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# Domestic Violence: Curbing Abuse of Women at Safest Place

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## ABSTRACT

*Women have been subject of different forms of violence from time immemorial. Domestic violence is one of the extreme forms of abuse committed within family which is considered to be a safest place for any human. The United National Committee on Convention on Elimination of All Forms of Discrimination against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. Indian Constitution has made a number of provisions for protecting the rights and status of women. After briefly discussing the measures under Convention on the Elimination of All Forms of Discrimination against Women and Constitution of India this paper focuses on remedy provided under Protection of Women from Domestic Violence Act, 2005. The prime object of this Act is to protect women from domestic violence. This Act is different from the earlier legislation, as it not only includes physical or sexual abuse but also verbal or emotional abuses, which were not taken into consideration by the earlier laws.*

*This paper also focuses that in order to render speedy and effective remedy to the victim of Domestic Violence there shall be a effective implementation of this Act. There is an immediate need to resist and report of abuse of Domestic Violence. The courts should not be reluctant in passing the orders within the prescribed time limit.*

## I. INTRODUCTION

*Statistically, it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur.*

- **Sidney Brandon**

In India during the Vedic period, women enjoyed a fair amount of freedom and equality. The Vedic period can best be termed as the period of feminine glory. Women participated in all spheres like men. There is a Shloka (verse) in the Sanskrit language which represents the position of women which is as follows “*yatra naaryastu puujyante ramante tatra devataah*

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*/yatraitaastu na puujyante sarvaastatraaphalaah kriyaa*” which means, where a woman is respected, the place becomes God's abode, by God's abode, we mean, divine qualities, good deeds, peace and harmony. However, if this is not done, then all the actions turn out to be fruitless. In the Post-Vedic period, the status of women suffered a setback when various restrictions were put on woman's rights and privileges. The birth of a daughter now become a source of grief for a family. The extracts from Ramcharitamanas of Tulsidas like *‘Dhol, Gauwnaar, Shudra, Pashu aur Nari; Sakal Tadan ka Adhikari’* [drums, uncivilized illiterates, lower castes, animals and women are all fit to be beaten] is a reflection of the history of women’s declining status. In the Medieval period with invasions of India by Alexander and the Huns, the position of women was further degraded. Social evils like sati, child marriage, and female infanticide arose.<sup>2</sup> In short, it is always the women who is subject to inequality and looked down as an inferior sex. During the British period, various reformers played a great role in curbing such evil practices against women.

In contemporary India, our Constitution has made several provisions for protecting the rights and status of women. The Preamble of the Constitution provides to all citizens equality of status and of opportunity as well as justice social, economic and political. Article 14<sup>3</sup> of the Constitution ensures equality before the law to all persons within the territory of India. Article 15<sup>4</sup> prohibits discrimination on the ground of religion, race, caste, sex, and place of birth or any of them. Article 51-A (e) in Part IV-A provides a fundamental duty that it is the duty of every citizen to renounce practices derogatory to the dignity of women. Yet even after having so many provisions for the upliftment of the status of women, the women folk in India have been the subject of different forms of violence.

The equality of status guaranteed by the Constitution is only a mirage to millions of women who faced various kinds of violence within their homes. Violence is also known as abuse and include any sort of physical aggression or misbehave. One of such violence is domestic violence, the term ‘domestic’ includes violence by an intimate partner and by other family members, wherever this violence takes place and in whatever form. Domestic violence is not a new concept it was there in all the periods. Domestic violence is an extreme form of abuse, committed within the four walls of the family which is considered to be the safest place for any individual. The family which was perceived as an arena of love, affection, gentleness and center of solidarity and warmth i.e. an institution from where any person expects utmost care,

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<sup>2</sup> MAMTA RAO, LAW RELATING TO WOMEN AND CHILDREN, 28(Eastern Book Company, Lucknow,3 ed., 2012).

<sup>3</sup>INDIA CONST. Art.14.

<sup>4</sup>INDIA CONST.art.15, clause 1

has now become a center of exploitation. A house where a woman is unsafe is not a home. Domestic violence causes far more pain than the visible marks of bruises and scars. It is devastating to be abused by someone from whom love and care is expected. This violence can take the form of physical assault, psychological abuse, social abuse, financial abuse, or sexual assault.

