

## Human Rights and Domestic Violence Act 2005: A Socio Legal Study

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### Abstract

International protections of human rights have increased dramatically in the last century,' due in part to the increased recognition that a number of nations share many fundamental legal values and expectations. Human Rights are those rights which every human being possesses by virtue of his birth. They are inherent and inalienable. In a country like India, we come across various instances in which the individual is threatened with the possibility of violation of his human rights in every walk of life. They are based on mankind's demand for a life in which the inherent dignity of human being will receive respect and consideration. The paper proceeds with the exploration of the socio-legal aspects of domestic violence identifying causes and effects accruing from the persistence of gender stereotypes. Domestic Violence Act 2005, provides that any conduct of a relative of the victim which subjects her to habitual assault or makes her life miserable, or injures or harms her or forces her to lead an "immoral life" would constitute domestic violence, domestic violence includes physical, mental, economic and sexual violence. Violence to wives, the central concern here, is found in all societies and across all economic and age groups. For centuries, domestic violence has been perceived as a part of the normative structure in patriarchal societies. In most societies women have been victims of abuse by their spouses and often by members of their family.

**Key words:-** domestic violence, legislative framework, legal system, criminal justice, injuries, sexual violence, miserable, victim.

### Introduction

Human rights are rights inherent to all human beings, regardless of gender, nationality, place of residency, sex, ethnicity, religion, color or and other categorization. Thus, human rights are non-discriminatory, meaning that all human beings are entitled to them and cannot be excluded from them. Of course, while all human beings are entitled to human rights, not all human beings experience them equally throughout the world. Many governments and individuals ignore human rights and grossly exploit other human beings. Women form the largest group of victims of domestic violence since time immemorial and violence against women still continue even in the 21st century. Women from every social background irrespective of their age, religion, caste, or class fall victim to domestic violence. However domestic violence is not just limited to women; men, children and elderly people can also be victims of it. Domestic violence occurs at all levels of society and in all population groups. Problems with understanding domestic violence as a human rights issue begin with the scope of international human rights law, which is limited to the public sphere. Although international law is gender neutral in theory, in practice it interacts with gender-biased domestic laws and social structures that frequently relegate women to socially and economically inferior status. When gender-neutral international human rights law is applied in these gender-biased social contexts, those making the application do not necessarily challenge the gender bias embedded in the social structure or in the state's determination

of its responsibilities. The concept of state responsibility defines the limits of a government's accountability for human rights abuses under international law. Domestic violence has generally been regarded as a private matter in which governments should not interfere and for which they are not accountable. In discussing the limits and value of the equal protection human rights approach to combating domestic violence.

In India, 30% women have experienced domestic violence at least once from the age of 15, and around 4 percent of pregnant women have even experienced spousal violence during pregnancy. The offence of domestic violence is committed by someone in the victim's domestic circle. It includes family members, relatives, etc. The term domestic violence is often used when there is a close cohabitating relationship between the offender and the victim. The various forms of domestic violence include senior abuse, child abuse, honour-based abuse such as honour killing, female genital mutilation, and all forms of abuse by an intimate partner. In the 21st century, various steps are incorporated to address the social issue of domestic violence. Governments all across the globe have taken proactive measures to eradicate domestic violence. Furthermore, the media, politicians and campaigning groups have aided people to acknowledge domestic violence as a social evil.

Many organizations and governments worldwide focus on improving the status of women and girls. According to the International Labour Organization, 11.4 million women and girls are victims of forced labor in different forms – including debt bondage, trafficking and forced prostitution. As global leaders seek to improve the status of women and girls, it's critical to focus on decreasing women and girls' exploitation in forced labor, trafficking and domestic violence. Domestic violence against women is a very common and emerging issue and it exists everywhere irrespective of the socio-economic and demographic status of a country. Although, there is no gender specific profile of victims of domestic violence it is generally seen that the victims are mainly women. Almost, every class of women -- upper class to lower class, from educated to uneducated -- are victims of domestic violence for various reasons. They are tortured physically and mentally by their husband, in-laws in their matrimonial homes.

### **Definitions:**

#### **Domestic violence**

According to Section-3 of Protection of Women from Domestic Violence Act, 2005, domestic violence is defined as, “any form of abuse causing harm or injury to the physical and /or mental health of the woman or compromising her life and safety or any harassment for dowry or to meet any other unlawful demand and a threat to cause injury or harm”.

