

## **DOMESTIC VIOLENCE AGAINST WOMEN INDIAN PERSPECTIVE**

Written by *Sanjeev Kumar\** & *Kalpna Devi\*\**

\* LLM Student, Career Point University Hamirpur, Himachal Pradesh

\*\* LLM Student, RIMT University, Gobindgarh, Punjab

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### **ABSTRACT**

A women who has been foundation stone of family and society in general who gives birth to life , nurtures life, shapes it, and strengthen it, who is transmitter of tradition and an instrument through which culture is preserved and transmitted from generation to generation, the greatest tragedy in our country is that grave injustice is done to her. She is subjected to domestic violence irrespective of her age, race, and caste, social and economic and political status. Her vulnerability in various forms is the common phenomenon in Indian society. The silent sufferings of a women is making her easy prey to the male domination which is supported by prevalent patriarchy. The authoritative, autocratic nature of male member in society and victimization of female makes the situation worst. Almost every home in India must be suffering from some kind of domestic violence where women either as a daughter, daughter-in-law, or as a wife are abused physically, mentally, verbally economically. Men and women both are equal in human right. Women are discriminated in this male dominating society. As a result most of women are unable to understand their own right and freedom. Thus domestic violence not only hampers women but also impedes the country growth. This paper deals with domestic violence against women in India, its various forms, its causes and solution for domestic violence are also discussed in this paper.

## **INTRODUCTION**

Domestic violence is as old as recorded history which has been reported in virtually every society, every civilization. Discrimination and oppression leading to physical, mental or emotional violence have been accepted as a part of every patriarchal society. Except recent reference is found, domestic violence has been both socially and legally acceptable. Some important event, laws, codes, provide historical context, within which conceptualization of domestic violence becomes crystal clear. Two major elements combined to seal the status of women are male dominance and projecting women as ‘property’ an object belonging to men and secondly expectations from women as an ideal ‘role model’ suit each other, in such a way as to make her vulnerable and subject to discrimination, oppression and all sorts of victimization and resultantly compel their subordination.

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women...”<sup>1</sup> Domestic violence is physical, sexual or psychological abuse directed towards one’s spouse, partner or other family member with in the household. Domestic violence occurs when a family member, partner or ex-partner attempts to physically or psychologically dominate or harm the other. It occurs in all cultures, people of all races ethnicities and religions can be perpetrators of domestic violence. Violence against women is particularly intimate partner violence and sexual violence against women is the major public health problems and violations of women’s human right. According to 2013 a global review of available data, 35 per cent of women worldwide have experienced either physical and or sexual intimate partner violence or non-partner sexual violence. However, some national violence studies show that up to 70 per cent of women have experienced physical and or sexual violence in their lifetime from an intimate partner.<sup>2</sup>

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<sup>1</sup> UNICEF (2000), *Domestic Violence against Women and Girls, Innocenti Digest* NO. 6, available at <http://www.unicef-irc.org/publications/pdf/digest6e.pdf> (Visited on 15 March, 2019).

<sup>2</sup> Narwadkar, Dr. Pooja P., *Law Relating to Domestic Violence in India* 9, (Hind Law House Publication, 2014).

## **MEANING OF VIOLENCE**

The term violence refers to any physical force for or any damage or injury to person or property.

**Oxford Dictionary defines:** “Violence as behaviour involving physical force intended to hurt, damage or kill someone or something”.<sup>3</sup>

**WHO defines Violence:** "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation".<sup>4</sup>

‘Domestic violence is violent victimization of women within the boundaries of family, usually by men. Domestic violence is in a majority of cases violence against women by the members of house where she resides. It can be the husband, his parents, or siblings or any other resident who has the overt or covert latitude for actions that can cause physical or mental agonies to women...it happens behind closed doors and is most often denied by the very women who has been victim of violence.’<sup>5</sup>

Term “ 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 house, however, such an act or conduct is done usually not by strangers.<sup>6</sup>

## **FORMS OF DOMESTIC VIOLENCE**

### **Physical Abuse:**

- Pushed or shoved you.
- Held you to keep you from leaving.
- Slapped or beaten you.
- Kicked or choked you.

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<sup>3</sup> <http://www.oxforddictionaries.com/definition/english/violence> ( Visited on 19 March, 2019).

<sup>4</sup> World report on violence and health, World Health Organization, 2002.

<sup>5</sup> Jaising Indira, *law of Domestic Violence*, 9-10, (Universal Law Pub. Co. Pvt. Ltd. Delhi, 2001).

<sup>6</sup> *Id* at 10.