## **II. INTERNATIONAL COMMITMENTS OF UNITED NATIONS TO ELIMINATE DOMESTIC VIOLENCE**

At the International level, various measures have been taken to deal with the problem of domestic violence. According to the United Nations, domestic violence is said to be an act which bluntly strips women of their most basic human rights including the right to safety in their homes. After the inception, the UN moved towards the advancement of women and the four following phases represents the same. In the first period, from 1945 to 1962,<sup>5</sup> the focus was on securing equality. The adoption of the Universal Declaration of Human Rights on 10 December 1948 is a significant example of this. Domestic violence is a violation of rights provided under UDHR. Article 2 of UDHR guarantees everyone all rights and freedoms stated in this declaration without distinction of sex. Article 3 guarantees the right to life, liberty and security. Article 5 guarantees the right not to be subjected to torture or cruel, inhuman and degrading treatment and punishment.

Any sort of discrimination including domestic violence against women violates the principle of equality of rights, therefore, during the second period from 1963 to 1975 the U.N. Assembly on November 7, 1967 adopted a Declaration on the Elimination of Discrimination against Women which acted as a catalyst in order to recognize the right of equality. The third phase from 1976-85 coincided with the UN decade for women.

In order to carry out the precepts outlined in Declaration, a Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by General Assembly on December 18, 1979 which is an International Bill of Human Rights for Women. Article 2 of this convention makes it obligatory for the state parties to condemn discrimination against women in all its forms by all appropriate means. CEDAW's 12<sup>th</sup> general recommendation required 'the States parties to act to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life. The General Assembly of United Nations on 20th December 1993 adopted the Declaration on the Elimination of Violence against Women which is the first international where Article 1 the definition of the

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<sup>5</sup>MAMTA RAO, LAW RELATING TO WOMEN AND CHILDREN, 40(Eastern Book Company, Lucknow, 3 ed., 2012).

term "violence against women". Under Article 2 clause (a) violence against women also encompasses physical, sexual and psychological violence occurring in the family, including battery, 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. In the current fourth phase, from 1986 till date, the UN and its institutions have been strengthened, and the support for the rights of women is the mainstream efforts of all the UN agencies.

### III. LEGISLATING DOMESTIC VIOLENCE IN INDIA

In order to fill the existing gap the Protection of Women from Domestic Violence Act, 2005 was enacted. It came into force on 26 October 2006, over a year after it was passed by Parliament. This Act is intended to provide for more effective protection of the rights of women, guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and other incidental matters.<sup>6</sup> Before the enactment of this Act, there was no express recognition of domestic violence in any law. In fact, the entire concept of domestic violence was restricted to cruelty and that too only to a married woman. It did not cover within its ambit the aggrieved sisters, mother, daughter or unmarried women. The need was felt to recognize domestic violence as a violation of the civil right and to provide immediate relief for its infringement with an aim to save the family and the institution of marriage. The present enactment within its ambit includes domestic violence within any relationship, thereby challenging the traditional treatment of the abuse of women.

#### Striking Features

##### 1. COMPREHENSIVE DEFINITION OF DOMESTIC VIOLENCE

The Act provides a broad definition of domestic violence. *Section 3*<sup>7</sup> defines domestic violence includes any act or conduct or omission, or commission of respondent

- a) harms or injures, or endangers the health, safety, life, limb or well-being, whether mental or physical of the aggrieved person or tends to do so
- b) harasses with a view to coerce her or any related person with an unlawful demand for any dowry
- c) threatening the aggrieved person or any related person by conduct mentioned in above clauses

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<sup>6</sup> The Protection of Women from Domestic Violence Act, 2005 No.43 Act of Parliament, 2005 came into enforcement on 26 October 2006

<sup>7</sup> Section 3, The Protection of Women from Domestic Violence Act, 2005 No.43 Act of Parliament, 2005.

- d) otherwise injures or causes harm whether mental or physical to the aggrieved person.

It includes:

- i. Physical abuse means any act which causes bodily pain, harm or danger to life, limb, or health and includes assault, criminal intimidation, and criminal force.
- ii. Sexual abuse means any act of sexual nature which violates the dignity of a human being.
- iii. Verbal and emotional abuse insults, ridicule, humiliation, name-calling and specially for not having a male child and repeated threats of physical pain to any person in whom the aggrieved person is interested.
- iv. Economic abuse includes deprivation of all or any economic or financial resources to which aggrieved person is entitled under any law or custom or disposal of household effects or prohibition or restriction to continued access to resources or facilities to which aggrieved person is entitled.

