

The recent media hype around the rules framed under the Domestic Violence Act seems to convey an impression that the protective injunctions is a new remedy introduced by the recently enacted Domestic Violence Act. While I welcome the fact that the routine and mundane violence faced by a large section of women has suddenly become newsworthy, the news reports which herald the Act as a magic wand that will end domestic violence in India are rather misleading and erroneous. Most reports seem to hint that prior to this enactment the husbands had the right to beat their wives (or other family members) and to throw them out of the house at their whim and women had no recourse in law.

It is in this context, I would like to share my experience of dealing with cases of domestic violence for well over 15 years through Majlis, a legal resource centre for women based in Mumbai.

Almost all women who approach us for guidance and advice are victims of domestic violence within the broad definition under the Domestic Violence Act and are subjected to physical, emotional, sexual or economic abuse from their husbands, partners or family members. Women who are physically or emotionally abused come to us for advice regarding their rights upon divorce. When we probe into the reason for the divorce they explain the long history of physical abuse or mental cruelty. At that point we advise them that there is no need to opt for divorce and that we can obtain for them a civil injunction restraining their husbands from beating them or throwing them out of their matrimonial residence.

Legal advocacy and litigation in lower courts constitute the core of a

# Making Laws Work for Women

## The Potential of Existing Laws against Domestic Violence

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comprehensive women's rights programme. The aim of day-to-day litigation is two-fold:

- To secure the rights of individual women and
- To create positive precedence and bring in a culture of women's rights within the precincts of courtrooms.

We have been using civil injunctions and protective orders in matrimonial disputes routinely to not only give a certain degree of protection to women facing domestic violence but as an effective legal strategy for protecting women's economic rights.

### Dispossession from Home

The most common manifestation of violence that a married woman faces in Bombay today is her dispossession from the matrimonial home. In the absence of a specific statutory provision, it is through struggle and negotiation in courts of law, that we have been able to use the general civil remedy of injunctions in order to prevent husbands and their

families from throwing the women out and selling or renting the house as an indirect means of dispossessing the wife.

The biggest hurdle that we face is to convince a woman that her husband has no right to beat her. And further, upon marriage she has acquired a right to reside in the home; the husband cannot throw her out at his whim and fancy and that she is entitled to a protective order from the courts. This is the most difficult task, because until the campaign on domestic violence was initiated and the issue of the right of residence was made an appendage to it, society in general and many women themselves in particular, believed that the home belongs to the husband (or his father, mother, uncle, brother or sister, as the case may be) and the woman has no intrinsic right to it.

I had learnt my lesson the hard way, after repeatedly being thrown out of my husband's home with three small children, during the thirteen years of a violent marriage. Every time I was thrown out I had felt even more violated than when I was beaten. I strongly believed that the contract of marriage gave me a right to reside in the home since I was primarily a home maker and knew of no other shelter except my matrimonial home. But no one else seemed to think so. At that time I had felt helpless and extremely



frustrated that I did not have the confidence to argue my own case. I felt I would be able to convince the judges and could secure a favourable court order securing for my children and myself the right of residence in the matrimonial home.

But I found it very difficult to convince my lawyers then. Finally, left with no other option, I just relinquished my rights and started a new life for myself, devoid of the economic security that the marriage was supposed to provide for me and my children. That was way back in 1980 when it was fashionable to highlight dowry related violence and domestic violence per se had yet to become a campaign issue.

Fortunately for me, with the help of a few friends, I was able to renegotiate the world and the courts on my own terms and move on in life without the aid of a protective order or even a formal divorce.

But nearly a decade later, after I acquired a law degree and some of us got together and set up Majlis, one of my primary engagements with law has been to convince the courts and the women concerned that the right of residence in the matrimonial home is a basic and fundamental right which needs to be protected.

Discussed below are some concrete examples of the strategies adopted by us. Some of the women whose stories appear here belong to the upper strata of society, while others are from the lower middle class or poorer sections. But the strategies have been effectively used for all of them. The cases were filed either in the Family Court of Mumbai, the High Court and the District Court of Thane. The names have been changed to protect the identities of the concerned women.

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Discussed below are some landmark cases that we dealt with during the first phase of Majlis between 1991-1998.

### **Setting a New Precedent**

Alice's case is one of the worst that we dealt with and one which seemed to go on and on and caused us years of mental anguish.

