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## Unveiling The Intersection : Exploring Human Right And Domestic Violence In India

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### Abstract

This research paper examines the complex interplay between human rights and domestic violence in the context of India. Domestic violence, a pervasive yet often concealed issue, presents a critical challenge to the realization of fundamental human rights within the confines of private spaces. Through an interdisciplinary approach encompassing legal analysis, sociological insights, and human rights perspectives, this paper sheds light on the multifaceted dimensions of domestic violence in India. The paper begins by exploring the legal framework governing domestic violence in the country, primarily focusing on the Protection of Women from Domestic Violence Act, 2005. It then delves into the socio-cultural factors that perpetuate domestic violence, including patriarchal norms, economic dependence, and societal stigmatization. The intersectionality of factors such as gender, caste, and class is also examined to unveil the disproportionate impact on marginalized individuals.

**Keywords-** Legal Analysis, Sociological Insights, Multifaceted Dimensions, Exploring Human Right And Domestic Violence In India.

### Introduction

United Nations defines gender - based violence as "any act of gender - based violence that results in ,or is likely to result in , physics, sexual,or mental harm or suffering to women , including threats of such acts , coercion or arbitrary deprivation of Liberty ,whether occurring in public or in private <sup>1</sup>

The study scrutinizes the role of governmental and non-governmental initiatives in addressing domestic violence and safeguarding human rights. It analyzes the efficacy of legal measures, support services, and awareness campaigns in mitigating the issue. The paper concludes by emphasizing the need for comprehensive reforms that encompass legal, social, and educational interventions. It calls for a concerted effort to challenge regressive norms, enhance awareness, and strengthen the mechanisms that protect victims' human rights. By addressing the intricate relationship between human rights and domestic violence, this research contributes to a nuanced understanding of the challenges and prospects for creating a safer and more just society for all individuals in India.

The paper commences by delving into the intricate legal framework that governs domestic violence in India, placing a primary focus on the "Protection of Women from Domestic Violence Act, 2005." This landmark legislation was enacted to provide a comprehensive legal framework to address the pervasive issue of domestic violence and uphold the rights of women within familial contexts. The Act recognizes various forms of abuse, both physical and psychological, that women may face within their homes, thereby acknowledging the multifaceted nature of domestic violence. The National Commission for women said in 2020- 21,it received 26,513 complaints from women , an increase of 25-09% compared with the 20,309 complaints registered in 2019-20, testifying to the global trends that during the pandemic more women were victims of domestic violence that before .

According to the national Family Health Survey (NFHS) 2019-2021, mm "29.3 percent of married indian women between the age of 18 and 49 days have experienced domestic /sexual violence: 3.1

percent pregnant women age 18 to 49 have suffered physical violence during their pregnancy. This is only the number of cases reported by women ; there are frequently many more that never make it to the police. In 2021 just 507 instances were registered across India under the protection of women from Domestic Violence Act 2005 , whereas 136,000 complaints were registered under Indian Penal Code Section 498A. According to NFHS data ,87%of married women who are victims of marital violence do not seek help.<sup>2</sup>

The cases of domestic violence in states are different according to the NFHS 2019-21, Karnataka 44.4%, Bihar 40.0%, Tamilnadu 38.1%, Manipur 39.6% Telangana 36.9% Uttar Pradesh . Estimate published by WHO indicate that globally about 1in 3 {30% } of women worldwide have been subjected to either physical and /sexual intimate partner violence or non-partner sexual violence in their lifetime As around half of countries lack specific health sector policies and guidelines that address violence against women and girls.For the first time the report monitors both the existence of national action plans and health policies to prevent and respond to this violence, in line with international commitments, (WHO) guidelines that support quality health care for survivors,human right standard as well as evidence based prevention strategies.<sup>3</sup>

Global database on wireless against women in india shows different forms of violence against women

Lifetime physical and sexual intimate partner violence: 29.3%<sup>4</sup>

Physical and sexual intimate partner violence in the last 12 months: 24%<sup>5</sup>

Child marriage: 27.3%<sup>6</sup>

Gender inequality index rank :122<sup>7</sup>

Global gender gap index ran: 135<sup>8</sup>

### **The enactment of the Protection of Women from Domestic Violence Act, 2005,**

Freedom not only from violence but also from the threat of violence is the first indicator of rise in women's capacity for survival and empowerment.

