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## Role Of Police In Physical Domestic Violence

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### Abstract

The police role is central to the issue of physical domestic violence in terms of providing immediate protection to the victim, and as a public statement of intolerance of such behaviour. Often, however, police are criticised for their lack of intervention. In order to explore the level of community support for the enforcement of the criminal process when physical violence against women occurs in the family home, other people over the age of 18 were surveyed in 2018 to ascertain their views on police intervention in domestic violence situations. The study was premised on the notion that police would be more likely to act if they felt they had the support of the community.

Domestic and family violence in India has received unprecedented attention over the past years. A number of recent reports and reviews have identified that improved policing is key to enhancing the safety of women and children. In response to these reports, it comes in recognition that police are often the first to respond to domestic violence, a number of jurisdictions have strengthened police powers and, in some cases, mandated police responses. This article draws on a qualitative study of victims' experiences of police responses to domestic violence in order to identify the extent and breadth of the problems that continue to plague police responses to domestic violence of many cases in spite of legislative change. The article uses these cases as a study to consider whether a victim of domestic violence, who claims that the police failed to adequately respond to or deal with their request for assistance, would be able to successfully take a private civil action against the police in India.

**Keywords-** Role Of Police, Community Support, Study Of Victims', Physical Domestic Violence.

### Introduction

Women have been subjected to physical domestic violence or otherwise throughout the pages of history whether they be Helen of Troy or Sita of Ramayana, whether they be Casandra of Troy, or Draupadi of Mahabharata. Women have been easy prey to the male ego and dominance. Much as the Indian civilization pays obeisance to the feminine divine, but the harsh reality remains that throughout the length and breadth of this country, women are assaulted tortured in their daily lives and in some cases burnt. The phenomenal growth of crime against women has attracted the attention of international community.

Article 15(2) of the Indian constitution provides for the making of special provision by the state, for women and child, for enforcing the right to equality. There was a dire need for a substantive step in creating a legal structure to fill the lacuna and accommodate the day to day cases of domestic violence in the lives of women. This substantive step was "The Protection Of Women from Domestic Violence Act, 2005". Seeing the demand of society it extended its authority to live in relationship. It has multiple roles ranging from legal provisions to emergency relief for victims.

**Legislative History:-** Since 80s women groups have been crusading to bring effective legislation to respond to domestic violence. In 2001, the Lawyer's Collective laid the "Domestic Violence Against

Women (Protection) Bill”. It takes into consideration several prevalent forms of violence against women within family and proposes a mechanism for women to approach the court for a protection order to prevent further violence and to ensure that they do not have to leave their home. Extensive discussion among representatives of several NGOs such as the Lawyers’ Collective, the NHRC, the National Commission for Women and the Ministries of Home Affairs, Health and Family Welfare, Social Justice and Empowerment, Elementary Education, Justice and Legal Affairs and legislative departments led to the advent of bill. It was brought into force by the Indian government on 26/10/2006. The act was passed by the parliament in August, 2005 and assented by president on 13/09/2005.

**Duties of police officers-** The Act contains 37 sections in 5 chapters. Chapter III deals with “POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC”. Section 5 deals with Duties of police officers, service providers and Magistrate. Its provisions are:

A. Scope:—This section lays down the duties of a police officer, Protection Officer, service provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, the availability of services of service providers and Protection Officers, her right to avail free legal services under the Legal Services Authorities Act, 1987 and her right to file a complaint under section 498-A of the Indian Penal Code, 1860 wherever relevant. It is also envisaged that this section shall not relieve any police officer from his duty to proceed in accordance with law on receipt of information as to commission of a cognizable offence.

**Duties of police officers-**

B.:—Police can register the offence if the information discloses cognizable offence: – Even though it is the duty of the police to assist the aggrieved person with a view to avail the remedy provided by the Act police can also register the offence and proceed with the investigation according to the procedure prescribed by law where the information received by them discloses the commission of cognizable offence. In such case the scheme provided by Section 154 of the Code of Criminal Procedure, 1973 is mandatory in nature. If the complaint discloses cognizable offence, then there is no discretion left with the concerned police station officer, but to register Police, the offence.

In Archana v. Commissioner of Police [case-1] of the marriage of petitioner was solemnized in 2000 and her husband was patient of HIV positive. The husband was fully aware about the deadly ailment he was suffering from, prior to getting married to the petitioner. The husband of petitioner deliberately and purposefully did not disclose these facts to the petitioner and performed the marriage with her. The complaint was filed under provisions of the Protection of Women from Domestic Violence Act, 2005, Section 498-A of the Indian Penal Code, 1860 and similarly under section 3 and 4 of the Dowry Prohibition Act, 1961. However, no crime was registered by the police under section 420 as well as section 308 of the Indian Penal Code, 1860, though the cognizable offence was made out. The Bombay High issued directions to police to apply mind to the allegations made by the complainant and if those allegations disclose any cognizable offence against the husband, appropriate steps are to be taken according to law by registering crime in the light of the observations made by Apex Court in Ramesh Kumari’s [case-2].

**Power & Functions of Police Officers-** S.10, The Protection Of Women from Domestic Violence Act, 2005, lays down the functions and duties of POLICE. Service providers are defined under the Act as

any voluntary association registered under the Societies Registrations Act 1860 or a company that is registered under the Companies Act, 1956 which aims to protect the rights of the women lawfully by providing legal aid, medical, financial or other assistance. The powers and duties of service providers are mentioned below.

