

# Journal of Multi-Disciplinary Legal Research

## **Domestic Violence and Misuse of law in India – Issues and Challenges**

**Veena Goyal**

Sr. No	Topic	Pg. No
1.	INTRODUCTION	4
2.	MEANING OF DOMESTIC VIOLENCE	5
3.	PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 - A STUDY	6
4.	LEGAL ISSUES	7
5.	LEGAL CHALLENGES	8
6.	SUGGESTIONS	10
7.	CONCLUSION	12
8.	REFERENCES	13

## **Domestic Violence and Misuse of Law in India: Issues and Challenges**

### **Abstract**

The crime of domestic violence can be traced back to time immemorial. Women have always been subjugated, tortured, looked down upon, considered weaker sex. It is widely prevalent but has remained largely invisible in the public domain. Violence can be physical as well as mental and has different manifestations. The Universal Declaration of Human Rights 1948, provides that all human beings are born free and equal in dignity and rights and everyone is entitled to all rights and freedoms set forth in the Declarations without discrimination of any kind, such as sex. Domestic violence is undoubtedly a human rights issue and serious deterrent to development.

## INTRODUCTION

Domestic Violence "Statistically it is safer to be on the 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 like to occur"- Sidney Brandon.

A central theme for the women's movement all over the world has been violence against women both in their homes and outside. This is directly linked to their unequal position in a patriarchal society cutting across both class and community. The first categories of violence focussed on were rape and murder of young brides for dowry. It was realised that there were other more brutal expressions of the wide spread ephemeron of domestic violence which included wife beating, cruelty, torture and humiliation. This realisation made women's groups demand that wife abuse be treated as an offence too. Domestic violence manifests as verbal, physical or psychological abuse often in forms more subtle than the violence in society. Familiarity with the perpetrator and filial values deter resistance, "closed doors" alienate the victim from remedies, resulting in a convenient status quo where the victim reconciles and society can connive. The reconciliation with subjugation, in the wake of limiting social circumstances, violates the care of human rights liberty and human dignity.

The hopelessness to their situation harms the women more than the violence itself, as it erodes their personality and faith in their own people. The Convention on Elimination of All Forms of Discrimination Against Women [CEDAW] is the main foundation of rights in respect of women to which 189 countries including India are members till date. The Convention inter alia recognised that the discrimination against women hampers economic growth and detrimentally hampers the society at large.

Earlier legislation in India have given the women the powers in respective fields but particularly, so far that the torture cruelty and harassment are concerned the provisions of sections 498- A, 304- B of Indian Penal Code and the Dowry Prohibition Act of 1961 are basic provisions. The law itself becomes failure thought not fully and it became necessary for enacting the Special Legislations. Perhaps these grounds national and international bounties

compelled the Indian Government to enact the Protecting of Women from Domestic Violence Act of 2005 for making restrictive provisions for errant family members for prohibiting harassment or any violence towards any women or girls. International Perspective Article 2 of the Convention on Elimination of Discrimination Against Women, 1979 States that "violence against Women", "shall be understood to encompass:"

(a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children with household, down related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation

(b) physical, sexual and psychological violence occurring with the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution

(c) physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs. The Vienna Accord of 1994 and the Beijing Declaration and Platform for Action 1995 have acknowledged that domestic violence is undoubtedly a human right issue and serious deterrent to development. The United Nations Committee on Convention of 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. As was pointed in Davis v Johnson:" "Thus it appears that domestic hooliganism and violence against married women what has come to be called wife battering occur all over the world on a significant and disturbing scale." "Domestic violence is part of the wider issue of gender violence, which the majority of the time is violence against women, a phenomenon that affects women of all races and social conditions. In Mexico, and in many other countries domestic violence is considered to be a private matter. In all Latin American and Carribean Countries, many men consider themselves to be superior to women and believe that women can be subject to the whims of men.

