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DISSERTATION

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

**SUBMITTED BY: -**

MISS ASHWINI B. BIRADAR

LL.M (TRIMESTER) 1YEAR COURSE

ROLL NO -16

**SUBMITTED TO:-**

NEW LAW COLLEGE, BHARATI VIDHYAPEETH, PUNE – 38

**UNDER THE GUIDANCE:-**

Dr. JYOTI DHARM

B.V.D.U'S NEW LAW COLLEGE,

PUNE – 411038.

## **CERTIFICATE**

This is to certify that the entire work embodied in the practical title PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE AND CRITICAL ANALYSIS OF DOMESTIC VIOLENCE, 2005 has been carried out by Miss.ASHWINI B. BIRADAR under my supervision and guidance in the department of Law, New Law College, Bharati Vidhyapeeth Deemed University, Pune for the L.L.M (Trimester) 1 year course.

Place: - Pune

Signature

Date: -

*Dr.Jyoti Dharm*

*(Research Guide)*

## **DECLARATION**

I hereby declare that the entire work embodied in the practical paper title PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE AND CRITICAL ANALYSIS OF DOMESTIC VIOLENCE ACT,2005 is written by me and submitted to New Law College, Bharati Vidhyapeeth, Pune. The present work is of original nature and the conclusion is based on the data collected by me. To the best of my knowledge this work has not been submitted previously, for the awards of any degree or diploma, to this or any other university.

Place: - Pune

Signature

Date: -

Miss. ASHWINI B. BIRADAR

LL.M (TRIMESTER)

## **ACKNOWLEDGEMENT**

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I sincerely thank the faculty members and college librarian for their co-operation and assistance.

Place: -Pune

Signature

Date: -

Miss. ASHWINI BIRADAR

LL.M (TRIMESTER)

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## Chapter-1

### **INTRODUCTION OF RESEARCH STUDY**

#### **IMPORTANCE:-**

Although Women may be victims of any of the general crimes such as 'Murder', 'Robbery', 'Cheating', etc., only the crimes which are directed specifically against Women are characterized as 'Crimes Against Women'. Domestic Violence remains one of the most prevalent yet largely invisible forms of violence. Contrary to the general belief, Domestic Violence is not restricted to certain social sections. Domestic Violence occurs in many forms- physical, emotional, sexual, economic, verbal, etc. Woman faces Domestic Violence as a daughter, sister, wife, mother, or a partner in her lifetime.

Prior to Protection of Women from Domestic Violence Act (PWDOMESTIC VIOLENCE) Act 2005, under the civil law, for acts of domestic violence a married woman can initiate proceeding for divorce/ judicial separation. However, this fails to provide any kind of immediate relief and protection to the woman. She remains at the mercy of her parents/ relatives. Also it leads to problems of costs and delays in litigation. Most commonly used provision of criminal law in dealing with cases of Domestic Violence is Section

498A of the Indian Penal Code. It makes cruelty to a wife by her husband or relatives an offence and attracts a maximum punishment of three years on conviction. Limitation of this provision is that it is not aimed at providing reliefs, namely maintenance, shelter, etc. It is confined to the prosecution and possible conviction of the offender.

Protection of Women from Domestic Violence Act (PWDOMESTIC VIOLENCE) Act 2005 recognizes the right of a woman to live in violence free home

### **AIMS AND OBJECT OF THE RESEARCH**

The aim and object of this research is to protect women from Domestic Violence. It is no surprise that protecting women from domestic and sexual violence is a massive priority. It may be 2015 but one in five women are still victims of domestic violence. We are on our way to recognizing and understanding the serious impact domestic violence has on the lives of women and in many instances, their children.

The other object is to critically analyse the Domestic Violence Act, 2005 ie. To highlight all the provisions of the act which benefit the victims and suggestions and recommendations if any in respect of betterment of women.

## **HYPOTHESIS:-**

The hypotheses in this research which are put to test are :

1. Domestic violence is a human right issue and serious deterrent to development.
2. Supreme Court made inclusive definition of domestic violence by way of its judgments.
3. Domestic violence is a serious threat for women's right.

## **RESEARCH METHODOLOGY:-**

The research methodology undertaken in the present research paper is doctrinal research.

## **SOURCES OF DATA COLLECTION:-**

In this Doctrinal research, I have taken references from various books dealing with the topic of dissertation and have collected some information from the internet.



## Chapter-2

### **DOMESTIC VIOLENCE: A CONCEPT**

#### **Introduction**

Domestic violence, also known as domestic abuse, spousal abuse, battering, family violence, dating abuse, and intimate partner violence (IPV), is a pattern of behaviour which involves the abuse by one partner against another in an intimate relationship such as marriage, cohabitation, dating or within the family. Domestic violence can take many forms, including physical aggression or assault (hitting, kicking, biting, shoving, restraining, slapping, throwing objects, battery), or threats thereof; sexual abuse; controlling or domineering; intimidation; stalking; passive/covert abuse (e.g., neglect); and economic deprivation. Alcohol consumption and mental illness can be co-morbid with abuse, and present additional challenges in eliminating domestic violence. Awareness, perception, definition and documentation of domestic violence differ widely from country to country, and from era to era.

Domestic violence and abuse is not limited to obvious physical violence. Domestic violence can also mean endangerment, criminal coercion, kidnapping, unlawful imprisonment, trespassing, harassment, and stalking. Laws on domestic violence vary by

country. While it is generally outlawed in the Western World, this is not the case in many developing countries. For instance, in 2010, the United Arab Emirate's Supreme Court ruled that a man has the right to physically discipline his wife and children as long as he does not leave physical marks. The social acceptability of domestic violence also differs by country. While in most developed countries domestic violence is considered unacceptable by most people, in many regions of the world the views are different: according to a UNICEF survey, the percentage of women aged 15–49 who think that a husband is justified in hitting or beating his wife under certain circumstances is, for example: 90% in Afghanistan and Jordan, 87% in Mali, 86% in Guinea and Timor-Leste, 81% in Laos, 80% in Central African Republic. Refusing to submit to a husband's wishes is a common reason given for justification of violence in developing countries: for instance 62.4% of women in Tajikistan justify wife beating if the wife goes out without telling the husband; 68% if she argues with him; 47.9% if she refuses to have sex with him.<sup>1</sup>

Traditionally, in most cultures, men had a legal right to use violence to "discipline" their wives. Although in the US and many European countries this right was removed from them in the late 19th/early 20th century, before the 1970s criminal arrests were very rare (occurring only in cases of extreme violence), and it was

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<sup>1</sup>Available at:- <http://www.legalindia.in/domestic-violence-against-women-in-india>

only in the 1990s that rigorous enforcement of laws against domestic violence became standard policy in Western countries.

## **Definitions**

The definition of the term "domestic violence" varies, depending on the context in which it is used. It may be defined differently in medical, legal, political or social contexts. The definitions have varied over time, and vary in different parts of the world. Traditionally, domestic violence was mostly associated with physical violence. For instance, according to the Merriam-Webster dictionary definition, domestic violence is:<sup>2</sup>

"The inflicting of physical injury by one family or household member on another; also: a repeated / habitual pattern of such behaviour."

However, domestic violence today, as defined by international conventions and by governments, has a much broader definition, including sexual, psychological and economic abuse.

The Convention on preventing and combating violence against women and domestic violence states that:<sup>3</sup>

“domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or

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<sup>2</sup> Available at:- <http://www.merriam-webster.com/dictionary/violence>

<sup>3</sup> Available at:-

<http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=210>

domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim".

The Declaration on the Elimination of Violence against Women classifies violence against women into three categories: that occurring in the family (DOMESTIC VIOLENCE) that occurring within the general community, and that perpetrated or condoned by the State. Family violence is defined as follows:<sup>4</sup>

"Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation".