- Hit or punched you.
- Thrown objects at you.
- Locked you out of the house.
- Abandoned you in dangerous places.
- Refused to help you when you were sick, injured or pregnant.
- Forced you off the road or driven recklessly.
- Threatened to hurt you with a weapon.<sup>7</sup>

**b) Sexual Abuse:**

- Minimized the importance of your feelings about sex.
- Criticized you sexually.
- Insisted on unwanted or uncomfortable touching.
- Withheld sex and affection.
- Forced sex after physical abuse or when you were sick.
- Raped you.
- Been jealously angry, assuming you would have sex with.
- Anyone insisted that you dress in a more sexual way than you wanted.<sup>8</sup>

**c) Psychological Abuse:** Psychological abuse which includes behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.<sup>9</sup>

**d) Economic Abuse:** Economic abuse includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment, etc.<sup>10</sup>

**e) Emotional Abuse:**

- Continually criticized you called you names or shouted at.
- You insulted or driven away your friends or family.

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<sup>7</sup> Newton C. J. "Domestic Violence: An Overview" FindCounseling.com, Mental Health Journal. February, 2001. Available at <http://www.aets.org/article145.htm> (Visited on 21 March, 2019).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

- Humiliated you in private or public.
- Kept you from working, controlled your money or made all.
- The decisions refused to work or to share money.
- Taken car keys or money from you.
- Regularly threatened to leave or told you to leave.
- Threatened to kidnap the children when the abuser was angry.
- With you abused pets to hurt you.
- Manipulated you with lies and contradictions.<sup>11</sup>

**f) Individual based Violence:** It is found that aged women and girl child particularly vulnerable to domestic violence. The condition of women in the families is undoubtedly still quite precarious. Unmarried girls, unwanted in their father's homes could also experience violence. a) Violence against Girl Child, (Unmarried Women) b) Violence Against Married Women c) Violence Against Aged Women.<sup>12</sup>

## **CAUSES OF DOMESTIC VIOLENCE**

There is no one single factor to account for violence perpetrated against women. Increasingly, research has focused on the inter-relatedness of various factors that should improve our understanding of the problem within different cultural contexts. Several complex and interconnected institutionalized social and cultural factors have kept women particularly vulnerable to the violence directed at them, all of them manifestations of historically unequal power relations between men and women. Factors contributing to these unequal power relations include: socioeconomic forces, the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males, and legislation and cultural sanctions that have traditionally denied women and children an independent legal and social status. Following are the causes which carry on domestic violence: a) Cultural b) Economic c) Legal d) Political.<sup>13</sup>

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<sup>11</sup> Dr. Mrs. Annie John, *Violence Against Women Need To Awaken The Conscience Of Humanity*, 55 (Asia Law House, 2013).

<sup>12</sup> *Ibid.*

<sup>13</sup> UNICEF (2000), *Domestic Violence against Women and Girls*, Innocenti Digest N0. 6, available at <http://www.unicef-irc.org/publications/pdf/digest6e.pdf> (Visited on 22 March, 2019).

## **THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

An Act 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 related with or incidental to. The incident of domestic violence is commonly prevalent but has remained largely invisible in the public domain. At present, where a woman is subjected to cruelty by her husband or his relatives, it is a crime under Section 498A of the Indian Penal Code, 1860. As a result of that, a law is proposed keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to grant for a remedy under the civil law which is intended to protect the women from being sufferers of domestic violence and to prevent the incidence of domestic violence in the society.<sup>14</sup>

“Any act, omission or commission or conduct of the respondent shall constitute domestic violence when 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 coerce 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; or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.<sup>15</sup>

### **The salient features of the Protection from Domestic Violence Act, 2005 are as follows:**

It seeks 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; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with are entitled to get legal protection under the proposed Act.

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<sup>14</sup> The Protection of Women from Domestic Violence Act, 2005.

<sup>15</sup> *Ibid* sec 3

“Domestic violence” includes actual abuse or the threat of abuse that is corporeal, sexual, spoken, emotional and financial. Pestering by way of dowry demands to the woman or her relatives would also be covered under the definition. One of the most significant characteristics of the Act is the woman’s right to secure accommodation.

The Act provides for the woman’s right to live in the marital or joint household, whether or not she has any rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman.

The other relief envisaged under the Act is that of the power of the court to pass protection orders that stop the abuser from assisting or performing an act of domestic violence or any other specific act, entering a workplace or any other place frequented by the abused, attempting to communicate with the sufferer, dividing any assets used by both the parties and causing violence to the victim, her relatives and others who provide her assistance from the domestic violence.

The Act provides appointment of Protection Officers and NGOs to provide help to the woman with respect to medical check-up, legal aid, safe asylum, etc.