Alice is a lower middle class Christian woman, mother of five daughters, whose husband was an alcoholic who did nothing but drink and beat up his wife and children. This was a case of extreme violence, where the husband had sexually molested his own elder daughters. He even sold his children's notebooks, just before their exams to pay for his drinks! The eldest daughter, then 16 years old, used to sleep with a knife under her pillow to stab the father, in

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The 'matrimonial house' was a two-room tenement in a *chawl*, which belonged to her mother-in-law and upon her death, was transferred to the husband's name, but Alice paid the monthly outgoings and managed the household expenses with her meager earnings as a casual worker. Since this was not sufficient to sustain her large family, she constantly approached church based organisations for welfare dole. One agency provided educational support; another provided the midday meals, yet another provided the uniforms and medicines. But no one dealt with the issue of violence and sexual abuse though each one knew about it. But finally one of them advised her to contact us.

It was not easy to get the history of violence in her household from Alice. At times she would ramble on and become incoherent. At times we felt that the years of violence and the constant mental trauma she faced had drastically affected her psyche. Even hearing stories of such extreme brutality took a toll upon the team of young lawyers working in Majlis. But the daughters aged 16 and 14 who were her strong supporters were mature beyond their age and came to our office with her to help her to coherently construct the history of violence. For years thereafter, they were our regular visitors.

In her case, we filed for divorce and sought an order of injunction restraining the husband's entry into the home. Despite the notice, the husband did not bother to come to court and the case had to be heard *ex-parte*. The judge hearing the case was sympathetic but in order to ensure that the story regarding sexual abuse was not made up by the lawyers, he wanted an affidavit from any of the agencies who had supported Alice. The affidavit had to

be produced within a day. We ran around town pleading with the agencies but no one was ready to get their fingers soiled with the messy business of court proceedings and without the affidavit we could not get the injunction. Finally the social worker placed with the Special Cell to help women in police stations (a project of the Tata Institute of Social Sciences) responded to our desperate plea and agreed to come to court and not only file the affidavit but also be present for the hearing. That was a big booster and turned the case in Alice's favour. We were elated when we secured the *ad-interim* injunction restraining the husband's entry into the home and a direction to the police station for the enforcement of the order. The order was obtained within a week of filing the petition.

Because of the direction of the High Court, it was easier to get police help to evict the husband. But he returned after a week and threatened to break one of the daughter's head with a huge stone. The girls came running to our office, and we ran to the police station and finally we were able to file a case under S.498(A) of IPC (cruelty to wives) and get the husband locked up. After three months he was released on bail but now he had learnt a lesson and was more cautious about entering the house. Instead, he would come to our office and abuse us in the filthiest of language.

Later he was convicted under S.498(A) and was imprisoned for two years. When he came out, he continued to threaten them but at least he was not living with them. The husband was arrested on two more occasions for violating the court orders. After four years, the initial case filed by us for divorce came up for hearing. Again it was an *ex-parte* order. The final judgement delivered by the Bombay High Court in 1998,

became a milestone in the realm of legal rights of women. The publicity received for this judgement brought many other women to us to obtain similar injunctions. In some cases, the women had preserved the news clipping for months together before they could muster the courage to approach us.

### **Legal/Extra Legal Measures**

Saroj was in her early forties and worked as a domestic maid and had purchased a house before her marriage. But she had to leave her house which was in her name due to her husband's debauched activities. Since then the husband lived in their matrimonial home with another woman.

Saroj's attempts to regain the right to live in her house were met with violent repercussions which caused her severe injuries. The police refused to register her complaint, influenced by the husband's allegations about her being a woman of loose character. She approached us to obtain a divorce and negotiate for half the value of the house as a settlement.

Since she was out of the house for over two years, filing a case for divorce would not be of much use to her as there was no guarantee that at the end of the divorce proceedings she would be able to claim the house. The husband would have ample opportunity to manipulate the legal documents which, at the moment, were in his possession. The only way to protect her rights was to file for a declaration that the house is her exclusive property. We decided to file for an immediate injunction restraining the husband from dispossessing her. But there was a snag. The strategy would work only if Saroj was in possession of the house at the time of approaching the court.

Saroj was apprehensive that her husband may kill her if she made one more attempt to enter the house.

Several sessions were spent boosting up her confidence but we let her know clearly that unless she musters up the courage and enters the house, we could do very little. Finally, Saroj was ready. We kept the legal papers ready and waited for her to make the move. At an opportune moment, when the husband was away, she broke the lock and entered the house.

Immediately thereafter we approached the court and obtained an *ad-interim* order restraining the husband from dispossessing her. The husband posed endless obstacles and each time she left the house he changed the locks. It was a battle of wits, with the husband and Saroj breaking each other's locks. But Saroj was a woman of grit and determination and withstood the pressure with the confidence that she had the backing of a reputed legal chamber.