The Crime Survey for England and Wales (CSEW) estimates of domestic abuse are based on a relatively broad definition covering male and female victims of partner or family non-physical abuse threats, force, sexual assault or stalking. The Domestic Violence, crime and Victims Act 2004 is an Act of the Parliament of the United Kingdom. It is concerned with criminal justice and concentrates upon legal protection and assistance to victims of crime, particularly domestic violence. It also expands the provision for trials without a jury brings in new rules for trials for causing the death of a child or vulnerable adult, and permits bailiffs to use force to enter homes. Domestic Violence in the US is a form of violence expressed by one partner or partners against another partner or partners in the context of an intimate relationship in the US. It is recognised as an important social problem by governmental and non-governmental agencies and various violence against Women Acts have been passed by the US Congress in an attempt to stem this tide.

## MEANING OF DOMESTIC VIOLENCE

Violence is an act of aggression that crosses the boundary of another person's autonomy and identity. It is a coercive instrument to assert one's will over another to prove or feed a sense of power. Terms "Domestic Violence against women" means any act or conduct which has potential to injure or hurt women physically, mentally, emotionally, socially and also spiritually within the four walls of the house, however, such an act or conduct is done usually not by strangers. "Ordinarily, the expression" "domestic violence" "connotes sexual abuse or a threat of sexual abuse of women but there are several other cases of abuse known to men when women are targeted to physical, mental, verbal and economic abuses certainly. These acts or conducts would come within the scope of the expression" "domestic violence".<sup>12</sup>

The definition of Domestic Violence as given under Section-3 of the Domestic Violence Act, 2005. – "For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it- 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 and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or • Harasses, harms, injures or endangers the aggrieved person with a view to coercing her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or • Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or Otherwise, injuries or cause harm, whether physical or mental. To the aggrieved person."

## PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 - A STUDY

The Protection of Women from Domestic Violence Bill, 2005 having been passed by the Lok Sabha on 24th August 2005 and by the Rajya Sabha on 29th August 2005, received the assent of the President of India on 13th September 2005 and came on the statute book as the protection of Women from Domestic Violence Act, 2005 (43 of 2005). No Doubt India has Women Specified and Women related legislation both Constitutional and Legal. Particularly Section 304B and 498A of IPC, and Provisions of CPPC and Indian Evidence Act along with Articles 14, 21 and 39 (a) to protect the women from different violence. The Act of 2005 specifically its Preamble states that this Act is 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 for matters connected therewith or incidental thereto.

Another important feature of this Act is the woman's right to secure housing. The Act provides for the woman's right to reside in a matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by residence order which is passed by a court and cannot be passed against a woman. [Section 17] In certain cases if she has to be provided alternate accommodation, maintenance was to be paid by her husband. Certain Provisions of the Protection of Women from Domestic Violence Act, 2005 came up

for interpretation before the Supreme Court in *SR Batra v. Taruna Batra* (2006). Taruna Batra was married to Amit Batra, son of appellants. After Marriage respondent, Taruna Batra started living with her Husband in the house of appellants which belonged to her mother-in-law.

After Taruna Batra's husband filed an FIR, she filed an FIR Under Section 406, 498-A, 506 and 34 IPC and got the family of her husband including him arrested who were granted bail after 3 days. She shifted to her parent's residence from where she then tried to enter the house, which was of her mother-in-law, failing which she along with her parents forcibly broke open the door of the house. The appellants alleged that they were terrorised by their daughter-in-law. Meanwhile, a mandatory injunction had been filed by her to enable her to enter the house. The trial judge granted a temporary injunction restraining appellants from interfering with the possession of Taruna Batra. When an appeal was filed against the order of the trial court, senior civil judge held that the house was not the matrimonial home and, therefore she had no right to properties other than that of her husband. Aggrieved Taruna Batra filed a petition Under Section 227 wherein the High Court held that she was entitled to continue to reside since it was her matrimonial home.

