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# Attitudes and Attributions associated with Female and Male Partner Violence Analysis with Special Reference to Domestic Violence

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## ABSTRACT

*The above mentioned statement was made by the Martin Luther King Jr. in the context of discrimination between the blacks on the pretext of whites. The author of this paper has referred this statement in the context of the brutalities and violence that the fairer sex goes through on the pretext of the male gender specifically in households. Thus, if law cannot be used as a tool to generate love between a man and a woman it at least can save the women from the violence reined upon her by her man. Hence the justification of the Domestic Violence Act, 2005 passed by the Indian Government on 26 October 2006 with the view to make the woman's life more humane and protecting her against domestic violence and crimes caused to her inside a family household.*

*Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.*

*The paper therefore looks at the aims and objectives of the Act, and in this light, examines the concept of domestic violence as enshrined in the Act, the procedures and remedies that the Act provides for, and the issues that may arise in the implementation of the same..*

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## I. INTRODUCTION

*“It may be true that the law cannot make a man love me, but it can keep him from lynching me, and I think that's pretty important.”*

*- Martin Luther King, Jr.*

### (A) Introduction and Definitions

The idea of domestic violence emerged from the first wave feminist movement which is popularly known as the ‘Suffrage Movement’, the belief that a husband had the authority to beat his wife was politically agitated against and the results were outstanding

The above mentioned definition of domestic violence in the international perspective inculcates the expression ‘intimate partner violence’ (IPV), this expression has been construed by legal scholars in a very wide sense of the term whereby the expression IPV includes within its ambit not only married couples but also unmarried couples who may be dating, friends or merely in cohabitation or in a live in relationship etc.

Before 2005 when the Domestic Violence Act was not in force, the aggrieved woman had two options, firstly, either she had to go to the civil court for a decree of divorce or secondly, initiate prosecution in the criminal court for the offence punishable under Section 498A of IPC. In both the proceedings, no emergency relief is available to the victim. Also, the relationships outside the marriage were not recognized.

Owing to these difficulties and keeping in consideration the principle of ‘equality’ the Parliament thought fit to enact Domestic Violence Act. The main Object of the Act is protection of women from violence inflicted by a man or/and a woman. It is a progressive Act, whose sole intention is to protect the women irrespective of the relationship she shares with the accused. The definition of an aggrieved person under the Act is so wide that it taken within its purview even women who are living with their partners in a live in relationship.<sup>2</sup>

The author of this paper has taken the liberty to explore various forms and aspects of domestic violence; the author also at a later stage in the paper compares the situation of domestic violence in India as to international counterparts. On the basis of the above international definitions it is apparent on the face on the face of record that the evil phenomenon of domestic violence is not only restricted to India and other third world nations rather it is an issue that is shaping itself in every form of society irrespective of the nation and this causes a major threat to the equal protection of law rights of the fairer sex.

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<sup>2</sup>Bhartiben Bipinbhai Tamboli v. State of Gujrat and Ors. (2018 SCC OnLine Guj 9)

The Hon'ble Supreme Court has rightly observed in the matter of *Bhartiben Bipinbhai Tamboli v. State of Gujarat and ors.*<sup>3</sup>

“The Domestic Violence in this country is rampant and several women encounter violence in some form or the other or almost every day. However it is the least reported form of cruel behavior.

A woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner, a single woman in her lifetime.”

### **(B) Forms of Domestic Violence**

Domestic violence may acquire several forms but the substratum of such acts of violence is limited to the fact of establishing domination over the victim, domination meaning hereby a state of mind of the accused where he feels that he has the control of the behavior of the victims. Some of the forms are as follows:

**Direct physical violence** ranging from unwanted physical contact to rape and murder.

**Indirect physical violence** may include destruction of objects, striking or throwing objects near the victim, or harm to pets. The National Coalition against Domestic Violence reports that between one-third and one-half of all battered women are raped by their partners at least once during their relationship. Any situation in which force is used to obtain participation in unwanted, unsafe, or degrading sexual activity constitutes sexual abuse. Forced sex, even by a spouse or intimate partner with whom consensual sex has occurred, is an act of aggression and violence. Furthermore, women whose partners abuse them physically and sexually are at a higher risk of being seriously injured or killed.<sup>4</sup>

**Verbal abuse** includes threats to harm physically and also threatening to take life etc. any other form of verbal abuses and threats or comments that may not have physical impact but causes emotional disturbances.

**Nonverbal threats** includes actual physical assault of any kind including beating with hands or objects, throwing her out of the home with her belongings also amounts to non verbal abuse.

**Psychological abuse** includes those such as making the wife feel that she is an economic burden asking her to get money from home, making her feel burden on the household etc.