The term "intimate partner violence" (IPV) is often used synonymously with domestic abuse or domestic violence. Family violence is a broader definition, often used to include child abuse, elder abuse, and other violent acts between family members.

Broad definitions of domestic violence are common today. For instance the Act XX on Domestic Violence 2006, in Malta, defines DOMESTIC VIOLENCE as follows:

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<sup>4</sup> Available at:-  
<http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/HomeFamily+Violence/What+is+family+violence/>

"Domestic violence" means any act of violence, even if only verbal, perpetrated by a household member upon another household member and includes any omission which causes physical or moral harm to the other"

Terms such wife abuse, wife beating, and battering are descriptive terms that have lost popularity recently for several reasons:

There is acknowledgment that many victims are not actually married to the abuser, but rather cohabiting or in other arrangements. Abuse can take other forms than physical abuse. Other forms of abuse may be constantly occurring, while physical abuse happens occasionally. These other forms of abuse that are not physical, also have the potential to lead to mental illness, self-harm, and even attempts at suicide.

Males as well as females may be victims of domestic violence, and females as well as males can be the perpetrators. All forms of domestic abuse can occur in same sex partnerships.

### **Domestic Violence Against Men**

There is no question that domestic violence directed against women is a serious and bigger problem, but domestic violence against men is also increasing gradually in India. The supremacy of men in the society makes one believe that they are not vulnerable

to domestic violence. Battering of men by their spouse and family members has become a concerned issue and is another form of domestic violence under purview of judiciary. In India, compared to violence against women, violence against men is less frequent but it has already taken a deadly shape in many of the western countries by now.

Males have reported incidences of assault against them like pushing, shoving, slapping, grabbing, hitting which are intended to harm them and also take their lives on many occasions. Recently, hundreds of husbands gathered in Chandigarh and Shimla to voice their opinion for men's rights and protection against domestic violence subjected to them by their wives and other family members. It reflects the need for a special law for curbing domestic violence against men in present times.

If we contemplate over the reasons behind this form of domestic violence we would find some of the possible causes such as not abiding by the instructions of the wives', inadequate earning of men, infidelity towards wives, not helping the partner in household activities, not taking a proper care of children, abusing the spouse's family, infertility of men, spying the activities of partner, doubting the partner all the time and not trusting her, revolt by the wife when asked to look after in-laws etc. On many occasions the spat between men and women becomes public thereby influencing the society around especially in the villages. In

urban areas such forms of violence may go unreported because of greater privacy. Also the families find their reputation at stake in urban areas.

### **Domestic Violence Against Children/Teens**

Children and teenagers in our society are not spared from the evil of domestic violence. In fact, this form of violence is second in terms of number of reported cases after the 'violence against women'. There is a lot of variation in the form of its occurrence in urban and rural areas and in upper/middle class and lower class families in India. In urban regions, it is more private and concealed within the four walls of homes. The possible reasons could be disobeying parental advises and orders, poor performance in academics or not being at par with other children in neighbourhood, debating with parents and other family members etc. In addition to this, factors like not being socially intelligent or as active as the parents expect them to be, abusing the parents or speaking ill about other family members, not returning home on time are some other factors.

In rural areas the reasons could be harassment for child labour, physical abuse or harm for not following family traditions, forcing them to stay at home and not allowing them to go to school etc. Domestic violence against girls is in fact more severe at homes. As the common mob mentality of India prefers to have at least one male child after marriage, the girls in most of the

occasions are cursed and assaulted for having taken birth in the home. This kind abuse is prevalent both in cities and villages but is more common in latter case. Then there are cases of paedophilia causing sexual harassment of children in homes by family member themselves. In fact the number of rape cases of pre-matured girls has been rising since last few years. A survey of teens and college students found that rape accounted for 67 percent of sexual assaults in girls. Apart from sexual abuse and rape, pushing, slapping, punching, stalking and emotional abuse are other forms of domestic violence against children.

Adding to the above mentioned causes, there are also instances of abuse against children who are physically and/or mentally challenged. Instead of providing them proper health care and treating them politely, these children are beaten and harassed for not cooperating and attending to what family members ask them to do. They are even emotionally abused by cursing them having been in such retarded or handicapped state. In fact in poor families, there have been reports of selling body organs of the retarded children for getting money in return. It reflects the height of cruelty and violence against innocent children.

### **Domestic Violence Against Olds**

This form of domestic violence refers to the violence which old people at home are subjected to by their children and other family members. This category of domestic violence largely goes



under-reported in India. It is because of the dependency of olds on their children and having a fear of not being looked after or even ousted if the violence is revealed in public. The main causes of violence against aged people are – children being hesitant in bearing the expenses of the old parents, emotionally victimising the olds and beating them to death to get rid of them. On various occasions, they are beaten for doing something against the desire of family members. One of the very common reasons includes torture for property grabbing.

A perturbing trend is the vulnerability of ageing women to domestic violence in various forms. Given existing structures of gender discrimination, old women are prone to a greater risk than men of becoming victims of material exploitation, financial deprivation, property grabbing, abandonment, verbal humiliation, emotional and psychological torment. When they fall seriously ill, it is more likely that it is the elderly women in the family who will be denied proper health care. There is also a widespread understanding that the neglect, deprivation and marginalisation of older women are the normal consequences of ageing. In fact the plight of young widows in homes as discussed above now becomes more serious as a result of the ageing of those women. They are cut off from the society they are living in, ignored, abused, cursed, and considered as bad omens. The atrocities of sons, daughter-in-laws, daughters and husbands could be another cause of domestic violence specifically against older women. They are restrained

from cooking, housekeeping, or participating in activities outside the home.

While it is difficult to accurately measure the extent of the problem on a national scale, given the fact that most families deny that such abuse but we do know that the number of old people in our midst is growing. A current estimate puts the 60-plus population at around 90 million in India and is projected to have a population of 142 million older people by 2020. Given this demographic reality an important concern is the kind of action the country can take at the individual and societal level to alleviate abuse and neglect of elderly class.

### **Other Forms of Domestic Violence in India**

There are some more possible forms of domestic violence prevalent in India other than the ones listed above. On a serious note, family wars or clan wars are deadly forms of domestic violence across the country. The reason of such type of violence include dispute over property, physically or emotionally abusing any member of other family or clan, any religious cause or conflict arising during a religious ceremony, jealousy because of progress and financial status of other family, inter-caste marriage etc. This form of violence is common in many states like Haryana, Punjab, and Andhra Pradesh etc.

One of the other forms of domestic violence is ill-treatment of servants and maids in households. In many of the affluent

homes, servants are deprived of their salary and basic necessities. They are harassed and beaten and to work without even taking adequate rest. Similarly maids are molested by males in the family. Atrocities against small children working as servants are common and increasing.

To some extent media is also responsible for contributing to all the above forms of violence. The exaggerated news coverage of reports of domestic violence, the daily soaps screening the torture of a daughter-in-law at the hands of family members, the films portraying an element of violence against people of all age groups etc. are some of the menaces which media is causing. It is influencing the mind-set of the viewer's strongly. The problem arises when instead of taking a lesson from those news clippings, films, and television shows, people start enacting the same in their homes. Comparatively, the visual media is far more influencing than the print and electronic media in these cases. Illiteracy and mob mentality of majority of Indians misguides them in all these cases.