## 2. SPECIFICALLY, WOMEN ORIENTED

Only women are entitled to the protection under this Act, *section 2(a)*<sup>8</sup> defines aggrieved person “*aggrieved person*” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. In the category of aggrieved women, a female child is also included. A female child can file a complaint under this Act, but such a complaint should be on her behalf by somebody who is an adult or the protection officer.

## 3. PROVISION FOR APPOINTMENT OF PROTECTION OFFICER

*Section 8* provides for the appointment of protection officers. *Section 9* defines various duties and functions of protection officer which provides for assistance to the aggrieved person, assistance to aggrieved person making Domestic Incident Reports (DIRs) and forwarding copies to police and service providers, making application for protection orders, ensuring legal aid, maintaining a list of service providers, shelter homes, medical facilities and counsellors, making shelter facilities These POs acts as a bridge between the court and the victims of the domestic violence.

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<sup>8</sup>Section 2(a), The Protection of Women from Domestic Violence Act, 2005 No.43 Act of Parliament, 2005.

#### 4. RECOGNITION TO LIVE IN RELATIONSHIPS

*Section 2(f)*<sup>9</sup> covers those women who are or have been in a relationship with the respondent 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 or are family members living together as a joint family. It simply means that women who are not married but living in a relationship which is in the nature of marriage also entitled to protection under this Act.

#### 5. RECOGNITION OF SEXUAL VIOLENCE

This Act recognizes sexual violence within the confines of marriage. Marital rape, or sexual intercourse by a husband without the wife's express consent, is an exception under Indian Penal Code. But this Act can come to rescue of these women through protection orders.

#### 6. EXPEDITIOUS IN NATURE

*Section 12(5)* provides that the Magistrate shall endeavour to dispose of every application made under this Act within a period of 60 days from the date of its first hearing so that there can be a speedy disposal of cases.

#### 7. IN-CAMERA PROCEEDINGS:

*Section 16* provides that if magistrate thinks that the circumstance of the case so requires or if either party to the proceedings so desires may conduct the proceedings in camera.

#### 8. CONCEPT OF SERVICE PROVIDER

*Section 10* provides for the concept of a service provider for the purpose of enabling any voluntary organization to more actively and efficiently help the woman in distress. The Government recognizes certain organizations to be service providers for the purpose of the Act empowering them to recognize the occurrence of any domestic violence in the vicinity, record the event and report the matter to the nearby Protection Officer and the Magistrate. The role of these service providers is to provide assistance to the woman with respect to medical examination, legal aid, safe shelter, etc.

#### 9. MAJOR RELIEFS AVAILABLE UNDER THE ACT

**PROTECTION ORDERS:** *Section 18* provides for protection order that if the magistrate is prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from

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<sup>9</sup>Section 2(f), The Protection of Women from Domestic Violence Act, 2005 No.43 Act of Parliament, 2005.

committing, aiding or abetting the commission of any act of domestic violence or entering the place of employment or school of aggrieved person, from communicating, alienating any assets, causing violence to the dependents or relatives or any person who provides assistance to aggrieved person, committing any other act as specified in the protection order.

**RESIDENCE ORDERS:** Under *Section 19* of the Act, when a Magistrate is convinced that domestic violence has taken place, then he can pass a residence order. The respondent may be restrained from dispossessing or disturbing the possession of the aggrieved person even if the respondent has no equitable or legal interest in the shared household. The respondent may be removed from the shared household but this order cannot be passed against a woman.

**MONETARY RELIEFS:** Under *Section 20* of the Act, the respondent may be directed to meet the expenses incurred and losses suffered by the aggrieved party and the child of the aggrieved party due to domestic violence. Such relief may include the loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from the control of the aggrieved party, and maintenance for her and her children. *Section 20(2)* states that the monetary relief granted must be fair, adequate, just, reasonable and consistent with the standard of living of the aggrieved person.

**CUSTODY ORDERS:** Under *section 21*, the court may grant the aggrieved person the temporary custody of the child or children, and an application may be made regarding the arrangement of visits by the respondent.

**COMPENSATION ORDERS:** Under *Section 22* of the Act, the Magistrate may direct the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed.