**Domestic Relationship:** According to Section 2(f) of Protection of Women from Domestic Violence Act, 2005, Domestic relationships are relationships between a woman and a man living in a shared household. Domestic relationships can be through marriage (i.e. wives, daughters-in-law, sisters-in-law, widows etc. with other members of the family), blood relationship (i.e. mother-sons, sister-brothers, daughters fathers, widows etc.) and other relations through adoption, relationships like marriage (including live-in relationship, bigamous etc.

**Aggrieved Person:** According to Section 2(a) of Protection of Women from Domestic Violence Act, 2005, aggrieved person means any woman who is, or has been, in a relationship with the respondent who claims to have been subjected to any act of domestic violence by the respondent.

**Shared household:** According to Section 2(s) of Protection of Women from Domestic Violence Act, 2005, a household where the victim lives or at any time, has lived with domestic violence, either singly or along with the perpetrator, and includes such households whether owned, tenanted, either jointly by the victim and the perpetrator, or owned or tenanted by either of them, in respect of which either of them or both jointly or singly have any right.

**Respondent:** According to Section 2(q) of Protection of Women from Domestic Violence Act, 2005, Respondent means any adult male person who is, or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act and also an aggrieved wife or female living in a relationship like marriage also may file a complaint against a relative of the husband or the male partner. On the other hand, the law explains that a mother-in-law cannot file an application against her daughter-in-law according to Section-2 (q) however, in cases where a mother-in-law is facing violence at the hands of her son and daughter-in-law, she can file an application against her son and daughter-in-law as abetting the act of violence perpetrated by son and she cannot ask for the removal of daughter-in-law from the shared household.

### **Constitutional Prospective towards Domestic Violence Act**

The commentary primarily looks into the provisions of this Act from the constitutional perspective – the Fundamental rights to be particular. The main aim of the commentary is to bring to light the numerous rights, most of which are constitutionally guaranteed, of women who are protected directly or indirectly by this Act. The all-encompassing nature of the legislation is elucidated among the other positive aspects of this law. The Act is thus a very vital piece of legislation from the feminist perspective of law. However one of the main and primary criticisms of the writers is that this Act intentionally or unintentionally neglects to address the issue of child abuse among male children. This persisting problem having been left without any such specific laws requires quick and immediate addressal.

Domestic violence is sadly a reality in Indian society, a truism. In the Indian patriarchal setup, it became an acceptable practice to abuse women. There may be many reasons for the occurrence of domestic violence. From a feminist standpoint, it could be said that the occurrence of domestic violence against women arises out of the patriarchal setup, the stereotyping of gender roles, and the distribution of power, real or perceived, in society. Following such ideology, men are believed to be stronger than women and more powerful. They control women and their lives and as a result of this power play, they may hurt women with impunity. The role of the woman is to accept her 'fate' and the violence employed against her meekly.

This posed a problem especially where the victims were children or women who were dependant on the assailant. In fact, even where the victim was the wife of the assailant and could approach the Courts under S.498A of the IPC, she would presumably have to move out of her matrimonial home to ensure her safety or face further violence as retaliation. There was no measure in place to allow her to continue staying in her matrimonial home and yet raise her voice against the violence perpetrated against her.

This, together with many other problems faced by women in the household, prompted this enactment. This commentary focuses on the constitutional perspectives of this progressive legislation.

### **Protection of Women and Fundamental Rights**

The Statement of Objects and Reasons declares that the Act was being passed keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21. Article 21 confers the right to life and liberty in negative terms, stating that it may not be taken away except by procedure established by law, which is required, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the following rights (which are reflected in the Act), among others:

1. The right to be free of violence
2. The right to dignity
3. The right to shelter

**The Protection of Women From Domestic Violence Act, 2005:** Dawn Of A New Era: Indian women have always been considered to be downtrodden section of the society. Men have always treated women like dirt under one's feet (More so in the Indian context). Deplorable has been the pathetic condition of women in Ancient India.

**Domestic Violence as a Human Rights Issue:** It is the fundamental right of all Indian citizens to enjoy life and liberty and it is the duty of the state to ensure that they can do so within the framework provided by the Constitution of India and the international obligations such as CEDAW which India has accepted.