When we advised her to enter the house, we knew we were taking a risk. Things could indeed have taken a turn for the worse. But this was her last chance. Since there was a case pending before the court the husband was bound to be more restrained this time. This calculation was our only hope. The police apathy towards her exposed her to a lot of physical danger. It was only with the tacit approval of the local police that the husband could flout the court order. Things began to change only when we approached the higher authorities. Saroj was fortunate that she had a sympathetic judge who went to a great extent to help her. The case was completed within a record period of nine months and finally the husband was forced to leave the matrimonial home. But he dealt a final passing blow to her. When she was away at work, he came in and emptied the house of all the household goods bought by Saroj. But Saroj took it in her stride and moved on. But from this point onwards, the husband did not

make any attempt to enter the house and Saroj could live in peace.

Women usually lose ground due to their lack of exposure, financial restraints and lack of competent legal advice. This strategy was based on our frustrations in other cases, where several women from the working class had lost the right to their meager dwelling places which they had purchased with great difficulty. The inadequate strategy of divorce resorted to by advocates had rendered these women destitute. Such cases are usually referred to us by local NGOs and community organisations, at the very stage when they are beyond redemption. Saroj's case was our moment of victory when we were able to get even with the system through a combination of legal and extra-legal strategies.

### Changing Wrecked Lives

Seema's was an inter-community love marriage; her husband was an affluent Marwari businessman and she hailed from a modest middle class Bengali family. Within a few years, love vanished out of their lives and her husband fell in love with a young girl from his own community. He constantly humiliated Seema for her modest middle class background and became abusive towards her. When she asked probing questions about his affair he started beating her and asked her to leave the house. Finally, one day he threw her out of the house and took away her four year old son and started living with his girlfriend in a far away suburb. The 'matrimonial home' in her case was a sprawling apartment which was segregated as two households. While Seema and her family lived in one, the other portion was occupied by Seema's brother-in-law and his family.

Seema approached us in 1995. Her only concern at that time was to meet her son. She was on the verge of a nervous breakdown and her family was scared that the judge might get



convinced of the husband's allegations about her mental instability which would render her an unfit mother in the eyes of the court. We advised her that she should first enter the home and then we would secure an injunction restraining the husband from throwing her out. Initially she was too scared and her family said that she could only enter the home if she had a court order. But it would be difficult to get a court order if she was not living in the house.

We advised her to seek police help but the police refused to help her. But we convinced her to break the lock and enter the place, assuring her that there was nothing to fear as it was her own home and she could not be booked for trespass. The next day we approached the court with a petition of restitution of conjugal rights and secured an *ad-interim* order of injunction. Now the husband could not throw her out. Seema was safely in the house.

The next task was to get her the custody of the child. The husband was issued notice to produce the child in court. He was shocked to find that his timid wife had not only

approached the court, but within a short time obtained an *ad-interim* injunction restraining him from throwing her out. Now he knew he could not mess around with her. When the child was produced after three days, we first asked the court to give us a few hours of exclusive access so the child and mother could spend some time together, before being produced in court.

When the child was produced in court, he clung to the mother and that clinched the issue for us. The custody was restored to Seema. We had no problem with the husband entering the home but Seema was given exclusive access to one bed room and part of the kitchen. Later, we filed for maintenance and the court awarded Rs.3000 per month as maintenance to Seema and her child. The amount was not much but with a roof over her head, it was sufficient to make ends meet.

The husband realised that he was defeated at his own game and gave in. Finally he agreed to buy her a separate accommodation if she was willing for a divorce by mutual consent. Seema too realised that there was no point in clinging to this marriage. She accepted the suggestion of divorce by mutual consent. The husband bought her a flat for her residence worth around Rs. 6,00,000. In the meanwhile Seema had found a good job and began earning around Rs. 6,000 per month.

The husband wanted the custody of the child, but agreed to give Seema regular access. Finally the case was settled amicably with a good divorce settlement for Seema. We could achieve this only through the unconventional legal strategy of securing a restraint order against the husband.

It is far easier to arrive at a divorce settlement than to arrive at a settlement of property disputes. Even when a couple agree for a divorce, the

issue of matrimonial home and civil injunctions has to be kept pending to be decided on merit.

### **Live-in Partners/2nd Wives**

Cases also became complicated when women, who could not prove a formal marriage as per the stipulations of the Hindu Marriage Act needed protection and economic support. Then there were cases of women who were physically challenged needing protection. If the woman lived within a joint family structure there were further complications. The strategies of obtaining injunctions were adopted even by lawyers representing husbands as a precautionary measure to exclude the wives from entry into the home. The following cases reveal the newer and complex aspect of the issue of matrimonial law and civil injunctions.