#### 10. PENALTIES UNDER THE ACT

The Act also imposes serious penalties including imprisonment of the respondent in case of violation of the orders passed by the Magistrate under the Act. As per *Section 31 of the Act, a breach of the protection order or an interim order shall be punishable with imprisonment which may extend to 1 year or with fine, which may extend to 20,000/- or with both.*

*Section 32* provides that the *offence under section 31 (1) of the Act shall be cognizable and non-bailable.*

#### ✓ IS THIS ACT CAPABLE TO ELIMINATE DOMESTIC VIOLENCE?

The National Crime Records Bureau introduced a category for offences under PWDVA in 2014, where 426 cases were reported. In 2015, this number increased to 461. A total of 461

cases were registered under this Act during 2015, showing an increase of 8.2% (from 426 cases in 2014 to 461 cases in 2015) during 2015 over 2014. Bihar (161 cases) followed by Kerala (132 cases), Madhya Pradesh (91 cases). Himachal Pradesh (15 cases), Rajasthan (14 cases) and Haryana (11 cases).<sup>10</sup>

The International Center for Research on Women (ICRW) in multiple centers in India reported that 85% of men admit they had indulged in violent behaviour against their wives at least once in the last 12 months. 57% of men admitted having sexual abuse with their wives. 32% of men admitted to committing violence on their pregnant wives. The men indulged in violence to establish their power over the weaker sex. Subtle and insidious forms of violence include repeated humiliation, insults, forced isolation, limitations on social mobility, the constant threat of violence and injury, and denial of economic resources.<sup>11</sup>

#### **IV. MAJOR LACUNAE UNDER THE ACT**

##### **1. DISPOSAL OF CASE IS NOT IN PRESCRIBED TIME PERIOD**

The time period provided for disposal of a case is 60 days but in reality, it takes a much longer period for disposal.

##### **2. NO PRESCRIBED TIME LIMIT FOR APPEAL**

If a case goes for an appeal there is no prescribed time limit for its disposal, cases will be subject to the mercy of the long judicial process.

##### **3. WIDE DISCRETIONARY POWER OF MAGISTRATES**

Magistrates have extensive powers under the Act and as many of them are influenced by the patriarchal approach they are reluctant in passing various reliefs to which the aggrieved person is entitled.

##### **4. EXCLUSION OF MALE CHILDREN**

The Act provides protection only to women against domestic violence and brushes aside male children. It is humbly submitted that domestic violence is also aimed at male children and because of their gender they should not be excluded from this Act. The Act is protected under Article 15 of the Indian Constitution, which empowers State to make special laws for women and children, which in itself justifies the extension of the Act to male children as well

##### **5. RELUCTANCE INEFFECTIVE IMPLEMENTATION**

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<sup>10</sup> Jan 15, 2020, 10:am <http://ncrb.gov.in/StatPublications/CII/CII2015/chapters/Chapter%205-15.11.16.pdf>.

<sup>11</sup> ICRW; 2001. The International Centre for Research on Women. Domestic Violence in India II: Exploring Strategies, Promising Dialogue. ICRW Information Bulletin; pp. 1–8, Washington USA

Many State Governments are in the back foot in implementing this Act by not appointing enough protection officers and allocating inadequate budgetary support. Again, there are major disparities in the implementation of this Act in various States. For instance, while Maharashtra appointed 3,687 protection officers, Assam had 27 and Gujarat 25. Andhra Pradesh had an allocation of Rs.100 million for implementation, while other States like Orissa lag far behind. Consequently, in Maharashtra 2,751 cases are filed in between July 2007 and August 2008 while in Orissa only 64 cases were filed in between October 2006 and August 2008<sup>12</sup>.

#### 6. MISUSE OF PROVISIONS

The definition of 'domestic violence' as given under Section 3 of the Act is very exhaustive. One dreads its misuse. The Act is intended to protect the women but now women used it as a weapon to anguish her in-laws which resulted in misuse of such legislation.