**Domestic Violence A Curse In The Society:** A Global Epidemic: Women is a unique creation of God understanding, hardworking, full of compassion holding high level of initiative and a trend setter for progeny inspite of these qualities the women have never been treated at par with the men.

### **Objectives of the Domestic Violence Act, 2005**

The objectives of the Protection of Women from Domestic Violence Act, 2005 is to serve the following purposes:

1. To identify and determine that every act of domestic violence is unlawful and punishable by law.
2. To provide protection to victims of domestic violence in the cases such acts occur.
3. To serve justice in a timely, cost-effective, and convenient manner to the aggrieved person.
4. To prevent the commission of domestic violence and to take adequate steps if such violence occurs.
5. To implement sufficient programmes and agendas for the victims of domestic violence and to guarantee the recovery of such victims.
6. To create awareness among the people about domestic violence.
7. To enforce harsh punishment and must hold the culprits accountable for committing such heinous acts of violence.

8. To lay down the law and govern it in accordance with the international standards for the prevention of domestic violence.

### **Duties and functions of police officers and Magistrate**

Section 5 of the Protection of Women from Domestic Violence Act, 2005 lays down the duties and functions of police officers and Magistrate. It states that when a police officer, service provider or Magistrate receives a complaint of domestic violence, an incident of domestic violence is reported to him or he is present at the scene of occurrence of domestic violence then they should take the following steps:

1. They are required to inform the victim about her rights to make an application for receiving relief by way of protection order, order for monetary relief, custody order, residence order, compensation order, etc.
2. They should inform the victim of the accessibility of services of the service providers.
3. The victim should be informed about the services and duties of the Protection Officers.
4. They should also inform the victim about her right to free legal services under the Legal Services Authorities Act, 1987 and her right to file a complaint under Section 498A of the Indian Penal Code, 1860.

### **Judicial Trend towards Human Rights and Domestic Violence**

The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or partner. The law significantly recognises the needs of an abused woman for emergency relief which will have to be provided by the husband. A woman cannot be stopped from making a complaint/application alleging domestic violence. She has the right to the services and assistance of the Protection Officer and Service Providers, stipulated under the provisions of the law.

The court of Judicial Magistrate of the first class or the Metropolitan Magistrate of the area has the jurisdiction to hear cases under this Act. However, Section 27 of the Act states the following factors;

1. The aggrieved person permanently or temporarily resides or carries out business in that area.
2. The respondent resides, carries on business or is employed within the local limits of the area.
3. The competent court will be liable to grant protection orders or any other orders as the case may be.

Section 28 of the Act states that all the proceedings arising under this Act shall be governed by the provisions of the Code of Criminal Procedure, 1973.

In **Francis Coralie Mullin v. Union Territory Delhi, Administrator, and the Supreme Court** stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21. This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or



development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.

In **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan**, the Supreme Court emphasised the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facets of the right to life find mention under the definitions of sexual abuse and emotional abuse, respectively. A praiseworthy aspect of the legislation is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable, especially as such sexual abuse is not recognized by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.

In **Chameli Singh v. State of U.P.**, it was held that the right to life would include the right to shelter, distinguishing the matter at hand from *Gauri Shankar v. Union of India* where the question had related to eviction of a tenant under a statute. Ss. 6 and 17 of the Domestic Violence Act reinforce this right. Under S.6, it is a duty of the Protection Officer to provide the aggrieved party accommodation where the party has no place of accommodation, on request by such party or otherwise. Under S.17, the party's right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless.

**Indra Sarma v. V.K.V. Sarma.** It was stated that the reason for the legislation to enact such an Act is to provide protection of rights of women who are victims of violence of any type occurring in the family. This Act safeguards women from facing violence within the four walls of their home.

The Madras High Court in the case, **Vandhana v. T. Srikanth** further stated the Protection of Women from Domestic Violence Act, 2005 “*is 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 connected therewith or incidental thereto*”.

**Meenavati vs. Senthamarai Selvi(2008)** The proviso to Section 19 of the Domestic Violence Act explicitly specifies that no order under Section 19 (1) (b) of the Act can be issued against a woman. It was held in this matter that women members of the family cannot be commanded to be removed from the shared household under the pretence of granting an order under Section 19 (1) (b) of the Domestic Violence Act.