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<sup>3</sup>Id.

<sup>4</sup> Watts C, Zimmerman C, Violence against women: global scope and magnitude, National Center for Biotechnology Information (Jan. 09, 2019, 11:39 AM), <https://www.ncbi.nlm.nih.gov/pubmed/11955557>.

tantamount to psychological abuse.

The following two forms have been added recently by the United States Department of Justice to the act of domestic violence and have also been recognized by Hon'ble Courts of India:

Economic abuse when the husband is in charge of all the economic resources including the income made by the wife, the husband withholds all the money and gives strict allowances meager for running the house creating a situation for the wife to beg for money also includes money not given for completing education etc.<sup>5</sup>

Stalking is often considered a type of psychological intimidation that causes a victim to feel a high level of fear.<sup>6</sup>

The only situation or circumstance under which these basic rights of life and liberties<sup>7</sup> can be taken away is by 'reasonable restrictions' which are to be imposed by the State itself. Domestic violence is the highest form of violations of these rights and also the worst outcry of democracy. Now domestic violence is a non-bailable offence under the Indian Penal Code<sup>8</sup> and results to direct arrest of the offender and his family members. Needless to say but under the provisions of the Indian Penal Code in order to prosecute an accused for an offence, the said offence should be proved beyond reasonable doubts and also 'mens rea' is an important essential in order to establish an offence under the provisions of the Code.<sup>9</sup> Thus, every time a woman makes a complaint under the provisions of Section 498A she has to prove the offence committed by her husband beyond reasonable doubt which is not possible in all cases and also the already victimized woman has to go through the hassle of litigation in order to seek justice.

Under section 2(f) of the Domestic Violence Act 2005, on the recommendation of the Parliamentary Standing Committee, 'a relationship in the nature of marriage' was included in the definition of a 'domestic relationship'. Evidently, the view of the committee prevailed. It

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<sup>5</sup> *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Ors.*, 2008 (4) SCC 649.

<sup>6</sup> U.S. Department of Justice (2007). "About domestic violence". usdoj.gov. U.S. Department of Justice. Archived from the original on 2007-10-11 (last retrieved on 09/01/2019)

<sup>7</sup> Indian Constitution Part III.

<sup>8</sup> 498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand (hereinafter SECTION).

<sup>9</sup> *Vijayee Singh & Ors. v. State of Uttar Pradesh*, AIR 1990 SC 1459.

would not be wrong to assume that the intention of the legislature, therefore, was to include in this category many more people than those who were otherwise legally eligible to marry each other. The expression ‘a relationship in the nature of marriage’ used under the Domestic Violence Act, 2005 could, therefore, be interpreted as including all those situations which were not covered under section 125 Cr PC and section 18 of the Hindu Adoption and Maintenance Act (due to the use of the word ‘wife’ in those provisions), or under sections 24 and 25 of the Hindu Marriage Act (because proceedings cannot take place under the Hindu Marriage Act for the passing of any decree without solemnization of the marriage). Unfortunately, this opportunity was missed by the Supreme Court of India in *D.Velusamy*. Perhaps, the focus of the court was more on the emerging trend of live-in relationships, and age old practice of concubinage was lost sight of. Many more women would have got the protection from domestic violence if ‘relationship in the nature of marriage’ were differently defined.

### **(C) Domestic Abuse**

Domestic violence or domestic abuse cannot always be crystallized as to have particular straight jacket characteristics rather it would have to be determined from the facts and circumstances of every case as to whether an act would amount to domestic violence or not.

The Indian Government also in order to honour its obligations made in CEDAW namely, the Domestic Violence Act, 2005 in order to ensure protection of women from domestic violence in families.

The phenomenon called “sexual abuse” is aptly defined by Explanation-I (ii) of Section 3. The limited nature of protection under Section 375 IPC in the matters involving forced sexual intercourse with wife notwithstanding, the fact that wife has all along been entitled under the general law to protection against sexual abuse under the cover of Section 354, 377 and 509 IPC, there can be no denial of or doubt about the fact that every woman is entitled to the protection of the said criminal law provisions.<sup>10</sup>

Needles to refer here, for driving the point home with full force and vigour, that judicial view in this country has been that even a prostitute is entitled to protection against forced sexual intercourse. In this view, one finds that the new law breaks no fresh ground in matters of sexual abuse of women except by stating what has always been implicitly the legal position.

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<sup>10</sup> Srilata Swaminathan. On the Protection of Women from Domestic Violence Act [http://www.cpriml.org/liberation/year\\_2005.october05/domestic\\_voilence\\_act.htm](http://www.cpriml.org/liberation/year_2005.october05/domestic_voilence_act.htm).