The enactment of the Protection of Women from Domestic Violence Act , 2005 was a pivotal moment in India's legal landscape, addressing a glaring gap in the legal framework concerning the safety and rights of women within their homes. This legislative milestone was driven by a confluence of compelling social and legal factors that underscored the urgency of a dedicated law to combat domestic violence. On the social front, India's patriarchal societal norms had perpetuated a culture of silence around domestic violence for centuries. The prevailing gender norms and attitudes often relegated women to subordinate roles within the family, rendering them vulnerable to abuse.

The Act sought to challenge these entrenched norms by providing a legal recourse that would empower women to break their silence and seek protection from violence, thereby challenging the systemic inequalities that underpin such behavior. The long-fought battle for women's rights and equality in India played a significant role in propelling the enactment of the Act. Activists, organizations, and feminist movements had tirelessly campaigned for legal provisions that recognized and addressed the unique challenges faced by women within their homes. These efforts were informed by the broader global movement for gender equality and human rights, reinforcing the need for India to align its legal framework with international standards. Legal considerations also played a crucial role in prompting the Act's enactment. Prior to its enactment, domestic violence was often treated as a

private matter falling outside the purview of legal intervention. The Act marked a departure from this approach by recognizing domestic violence as a violation of women's fundamental rights. This shift was in line with India's constitutional commitment to ensuring gender justice and equality, and it reinforced the state's obligation to protect women from all forms of violence, both public and private. Additionally, international conventions and treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), had underscored the need for states to take measures to prevent and address domestic violence.

The Act was a direct response to these international commitments, reflecting India's commitment to fulfilling its obligations under these treaties and aligning its domestic legislation with global human rights standards. The enactment of the Protection of Women from Domestic Violence Act, 2005, was propelled by a combination of social pressures, feminist advocacy, legal considerations, and international commitments. This dedicated law marked a significant step forward in addressing the pervasive issue of domestic violence in India, signaling a shift towards a more just and equitable society where women's rights are protected within the confines of their own homes.

The Protection of Women from Domestic Violence Act, 2005, is a comprehensive legal framework in India that addresses the issue of domestic violence and provides protection and remedies to victims. The Act recognizes the multifaceted nature of domestic violence and aims to provide holistic support to survivors. The Act provides a broad and inclusive definition of domestic violence, encompassing physical, sexual, verbal, emotional, and economic abuse. This definition recognizes that domestic violence extends beyond physical harm and includes various forms of harm that can be inflicted within a domestic relationship.

### Provisions of the Domestic Violence Act 2005

**Protection Orders:** One of the significant provisions of the Act is the issuance of protection orders by the Magistrate. These orders can prohibit the respondent from committing acts of domestic violence, communicating with the aggrieved person, or entering certain areas. Protection orders are crucial in ensuring the safety and security of survivors. **Residence Orders:** The Act empowers the Magistrate to pass residence orders, which allow the aggrieved person to continue living in the shared household or a separate residence, as the circumstances require. This provision ensures that victims do not face homelessness or displacement due to domestic violence. **Monetary Relief:** The Act allows for the provision of monetary relief to the aggrieved person to cover medical expenses, loss of earnings, and other costs incurred due to the violence. This provision acknowledges the economic impact of domestic violence and aims to alleviate financial burdens. **Counseling and Support Services:** The Act recognizes the importance of counseling and support services for survivors of domestic violence. It mandates the provision of services that include medical aid, counseling, legal assistance, and safe accommodation.

**Emergency Relief:** The Act provides for immediate and emergency relief to the aggrieved person, including ex parte orders that can be issued without hearing the respondent's side. This provision is particularly significant in cases where immediate protection is required. **No Waiver of Rights:** The Act explicitly states that the rights available to the aggrieved person under the Act cannot be waived by any agreement or custom. This ensures that survivors are not coerced into relinquishing their rights or pursuing arbitration that may not adequately address their needs.

**Right to Residence:** The Act recognizes the right of the aggrieved person to reside in the shared household, regardless of her ownership or entitlement. This provision prevents the eviction of survivors from their homes and helps them maintain their dignity and security. **Jurisdiction:** The Act provides that proceedings under the Act can be initiated in the court within the local limits of which the aggrieved person resides or where she temporarily resides. This provision ensures ease of access to justice for survivors.

In conclusion, the key provisions of the Protection of Women from Domestic Violence Act, 2005, establish a comprehensive legal framework to address domestic violence in India. The Act goes beyond merely criminalizing acts of violence and provides a range of protective measures and remedies to empower survivors and ensure their safety, well-being, and access to justice.