### **Domestic Violence against Women**

In India where almost half of the population is women, they have always been ill-treated and deprived of their right to life and personal liberty as provided under the constitution of India. Women are always considered as a physically and emotionally weaker than the males, whereas at present women have proved

themselves in almost every field of life affirming that they are no less than men due to their hard work whether at home or working places. Behind closed doors of homes all across our country, people are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolitans as well. It is crossing all social classes, genders, racial lines and age groups. It is becoming a legacy being passed on from one generation to another. But offences against women which reflects the pathetic reality that women are just not safe and secure anywhere.<sup>5</sup>

According to a latest report prepared by India's National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country.<sup>6</sup> Every six hours, a young married woman is found beaten to death, burnt or driven to suicide. Violence against women is not a new phenomenon. Women have to bear the burns of domestic, public, physical as well as emotional and mental violence against them, which affects her status in the society at the larger extent. The statistics of increasing crimes against women is shocking, where women are subjected to violence attacks i.e. foeticide, infanticide, medical neglect, child marriages, bride burning, sexual abuse of girl child, forced marriages, rapes, prostitution, sexual harassment at home as well as work places etc. In all the above cases women is considered as

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<sup>5</sup> Available at: -<http://www.legalindia.in/domestic-violence-against-women-in-india>

<sup>6</sup> *Ibid*

aggrieved person. The term used to describe this exploding problem of violence within our homes is 'Domestic Violence'. This violence is towards someone who we are in a relationship with, be it a wife, husband, son, daughter, mother, father, grandparent or any other family member. It can be a male's or a female's atrocities towards another male or a female. Anyone can be a victim and a victimizer.

This violence has a tendency to explode in various forms such as physical, sexual or emotional. 'Domestic Violence' includes harms or injuries which endangers women's health, safety, life, limb or wellbeing, whether mental or physical. It may also be through physical, sexual, verbal, emotional and economic abuse. According to 'United Nation Population Fund Report', around two-third of married Indian women are victims of Domestic Violence attacks and as many as married women in India between the age of 15 and 49 are victims of beating, rape or forced sex. In India the women suffer from Domestic Violence, especially in the states of Bihar, U.P., M.P. and other northern states. What amounts to domestic violence against women? -Domestic Violence undoubtedly a human right issue where it is very important to know what actually leads to act of domestic violence. The most common causes for women stalking and battering include:- exploitation of women for demanding more dowry, discrimination of women, alienation of women's self-acquired property fraudulently, torture by husband and in-laws of the husband,

arguing with the partner, refusing to have sex with the partner, neglecting children, going out of home without telling the partner, not cooking properly or on time, indulging in extra marital affairs, not looking after in-laws, cruelty by husband or in-laws mentally or physically, abusing & insulting by using vulgar language, sexual harassment, molestation, immoral traffic, rape, sodomy and all other inhuman acts. In all above stated causes women are subjected to torture and will be considered as the aggrieved person.

Usually violence takes place due to lack of understandings between the couple as well as in the family. The consequences of domestic violence attack on women, which will affect victim as well as family of the victim. Domestic Violence affects women's productivity in all forms of life i.e. assaulted women will always get agonized and emotionally disturbed and remain quite after occurrence of the torment. The suicide case of such victimized women is also a deadly consequence and the number of such cases is increasing day by day. A working Indian woman may lose her efficiency in work or drop out from work in some cases. Domestic Violence may affect the life of children at the larger extent because child will be having greater attachment with her mother and once the mother's grief and sufferings revealed then child may turn silent, reserved and express solace to the mother. In some of the cases violence will lead to maintain distance from the partner whereby sexual life gets affected aDomestic violenceersely. Sometimes marriage life will become a burden to the spouse and

one of the spouses will opt out for divorce or separation which again affects life of the children. In a case where wife is beaten up by her husband doesn't amount to domestic violence unless a sufficient reason of violation of right to life is shown. In another case where the women just not given food, it amounts to domestic violence if it is intended to achieve the ultimate purpose of necking her out of the benefits of shared household.<sup>7</sup>

To prevent violence against women and to protect the rights of aggrieved women, the legislation 'The Protection of Women from Domestic Violence Act, 2005' was passed by the parliament. According to this act every women who have been deprived of their right to life by the act of husband or relatives of the husband, can file a complaint to the protection officer, police officer or magistrate in the form of 'Domestic Incident Report' (Similar to FIR). Complaint can be filed by the victim /aggrieved person or relatives, it will be considered as the prima-facie evidence of the offence. Every 'Domestic Incident Report' has to be prepared by the Protection Officer which will assist in the further investigation of the incidence. The protection officer will pass certain orders i.e. protection of the women, custody of respondent and order of monetary relief to the victim. The Government of India should come out with some more stringent laws to protect the rights of women who are victims of violence of any kind occurring within the family, so that it will work as the preventive measure to

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<sup>7</sup> Available at:- <http://www.legalindia.in/domestic-violence-against-women-in-india>

eradicate the crime. A strict law to be passed to punish those women who are filing a false complaint against husband or relatives by misusing of Domestic Violence Act so that there will be fair justice to all.

### **Inclusive Definition of Domestic Violence Against Women**

In the case of, *Satvir Singh v. State of Punjab*<sup>8</sup> what would be the effect on the facts of the present case. At this stage, one would hasten to add that in a given case a fact shows that harassment was with an intention to ensure that victim will commit dowry death. It may in those facts be taken as an offence punishable under Section 304-B read with Section 511, IPC. But herein the facts are different it is not the prosecution case that the persistent demand of dowry was with a view that victim would commit dowry death. The demand was being made to get more dowry. It is not prosecution case that petitioners were driving her intentionally to put an end to her life.

### **Allegations of Adultery Amounts to Cruelty**

In case of, *P. Bayamma v. Peteti Mariyadass*<sup>9</sup> It is no doubt true the two daughters of the petitioners have categorically stated on oath that they saw their mother (petitioner) and her second son-in-law indulging in sexual act. The additional Sessions Judge was carried away by the fact that they are her daughters and daughters

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<sup>8</sup>*Satvir Singh v. State of Punjab* 1998 Cri LJ 405 at 413 (P & H)

<sup>9</sup>*P. Bayamma v. Peteti Mariyadass* 1998 Cri LJ 3247 at 3250, 3251 (AP)



can never attribute unchastely to their mother. But, the credibility of those witnesses should be judged from the other existing factors and one should not be carried away by the presumption that the daughter will never lie against their mother. It is significant to note that it is not the case of the respondent that prior or her operation, the petitioner had illicit contact with her second son-in-law only after the operation and when she was brought to the house of prosecution witness No. 4 during the convalescent period. It should not forget that the petitioner underwent a major operation of removing uterus and witness admits in her cross-examination, that a female who under went such an operation cannot indulge in sexual act till completion of six months' period. Therefore, the testimony of these witnesses that they saw the petitioner and her second son-in-law indulging in sexual act even before the expiry of six months' period after operation is highly improbable. Further, as pointed out by the trial Magistrate that the evidence of witness 2 in her examination;-in-chief is in conflict with her evidence in cross-examination. But, in her cross-examination, she gives a conflicting version stating that by the time she went, she saw her mother and brother-in-law embracing each other while standing like husband and wife and that she did not wake up her sister and that she chastised prosecution witness 1 and her brother-in-law. This version of witness 2 is highly unbelievable. It is most unnatural on the part of the petitioner and her son-in-law indulging in sexual act while her second daughter was inside the house though sleeping. It

is not known who opened the door for witness to enter into the house at the odd hour. It is highly improbable for them to indulge in sexual act without bolting the doors inside. The evidence of witness 3 is also most unnatural and it cannot be accepted. Her testimony that her mother and brother-in-law had indulged in sexual act when she went there to give them tiffin is highly artificial. Court has no hesitation in accepting the conclusion of the trial Court that the respondent had pressed into service witnesses 2 and 3 to speak falsehood against their mother to avoid maintenance to her. Court has also no hesitation to say that witnesses are liars and their testimony cannot be relied upon One great significant fact to be remembered in this case is that the petitioner is not having any sons and she has disputes with her husband. It is common knowledge that a house wife having disputes with her husband, will go either to the house of her son or her parental house or to the houses of her daughters. It has come in the evidence of witness 1 himself that during the convalescent period after undergoing major operation, the petitioner was taken to Hyderabad by her own daughters and she stayed in the house of her second daughter. There is nothing unnatural on the part of the petitioner in staying with her second daughter along with her second son-in-law. For the folly of giving shelter to his mother-in-law, the respondents 1 to 3 have attributed illegal contact with the second son-in-law. Witnesses 2 and 3 instead of taking their mother to their houses, they have attributed illegal contacts to her. This conduct on the part

of witnesses 1 to 3 is highly obnoxious. In the circumstances of this case, the trial Court rightly disbelieved their testimony and rightly held that the respondent failed to substantiate his plea that the petitioner is living in adultery. The trial Court also rightly held that as the respondent failed to prove the said allegation of adultery, it amounts to cruelty and the petitioner is entitled to stay separately and claim maintenance. The trial Court considering the quantum of income that the respondent is getting rightly held that the petitioner is entitled for maintenance at the rate of Rs. 300/- per month from the date of filing of the petition.