## **(D) REASONS OF DOMESTIC ABUSE**

The following reasons result into domestic violence:

**Poverty:** As is it is universally quoted ‘when there is no money, love flies out of the windows’. This is true in case of domestic violence, the international institutions state that financial burden is one of the most vital impediment for liberty of women. As observed in many statistical reports domestic violence is more pertinent in the village areas, it has been stated in the statistics that male who earns for the family comes home drunk and resorts to violence on his family members.<sup>11</sup>

**Illiteracy:** The other reason is the illiteracy. Illiterate or lack of education results into unawareness of one’s rights and duties. Illiteracy is also fatal to the offender because he has not been made aware of the punishments that can be imposed on him under the provisions of law. Illiteracy creates a bridge between the legislation framed and the beneficiaries of such legislation, it also puts an embargo for women to come forward and report such incidents of domestic violence being caused against them. In order to make the domestic violation legislation a greater force of implementation awareness is quint essential especially among the fairer sections so that they can identify their rights and liberties against the atrocities being committed on them across the country.

**Drug Abuse and Alcoholism:** At the village level it is a common theatrics where male is the earning head and female sit at home and are forbidden from taking up a job, thus, this social stereotype put the male at a dominating position wherein the male is allowed to come home drunk and beat his family members up and it is this very social stereotype that also pressures women take everything and anything thrown in their way by the earning head of the family. In short the economic dependence of a woman on her husband is the root cause of domestic abuse and the women is also not left with any choice but to bear in order to feed herself and her children and at the same time not be relinquished from the society and there would be drastic consequences if she raises her voice against her husband.

**Extra Marital Affairs:** With changing times new kind of relations in the society have come up such as the concept of nuclear families, casual relations between the man and woman, concept of concubine etc. These kinds of relations have though broken the stereotype of the society but comes with their own impact. Firstly,

Effect of TV Programs and Cinema: Indian cinema has always had a huge impact on the

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<sup>11</sup>National Statistics, National Coalition Against Domestic Violence (Jan. 01, 2019, 02:51 PM), <https://ncadv.org/statistics>.

Indian population, the TV soaps and cinemas tend promote more masculinity and male dominance and the same is imitated by the Indian population. The rising shows of violence in cinemas, the alarming rate of sexual violence, the ever growing pornographic industry are a widespread cause of domestic violence.<sup>12</sup>

The causes of domestic violence listed above is not an exhaustive list rather an alternative one, thus the causes may be many but violation of human and fundamental rights are the outcome and such type of causes should be curtailed in order to bring down the rate of domestic violence.

## **II. REVIEW OF LITERATURE**

**Saxena, Shobha(2013)**, in ‘Crime against Women and Protective Laws’, emphasized that today the greatest numbers of crimes are committed against them and it found on the present condition of our country related with women and crimes against them. We should plan some safety measures like women cops patrolling roads on two-wheelers and starting pink autos for women in which women are driving, inbuilt CCTV cameras on roads, keeping police guards on the roads after every kilometer, launching a helpline which provides police and medical securities to women over a phone call in need. We need to speak about the rights of women and parents should teach their daughters and sons about fair and respectful treatment of girls and women.<sup>13</sup>

**Goel, Aruna, Kaur Manvinder & Sultana, Ameer(2013)**, ‘Violence against Women’. author emphasized that Ladies in India have been casualties of viciousness from numerous years in every one of the social orders, districts, societies and religious groups. Women in the Indian culture need to endure assortment of brutality, for example, local, open, physical, social, enthusiastic and mental. Women can be burnt for not bringing enough dowries and tortured and harassed by alcoholic husbands. Savagery against ladies is obviously found in the history to an expansive degree which is as yet getting honed with no positive change. We have to change our mentality and uplift the unprivileged women so we can let them live freely and openly in the society.<sup>14</sup>

**Ranjan & Ajay, Kumar**, in an essay on ‘Crime against women in India’, he explained that Indian Women through the countries remained subjugated and oppressed because society

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<sup>12</sup>Id.

<sup>13</sup>Shobha Saxena, Crime against Women and Protective Law 152-153(1st ed. 1995).