Section 8 of the Protection of Women from Domestic Violence Act, 2005 provides for the setting up and functions of Protection Officers. These Officers to be appointed by the State Government will be under the jurisdiction and control of the court and are responsible for monitoring the cases of domestic abuse. Section 20 of this Act states that Magistrate may direct the respondent to pay monetary relief to meet expenses or losses of the aggrieved person. Section 22 of this Act states that Magistrate can make the respondent pay compensation and damages for injuries including mental torture and emotional distress caused by the acts of domestic violence. Under Section 23 of this Act, the Magistrate may grant interim orders. He may also pass ex-parte orders on the basis of affidavits given by the aggrieved person. Under Section 29 of the Domestic Violence Act 2005, the appeal can be made to Sessions Court within 30 days from the order of concerned Magistrate. According to Section 31 of this Act, the imprisonment can be made up to one year or a fine up to rupees twenty thousand or both for breach of protection order by the opposite party. The Protection Officer can be prosecuted up to one-year imprisonment or with a fine up to rupees Twenty thousand or both can be imposed for failure of his duties. Other than the Protection of Women from Domestic Violence Act, 2005, an aggrieved woman may seek remedy under civil law and also under matrimonial laws like the Hindu Marriage Act, 1955, the Special Marriage Act 1954, the Dissolution of Muslim Marriage Act, 1939 and all enactments that recognize cruelty as valid ground for divorce. Similarly, in Criminal Law a woman has the option to initiate criminal action against her abuser. There are certain provisions under the IPC, 1860 which deals with offence in form of domestic violence against woman like Dowry death, (Section 304 – B), Hurt and Grievous hurt (Sections 319 and 320), Matrimonial cruelty Under Section 498 - A forceful termination of pregnancy and abetment of suicide amounts to violence. Dowry Prohibition Act, 1961 is a special law enacted to deal with the social evil of dowry viz. demand for property or valuable security having an inextricable link with the

marriage. In such circumstances, the married woman is often subjected to domestic violence at her matrimonial home.

## LEGAL ISSUES

Though the Domestic Violence Act 2005 guarantees justice to women who suffered domestic violence, the act hasn't been implemented properly and there is a dire need to raise awareness among people, especially in rural India. In a country, where Constitution guarantees equal rights to women and men, it is a shame that women still have to struggle even for small things. A simple example of this is the domestic violence against women, but as far as the justice is concerned, victims are less aware of the provisions of this Act. As per the Act, the victim can directly approach the Protection Officer for justice but it is found that very less number of persons have directly approached Protection Officer in domestic violence cases. Most of the time victims approach the Police and then the Protection Officer about the case. Protection Officers are lenient about their work. They handle the cases just as a work and not to show their performance to help someone. As per the Law, the result should come up within 90 days but due to the leniency of officials, most of the cases are not solved during this time period.

Besides the above-mentioned issues, the law has been misused by the woman against innocent men and is causing a sheer injustice in the eyes of law. The Domestic Violence Act assumes that only women are victims. As per this law, only a woman can file a complaint against a man. A man has no rights under this law. According to Section 32(2) Domestic Violence Act, 2005, the court concludes that the testimony of the woman is always true and there will be no need for any supportive evidence to prove that an offence has been committed. This is very dangerous for innocent men since they are left with absolutely no remedy against the woman who can any time lodge false complaints due to certain grudge or revenge against them. Secondly, if a woman lodges complaint that there was a verbal and emotional abuse by her husband, then she needs to prove nothing. According to Section 18 of the Domestic Violence Act, a Magistrate can take measures to protect the woman from any acts of violence that are even lightly to take place in the future. This means that the woman get an upper hand in protection and the person against whom the complaint is made can be punished even though he may not have committed any act of violence. This Act also says that the information regarding an Act of domestic violence does not necessarily lodged by the woman herself but can be lodged by any person who has reason to believe that such an Act has taken place or is being so committed. That is even the neighbours and relatives can take an initiative on behalf of the victim. This is a sheer injustice because anyone can lodge a complaint on behalf of the woman without any authentic prove or evidence. Moreover, the definition of domestic violence is not well defined, an insult is also considered as a domestic violence.