### **Cruelty and Harassment**

In case of, *Chanda Lakshminarayana v. State of Andhra Pradesh*<sup>10</sup> The evidence of PWs 2 and 3 on the point of harassment is relied on by the prosecution. It is stated by these witnesses that after the marriage, the deceased stayed happily with the accused for 1-1/2 years and during that period they were blessed with a son and thereafter the accused started demanding Rs.15, 000 and five tolas of gold which they could not satisfy and therefore, the accused has deserted his wife (deceased) for about ten months. Harassment of demanding additional money stands proved from the evidence of PWs 1, 2 and 3. The above evidence stands further corroborated by evidence of PW 7 who happens to be a resident of Rampur and also happens to be the Sarpanch of the village. It is stated by him in his

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<sup>10</sup>*Chanda Lakshminarayana v. State of A.P* 1996 Cri LJ 2670, (1996) 1 Crimes 439, 1996 APLJ (Cri) 40 (AP)

evidence that he was approached by PW 1 and 3 who complained that the accused was demanding a sum of Rs. 15,000/-

### **Demand of Money**

In case of, *Anand Kumar v. State of Madhya Pradesh*<sup>11</sup> In the instant case, it would be clear that there was constant demand of money by the accused/appellant from the deceased 'R' and since his demand was not fulfilled by 'R', she was subjected to torture by the accused/appellant, who went even to the extent of assaulting and beating her. It also appears that she was assaulted just prior to her death. She was not even permitted to talk to her close relatives on phone and to visit her mother. Clearly, therefore, she was subjected to continuous harassment and torture, both mental and physical, which certainly would amount to cruelty, by the accused/appellant in connection with his demand of dowry. This behaviour of accused/appellant ultimately led 'R' to commit suicide. In the circumstances, the trial Court appears to be wholly justified in finding the accused guilty of causing dowry death of 'R'. He has, therefore, rightly been convicted for offence punishable under Section 304-B of the Code.

### **Discrimination Against Women**

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<sup>11</sup>*Anand Kumar v. State of M.P* 1997 Cri LJ 1005 at 1010 (MP)

In case of, *Pragati Varghese v .Cyril George Varghese*<sup>12</sup>Articles 2 of the Declaration on the ‘Elimination of all Forms of Discrimination against Women’ is as follows:-

“Article 2 –Violence against women shall be understood to encompass, but not be limited to, the following:-

Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence marital rape, female genital mutilation and other traditional practices harmful to women...”

### **Dowry –An Evil**

In case of, *In re, Shri Bhagwan Singh*,<sup>13</sup>The supreme court dealing with the matter of death of a married daughter held:

“We believe it would be appropriate to make a few further observation at this stage. It is impossible to escape the conclusion that, in a case such as this, the death of young wife must be attributed either to the commission of a crime or to the fact that mentally tortured by the suffocating circumstances surrounding her, she committed suicide, Young women of education, intelligence and character do to set fire to themselves to welcome the embrace of death unless provoked and compelled to that desperate step by the intolerance of their misery. It is petitioning to note that such cases evidence a deep stated malady in our social

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<sup>12</sup>*Pragati Varghese v .Cyril George Varghee* 1994 APLJ (Cri) 46 (AP)

<sup>13</sup>*In re, Shri Bhagwan Singh* (1983) 2 SCWR 164.

order. The greed for dowry, and indeed the dowry system as an institution calls for the severest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have met with the success for which they were designed. Perhaps legislation in itself cannot succeed in stamping out such an evil, and the solution must ultimately be found in the conscience and will of the social community and its active expression through legal and constitutional methods”.

### **Fundamental Rights**

Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore of great significance in the formulation of the guidelines to achieve this purpose.<sup>14</sup>

In case of, *KailashKaur v.StateOf Punjab*,<sup>15</sup>“This case relates to a gruesome murder of a young wife by the bar baric process of pouring kerosene oil over the body and setting her on fire as the culmination of a long process of physical and mental harassment for extraction of more dowry. Wherever such cases come before the Court and the offence is brought home to the accused beyond

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<sup>14</sup>Vishaka v. State of Rajasthan, AIR 1997 SC 3011

<sup>15</sup>*KailashKaur v.StateOf Punjab* 1987 Cri LJ 1127 at 1128, 1129: AIR 1987 SC 1368: 1987 (2) SCJ 516: 1987 SCC (Cri) 431.

reasonable doubt. It is the duty of the Court to deal with it in most severed and strict manner and award the maximum penalty prescribed by the law in order that it may operate as a deterrent to other persons from committing such anti-social crimes.

### **Right of Arrested Person To Inform The Court About Torture Or Assault**

It is a case where it is really difficult to separate the grain from the chaff. If really there was merciless beating with such rural force that a hockey stick broke and the beating was given for more than one hour, the result would not have been sixteen simple injuries with no fractures or internal rupture. There is another vital factor which corrodes the complainant's plea. If the condition of the accused was so severe that he was not able to even stand on 15.10.1983 morning as claimed, it is not explained as to how the Magistrate who granted bail did not notice the condition or who even no grievance was made by the deceased before him. There is a requirement under Section 54 of the Code which deals with the right of an arrested person to bring to the notice of the Court about torture or assault. The provision provides for an examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. As the Court had noticed that in many cases the arrested persons are not aware of the right, and on account of ignorance are unable to exercise that right even though they have been tortured or

maltreated by the police in the lock-up, a direction was given in the case of *Sheela Barse v. State of Maharashtra*,<sup>16</sup> to the Magistrates requiring them to inform the arrested person about this right in case he has any complaint of any torture or maltreatment in police custody. This apparently was not done by the deceased and it is a serious flaw in the complainant's version. It is not the case of the complainant that such a grievance was made and the magistrate did not take note of it. There are several notices issued by the High Court and one of them is non-supply of documents.