**Geeta's** case threw another new challenge to us in the realm of the matrimonial home. The concept of matrimonial home by its very terminology assumes a relationship of 'matrimony' between the man and woman. Geeta was the second wife of a Hindu man who was forcing her to leave the house wherein she had resided with him as his 'socially recognised' wife for the last thirteen years. The question for us was to see if it was possible to translate this social recognition into a legal recognition of her rights.

When Geeta met Vivek he had filed a case for divorce against his first wife. He told Geeta that he would soon get his divorce and the two of them could get married. On this assurance Geeta began to live with Vivek. A few months later he wrongly informed her that he was divorced and they performed an informal ceremony of marriage in the house in the presence of their immediate family. Subsequently they had a son.

Gradually, over time, the relationship between them deteriorated and Vivek began to

assault her, deny her maintenance and threaten to throw her out of the house. On one occasion when she and her son were out of the house, Vivek threw all of their belongings out, changed the lock and tore down the entire interiors. The flooring was removed, the doors were broken, the toilets blocked and electric wiring removed, making it impossible for her to reside in the house. Being a determined and strong willed person, Geeta broke open the lock and re-entered the house.

Faced with a woman as strong as Geeta, Vivek had to resort to legal recourse and filed a suit in the City Civil Court seeking an order to evict her on the ground that there was no legal relationship between himself and Geeta as he was still married. He had failed to obtain a decree of divorce against his first wife, and he now used this against Geeta.

In a packed courtroom Vivek's lawyer would refer to Geeta as a 'keep', 'mistress', 'concubine' only to drive home the fact that in law she had no right. Amidst jeering and laughter we argued the matter for three days to obtain an order in her favour. The court considered our argument of the changing nature of relationships and how a man taking advantage of his own wrongdoing cannot take away a second wife's right to shelter, and granted us an order in her favour.

Later we filed for maintenance for her and her son in the Family Court based on a Supreme Court ruling. The husband tried various ways to throttle her rights, but finally we were able to obtain an interim order of maintenance in her favour.

While both these cases are still pending, negotiations are going on for an alternative accommodation for Geeta.

### **Woman against Woman**

When **Asha** married Anand, his father had purchased two apartments for his two sons and upon his death

both these flats were transferred to Anand's mother's name. The flat in which Asha was residing constituted her matrimonial home, where she lived along with her husband and mother-in-law.

After three years of marriage Anand fell in love with another girl and began to pressurise Asha for a divorce. When Asha did not agree, he filed a petition for divorce in the Family Court. At that time she was residing in the matrimonial home. When Asha did not relent, the husband threw her out and sought a court order restraining her entry into the matrimonial home.

At this point, Asha approached us for legal assistance. Legally once a woman has been thrown out of the house it is almost impossible to get a court order allowing her re-entry. Despite this, in an attempt to find newer alternatives in law, we filed an application seeking restoration of her possession of the house. This was on the principle that the situation at the time of filing the proceeding cannot be changed unless by a court order.

Anand was enraged and as a retaliatory measure, his mother filed a suit in the City Civil Court, against both Anand and Asha on the ground that neither had a right to reside in the house as the house stood in her name. Her contention was that being old and ill, Asha was causing her further trauma. In the arguments before the civil court, rights of two women were pitted against each other.

We filed our reply in the city Civil Court claiming Asha's right to the matrimonial home and pointed out that a case was already pending in the Family Court where Asha had been given protection to reside in the matrimonial home. The judge hearing the case in the City Civil Court could see through the fraudulent strategy adopted by the husband and refused to grant an injunction to the mother-in-law.

Realising that Asha has built a strong legal defense and was not ready to relent to the pressure exerted by him, Anand finally approached us for an amicable divorce settlement and agreed to provide a considerable amount of money as a settlement to Asha. Only through providing for her future security could Anand finally get a divorce.

### **Persistence Pays**

**Mary**, a deaf and mute woman, who had been working for several years, had purchased a house in the joint name of herself and her husband in order to obtain a higher bank loan. Her husband, a chronic alcoholic and gambler, constantly assaulted Mary and her children. She approached us a day after she was thrown out of her house along with her two children. In her case, we could not risk putting her back into the home as she was not in a position to defend herself against the husband's assaults.

So instead we advised her to file a criminal case under Section 498A of IPC under which the husband was arrested. Taking advantage of his absence, we filed a petition for divorce and sought an order that though the house was in their joint names she should be declared the sole owner and that there should be an injunction restraining his entry to the house.

