

Domestic Violence and Law

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Domestic violence is the crime of physical and sexual abuse perpetrated against one family member by another family member. It is a broad term encompassing spouse abuse, child abuse, sibling abuse and an abuse of a parent by a child, abuse of an elderly or handicapped family member. It is an area that has usually been left out of the ambit of public discussion, because the familial space is considered sacred. The UN has only a declaration against violence, which itself makes the issue seem less important. It could be theoretically debated whether gender discrimination leads to gender based violence or the reverse. The UN Declaration on Elimination of Violence against Women (1993) is a seminal text, because most of the South Asian countries which have in the decade of 2000 enacted or are in the process of enacting laws on domestic violence are influenced by the definition of domestic violence in DEVAW. The definition in DEVAW includes physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

Domestic violence as a legal term comes within the legal discourse in the South Asian countries only in the 2000s after a decade of women's movements pressurizing the state(s) to recognize violence within the domestic sphere and proposing legal solutions to it. This article merely traces the different meanings of what constitutes violence within the domestic sphere in India, Bangladesh, Pakistan and Sri Lanka. The only reason why this legal regime is taken is because there is a similarity among the societies and cultures. It is an example of how societies which had even legally tolerated domestic violence a few years ago, is now changing. In India, the legislation is called Protection of Women from Domestic Violence Act, 2005 . It is a legislation which considers that only women can be aggrieved due to domestic violence. Four types of domestic violence considered. (i) Physical abuse causing bodily pain, harm, or danger to life, limb, or health or impairing the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force; (ii) Sexual abuse that abuses, humiliates, degrades or violates the dignity of woman; (iii) Verbal and emotional abuse including insults, ridicule, humiliation, name calling specially with regard to not having a child or a male child. Repeated threats to cause physical pain also are considered to be emotional abuse. (iv) Economic abuse includes deprivation of all or any economic or financial resources like household necessities for the aggrieved person and her children, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance. Among the South Asian countries, it is only that India has a specific gender mentioned in the legislation as an aggrieved person, i.e. women. It considers only girls and women rather than multiple vulnerable groups as possible targets of violence within the domestic sphere. It

does not include elderly persons, persons with disability, or domestic servants facing violence within a domestic relationship.

The Sri Lankan government calls the legislation Prevention of Domestic Violence Act, 2005. Chapter XVI of the Sri Lankan Penal Code is included in the act as a part of what constitutes domestic violence which is a chapter on offences against the human body. It includes culpable homicide, causing miscarriage without the consent of women, abandonment of child by parent or caregiver, causing hurt or grievous hurt, criminal force, assault, cohabitation caused by a man deceitfully inducing a belief of lawful marriage, rape, and unnatural offence. Together with this, the act also talks about emotional abuse meaning a pattern of degrading or humiliating conduct directed towards an aggrieved person, including (a) repeated insults, ridicule or name calling; (b) repeated threats which cause emotional pain; or (c) the repeated exhibition of obsessive possessiveness or jealousy such as to constitute a serious invasion of the aggrieved person's privacy, liberty, integrity or security.

This legislation includes what already is a part of the criminal law within the ambit of domestic violence legislation, unlike India. Emotional abuse is in addition to the penal code provisions. The definition of which has a direct understanding of violation of a person's freedom and privacy. This definitely is moving beyond merely morality rhetoric of degrading dignity of women as in the Indian law and expanding to a more individual-centric notion of violation.

Bangladesh has a Prevention of Oppression against Women and Children Act, 2000 which does not contain any definition of domestic violence. However, there is a Law Commission of Bangladesh report, 2005, proposing a Domestic Violence Act in the country which gives a definition to domestic violence. The commission of any or more than one of the following acts by any member of the family, excluding a child or handicapped adult, against any other member of the family: (a) Physical abuse including assaulting, damaging the physical beauty of a spouse by torture, indecently abusing, beating and maltreating the wife by the husband on being drunk, torturing the wife by the husband being influenced by others, maltreatment, misbehavior, torture or assault upon a domestic servant by any member of the family. (b) Sexual abuse including compelling the wife to cohabit with anybody other than the husband; forcibly marrying a religiously prohibited woman or establishing illicit sexual connection with such woman voluntarily or otherwise; any kind of sexual abuse including sexual harassment of a member of the family. (c) Psychological abuse: (i) intimidation, harassment, denial of food or drink for adequate sustenance, denial of salary or expenses, threat of physical or psychological abuse by any member of the family to the other or others; (ii) inducing or compelling a spouse to commit attempted suicide through continued oppression by any member of the family; (iii) blaming a spouse of immorality without any rational basis; (iv) threatening to divorce a wife on demand of dowry by the husband; (v) baselessly blaming or imputing insanity, or citing barrenness of a spouse with the intention to marry again or to get a male member of the family married again; (vi) bringing false allegation upon the character of a female member by any member of the family; (vii) keeping a female member of the family disconnected with her father, mother, child, sibling and other relatives; (viii) threatening to get a male member of the family remarried by the other

member or members of the family on the ground of the female spouse giving repeated birth to female children; (ix) disallowing the children to see their father or mother during their separate living, being divorced or otherwise; (x) torturing the parents or any other member of the family by the husband being instigated by the wife; (xi) confining or detaining the victim against the will of the victim; (xii) causing mischief or destruction or removal of the victim's property or personal belongings or documents and papers. This is the only country among the four which is still awaiting a comprehensive law on domestic violence. If the proposal is taken, this will be the only one covering domestic servants within the ambit of legally recognized persons within the domestic sphere. Although it is a gender-neutral legislation, yet there are certain acts which are thought to be gender-specific. Like character blemish in case of a female member while torturing parents by husband at the instigation of wife in case of male member.

The Prevention of Domestic Violence Act, 2008, has been very recently passed by the Pakistan National Assembly in August 2009. Domestic violence means hurt, wrongful confinement, criminal force, assault, mischief against the property of the victim, including causing economic loss or damage to property; criminal intimidation, entry into the victim's place of residence, without the victim's consent, where the parties do not share the same residence; stalking, willful and negligent abandonment of dependant; any other controlling or abusive behaviour towards the victim, where such conduct harms, or may cause imminent harm to the safety, health or well-being of the victim. Economic abuse means the unreasonable deprivation of economic or financial resources to which a victim is entitled. Emotional, psychological and verbal abuse means a pattern of degrading or humiliating conduct towards the victim, including repeated insults or ridicule; repeated threats to cause pain; repeated threats of malicious prosecution; repeated exhibition of obsessive possessiveness or jealousy, constituting a serious invasion of the victim's privacy, liberty, integrity of security. Harassment means engaging in a pattern of conduct that evokes the fear of harm to a victim and includes repeatedly making unwelcome telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues; repeatedly sending, delivering or causing the delivery of unwelcome letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant. Sexual abuse means any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the victim, and includes force or threat of force in any sexual conduct towards the victim. This legislation resembles the Sri Lankan in that parts of the Pakistan Penal Code is included within the definition of domestic violence, besides adding the three other abuses that are a part of the Indian legislation. There is an attempt to define harassment in this legislation and that combines traditional and modern methods of harassing—telephone calls and emails. It is a different issue that to trace perpetrators of technologically advanced harassment is much more legally difficult. Except for marital rape (which is a culture shock and thus the legal silence) and female genital mutilation (which is culture and legally specific), the broad meaning of the UN DEVAW finds place in all the countries' legislations on domestic violence. □□□