-law-in-india/>

External Links

1. <https://legalservices.maharashtra.gov.in/1111/Contact>
2. https://mumbaipolice.gov.in/Police_incharge
3. <http://ncwapps.nic.in/onlinecomplaintsv2/frmPubRegistration.aspx>
4. <https://sheroes.com/helpline>