### **Implementations of the domestic Violence Act 2005**

The Act has led to increased awareness about the issue of domestic violence and the legal remedies available to survivors. This has prompted more women to come forward and seek protection under the law. Awareness and sensitization efforts regarding the Protection of Women from Domestic Violence Act, 2005, are of paramount importance in India. This legislation holds the potential to transform lives by offering protection and remedies to survivors of domestic violence. However, for the Act to be effective, individuals across society need to be well-informed about its provisions, significance, and their rights. By raising awareness and sensitizing communities, the Act can serve as a powerful tool to break the cycle of violence, empower survivors, and foster a culture of respect and gender equality. Implementing effective strategies for awareness and sensitization involves a multi-faceted approach. Utilizing mass media platforms, such as television, radio, and social media, can help reach a broad audience and disseminate information about the Act's provisions and available support services. Workshops, seminars, and educational programs can be conducted in schools, colleges, and communities to engage individuals in meaningful conversations about domestic violence and its prevention.

Collaborating with local NGOs, community leaders, and religious institutions enables tailoring awareness campaigns to specific cultural contexts, fostering a more personalized connection. While awareness and sensitization efforts hold great promise, they encounter several challenges. Cultural norms that normalize violence and traditional gender roles can hinder open conversations about domestic violence. Overcoming language barriers is vital to ensure that information reaches all segments of the diverse Indian population. Rural areas with limited access to educational resources and media platforms may require targeted outreach efforts. Moreover, overcoming the stigma associated with being a survivor of domestic violence requires tactful messaging that encourages individuals to seek help without shame.

Sustainable change in societal attitudes and behaviors requires consistent and long-term efforts. Awareness and sensitization campaigns need to be ongoing, creating a continuous dialogue that challenges harmful norms and encourages positive behaviors. By nurturing a collective understanding of the Act's role in safeguarding rights and promoting respectful relationships, India can gradually shift towards a society where domestic violence is no longer tolerated. In this journey, collaboration between government agencies, NGOs, educational institutions, and communities will be pivotal in achieving lasting change and creating a safer environment for all.

The issuance of protection orders by the Magistrate has provided immediate relief to survivors, allowing them to seek legal protection against further acts of violence. These orders have been successful in preventing immediate harm. The Act has given survivors a specific legal avenue to address domestic violence, moving beyond general criminal laws. This has resulted in quicker legal action and tailored remedies. The provision of counseling and support services has offered survivors psychological and emotional assistance, helping them cope with the trauma of domestic violence.

**Challenges:-** Despite the Act's provisions, the societal stigma surrounding domestic violence continues to discourage many survivors from seeking legal assistance. The fear of judgment and social repercussions often prevents women from reporting abuse. While there has been progress, many women, especially in rural areas, remain unaware of their rights under the Act. This lack of awareness hinders them from accessing the legal remedies available to them. Domestic violence remains largely underreported due to fear, economic dependency, and lack of awareness. Many cases go unreported, leading to a gap between the actual prevalence of domestic violence and the reported cases. Implementation of the Act varies across states and regions. Some areas lack the necessary infrastructure, resources, and trained personnel to effectively implement the Act. Court processes can often be lengthy, delaying justice for survivors. Timely resolution is essential to provide effective relief to victims. While the Act mandates the provision of shelter homes, there is a shortage of safe and well-equipped shelter facilities for survivors, making it challenging for them to escape abusive situations. Economic dependency on the abuser can prevent survivors from leaving abusive relationships.

The Act does offer monetary relief, but economic independence remains a significant challenge. There have been instances of misuse of the Act as well, where false accusations have been made against innocent individuals. This has raised concerns about the potential for misuse of legal provisions. Thus the concept of human rights developed largely from western political theory of the rights of individual autonomy and freedom.<sup>9</sup> International human rights law evolved in order to protect those individual rights from limitations that might be imposed on them by states. States are bound by international law to respect the individual rights of each and every person and are thus accountable for abuses of those rights. The aim of the Human rights movement is to enforce State's obligations in this regard by denouncing violations of their duties under international law<sup>10</sup>. The exclusive focus on the behaviour of States confines the operation of international human rights law entirely within the public sphere.<sup>11</sup>

In conclusion, while the Protection of Women from Domestic Violence Act, 2005, has brought positive changes in addressing domestic violence, challenges related to societal attitudes, lack of awareness, and inadequate implementation persist. To maximize the Act's effectiveness, efforts should be directed towards raising awareness, providing accessible support services, enhancing implementation mechanisms, and addressing the root causes of domestic violence in India.

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