<sup>14</sup> Hamideh Hajnasiri et al., Domestic Violence Among Iranian Women: A Systematic Review and Meta-Analysis, National Center for Biotechnology Information (Mar. 31, 2019, 10:59 AM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5006439/>.

believed in clinging on to orthodox beliefs for the brunt of violence. The paper deals with physical violence and atrocities against women in both the public arena as well as inside the family. Fear of violence is an important factor in the lives of most of women.<sup>15</sup>

**Devi and Prema (2006)** explain that the main cause of domestic violence against women are unequal power relations, gender discrimination, patriarchy, economic dependence of women, dowry, low moral values, negative portrayal of women's images in media, no participation in decision-making, gender stereotypes and a negative mindset. There are various manifestations of violence, which includes beating, mental torture, forced pregnancy, female infanticide, rape, denial of basic necessities and battering. The worst form of violence is dowry murder.<sup>16</sup>

**Veer (2005)** states that living in a society which is largely patriarchal though centred around the wife, the family has its share of marital violence in which the woman bears the brunt in spite of being the pillar of the home. To maintain his dominant position in the home, a man inflicts some or other kind of violence on woman and harasses her throughout her life. A common name given to domestic violence is silent crime.<sup>17</sup>

**Mahalick (2005)** there are many crimes against them such as burning, harassment, rape, and desertion. Some husbands in slum areas desert their wives in a helpless condition. While their wives lead a miserable condition with their children, they lead a happy life by getting re-married to some other women. Such cases are quite different from the system of upper class and middle class society. Who can get legal separation and have re-marriage. But most of the inhabitants of slums are ignorant of their rights. This is the root cause of their misfortunes. Generally most of the couples of slums are low paid labourers and daily workers; they languish in conditions of poverty and deprivation. The men cannot fulfil the assurance of providing food and other necessities required for the life of their wives. The situation gets complicated when they give birth to two or three children. The peace of family remains a dream due to acute poverty. Consequently the men choose the safest way of deserting their families and develop illicit relationship with other women living in the same slum or some other slums and get remarried.<sup>18</sup>

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<sup>15</sup> Vimal Vidushy, Crime against women in Punjab: An analysis, *International Journal of Applied Research* 445, 446 (2016).

<sup>16</sup> Devi, Kamala and Purna Pandey, Combating Violence against Women; Some Initiatives, *Woman's Link Worldwide* (Apr. 31, 2019, 11:05 AM), <https://www.womenslinkworldwide.org/en>.

<sup>17</sup> Available at <https://veermag.com/tag/domestic-violence/> (last visited on 31.03.2019 at 11:07am)

<sup>18</sup> Janet E. Findlater et al., *The Michigan Law Enforcement Response to Domestic Violence*, Michigan Commission on Law Enforcement Standards (Mar. 31, 2019, 11:07 AM), [https://www.michigan.gov/documents/mcoles/DV\\_Officer\\_Manual\\_2011\\_438249\\_7.pdf](https://www.michigan.gov/documents/mcoles/DV_Officer_Manual_2011_438249_7.pdf).

### **III. LEGAL PROVISIONS**

#### **(A) Constitutional Provisions for Women**

The Preamble of our Constitution is “a key to open the mind of the makers of the Constitution which may show the general purpose for which they made the Constitution. It declares the rights and freedoms which the people of India intended to secure to all citizens. The Preamble begins with the words We the people of India ...” which includes men and women of all castes, religions, etc. It wishes to render “Equality of status and of opportunity” to every man and woman. The Preamble again assures “dignity of individuals” which includes the dignity of women. On the basis of the Preamble, several important enactments have been brought into operation, pertaining to every walk of life family, succession, guardianship and employment which aim at providing protection of status, rights and dignity of women. Our compassionate Constitution, the Foundation Head of all laws, is gender sensitive.

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralising the cumulative socio-economic, education and political disadvantages faced by them. It is apt to refer to certain constitutional provisions which are significant in this regard.

Article 14, confers on men and women equal rights and opportunities in political, economic and social sphere.

Article 15, prohibits, discrimination against any citizen on grounds of religion, race, caste, sex etc. Article 16, provides for equality of opportunities matters relating to employment or appointment to any office under the state. Article 39(a)(d), mentions policy security of state equality for both men and women the right to a means of livelihood and equal pay for equal work for both men and women.

Article 39(a), requires the State to direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood. Under Article 39(d), the State shall direct its policy towards securing equal pay for equal work for both men and women. This Article draws its support from Articles 14 and 16 and its main objective is the building of a welfare society and an equalitarian social order in the Indian Union. To give effect to this Article, Parliament has enacted the Equal Remuneration Act, 1976 which provides for payment of equal remuneration to men and women workers and prevents

discrimination on the ground of sex. Further, Article 39(e) is aimed at protecting the health and strength of workers, both men and women.

Article 42; direct the State to make provision for ensuring just and humane conditions of work and maternity relief.

### **(B) Other Legal Provisions for Women**

**Factories Act 1948:** Under this Act, a woman cannot be forced to work beyond 8 hours and prohibits employment of women except between 6 A.M. and 7 P.M.

Maternity Benefit Act 1961: A Woman is entitled 12 weeks' maternity leave with full wages.