1. A service provider has the authority to record any incident of domestic violence and forward it to the Magistrate or Protection Officer having jurisdiction where the incident of domestic violence took place.
2. The service provider must get the aggrieved person medically examined and forward such a report to the Protection Officer, Magistrate and the police station within the local limits where the domestic violence took place.
3. It is also the responsibility of the service providers to provide a shelter home to the victim if they require one and forward the report of lodging of the victim to the police station having jurisdiction.

### **Suggestions-**

**Role of Police : Critical review-** Domestic Violence differs from the other traditional crimes. As a result of this the police do not consider it as a crime unless it takes a bizarre turn. Generally the complaints are registered only after an offence has been committed but in a situation of domestic violence a woman needs protection even before the crime is committed, as she apprehends danger to her life from the assaulter on whom she is dependent and the threat is constant. Sometimes the protectors of the society or the guardians often become the perpetrators of the crime. The reason behind these may be seen from the two points of view, first the ordinary policeman is ill equipped to deal with the difficult and sensitive cases of crime; and secondly the social background from which the policemen are drawn is itself found to be wanting in its behavioral attitude towards female sex.

When a matter of domestic violence comes into notice of police, they are reluctant to intervene and state it as a family matter. A few of these deficiencies, as pointed out by the Supreme Court in Bhagawant Singh's case [3], support the allegation that the incidence of unnatural deaths is much higher than is indicated by the police records. Even the police diaries relating to the registered cases are not maintained properly. It has been found that very often in dowry death cases, police investigation tends to be sloppy and full of loopholes, whereas the Ministry of Home Affairs, Govt. of India has issued a circular containing the detailed instructions regarding the investigation into dowry death cases. According to this circular every case should be investigated by the officers not below the rank of Deputy Superintendent of Police.

**Role of Police : Critical review-** As the police is a state subject, it has a professional responsibility to take care of all the people. This responsibility demands the highest standards of conduct, particularly those of honesty, impartiality and integrity. The ideal purpose of Police in a Community can best be described in the following words which spell out the duties of law enforcement officers as laid down in the International Code of Enforcement Ethics [4]. If a police officer has any reason to believe that a person is a victim of domestic violence, the officer shall be under obligation to use all reasonable means to prevent further domestic violence and to ensure the victim's safety. Thus, police are empowered to take action against the wrongdoers.

In this regard the decision in Thurman's case of USA elaborates the obligations of the police. This decision has gone a long way to making the police responsible for the claims of compensation for causing negligence and violation of equal protection of law and right, under the Constitution. The facts

of the case in brief are Mr. Thurman[5] and her relatives sought help from the police against her entrained husband who had been threatening to kill her and her son. The USA police in conformity with their usual indifference and apathy in such family affairs, resorted to various delaying tactics for many days till her husband attacked her causing multiple grievous injuries leading to paralysis below the neck and permanent disfiguration of the body. A claim for compensation from the police for their negligence and violation of equal protection of law right under the constitution was upheld by the court, which awarded a sum of 2.3 million dollars to the victim. Thus, this case leads to the protection of human rights of women in real sense.

**Object of Section 498A IPC-** Section 498A was introduced into Chapter XXA of the Indian Penal Code, 1860 by the Criminal Law (Second Amendment) Act, 1983, w.e.f. 25.12.1983. The Statement of Objects and Reasons of the Bill introducing the said section reads: The increasing number of dowry deaths is a matter of serious concern. The plight of the situation has been commented upon by the Joint Committee of the Houses to examine the working and usability of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the helpless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act to increase the ambit so as to include with cases of dowry deaths, the cases of cruelty to married women by their in-laws. Woman is eligible to apply for free legal aid by virtue of S.12(c), The Legal Services Authorities Act, 1987.

**Conclusion-** The Protection of women From Domestic Violence Act has been passed by the Parliament in response to a worldwide pressure for such legislation and also the outcome of the continuous efforts of Women organizations working for women. It is the general hope that the legislations would serve a real deterrent to the occurrence of domestic violence in the country from ancient period and it would assure the families peaceful coexistence among their members. Indeed it was a welcome step.

To make real effective implementation of the Act the and to give the support to the victims of domestic violence the authorities created under the Act have a vital role to play if they are not well aware of the legal provisions, similarly the awareness of the law, the relief and remedies available to the victim under the Act and the formalities of procedure is also necessary to be analyzed in order to find out the utility of the Act. While assessing the Legislative framework it is observed that the procedural technicalities are not given much importance so also the analysis of few judgments show that the judiciary is also giving purposive jurisprudence to vindicate the rights of women. But again the access of justice even though made easy for victim still the social mindset and the extreme patriarchal structure of our society from time immemorial throw the real challenges for the working of the PWDVA 2005.

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9. [1] 2007 (2) Mh.L.J. (Cri.) 757
10. [2] Ramesh Kumari's v. State (NCT of Delhi) and others, 2006 (2) SCALE 457, wherein the Apex Court held that, if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirement of section 154 (1) of the Code of Criminal Procedure, 1973, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information
11. [3] Bhagwant Singh v. Commissioner Of Police,(1983) 3, SCC 344
12. [4]Trecy Thurman's Vs. the City of Tarrington, Connecticut 595 f supp 1521 (Dist. Conn 1984) in Ahmed Siddiqui, Criminology Problems and 'Perspectives' Ch XVI P. 500 (Eastern Book Company, Lucknow, 4th edition ,1997)