### **Sexual Harassment and Violation Of Fundamental Rights**

Each such incident results in violation of the fundamental right of "Gender Equality" and the "Right to Life and Liberty. It is clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 13 (1) (g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 of the Constitution for the enforcement of these fundamental rights of women. This action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be

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<sup>16</sup> *Sheela Barse v. State of Maharashtra* (1983) 2 SCC 96, 1983 SCC (Cri) 353



accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a “safe’ working environment, right to life means life with dignity. The primary; responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the Legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental right of women workers under Articles 14, 19 and 21 of the Constitution, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.<sup>17</sup>

### **Strangulation and Post-Mortem Burn Injuries**

As stated the deceased was married to the first respondents on March 1, 1979 by her brother, Harbans Lal, PW 15. She was given usual presentation of the gold ornaments, utensils television set etc. she gave birth to a male child and by August 10, 1980 the boy was 3 months’ old. PW 15 gave on June 8, 1980 Rs. 5,000/- to her as against Rs. 10,000/- requested for. He received a telegram on August 10, 1980 at Sausuna, Punjab State hat ‘S’ died. He immediately came to Uklana Mandi, Haryana State at about 9.00

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<sup>17</sup>Vishaka v. State of Rajasthan, AIR 1997 SC 3011 at 3012,3013: : 1997 (3) Crimes 188: 1997 SCC (Cri) 932: 1997 (2) East Cri Cas 574: 1997 (6) SCC 241: 1997 (7) JT (SC) 384.

p.m. on August 10, 1980 and found 'S' dead. It is his case that 'SK' made extra-judicial confession that the deceased was strangled for not getting the dowry of their demand and that she was burnt to destroy the evidence and sought pardon of him. He sent for his people. A compromise was mooted to which he was not agreeable. The complaint was laid with the police on August 11, 1980. PW 1, Dr.Sher Singh held the autopsy and found that the death was due to asphyxia. The police laid the charge under Section 302 read with Sections 34 and 201, IPC against all the respondents

### **Sufficient Evidence - Regarding Demand of Money-Though Deceased Proves the Guilt**

It has not been disputed by the counsel for the appellant that the death of the deceased was within 7 years of her marriage. It is also not disputed that the death was caused by burns. The death though caused by burns was accidental. Form the evidence on record, the Court, however, does not find any infirmity in the finding of the trial Court that the death in the present case was accidental. Though, the appellant examined one defense witness in support of his assertion that the death was accidental but his evidence does not inspire confidence as even according to his own version he was not preset when deceased caught fire and in fact he entered the house after deceased came out crying "Bachao, Bachao". The Court, however, finds that the prosecution has failed to establish the third

ingredient that soon before her death, deceased was subjected to cruelty or harassment for or in connection with the demand of dowry. Though, the father and mother of the deceased had stated that appellant used to demand money and other dowry articles through deceased and he used to give her beating on the demand of dowry articles but there is nothing on the record to show that she was treated with cruelty or harassment on the demand for dowry; soon before her death. Prosecution witness in her statement, had stated that the appellant demanded money and other dowry articles through deceased from the next day of marriage but she did not state any fact that soon before the death of deceased, the appellant had demanded any dowry. Prosecution witness in his cross-examination, admitted that the appellant did not demand money in his presence and he sued to demand through prosecution witness who used to tell about it to her mother. In the absence of any such evidence, it will not be valid to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act. In view of the aforesaid findings, the appellant cannot be convicted of the offence under Section 304-B, IPC but from the fact mentioned hereinabove a clear case is made out against the appellant under Section 498-A, IPC for which there is enough evidence on the record. The father of the deceased has clearly proved that the appellant was not satisfied with the dowry articles and he was in the habit of taking liquor etc. similarly, mother of the deceased has also proved that the appellant used to demand money and other

dowry articles through deceased and she used to tell her about those demands. The trial Court has also found evidence reliable. The Court, therefore, holds that the prosecution has succeeded in proving the offence under Section 498-A, IPC.<sup>18</sup>

### **Suicide Committed Due Out Infliction Of Torture By Husband Not Proved-Conviction Set Aside**

On the basis of the First Information Report lodged in the police station by the brother of the deceased investigation was commenced and challan was filed against the petitioner and on 'K' for offences under Sections 306 and 498-A of the Indian Penal Code. The Special Judge on appreciation of the material before him came to the conclusion that the provision of Section 498-A of the Indian Penal Code cannot be attracted in relation to the petitioner as she is not relative of 'K' husband of the deceased. The allegation that there was illicit relationship between petitioner and 'K' about six years prior to the commission of suicide by the deceased. It is then stated that these person ill-treated which amounted to cruelty as contemplated by Section 498-A of the Code. Section 498-A postulates cruelty to a woman by her husband or relative of the husband. The Judge, was, therefore, right in not framing charge against the petitioner under Section 498-A. the framing of charge by the Special Judge under Section 306, IPC is in challenge in the present revision application.

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<sup>18</sup>Surya Narayan Panda v. State of Orissa, 1998 Cri LJ 2050 at 2052 (Ori).

## **Unlawful Demand for Any Property Or Valuable Security**

For the purpose of proving the offence against the accused-appellants under Section 304-B, IPC, the prosecution has, thus, to establish the following essential facts, namely:

The death of the woman has been caused otherwise than under normal circumstances, Such death has occurred within seven years of her marriage; and Deceased must have been subjected to cruelty or harassment by the appellants and such cruelty or harassment should be for or in connection with demand of dowry. The essential ingredients of the offence under Section 498-A IPC are that the woman is subjected to cruelty by the husband or the relatives of the husband. 'Cruelty', according to Section 498-A IPC, means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb etc., whether mental or physical, or harassment of the woman where such harassment is with a view to forcing her or any person related to her, to meet any unlawful demand for any property or valuable security or on account of failure of her or any relative to meet such demand.<sup>19</sup>

## **Working Women Nod Sexual Harassment**

Thus, the power of the Apex Court under Article 32 of the Constitution for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect

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<sup>19</sup> Gordhan Ram v. State of Rajasthan, 1995 Cri LJ 273 (Raj).

the working women form sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirement as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the Solicitor General and other member of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.<sup>20</sup>

In case of, *Soni Devrajbhai Babubhai v. State of Gujarat & Others*<sup>21</sup> This Court dealt with the objects and philosophy behind enactment of section 304B IPC. In this case, it has been mentioned that section 304B and the cognate provisions are meant for eradication of the social evil of dowry which has been the bane of Indian society and continues unabated. For eradication of social evil, effective steps can be taken by the society itself and social sanctions of community can be more deterrent, yet legal sanctions in the form of its prohibition and punishment are some steps in that direction. The Dowry Prohibition Act, 1961 was enacted for this purpose. The report of the Joint Committee of Parliament quoted the observation of our first Prime Minister Pt. Jawaharlal Nehru to indicate the role of Legislation in dealing with the social evil as under: "Legislation cannot by itself normally solve deep-rooted

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<sup>20</sup> See *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 at 3014: 1997 (3) Crimes 188; 1997 (6) SCC 241.

<sup>21</sup> *Soni Devrajbhai Babubhai v. State of Gujarat & Others* (1991) 4 SCC 298: (1991) AIR 2494,

social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape." Prime Minister Nehru proved prophetic because despite various Legislations the menace of dowry deaths is unfortunately increasing at an alarming speed. Ordinarily, Legislations are based on public opinion, but at times even Legislations also create public opinion. Regrettably, despite many Legislations, we have not been able to control dowry deaths. Perhaps greater social awareness and more severe legislative measures are urgently required to curb the menace of dowry related deaths. To our information, in no other civilized country similar problem of this magnitude exists. This is indeed a slur on our great heritage, ancient cultural and civilization.

Court in, *Hem Chand v. State of Haryana*<sup>22</sup> Case dealt with the basic ingredient of section 304B IPC and section 113B of the Evidence Act. This Court, in this case, observed as follows: "A reading of section 304B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a

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<sup>22</sup>*Hem Chand v. State of Haryana* (1994) 6 SCC 727: 1994 AIR SCW 4150,

person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there Supreme Court on Domestic Violence were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under section 113B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in section 304B IPC also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied." In cases where it is proved that it was neither a natural death nor an accidental death, then the obvious conclusion has to be that it was an unnatural death either homicidal or suicidal. But, even assuming that it is a case of suicide, even then it would be death which had occurred in unnatural circumstances. Even in such a case, section 304B IPC is attracted.



In case, *Satvir Singh & Others v. State of Punjab & Another*<sup>23</sup> This Court examined the meaning of the words "soon before her death". The Court observed that the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasize the idea that her death, should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a close and perceptible nexus between death and the dowry-related harassment or cruelty inflicted on the deceased.