The Act provides for violation of protection order or temporary protection order by the respondent as a cognizable and non-bailable offence punishable with sentence for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

## **CRITICAL ANALYSIS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

In the garb of providing protection, this legislation in fact, strikes at the very foundation of marriage by promoting intolerance and encouraging unnecessary litigation even for petty domestic dispute. This law is based on a wrong notion and assumes man as the sole perpetrators of domestic violence. This is altogether a wrong impression and only confirms the gender bias in favour of women created by this law. The law confers a right in favour of a woman without imposing any liability, while the man is overburdened with discriminative liabilities with total

denial of any such similar right. The law is wholly gender specific and rules out any possibility of domestic violence against a man.

In the zeal of providing protection and assistance to women, this Act has given recognition and legal status to extra-marital relationship or other immoral relationship, which are neither recognised by our society or by our existing matrimonial and penal law. The legislature while passing the Act did not notice that having sexual intercourse with any person other than his or her spouse is a ground for divorce. Even sections 24 and 25 of the Hindu Marriage Act, 1955, which provide for maintenance pendente lite and permanent alimony respectively do not recognize any relationship except that of a legally wedded husband and wife.

Besides this section 125 of the Code of Criminal Procedure, which provides for grant of maintenance to wife, children, father and mother in a broader perspective, does not recognize persons having illegitimate relationships, entitled to claim maintenance except an illegitimate child. Section 125(4) specifically prohibits a wife living in adulter)' from claiming any maintenance from the husband under section 125(1) of the Code of Criminal Procedure.

The legislature also did not notice that adultery is also an offence under section 497, Indian Penal Code. So therefore, while on one hand a man will be prosecuted for adultery, at the same time he will be compelled to pay maintenance as well as residency rights to a women with whom he is alleged to have maintained illegitimate relationship. This provision will destroy the matrimonial relationships thereby disturbing the social fabric of the society.

Prior to this Act there was no comprehensive legislation defining domestic violence except the offence of cruelty punishable under section 498-A, IPC. Critics feel that the term violence should not be given such a wider interpretation. The meaning of the term 'economic abuse' as given in section 3 of the Act implies that even if a male member of family merely misappropriates, or disposes of the share of a women member of the family i.e. movable or immovable assets, he may be hauled up for committing domestic violence. This meaning is against the spirit of the Act and the basic concept of domestic violence. Again the Act does not distinguish between actual abuse and threat of abuse and gives equal weightage to even a likelihood of abuse. Also in regards to the notion of emotional abuses, insults and verbal abuse, enshrined in the Act, the terms in itself are extremely relative and subjective, often depending on one's mindset and shockingly, the husband does not have any recourse in case of any abuse by the wife. Refusal to pay any sum of money for whatsoever reason will attract the provisions



of this law. Non-payment of rent related to the shared household will also constitute an economic abuse even if the husband himself is devoid of sufficient resources or even if he is in jail.<sup>16</sup>

In this enactment the Magistrate has been entrusted with unaccountable powers as he is invested with the responsibility to take cognizance of the case and also for executing his own orders in favour of the aggrieved woman even without being approached for the execution of his orders. An additional disturbing aspect is that the Magistrate trying the case has to evaluate not only the individual incident of violence, but the overall circumstances as well.

Section 14 of the Protection of Women from Domestic Violence Act, 2005 contains a very dangerous provision whereby the Magistrate may order the aggrieved person to undergo counseling jointly with the respondent and any member of the service provider. This goes against all accepted principles of counseling. The victim, and the abuser are in an unequal situation and no joint counseling is possible in that situation. It can only lead to the disempowerment of the unequal party. Counseling is one of the methods of correcting abusive behaviour and hence, it is only appropriate that the abuser and not the victim is counseled. The victim may have the possibility of seeking voluntary counseling.

Section 16 of the Protection of Women from Domestic Violence Act, 2005 allows the Magistrate to hold proceeding in camera if either party to the proceedings so desire. But, in camera proceedings sometime, intimidate the aggrieved party in favour of the respondent. This is especially so when the aggrieved party is the only woman in the court facing a completely male phalanx of hostile, sneering Magistrates, lawyers, officials, police, male respondent, etc. The situation is to change this section is to allow for in-camera proceeding not when either party so desire but only if the aggrieved party so desires. The aggrieved party should be allowed to be accompanied by any relative/woman social worker etc., of her choice for her moral support.

Under the Act, complaint of domestic violence may be given to both the protection officer and the police officer as under section 498-A of the Indian Penal Code. Both the agencies can out their investigations respectively and submit their reports to the Magistrate. In case of

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<sup>16</sup> Nagpal, Vijay and Singh, K. P., The Protection of Women from Domestic Violence Act 2005 - A Critique, CBI Bulletin, Jan-March, 12 (2007)

contradictory reports of both the agencies, the duty rests upon the Magistrate, who is the ultimate authority to pass the decision. This double enquiry of the same offence is over to the major demerits of the Act.