**V.D. Bhanot vs. Savita Bhanot(2010)** In this case, the Supreme Court maintained the Delhi High Court's decision that “even a wife who shared a household before the Domestic Violence Act came into existence would be entitled to the Domestic Violence Act's protection.” As a result, the Domestic Violence Act allows an aggrieved party to make an application under the Act for acts that occurred prior to the Act's inception.

**Chanmuniya vs Virendra Kumar Singh Kushwaha and Anrs (2010)** In 2008, the Maharashtra government proposed to expand the definition of “wife” under section 125 of the Criminal Procedure

Code to cover women in long-term non-marital relationships. The Malimath committee also advised that the law recognise women in such "live-in" relationships so that males do not exploit and take advantage of them, which could lead to circumstances where the guy absolves himself of his responsibilities to his partner without incurring legal consequences. The courts should take into account the changing society structure, in which people are increasingly engaging in 'live-in' partnerships.

**Sandhya Wankhede vs. Manoj Bhimrao Wankhede (2011)** The term "respondent" is defined under Section 2(q) of the Domestic Violence Act as any adult man who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any remedies under this Act: Provided, however, that an aggrieved wife or female in a marriage-like relationship may file a complaint against a relative of the husband or male partner. Since the term respondent is defined to include an adult male person, the judiciary has been faced with the argument that an aggrieved person can only file a complaint under the Domestic Violence Act only applies to adult males, not to female relatives of the spouse, such as the mother-in-law or sister-in-law. The Supreme Court, on the other hand, concluded that the proviso to Section 2(q) did not exclude female relatives of the husband or male partner from the scope of a complaint that might be made under the Domestic Violence Act in the aforementioned case. As a result, complaints can be filed not just against an adult male but also against a female related to that adult male.

**Lalita Toppo vs. State of Jharkhand & Anr. (2013)** In this case, the Supreme Court has categorically held that maintenance can be claimed under the provisions of the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act) even if the claimant is not a legally married wife and so, is eligible for maintenance under Section 125 of the Code of Criminal Procedure. The Court explained that the requirements of Section 3(a) of the Domestic Violence Act of 2005, which defines "domestic violence," include "economic abuse" as a form of domestic violence. The Court went on to say that under the Domestic Violence Act, the victim, such as an estranged wife or a live-in partner, would be entitled to more relief than what is provided under Section 125 of the CrPC, such as a shared household.

**Indra Sarma v. V.K. V. Sarma (2013)** and **D. Veluswamy vs D. Patchaiammal** Section 2(f) of the Act defines 'domestic relationships.' The Supreme Court laid down tests to determine what constituted 'relationship in the nature of marriage.' In the matter of Veluswamy, the Court concluded that live-in partnerships in which a man financially supports a woman for primarily sexual purposes as a keep or a servant are not deemed domestic relationships under the Act. As a result of the Supreme Court's judgement, courts must now consider a variety of factors related to the parties' relationship. The Court would have to deconstruct and scrutinise the origins of their relationship, giving judges broad discretion in deciding the nature of the relationship and, as a result, allowing subjectivity and personal prejudice to play a large role in the final decision. While seeking to strike a balance between the rights of women and public policy considerations, the two judgments unjustly restricted the scope of beneficiaries of the Act. The judges appear to view women in live-in relationships in an unfavourable light and frown upon them, believing that they contribute to infidelity, as seen by both verdicts.

**Kusum Sharma vs. Mahinder Kumar Sharma (2015)** The Delhi High court had stated that: the affidavit of assets, income and expenditure of both the parties are necessary to determine the rights of

the parties and hence, both parties must file sworn affidavits with the court in order for the court to make monetary relief orders.

**Mohd. Zakir vs. Shabana & Ors. (2018)** In this fascinating case, the High Court of Karnataka ruled that a petition filed by the husband or an adult male under the Domestic Violence Act can be heard. Anand Byrareddy, J. had allowed a criminal petition submitted by a Muslim man, ruling that he was entitled to utilise the provisions of the Protection of Women from Domestic Violence Act 2005.

**Kamlesh Devi vs Jaipal & Or (2019)** The Supreme Court held that mere vague allegation that respondents are family members will not be sufficient to maintain the complaint. In this instance, a panel of Justice Banerjee and Justice Shah ruled that a vague claim is insufficient to pursue the case under the Domestic Violence Act. The Supreme Court is in favour of the High court order and hence dismissed the petition for special leave.