In case of, Hira Lal's case<sup>24</sup> This Court observed that the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is relevant for invoking section 304B IPC and section 113B of the Evidence Act. On consideration of the law as crystallized in the decided cases of this Court and evidence on record, we are, therefore, satisfied that the prosecution has successfully proved its case against the appellants. We, therefore, concur with the view of the courts below and affirm the conviction and sentence of the appellants<sup>25</sup>. These appeals are accordingly dismissed. Appeal dismissed.

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<sup>23</sup> *Satvir Singh & Others v. State of Punjab & Another* (2001) 8 SCC 633: (2001 AIR SCW 3793),

<sup>24</sup> 2003 AIR SCW 3570,

<sup>25</sup> *Dhian Singh & Another v. State of Punjab*, (2004) 7 SCC 759: 2004 AIR SCW 7357, *Sarojini v. State of M.P.* (1993) Supp. (4) SCC 632: 1993 AIR SCW 817, *State of Karnataka v. M.V. Manjunathgowda & Another*, (2003) 2 SCC 188: 2004 AIR SCW

## **Allegation Of Cruelty And Harassment By Husband**

In case of *Harjit Singh v. State of Punjab*<sup>26</sup> It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if section 304B is to be invoked. But it should have happened "soon before her death." The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment.

## **Ingredients Of Offence Of Harassment For Dowry**

*In L.V. Jadhav v. Shankarrao Abasaheb Pawar*<sup>27</sup> the Dowry Prohibition Act, 1961 is intended to prohibit the giving or taking of dowry, and Parliament has made every offence under the Act non-compoundable by s. 8 of the Act. By s. 5 it has been enacted that any agreement for the giving or taking of dowry shall be void. Section 3 makes abetment of the giving or taking of dowry an offence. No doubt, according to s. 2 of the Act "dowry" is any property or valuable security given or agreed to be given either

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7396, MuthuKutty & Another v. State, (2005) 9 SCC 113; 2005 AIR SCW 6470, Harjit Singh v. State of Punjab, (2006) 1 SCC 463; 2005 AIR SCW 770, Kamesh Panjiyar v. State of Bihar, (2005) 2 SCC 388 and State of Punjab v. Iqbal Singh & Others, (1991) 3 SCC 1; 1991 AIR SCW 1459

<sup>26</sup> *Harjit Singh v. State of Punjab* AIR 2006 SC 2855

<sup>27</sup> *L.V. Jadhav v. Shankarrao Abasaheb Pawar* AIR 1983 SC 1219

directly or indirectly at or before or after the marriage as consideration for the marriage but does not include dowar or mahr in the case of person to whom the Muslim Personal Law (Shariat) appear applies. It would appear from s. 2 that consent to comply with the demand for any property as consideration for the marriage would alone make the property or valuable security given or agreed to be given directly or indirectly, "dowry" within the meaning of the Act. But having regard to the dominant object of the Act which is to stamp out the practice of demanding dowry in any shape or form either before or after the marriage, we are of the opinion that the entire definition of word "dowry" should not be imported into s. 4 which lays down that "if any person after the commencement of this Act, demands directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both".

Because as Lord Denning said in, *Sheldon v. Sheldon*<sup>28</sup> "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacitor incapability to tolerate the conduct complained of. Such

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<sup>28</sup>*Sheldon v. Sheldon* (1966) 2 All ER 257 (259)

is the wonderful realm of cruelty. These preliminary observations are intended to emphasize that the Court in matrimonial cases is not concerned with ideals in family life. The Court has only to understand the spouses concerned as nature made them, and consider their particular grievance.

As Lord Reid observed in, *Gollins v. Gollins*<sup>29</sup> "In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman."

*Chandrachud, J.* (as he then was) in *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*<sup>30</sup> Court said: "The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

## **INGREDIENTS OF CRUELTY**

In case of, *Shobha Rani v. Madhukar Reddi*<sup>31</sup> Section 13(1)(ia) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has

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<sup>29</sup>*Gollins v. Gollins* (1963) 2 All. E.R. 966 (1972):

<sup>30</sup>*Dastane v. Sucheta Narayan Dastane* (1975) 3 SCR 967 (1978)

<sup>31</sup>*Shobha Rani v. Madhulcar Reddi* AIR 1988 SC 121

been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is a Domestic violence adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other.

## **Conclusion**

In this chapter researcher define about the violence and its types. Researcher also explained about the consequences of domestic violence and effects of domestic violence. By way of case law researcher tried to explain about the role of court in making inclusive definition of Domestic violence.

Importantly researcher has given stress upon the violence against women in India. Courts in India played very important role to provide remedy to women in all type of violence against women.

## Chapter-3

### **LEGISLATION ON DOMESTIC VIOLENCE**

#### **Introduction**

In this topic researcher is going to explain about the law on the domestic violence in India as well as its role and importance to protecting the rights of women in India. Domestic violence is an extremely complex and vicious form of abuse, committed most often within four walls of the family house and /or within a particular deep rooted power dynamic and socio- economic structure, which do not allow even the recognition or acknowledgment of this abuse. Domestic violence is defined as an act of omission or commission stressing the fact that omission can cause as much heat burn as acts of commission. Thus the section provides protection against any act, conduct, omission, or commission that harms or injures or has the potential to harm or injure, and it will be considered as 'domestic violence'. Again the act of omission or commission may be physical, mental, sexual, emotional or economical. Even a single act of commission or omission may constitute domestic violence. Now women do not have to suffer a prolonged period of abuse before taking recourse to the law. The legislation has widened the scope of domestic violence and can be broadly related to human rights. In a way it highlights the notion violence of silence also. The expansive interpretation of violence of violence is a critical breakthrough

made by an act. A woman of any age, she may be a girl child, and unmarried, married or elderly women including a widow are such women with whom men have marriage like relationship. Violence can be both physical and psychological. It indicates threats or aggressive behaviour towards her not only to her physical being, but towards her self-respect and self-confidence. Domestic Violence against women may be psychological, physical or sexual. Psychological violence is carried out with psychological weapons like insults, humiliating treatment, denial of human existence rather than physical attack. Physical violence includes all types' aggressive physical behaviour towards the women's body. Sexual violence could include both passive and active violence. It will also include cases of perversity. Victims of domestic violence may be husband or his family members. Domestic violence could occasionally be seen in other relations also like by parents, brothers or others in parent family.

In India, there is unique situation of co-existence of all form of violence especially of elimination of women that is selective female foeticide, female infanticide, and bride burning. The incidence of violence of all forms within family has also gone up. Even today various forms of violence against women are prevalent in our society, though many cases remain unreported due to one or other reasons. Women on many occasions are victimized by all sorts of discrimination, deprivations and obstruction in goal achieving and responses. These incidences may occur in the

family, offices, industries or even public places. Inflicting and experiencing violence in many subtle forms causing and suffering mental pain in day- to- day life has become ways of our world in interpersonal relationships. The cruelty, the hate that exists in us is expressed in the exploitation of the weak by the powerful and cunning. The worst part of problem is that women today are not feeling safe and secure even in the family. The concept of home, sweet home is no more, so far many women, who suffer violence against themselves by the members of the family whom is no safe place when it comes to aggressive behaviour.

In last many decades, there has been an alarming increase in the incidence of violence within and outside family .Today, we hear more about wife beating, dowry deaths, and sexual crimes. There are differences between the husband and wife resulting in increasing divorce. Human feelings are gradually evaporating and man resorts even to murder the wife if he does not get the expected dowry or some other reason. The growing dowry system is gradually making the baby girl unwanted. People are resorting to foeticide and sometimes, baby girls are even killed after birth. Women are ignored in house work and outside home. They are suffering innumerable tortures from their in-laws and husbands. The women, right from the moment of stepping into the husband's home tries to forget her own identity and adjust everything according to needs of new place and the people living in it. In spite of it, she is under a constant watch and is often criticized for many



things. The society, the religion, her parents and in-laws everyone expects her to become her husband's shadow. The worst thing is that all this come as a rude shock to her after marriage, because the institution of marriage in our society is highly glamourized. Hence for women, 'the union of souls' turning into a nightmare is a truly horrifying and shattering experience. The mental violence may be committed in such a subtle manner that others will never come to know of it.