**The Dowry Prohibition Act, 1961:** Under the provisions of this Act demand of dowry either before marriage, during marriage and or after the marriage is an offence.

The Child Marriage Restrain Act of 1976: This act raises the age for marriage of a girl to 18 years from 15 years and that of a boy to 21 years.

**Indian Penal Code:** Section 354 and 509 safeguards the interests of women.

**The Medical Termination of Pregnancy Act of 1971:** The Act safeguards women from unnecessary and compulsory abortions. Amendments to Criminal Law 1983, which provides for a punishment of 7 years in ordinary cases and 10 years for custodial rape cases.

**73rd and 74th Constitutional Amendment Act:** reserved 1/3rd seats in Panchayat Urban Local Bodies for women.

**The National Commission for Women Act, 1990:** The Commission was set up in January, 1992 to review the Constitutional and legal safeguards for women.

### **(C) Highlights of Protection of Women from Domestic Violence Act**

Regardless of these examples of overcoming adversity, the laws existing before PWDVA were deficient to counter Domestic violence at home, for the accompanying reasons:

The fundamental elements of this law are as per the following:

- The law plainly expresses its fundamental target - forestalling Domestic violence at home.
- The right of ladies to be free from aggressive behavior at home has been perceived.
- Domestic brutality has been unequivocally perceived as an infringement of ladies' human rights.

- It gives a meaning of aggressive behavior at home that is expansive and covers different parts of Domestic violence at home - physical, mental, enthusiastic, monetary and sexual - in light of ladies' experience of local violence.<sup>19</sup>
- It perceives, in clear terms, a lady's entitlement to live in the wedding home ('shared family unit') and shields her from being seized and turning into a destitute.<sup>20</sup>
- It goes for brisk reaction of the law, through quick requests, to anticipate further demonstrations of violence.<sup>21</sup>
- The law gives a 'solitary window freedom framework'/'one stop solutions for's ladies – numerous requirements of the lady can be tended to through a solitary prosecution in one court, in this manner definitely lessening the time and cash spent by wronged ladies on lawful intercession.
- The law perceives that lawful cures alone would be deficient to help the casualty of aggressive behavior at home carry on with her existence with pride. Thus, numerous bolster structures have been made, to comprehensively address ladies' requirement for safe house, directing and restorative backing.
- The law supplements existing wedding and criminal laws on Domestic violence at home, with the goal that ladies have a more extensive choice in legitimate procurements that can be connected. They would practice this alternative by evaluating as to which law would most successfully address their particular circumstance and need.

#### **(D) PDWA SUBSUMING LOOPHOLES IN PREVIOUS ENACTMENTS**

For the past few decades the women's movement in India has been campaigning for the elimination of violence against women. Campaigns for equal pay for equal work, dowry deaths, prostitution, sati, female infanticide, custodial rape and the abduction of women have all captured the public imagination, and law has adapted to accommodate the demands of the movement. However, these laws effectively remained limited to violence that was linked to demands for dowry—this approach was the only one, which received judicial and institutional support, and consequently lent itself to a lot of misuse.

A significant lacuna has existed in the capacity of any legal system to accommodate cases of everyday domestic violence in the lives of women—something that has been restricted to the private domain. Interference into “domestic privacy” has traditionally been seen as a greater

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<sup>19</sup> PWDVA, supra note 25, at Section 3.

<sup>20</sup> PWDVA, supra note 25, at Section 17 and Section 19.

<sup>21</sup> PWDVA, supra note 25, at Section 18.

evil than actual violence inflicted upon a wife. However further step came in understanding domestic violence as a violation of human rights itself and attempts were made to dissolve the same. Ordinary laws of cruelty, assault, etc., were seen as inadequate when dealing with violence within a domestic relationship.

The need for an understanding of domestic violence and specific legislation to address it in India has been extensively debated before the Protection of Women from Domestic Violence Act, 2005 was passed.

The passing of the much-awaited Protection of Women from Domestic Violence Act, 2005 represents a major victory for women's rights in India. Importantly, the new law, which criminalises the abuse of a woman by her spouse, partner or other males in the household, recognises the abused woman's right to secure housing.

Then landmark legislation that gives married and unmarried women far-reaching legal protection against abuse or “threats of abuse” from their spouses, partners or other males in the family came into effect from October 26.

The law, under which offenders can be jailed for a maximum of one year, or fined up to Rs 20,000, or both, is the culmination of a two-decade-old sustained national campaign by women's groups to prevent violence against women and enact legislation on domestic abuse. It was notified by the Ministry of Women and Child Development, and came into effect on October 26.