## LEGAL CHALLENGES

Besides the limitations of the laws relating to domestic violence in India, there are positive aspects also. The legislation on domestic violence has created awareness among women and society. No longer women have to stay in the same place where they are ill-treated. The Protection of Women from Domestic Violence, 2005 has defined "aggrieved person" under section 2(a) – "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". It is a comprehensive enactment. It covers those women who are or have been in relations with the abusers where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adaption. In addition, relationship with family members living together as a joint family is also included. Even those women who are sisters, widows, mothers, or single woman living with the abuser are entitled to legal protection under the present enactment. 17 It includes a female relative of the male partner of the respondent, and, thus, a mother-in-law being an "aggrieved person" can file a complaint against the daughter in law. This enactment so includes females in live-in relationships. In *Chanmuniya v. Virendra Kumar Singh Kushwaha*.<sup>18</sup> The question was regarding maintenances to be paid in cases of live-in relationships, presumed marriage, de facto marriage and cohabitation cases, and interpretation of the word "wife". The Court also raised a question on the entitlement of such women to maintenance. The opinion expressed was divergent in the interpretation of the word "wife" in Section 125 CrPC and, therefore, the matter was referred to a larger bench in the light of the protection of women from the Domestic Violence act, 2005.

The Act gave a wide interpretation of the words "domestic abuse", and "domestic relationship", which included the live-in relationships and also entitled women to reliefs under it. In the instant case, the court opined that broad and expansive interpretation should be given to the term "wife" to include even those cases where the woman and men are living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a pre-condition for maintenance under Section 125 CrPC. According to Domestic Violence Act 2005, 2(q) of the Act defines the term respondent means any adult male person who is, or has been in a domestic relationship with the aggrieved person has to sort any relief under this act. Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

In the appeal of *Sandhya, Manoj Wankhade v Manoj Bhimrao Wankhade* (2011), the question wherein was whether the relative of the husband Under Section 2(g) of the protection of Women from Domestic Violence Act 2005 includes 'females'? It was held by the Supreme Court that legislature never intended to exclude the female relatives from the ambit of complaint that could be made under the protection of women from domestic violence act. Though in the proviso to Section 2(q), the word "female" is not used restricted meaning cannot be given to the expression "relatives" "nor it has been made to specify males only. In a recent landmark verdict, *Hiral Harsora v. Kusum Harsora* (2016) the Supreme Court has widened the scope of the Domestic Violence Act by ordering the deletion



of the words" "Adult male" "from it, paving the way for prosecution of women and even non-adults for subjecting a woman relative to violence and harassment. The apex court has ordered striking down of the two words from 2(g) of the domestic violence act 2005.

The main challenging factor to the laws relating to domestic violence is that in the recent year it has witnessed ample cases that women are taking undue advantage of the provisions created for their benefit to prosecute their husband in-laws in false cases. According to Section 498-A of the Indian Penal Code, 1860 – Whoever being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine. The Section 498A of IPC and 113A of Indian Evidence Act has been inserted by the Criminal Law (Amendment) Act, 1983. The purpose of this section is to ventilate the atrocities of newly married brides due to dowry or other such similar demands from there husband or in-laws. The aforesaid provision was intended the cure the existing evil in the society. Naturally, the victims of such domestic violence being woman could not take recourse to public authorities to ventilate their grievances. After all the social conditions family traditions etc prevented the brides to take any recourse to public authorities. Some women tend to misuse 498A to harass and get the husband and in-laws convicted a violation of this section, its goals and aims are rising with the frivolous false allegations against husbands with the purpose of getting rid of them or simply hurting the family. The Abuse of this Section is rapidly increasing and the women often well-educated know that this Section is both cognizable and non-bailable and impromptu works on the complaint of the woman placing the man behind bars. Like in the case of Savitri Devi v. Ramesh Chandra & Ors (2003), the court held clearly that there were a misuse and exploitation of the provisions to such an extent that it was hitting at the foundation of marriage itself and proof to be not so good for the health of society at large. The court believed that authority and lawmakers had to review the situation and legal provisions to prevent such from taking place. The Domestic Violence Act, 2005 is not exhaustive, it has loopholes. Only women are protected, what about men? A man can also be subjected to domestic violence. Old and infirm father- in -law can also be a victim of domestic violence in hands of his daughter- in- law. One can be certain that there is something sinister about a law when it intimidates and instils fear in innocent people when a person who had not committed any crime begins to fear punishment under the provisions of a law it will certainly create panic amidst men.