For Mary's case, the jurisdiction was in the District Court at Thane and lawyers practicing in this court advised us that it is impossible to obtain such injunctions. But we persisted in our attempts and succeeded in obtaining the initial *ad-interim* order. Later we managed to follow it up with an interim order along with an order directing the local police to help her execute the orders. Mary now lives in the house with her children.

The uphill task of litigating at the Thane Court, which is a general civil court and not a Family Court, is that most courts are not accustomed to

issuing restraining orders in family disputes and are extremely hesitant to pass such orders. But over a period of time Majlis advocates appearing before the District Court have brought in changes in the approach of the judges and quality of court orders.

### **When Lawyers Mess Up**

**Jisha** was referred to us by the judge of the Family Court when she felt that her lawyer had been taking advantage of her naivety and ignorance of law. Jisha had been married for more than twenty years and was living in her husband's joint family property with her two children.



After her husband deserted her he and members of his family asked her to vacate the house.

She contacted a lawyer who filed a petition for divorce and asked for an order of injunction restraining her husband from throwing her out of the house. After five years of litigation when the matter finally came up for hearing and the judge asked her what order she wanted from the Court, Jisha replied 'I want an order to keep my shelter'. A divorce would have meant an end of the legal relationship of marriage and all rights flowing from

it including that of residence in the matrimonial home. The judge realised that the lawyer had adopted a faulty strategy which would deprive her of her rights and hence referred the case to us for legal intervention.

The first step was to withdraw the earlier petition and file a new petition against the entire family restraining them from throwing her out of the house or from selling the same. Two days after the filing of the petition, we obtained an *ad-interim* order of injunction and the entire family was served the proceedings. At that stage, the husband appeared in court and gave an undertaking that he would not sell the house. But thereafter he changed his mind and made a fresh application stating that the wife has no right to the house, as it was his joint family property.

Rejecting the husband's application, the court passed an interim order restraining the entire family from disturbing the status quo of the wife. With all these orders in hand the family agreed to a settlement and the husband offered his share of the house to Jisha, which was 33 percent of the total property. But we were unwilling to settle for anything less than half the house, which came to a total of Rs. 8,00,000. The house was sold and Jisha got the said amount and now lives in her own house with her daughter.

### **Rights of Widows**

**Ameena**, a widow residing in her matrimonial home after the death of her husband through whom her right to reside in the house flows, fought against her brother-in-law to secure her and her children's right to the house. The complication in the case was that the house was a self-acquired property of the mother-in-law who died without leaving a will. The woman's husband, who was an alcoholic, allowed his brother to transfer the property to his name only

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to spite his wife and thereafter, he and his brother began to harass her asking her to leave.

During his lifetime she filed a case against her husband and her brother-in-law claiming a right to reside in the house. As luck would have it, during the proceedings, her husband expired and the brother-in-law claimed that her right to the house extinguished upon his death. On the issue of jurisdiction the case was fought for two years in the Family Court and the High Court. Both the courts held in her favour saying that the case continued after the death of the husband and her right to the house had to be finally decided after a full-length trial. As her right to the house was by virtue of her residence in the house the brother-in-law tried all means to compel her to leave the house. He even went to the extent of getting the gas and electricity disconnected and not allowing the children to study.

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Finally in the interest of the children she decided to leave the house and we promised to fight the case on the principle of matrimonial home. We amended our petition to ask for an order to permit her re-entry if she required. After years of following up the case finally we secured a judgement in her favour.

The Family Court recognised a widow's right to the matrimonial home when it was in the name of a relative and despite the fact that she was not residing in the house. It was declared that the house, despite being in the name of the relative, would continue to be the matrimonial home even after the death of the husband and no one had the right to obstruct her occupation of the same. The judgment in this case now expands the concept of matrimonial home, which would help many women who are thrown out of their houses and are not in a position to re-enter. A case that began when Majlis had just started, finally ended after nearly a decade.

#### **In Conclusion**

I have discussed these cases in detail not merely to illustrate that they are success stories but to highlight the complexities of each case and the

long and nerve wracking legal battle that is involved. What has been the determining factor in each of these cases is the grit and determination of the women to fight for their rights and the commitment of a team of lawyers to push the boundaries of law beyond the accepted paradigms. The Domestic Violence Act cannot wish away the complexities nor can there be positive results without creating the necessary infrastructure and mechanisms for easy access to courts with the help of affordable lawyers. We need to remember that every case that is brought before the court would require the services of legal experts to guide women through the complicated legal maze. If support services and necessary infrastructure are not developed the Domestic Violence Act will soon become yet another legal reform that has fallen by the wayside and we will continue to wonder why the best laws fail to yield the desired effect and change women's lives. □

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