Domestic violence under the Act includes actual abuse or threat of abuse, whether physical, sexual, verbal, emotional or economic, said a statement issued by the Ministry. Besides physical violence, beating, slapping, hitting, kicking and pushing—it also covers sexual violence like forced intercourse, forcing a wife or partner to look at pornographic material, and child sexual abuse.

Harassment by way of unlawful dowry demands from the woman or her relative and preventing one's wife from taking up a job or forcing her to leave her job also come under this definition. Primarily this Act meant to provide protection to women against violent husbands, partners and relatives; the law also extends its protection to mothers, sisters and widows. “Even those women who are sisters, widows, mothers, single women or living with the abuser are also entitled to get legal protection.”

Against opposition from conservative voices, the ambit of the legislation has been widened to cover women who are or have been in a relationship with the abuser, where both parties have lived together in a shared household and are related by consanguinity, marriage or a

relationship in the nature of marriage, or adoption also, relationship between family members living together as a joint family. The law also addresses sexual abuse of children and forcing young girls to marry against their will.

The Act provides for a breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment or a fine, or both. Offenders can also be charged under other sections of the Indian Penal Code (IPC), if applicable.

The Ministry has simultaneously issued another notification that lays down rules for the Act's implementation. The Act provides for, among other things, the appointment of protection officers, service-providers and counsellors. The State Governments will have to appoint a woman protection officer at each police station to book and pursue cases. Victims can seek compensation under the law.

The author enlists the following add-ons that the PDWA provides which were not provided in earlier enactments as follows:

- Most of these procurements must be utilized by ladies as a part of lawfully substantial relational unions.
- Under the procurements of criminal law, while the culprit of Domestic violence at home could be arraigned and rebuffed, ladies' requirement for haven, upkeep, guardianship of youngsters and pay stayed unaddressed.
- Criminal law did not permit space for any transaction of rights.
- The utilization of marital law included delayed lawful procedures.
- There was no express law empowering courts to issue requests and orders limiting aggressive behavior at home or to give money related help when the bothered ladies drew nearer the court grumbling of Domestic violence at home.
- Most medicinal measures on aggressive behavior at home were viewed as 'subordinate reliefs' in marital procedures, and Domestic violence at home was not regarded autonomously as a circumstance justifying quick legitimate intercession.
- Women needed to approach diverse courts for various cures (family courts/region courts/criminal courts), prompting numerous suits in different courts, creating extensive hardship to ladies.
- There was no express acknowledgment, in law, of ladies' entitlement to living arrangement in their wedding homes.

The Statement of Objects and Reasons of the PWDVA states that since criminal law does not

manage the issue of Domestic violence at home in an all encompassing way, a different enactment should have been sanctioned "to accommodate more viable assurance of privileges of ladies, ensured under the constitution, who are casualties of viciousness of any sort happening inside of the gang".

“The acknowledgment of aggressive behavior at home as an issue justifying a different enactment has expanded the comprehension of what sums to Domestic violence at home, who can look for cures under the law and what sorts of insurance can be looked for.”<sup>22</sup>

#### Importance of the said Act

- (1) The applicants under this Act will only be women.
- (2) This Act is undoubtedly a human rights issue.
- (3) This Act is enacted for the elimination of all forms of discrimination against women.
- (4) This Act protects women against violence of any kind specially that occur within the family.
- (5) This Act was drafted keeping in mind the situation in India. Provisions such as the inclusion of economic abuse exemplified this.
- (6) Important advance made by the Act in understanding the nature of domestic violence has been in the combination of civil and criminal remedies. While civil remedies are tailored to meet the circumstances of each case, criminal sanctions provide a great deterrent effect among perpetrators.
- (7) An important feature of the landmark law is a woman's right to secure housing. It provides for a woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. Interestingly too, the new law does not distinguish between married women and women who are in live-in relationships. It provides equal protection to both from abuse at the hands of their partners.
- (8) Women are often discouraged from filing complaints about domestic violence because they will be left homeless and destitute, once turned out of the house of the husband. The idea of residence orders therefore has a dual purpose. In that it prevents destitution of women, and empowers them to utilise the legal system available by security.
- (9) This Act is enacted keeping in view the rights guaranteed under Article 14 (right to

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<sup>22</sup> Id.

equality), Article 15 (prohibition of discrimination under age, sex, cast, etc.) and Article 21 (fundamental rights) of the Constitution for a remedy under the civil law to protect women domestic violence.

(10) Domestic violence under the Act includes actual abuse, whether physical, sexual, verbal, emotional or economic, said a statement issued by the Ministry. Besides physical violence, beating, slapping, hitting, kicking and pushing—it also covers sexual violence like forced intercourse, forcing a wife or partner to look at pornographic material and child sexual abuse.