### **Causes of Domestic Violence**

In India, where there is no discrimination on grounds of caste, sex and where each human being has the right to participate in social process to create conditions of equality for the socially suppressed and disadvantaged sections of society, 'the dice is heavily loaded against women.' Female oppression continues from womb to tomb. In particular, discrimination occurs within the family, where norms regarding women's secondary status are reinforced in children from birth. Women are viewed as dependent within the family, hence face severe restrictions. The cultural beliefs, patriarchal social norms, superstitions and mind set are reasons which combine to produce discrimination patterns.

Due to modern science and technology female infanticide has been replaced by female foeticide. Another reason for the dangerous phenomenon of female foeticide is the extreme low valuation of female life and the low status accorded to women in

India. The reduction of birth rates in most of the Indian states has also contributed to intensification of son preference in the existing patriarchal society. Because of traditional gender bias, the cases of female infanticide occur and the girl child is denied equal opportunities in terms of food, clothing and education. Fear of sexual abuse of girl child also leads to female infanticide. Lack of religious education and degradation of moral standards also leads to such crime. Hence social and economic factors have been overemphasized in dynamics of child abuse.

Violence against married women is also a manifestation of gender discrimination. The specificity of violence in women involves an analysis of gender and its centrality to the family which has gender inequalities in day-to-day life. Domestic violence, battering, dowry, rape, suicide are the manifestations of gender inequalities within the family system. There are indications that any social structure which treats women as fundamentally of less value than men is conducive to violence against women. Violence against women in marital situation has more to do with the relationship of the husband and wife in social matrix. The cultural factors relating to marriage, status of women and per structure relationship between men and women in the society are important while describing violence against women in the family context. It may also have its origin in psychological factors like irrational, pathological behaviour of abuser and the victim, which subsequently affect the interpersonal relationship of both the

parties. The lack of awareness of the right and a general social belief in women's sub-ordination perpetuates a low self-image in women and her inferior status. She is taught that marriage is the ultimate goal she has to achieve. All this conditioning gradually becomes the nature of Indian women. Puberty, alcoholism, unemployment, frustration and poor role of modelling also contribute to violent behaviour.

It is also seen that the patriarchal attitude of Indian society which perceives women as an object rather than a subject and gives her a low status in the society. Deep rooted ideas about male superiority enable men to freely exercise unlimited power over women's life. Violence is thus a tool that men use constantly to control women as a result of highly internalized patriarchal conditioning which accord men the right to be their wives and thus ostensibly perform the duty of chastising them. The Indian women directly or indirectly encouraged to sacrifice her own needs, feelings or interests constantly for the needs of some other person or community like children, husband, family or community. The social conditioning results in the basic difference between how men and women view themselves and the reason for their violent interactions.

In, *Kuandalabala v.State of A.P.*<sup>32</sup>It was observed that 'Of late there has been an alarming increase in cases relating to harassment,

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<sup>32</sup>*Kuandalabala v.State of A.P* (1993) 2 SCC 684

torture, awaited suicides and dowry deaths of young innocent brides. The growing cult of violence and exploitation of young brides continues unabated there is constant erosion of the basic human values of tolerance and the spirit of live and let live. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime.

In the Indian society the situation of elderly is thought to be less severe considering the value system, culture and the still sustaining joint family system. However, the fast changing Indian social scenario leading to the degeneration of the joint family system, dislocation of cultural and family bonds and loss of respect for the aged indicate that family can no longer be a secure place for elderly. There are indications that the elderly population still depends on the family for economic and emotional support. The dependant position of elderly is a major cause of abuse. Stress is one of the major factors contributing to the abuse of the elderly. Social isolation and poverty experienced by the care takers are additional factors that increase the possibility of abuse.

## **Consequences of Domestic against Women**

### **1. Effect on the victim and the family**

Battered women have tendency to remain quiet, agonised and emotionally disturbed after the occurrence of the torment. A psychological set back and trauma because of domestic violence affects women's productivity in all forms of life. The suicide case

of such victimised women is also a deadly consequence and the number of such cases is increasing.

A working Indian woman may drop out from work place because of the ill-treatment at home or office, she may lose her efficiency in work. Her health may deteriorate if she is not well physically and mentally. Some women leave their home immediately after first few atrocious attacks and try to become self-dependent. Their survival becomes difficult and painful when they have to work hard for earning two meals a day. Many such women come under rescue of women welfare organizations like Women Welfare Association of India (WWAI), Affus Woman Welfare Association (AWWA) and Woman's Emancipation and Development Trust (WEDT). Some of them who leave their homes are forcefully involved in women trafficking and pornography. This results in acquiring a higher risk of becoming a drug addict and suffering from HIV/AIDS<sup>33</sup>. Some of course do it by their choice.

One of the severe effects of domestic violence against women is its effect on her children. It is nature's phenomenon that a child generally has a greater attachment towards the mother for she is the one who gives birth. As long as the violence subjected to the mother is hidden from the child, he/she may behave normally at

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<sup>33</sup> Dr. A.K. Pandey, Protection of Women from Domestic Violence in India, available at:- [http://www.lawcollegedehradun.com/lawreview/vol3\\_issue1\\_nov10/article6.html](http://www.lawcollegedehradun.com/lawreview/vol3_issue1_nov10/article6.html)

home. The day when mother's grief and suffering is revealed, a child may become upset about the happening deeply. Children may not even comprehend the severity of the problem. They may turn silent, reserved and express solace to the mother. When the violence against women is openly done in front of them since their childhood, it may have a deeper and gruesome impact in their mindset. They get used to such happenings at home, and have a tendency to reciprocate the same in their lives. It's common in especially in rural homes in India which are victimised by the evil of domestic violence.

In cases of Intimate Partner Violence (IPV), violence against women leads them to maintain a distance from their partner. Their sexual life is affected adversely. Many of them file for divorce and seek separation which again affects the life of children. Some continue to be exploited in lack of proper awareness of human rights and laws of the constitution.

## **2. Effect of Domestic Violence on the society**

All the different forms of violence discussed in this essay adversely affect the society. Violence against women may keep them locked in homes succumbing to the torture they face. If they come out in open and reveal the wrong done to them for help and rescue, it influences the society both positively and negatively. At one hand where it acts as an inspiration and ray of hope for other suffering women, on the other hand it also spoils

the atmosphere of the society. When something of this kind happens in the society, few families may witness the evil of domestic violence knocking their door steps. Some families try to imitate what others indulge in irrespective of it being good or bad for the family.

### **3. Effect on the productivity**

As mentioned earlier, domestic violence affects the productivity level of the victim negatively. Men and women lose interest in household activities. If they are employed they fail to work with full capabilities in workplace. Children are found to concentrate less on studies. They drop out of school and do not get the education which otherwise they might have got if they were not tormented and thus the country loses a productive asset. Therefore, the nation's productivity altogether gets affected because of domestic violence in homes. When old people are tortured and physically abused, they separate themselves from family members and their daily activities are restricted to themselves. The guardianship they can provide out of their experience, the moral values which they can instil in the grandchildren are all not done as they are unwanted in their own homes. People need to spend their part of income for medication when they are met with worse forms of domestic violence which again leads to loss in productive use of a family's income. The cumulative effect of the domestic violence

at all levels and across all regions is the country's hindered development and slow economic growth.