## SUGGESTIONS

- The law at present is inadequate to tackle the problem of domestic violence. The Law should offer equal protection to both men and women so that women cannot misuse the law.
- Widespread about the Domestic awareness Violence Act has to be created by the government and NGOS so that rural people become aware of this act and women belonging to all sections of society come forward to embrace the remedy provided by this act. · The Court or Legal procedure should be easy for the victims and proper protection should be provided to them by the authority.

- Justice should be delivered in the mentioned time period (60days)
- Majority of Protection Officers are male but victims are females, hence Government should recruit female protection officers for the benefit of female victims.
- Proper implementation of the act and quick decision making should be done during solving a case.
- Medical facilities and shelter homes should be provided to women who receive injuries due to domestic violence. There should be proper security and privacy for aggrieved persons for shelter homes so that aggrieved person could feel safe and homely there.

Journal of Multi-Disciplinary Legal Research

## CONCLUSION

The Hallmark of any matured and civilized society is Gender Justice. In this context, the Domestic Violence Act 2005 has enlarged the spear of protection given to women in their domestic relationship. The act covers even verbal abuse and threat, Physical and actual violence is not required to be proved by woman complainant. Post this legal provision, women feels in a way empowered to fight against any sort of slave treatment mated to them. There seem to problems with the actual implementations of the regulations. In many districts instead of employing Protection Officers, existing Government officials are given this responsibility and are not equipped to deal with the same. Therefore they do not fulfil most of the duties specified in the Act, because of this victims are not able to make full use of the law for their benefit. Similarly, with regard to shelter homes, the act specified that there should be as many as deemed enough. However, research into actual implementation has shown that many districts do not have even one shelter home.

Most cases of Domestic Violence are medico-legal. Medical aid is usually necessary when the injured woman seeks for help. In cases of serious injuries as a result of domestic violence, doctors are usually the first person from whom medical assistance is sought. In almost all cases of domestic violence, a doctor is a competent person to find out whether an injury is inflicted to another person or self-inflicted or accidental. It is to be made clear that counselling by a doctor to injured woman who is a victim of domestic violence could be very fruitful and valuable. Though the act has few defects and the implementations leave a lot to be desired, the policy by itself seems to be quite practical.

### References

1. Sydney Brandon in M.Borland (Ed.), Violence in family (1976) I.
2. Mamta Rao, "Law relating to Women and Children", Eastern Book Company, 2012, P.209
3. P.K.Das "Protection of Women from Domestic Violence Act and rules", Universal Law Publishing Co Pvt. Ltd, 2009. P.3
4. Dr. S.C. Tripathi & Vibha Arora, "Law relating to Women and Children", Central Law Publications, 2015.
5. (2007) 3 SCC 169: (2007) 2 SCC (Cri) 56
6. (2011) 1 SCC 141: (2011) 2 sCC(Cri) 666: (2011) 1 SCC (civ) 53.
7. (2011) 3 SCC 650: (2011) 2 SCC (Cri) 21