(11) The reasoning behind this provision gives an easy access for the aggrieved. The option of family courts, wherever they have been was also considered. However, it was noted that the family courts, are greatly overcrowded due to the channelling of cases under Section 125 CrPC to these courts.

(12) There has been an effort in this Act to simplify and make more effective issues of the method of filing a complaint of domestic violence and of obtaining relief under it. It also simplifies the procedure for an aggrieved who wishes to file a complaint, for example, the Act allows anyone, perhaps a friend or an NGO, who has witnessed a domestic violence to file a complaint in that regard to the Protection Officer.

(13) It makes it mandatory for the Magistrate to hear a case within three days of the complaint being filed. The idea of prompt relief is found in Section 12(5), which directs the Magistrate to finish hearing the case within six months reaching the court.

(14) The law also addresses sexual abuse of children and forcing young girls to marry against their will.

(15) The Act provides for a breach of protection order or interim protection order by the respondent as a cognizable and non-cognizable offence punishable with imprisonment or a fine, or both. Offenders can also be charged under other sections of the Penal Code, if applicable.

(16) The State Government will have to appoint a woman protection officer at each police station to book and pursue cases. Victims can seek compensation under the law.

(17) An important feature of the landmark law is a woman's right to secure housing. It provides for a woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. Interestingly too, the new law does not distinguish between married women and women who are in live-in relationships it provides equal protection to

both from abuse at the hands of their partners.

#### **IV. CONSTITUTIONAL VALADITY OF SECTION 498A OF THE INDIAN PENAL CODE, 1860**

The constitutionality of the newly inserted provision of section 498 A of IPC, 1860 was before the Hon'ble Supreme Court in the matter of Inder Raj Malik and others v. Mrs. Sumita Malik<sup>23</sup>.

##### **Arguments Advanced**

It was contended by the counsel for the accused that section 498A Indian Penal Code is ultra vires the Constitution on the following two grounds:

Section 498A Indian Penal Code gives an arbitrary power to the police as well as to the court thereby offending against the provisions of Article 14 of the Constitution. The 'cruelly' occurring in the said provision is very vague. It has been defined in the Explanation clause (b) of which says that if there is a harassment for obtaining some property or valuable security from a wife or her relative, it amounts to cruelty. The word 'harassment' is equally vague and as such any person can be arbitrarily hauled up for committing an act of harassment.

Section 498A Indian Penal Code offends against the principle of double jeopardy' in as much as demand of dowry or any property is punishable both under section 4 of the Dowry Prohibition Act, 1961 as well as section 498A Indian Penal Code

##### **Ratio**

The Hon'ble Court further at para 18 have held as follows:

“(18) It is also that section 498-A Indian Penal Code was inserted by way of Criminal Law (Second Amendment) Act, 1983, which came into force on 25th December 1983. It is therefore correct that anything done before 25th December 1983 cannot constitute an offence punishable under section 498-A Indian Penal Code. But the allegations of the complainant are that she was being continuously threatened that her son would be taken away unless she met the demands of the accused by way of compelling her parents to sell their property in Hauz Qazi. In the present case, as the allegations of the complainant are. she was harassed to meet the demands of the accused even by compelling her parents to sell their immovable property. That cruelty, as alleged by the complainant, was committed even upto December 1984 which was the date after coming into force of the Criminal Law (Second Amendment) Act, 1983.”

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<sup>23</sup> Inder Raj Malik and Ors. v. Mrs. Sumita Malik, 1986 Cri. L.J. 1510.

The Hon'ble Court further at para 24 have held as follows:

“It is just a case similar to section 5(2) of the Prevention of Corruption Act and section 409 Indian Penal Code and in such a case it was held by the Supreme Court in *State of Madhya Pradesh v Veereshwar Rao Agnihotri*, that there could be no objection to a trial and conviction under section 409 Indian Penal Code even if the accused had been acquitted of an offence under section 5(2) of the Prevention of Corruption”

Thus the decision given by the Hon'ble Court in the above instance makes it clear that there exists a distinguishing line between Section 498 A and section 4 of the Dowry Prohibition Act. The difference lies in the very ambit and scope of both these sections. Section 498 A has a wider scope and ambit than Section 4 of the Dowry Prohibition Act meaning thereby that section 498 A also takes into account the mens rea of the relatives of the husband as well thus any kind of demand of property by the husband or the relatives of the husband would be punishable under section 498 A whereas the remorselessness as provided under section 498 A is far more than what has been provided under section 4 of the Dowry Prohibition Act.

This Section gives wide powers to the Courts but such discretion has been opined to be exercised sparingly in order to serve justice and ensure protection of women.