**Binita Dass v. Uttam Kumar (2019)** The Supreme Court held that Domestic Violence and Section 125 CrPC both are proceeded independently. The magistrate indirectly ordered maintenance at a rate of Rs. 2,000 per month to the respondent until the proceedings under section 125 Crpc are not concluded, according to the Supreme Court of India. Because the order lacks authority, it is completely unreasonable and unsustainable. In this case, an order was issued by Justice Sachdeva's bench. The Delhi High Court has ruled that a Magistrate cannot refuse to pay interim support to a wife only because she has earning capacity or is a qualified person, and that qualification and earning capacity cannot be used as a reason to deny interim maintenance to a wife.

**Ajay Kumar v. Lata (2019)** The Supreme Court held that an aggrieved wife may also file a complaint against a relative of the husband or the male partner, as the case may be. The case was decided by Justice Dr Dhananjaya Y. Chandrachud and Justice Hemant Gupta. An aggrieved wife or female living in a relationship in the form of marriage may file a complaint against the husband's or male partner's relative, as the case may be, under the proviso to section 2(q) of the Protection of Women from Domestic Violence Act, 2005.

**Megha Khandelwal v. Rajat Khandelwal (2019)** The Supreme Court held that the husband has to pay maintenance even if the wife is well educated. Justice Khanwilkar and Justice Rastogi have passed the order in this case. Despite the fact that the woman was well educated, the Supreme Court significantly increased interim maintenance for her in a domestic abuse case. The Court decided that the interim maintenance should be increased to Rs. 25,000 per month and provided to the petitioner.

**Sadhana vs Hemant (2019)** A divorcee is not entitled to the benefits of the Domestic Violence Act, according to this judgement of Bombay High Court. Justice Giratkar passed the order in case and held that if at the time of filing of petition, the wife has already been divorced, there cannot be any domestic relationship. As a result, a divorced wife cannot be protected under the Domestic Violence Act.

**Vijayanand Dattaram Naik v. Vishranti Vijayanand Naik (2019)** Order of maintenance under DV Act set aside by HC in absence of any act of Domestic Violence committed by husband. Justice C.V. Bhadang of the Bombay High Court's Goa bench ruled the case, allowing the husband's plea and quashing the trial court's judgement partially allowing the wife's application filed under Section 20 of the Protection of Women from Domestic Violence Act, 2005. The wife was given the option of



pursuing any other legal remedies accessible to her. For a period of six months, the spouse was ordered to pay a monthly fee of Rs 5,000.

## Conclusion

The Act plays a critical role in the Indian legal system vis-a-vis protecting the rights of the women, so that they can feel protected and safe within the comfort of their own house. It is an exhaustive piece of legislation as it lays down the powers and duties of the various authorities, reliefs available to the victims, steps to filing a complaint regarding domestic violence, assistance provided to the victims of domestic violence, power and extent of the Indian Judiciary and the power of the Central Government to make rules. The Act provides civil remedies to the victims of domestic violence. And prior to the enactment of the Act, the victims of domestic violence sought civil remedies such as divorce, custody of children, injunctions in any form or maintenance only by taking recourse to civil courts. Therefore, the Act brought about necessary changes in the Indian legislature.

The Act, by and large, is a valuable piece of legislation. Its shortcomings do not, on final analysis, blot out the immense benefit the Act could be of to women. A good thing about the Act is the fact that it deals with domestic violence regardless of the religion of the parties, as many a time wrongs are perpetrated using the protection afforded by personal laws. It is thus secular in outlook in protecting women's rights. It also does take up for consideration child sexual abuse, though in a limited sense (male children being excluded from its purview), at a time when the practice has become rampant. Further consider it desirable to extend the Act and allow its application to male children who are also affected by domestic violence, considering the nature of the practice, and recommend such an extension.

Though the Government of India has passed many legislations to protect women, yet they are oppressed from time to time and it has become a complex problem. As such, the efforts of educators, social workers, health workers and members of women groups, government authorities, NGOs, police, people from different professional backgrounds and the community in general, are required to combat the domestic violence to a greater extent. Further, there is an urgent need to strengthen the PWDV Act and also need to provide family counselling services and set up separate shelter homes for women and children in all districts.

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