### V. IMPORTANT JUDGEMENTS

1. *S.R. Batra v. Smt. Taruna Batra*<sup>13</sup> In this case, the Supreme Court held that under Section 17(1) of the Act wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member.
2. *D. Veluswamy v. D. Patchaiammal*<sup>14</sup> In this case, the Supreme Court prescribed guidelines for a relationship in the nature of marriage and equates them to common law marriages.
3. *Indra Sharma v. V.K.V Sharma*<sup>15</sup> In this case, the Court held that Relationship in the nature of marriage is a very significant element in order to constitute live-in-relationship and this element is sine qua non in order to get protection by a woman under live-in-relationship
4. *Dhannu lal v. Ganeshram*<sup>16</sup> In this case, the Supreme Court held that a man and woman cohabiting for a long time would be presumed to be married but the presumption could be rebutted with strong evidence.
5. *Lalita Toppo v. State of Jharkhand & anr.*<sup>17</sup> In this recent case, the Supreme Court has categorically held that maintenance can be claimed under the provisions of the Act even if the

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<sup>12</sup> 3 Jan,2020,11:00 am domestic violence/infochange India news/ features development news India- Report on India's domestic violence law highlights major loopholes.html.

<sup>13</sup>S.R. Batra v. Smt. Taruna Batra 2007 (1) RCR (CrI) 403 (SC)

<sup>14</sup>D. Veluswamy v. D. Patchaiammal [(1991) 2 SCC 375]

<sup>15</sup> Indra Sharma v. V.K.V Sharma, 2014 (1). RCR (CrI).

<sup>16</sup> Dhannu lal v. Ganeshram AIR 2015 SC 2382(India)

<sup>17</sup>Lalita Toppo v. State of Jharkhand (2005) 3 SCC 636

claimant is not a legally wedded wife and therefore not entitled to claim of maintenance under Section 125 of Code of Criminal Procedure.

6. *Krishna Bhattacharjee v. Sarathi Choudhury and Another*<sup>18</sup> The Apex Court while elucidating on the duty of courts while deciding complaints under the Domestic Violence Act stated that: before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

7. *Hiral P. Harsora v. Kusum Narottamdas Harsora*,<sup>19</sup> The Supreme Court while striking down a portion of Section 2(a) of the Act (defining “aggrieved person”) on the ground that it is violative of Article 14 of the Constitution of India and the phrase “adult male” as appearing in Section 2(q) of the Act stood deleted, any person, whether male or female, aggrieved and alleging violation of the provisions of the Act could invoke the provisions under the Act. In that view of the matter, the petitioner’s complaint could not have been trashed on the ground that the Act does not contemplate provision for men and it could only be in respect of women.

## VI. CONCLUSION AND SUGGESTION

*Half of the Indian population are...women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.*

Madhu Kishwar v. State of Bihar

Women who once considered to be an epitome of Shakti has been subject to violence within the family. The Protection of Women from Domestic Violence Act, 2005 has a multi-pronged approach to campaign against the menace of domestic violence, This Act covers a variety of provisions to safeguard rights of women and to provide them violence-free environment. The Domestic Violence Act is specifically meant to address the issue of domestic violence by providing for civil relief to Indian womenfolk facing violation in intimate relationships. The main advantage of the Act is its secular outlook protecting women regardless of the religion of the parties. It also protects women irrespective of their age, caste and marital status. The

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<sup>18</sup> *Krishna Bhattacharjee v. Sarathi Choudhury and Another*, 2015SC 1229

<sup>19</sup> *Hiral P. Harsora v. Kusum Narottamdas Harsora*, 2016(10) SCC 165

Act has been enacted with a view to eliminate the atrocities over the women that occurred in the domain of family itself, but there are chances of misuse of this Act and this will definitely affect the effective implementation of the Act. There is a dire need to resist and report the menace of domestic violence. The Act is failed to achieve its ultimate goal but it does not simply mean that Act is ineffective but what required is the proper implementation of this Act. The Court should not be reluctant in passing the orders within the prescribed time period. Enactment of law does not provide the solution in itself, the endeavour should be made to make the women powerful by making them aware of their rights so that the main purpose of the Act can be achieved. There cannot be any perceptible change in woman's status unless there is a mobilization of public awareness against the malpractices of domestic violence. In the illuminating words of Swami Vivekananda 'just as a bird could not fly with one wing only, a nation would not march forward if the woman is left behind' so there should be efforts to protect them from such atrocities.

**What can be done to eliminate this menace**

1. There should be a sensitization and awareness training should be given to all the functionaries under the Act.
2. A periodic review of the activities of the functionaries under the Act should be conducted at regular intervals to have check over them.
3. There should be a prescribed time limit for disposal of the appeal.

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