The dire state of affairs came to light before the Hon'ble Supreme Court at the instance of *Wazir Chand vs. State of Haryana*<sup>24</sup> wherein the appellant's daughter in law died within one year of her marriage sustain burn injuries in the kitchen of the appellant. The case of the prosecution is that the husbands as well as all of the in laws of the deceased were making demands for further articles of dowry and were harassing, humiliating and insulting her for the same. This drove the deceased to sprinkle kerosene on herself and set herself to fire. It is also the case of the prosecution that when the deceased was crying for help while burning the in laws turned on the radio to a higher volume so that her screams were muffled by the sound of the radio. It was also alleged by the prosecution that there was deliberate delay in taking Veena to the Geeta Nursing home where she died, and that she was deliberately taken to Geeta Nursing Home where adequate facilities for treatment of burn injuries were not available instead of the Badshah Khan Hospital, which is also known as the Civil Hospital where better treatment for burn injuries was available as known to the Appellants.

Before proceeding to appreciate the impact of the new legislation, it is necessary to bear in mind certain facets of existing law governing human body. They include the following:

1. It is plain that the expression hurt, as defined in Section 319 IPC includes causing of bodily

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<sup>24</sup> *Wazir Chand v. State of Haryana*, 1989 (1) SCC 244.

pain, disease or infirmity to any person.

2. The meaning of the expression 'cruelty' used in Section 498-A IPC has been defined to include wilful conduct as is likely to endanger the life, limb or mental or physical health of the woman. In this context, it must be mentioned that a cruelty of such nature would constitute the offence under Section 498-A IPC even if it is not connected with an intent to coerce the woman or her relatives to meet any unlawful demand for dowry etc. in as much as the two clauses of the explanation appended to Section 498-A IPC are exclusive and independent of each other.

3. The general penal law prohibits non-consensual sexual intercourse between persons not related to each other by marriage. Undoubtedly the law has generally disfavoured the married women in matters connected with forced sex or sex without their consent or not involving their will vis-a-vis the husband in that the exception to Section 375 IPC makes it clear that sexual intercourse by a man with his own wife, the wife not being under 15 years of age is not rape, notwithstanding the fact that such intercourse may be against her will or without her consent.

4. Section 377 IPC renders taboo even a consensual non-vaginal coitus and carves out no defence for husbands vis-à-vis the wives.

5. The offence commonly known as outraging the modesty of a woman (Section 354 IPC) is one of the aggravated forms of assault or the use of criminal force particularly made to protect women against such indecent advances as violate their dignity. It is well settled that this law protects not merely an adult woman but even a female infant.

6. Unlike the offence of rape where, as seen above under our law, the married woman has been at some disadvantageous position. Section 354 creates no defence in favour of a husband in relation to the wife, though it must be added, that this penal clause has been rarely used by women against the husbands in matters of sexual abuse.

## **V. CONCLUSION**

The higher exonerations in 498A cases are additionally an indication of the concept of the law and its requirement is appeared in study. Whether the sexual, or verbal and mental, misuse confronted by a lady on account of her spouse or in-laws would qualify as cruelty under Section 498A is at the circumspection of the cops to evaluate, it is an outcome and impact of vague meaning of "cruelty".

Definitions and forms of relief drafted show a clear effort on the part of the legislators to

provide adequate redressal and protection. Hope the Domestic Violence Act, 2005 intending to give protection to women from domestic violence is a step in the right direction.

"Sexual brutality" should be recognized as a cruelty or type of cruelty not due to its high event in wedding cases additionally due to the avoidance of conjugal assault as an offense from the meaning of rape under Section 376 of IPC.

Awakening of the collective consciousness is the need of the day. Change of heart and attitude is what is needed. If man were to regain his harmony with others and replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if woman were to receive education and become economically independent, the possibility of this pernicious social evil dying a natural death may not remain a dream only.

We have to recognize that claiming ownership by a spouse over some property because they made some concrete financial contribution is unjustified. The contributions and the role played by the homemaker also have to be recognized. Even the English laws and laws in other jurisdictions use this as a basis to grant equal property rights to women. The matrimonial property laws should be brought in and they should be aimed at bringing equality among the rights of men and women unlike the existing personal laws which are already biased against women. It is only then that we can say that a move towards women empowerment is actually being made.

The bottom line, however, remains that till such time the legislature does not define 'relationship in the nature of marriage', the problem of interpreting it is going to haunt the Supreme Court.

From a judicial perspective, it is critical to focus on procedural equality and feminist writing of judgments. Focusing on violence and protecting the rights of the battered women will contribute significantly to challenging the traditional stereotypes that delegitimize the experiences of women. This will help 'ungender' the Indian Penal Code and empower the voices of women who are systematically excluded.

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