The Act is silent about non-compliance of some orders. It shuts down the chance of reconciliation in future. The major inappropriate implication would be that it would shut down the chances of reconciliation in future. On the one hand, the Act punishes a man for forcing his wife to leave her job while on the other it provides maintenance to the very same wife. But the law does not provide for any such remedy to a male in any similar circumstances.

Under the Act, when no eye witnesses are available, the women will be the primary witness and her statement is considered as circumstantial evidence, to arrive at a conclusion on the facts of the case. This has virtually empowered all women to punish men at their will. The slack drafting of this, law will allow cunning and unscrupulous women to teach a lesson to any of her male relatives at her sole behest.

No doubt that the Act is landmark legislation in the Indian history and people of India welcomed the same with great enthusiasm yet, there is an apprehension in the minds of the people about the misuse of the Act against the innocent husband and his family members. It definitely cannot be said in general that the troubles and tortures of all kinds and differences always arises from the side of the husband and the in-laws. The wedded woman cannot be said to be just and fair in all cases. This Act is being misused in a number of cases where it is used as a weapon by the wives and their paternal relatives to put an innocent husband and their relatives to unnecessary harassment. Hence before going to apply the provisions of the Protection of Women from Domestic Violence Act, 2005, the concerned parties and authorities should think about the consequences of the application, so that innocent persons and their families are not put to unnecessary harassment.

## **SUGGESTIONS**

- i. Women's vulnerability is the Root Cause; the problem of domestic violence in India is required to be understood in the real sense. To understand the reason behind why women become vulnerable and positioned themselves to be exploited. Most of the

women's are illiterate and face a silent violence and they are also under the pressure of tradition in society.

- ii. Attitudinal Change is needed among men and women; the basic social structure from long time in India is Patriarchal structure where we can see a male dominated society. There is unequal distribution of power relationship is the root cause of violent attacks. There should also be change in the attitudes between men and women to overcome the victimization of violence.
- iii. Internalization of Legal Norms with Public Consensus Domestic violence in our country is yet held to be "interfamilial affair" and disallow the intervention of the close relatives and outsiders and the state. The real effective implementation of any legislation has to undergo a security of strong public consensus and acceptance in democratic processes.
- iv. The strong legal mandate prescribed for officers and stake holders; the officers and institution is responsible for the more effective implementation of Act. It is needed to wipe out the gender discrimination, traditional relation of patriarchal society and male dominance.
- v. Gender Perspective training is necessary Gender perspective training should be mandatory by the law and is crucial for changing the crucial mind set of patriarchal society, police, service providers, medical practioners, protection officers, and especially of magistrates, who often advise women to put up with the violence and "stop complaining".
- vi. Counselling by Expertise At the pre litigation stage, counselling to the aggrieved person for the restoring self-esteem, providing emotional support and assist her in making decision as to the initiation of legal proceedings.

## **CONCLUSION**

Domestic violence is not only visible but it is a part and parcel of life of women in India. Violence starts with her from the day her mother conceives her existence in the womb and since then in every phase of her life span she has to fight for her survival in this rude society. Most of the women in our country are illiterate and they are not aware of the basic law provision and also about their rights, due to which most of the time they do not register the cases against

those person who violate their rights and commit crimes against them. Lack of awareness about the law and rights guaranteed under that legislation for them but most serious problem is that the women's are not aware about their rights which are due to traditional customs. Victims are unable to get the legal remedies which are guaranteed by the government for the protection of women. In our society which is said to be tradition bound and a male dominated, women are still treated as secondary sex which makes her to suffer the violence silently. The fact in India women is made to suffer human right abuses in a gender specific way. She is often ignored and underestimated. The Protection of Women from Domestic Violence Act (PWDVA), 2005 is passed by the Parliament in response to worldwide demand for such legislation and also the outcomes of the continuous efforts of Women Organizations working for women. The Act gives right and Protection to the women's. The remedies available to the victim prior to the PWDVA 2005 were in the form of punishment of the offender under IPC, the civil remedy of divorce and maintenance were not giving her ultimate relief, the remedies which were available that were related to matrimonial proceeding and also according with court proceeding. The statutory provision and constitutional provision were available to women but these provisions were insufficient and the most important problem about it was lack of awareness about their rights which constitution provide for the protection of women. Domestic Violence goes beyond the boundaries of race, caste, religion, and class. In 2013 according to the Global Review Data, 35% of women worldwide have experienced either physical and sexual intimate partner violence or non-partner sexual violence. However, some National Violence studies show that up to 70% of women have experienced physical or sexual violence in their lifetime from an intimate partner.<sup>153</sup> In New Delhi; a 2010 study found that 66 % of women reported experiencing sexual harassment between two and five times during the past year.