## **Remedies for Domestic Violence**

### **1. Protection under Indian Constitution**

The constitution of India contains much provision for securing the gender justice. The preamble of the constitution of India promises 'to secure to all its citizens Justice - social, economic and political; equality- of status and opportunity. The Constitution empowers the state to make special provisions for women and children even in violation of the obligation not to discriminate among the citizens. This power has been used to enact special laws for the protection of women, women workers in factories, mines and plantations and to provide maternity leaves to women workers in the organized sectors. The Constitution of India enunciates the general principle of right to equality and prohibits the state from denying to any person equality before law and equal protection of law. Equality of opportunities in public employment and office under the state is guaranteed by Article 16 of Constitution. This Clause has helped to ensure a significant position and its status to Indian women.

In a landmark judgment *Vishakha v. State of Rajasthan*<sup>34</sup> The Supreme Court has laid down exhaustive guidelines to prevent sexual harassment of working women in place of their work. The

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<sup>34</sup>*vishakha v.state of rajasthan* AIR 1997 SC 3011



court held that it is the duty of employer or other responsible person in work places or other institutions whether public or private to prevent sexual harassment of working women. The court also held that right to life means life with dignity .The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of the mechanism for its enforcement, is the responsibility of the legislation and the executive. The Directive Principles of State Policy embodying the major goals of welfare State also contain certain specific items affecting women while the provision of Article 38 directs the State to bring about a transformation of socio-economic conditions for the common good, another Article directs movement towards the achievement of an egalitarian and just social order, which would affect men and women equality. Article 39 holds out the promise of an equal right to adequate means of livelihood , equal pay for equal work, protection of health and strength of workers- men, women and children- from abuse and entry into avocations unsuited to their age and strength . Just and humane conditions of work and provision of maternity relief are directed by Article 42.

In, *Yousuf Abdul Aziz v. State of Bombay*<sup>35</sup>The validity of Section 497 Indian Penal Code which punishes only male counterpart in the offence of adultery which exempts the women from punishment was challenged as violative of Article 14 and 15(1) of the Constitution. The petitioner contended that even

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<sup>35</sup>*Yousuf Abdul Aziz v. State of Bombay* AIR 1954 S.C. 321

though the women may be equally guilty as abettor only but the man was punished, which violated the right to equality on the ground of sex. The Supreme Court upheld the validity of said provision on the ground that classification was not based on the ground of sex alone. The Court obviously relied upon the mandate of Article 15(3) to uphold this provision.

## **2. Protection under Civil law**

The Specific recognition of domestic violence is the concept of cruelty as ground for divorce and judicial separations. The meaning of cruelty differs in the various personal laws applicable depending upon the religion of the parties. There is no specific remedy to a spouse, who does not wish to move for a divorce or judicial separation. Further, domestic violence in a not matrimonial situation is not recognized. Civil remedies against domestic violence are to be found in the Specific Relief Act and Civil Procedure Code. The basic principle of general civil law is that an invasion of a right or a threat of such an invasion would entitle a person to a mandatory or prohibitive injunction as a means of preventing the enquiry. Other Civil laws relevant to situations of domestic violence are with respect to maintenance and custody and guardianship of children.

The Hindu Adoption and Maintenance Act provides for maintenance to be provide by a Hindu husband to his wife in case of desertion and cruelty. The Act further lists out the factors to be

taken into consideration while determining the amount of maintenance (under the Act). In a family where domestic violence occurs, children are the worst sufferers. Children can claim maintenance from their father. In case the children are minor, application can be filed by a mother. If women decide to leave her husband due to domestic violence she is very much concerned regarding the welfare of her children as they are worst sufferers of domestic violence. A woman will have to start legal proceedings for guardianship, if her husband is threatening to deny or has denied access to her children or if she wishes to prevent her husband from having access to them.

### **Role of Non-Governmental Organizations (NGOs)**

The role of non-governmental organizations in controlling the domestic violence and curbing its worse consequences is crucial. Sakshi – a violence intervention agency for women and children in Delhi works on cases of sexual assault, sexual harassment, child sexual abuse and domestic abuse and focuses on equality education for judges and implementation of the 1997 Supreme Court's sexual harassment guidelines. Women's Rights Initiative – another organization in the same city runs a legal aid cell for cases of domestic abuse and works in collaboration with law enforcers in the area of domestic violence.

In Mumbai, bodies like Majlis and Swaadhar are doing meaningful works in this field. Sneha in Chennai and Vimochana

in Bangalore are working on many women's issues arising from domestic abuse. They are also doing active work in issues related to labour.<sup>36</sup> Services ranging from counselling, education and outreach, giving provisions, and mobilizing them for gaining self-confidence are provided to them. Anweshi is a women's counselling centre in Kozhikode providing meditation, resource and counselling for battered women. All the above bodies have their own registered offices, contact numbers and websites for those who want to seek help. There are at present only few NGOs for welfare of men like Social Welfare Association for Men (SWAM) in Chennai.<sup>37</sup> Few more such organizations need to be opened for the help of abused men.

These NGOs continue to spread awareness amongst people regarding the legal rights they have in hand for fighting against the atrocities they are subjected to. They are encouraging more and more people to report any case of domestic violence so that proper action may be taken against the culprits.

### **Police and Health Care**

Police plays a major role in tackling the domestic violence cases. They need to be sensitized to treat domestic violence cases as seriously as any other crime. Special training to handle domestic violence cases should be imparted to police force. They should be

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<sup>36</sup> Dr. A.K. Pandey, Protection of Women from Domestic Violence in India, available at: [http://www.lawcollegedehradun.com/lawreview/vol3\\_issue1\\_nov10/article6.html](http://www.lawcollegedehradun.com/lawreview/vol3_issue1_nov10/article6.html)

<sup>37</sup> Dr. A.K. Pandey, Protection of Women from Domestic Violence in India, available at: [http://www.lawcollegedehradun.com/lawreview/vol3\\_issue1\\_nov10/article6.html](http://www.lawcollegedehradun.com/lawreview/vol3_issue1_nov10/article6.html)

provided with information regarding support network of judiciary, government agencies/departments. Gender training should be made mandatory in the trainings of the police officers. There should be a separate wing of police dealing with women's issues, attached to all police stations and should be excluded from any other duty.

Authorities should take steps to recognize Domestic Violence as a public health issue. A crisis support cell needs to be established in all major Government and Private Hospitals with a trained medical social worker for provide appropriate services. Training programmes must be organized for health professionals in order to develop their skills to provide basic support for abused people. Documentation on the prevalence and the health consequences of domestic violence should be undertaken by the concerned government departments, health care institutions, NGOs and counselling centres. A nodal agency should also be set up for the annual consolidation of the documented work and publish the same for wider publicity among the masses for increasing awareness.

### **3. Protection under Criminal law**

The incidence of domestic violence against women has been increasing over the years. Women are subjected to violence namely cruelty by husband or his relatives, dowry death, and grievous hurt. The criminal law offers two options that one is of prosecuting abusers for committing offences. If a woman is facing violence at

home, she can approach criminal court, the abuser will be arrested. The second is preventive measure by getting the abuser to executive bond for keeping the peace.

In order to combat the increasing incidence of torture of women by their husbands and relatives, the legislature enacted S. 498A of IPC and S.113A of the Indian Evidence Act. In order to convict a person for a crime under S. 498A of IPC, the prosecution has to prove that the accused committed acts of harassment or cruelty as contemplated by the section and that the harassment or cruelty was the cause of suicide. Many women have been killed by their husbands and relatives out of greed for more dowries. To deal with this problem, the offence of dowry death was included in IPC and legislature has also enacted the Dowry Prohibition Act 1961. As the earlier law was not sufficient to check dowry death, the legislature introduced provisions under S 304 B in IPC. And S 113 .B in Evidence Act. These provisions were introduced so that the person committing inhumane crimes on married women could not skip liability as Evidence of direct nature is not readily available. Dowry deaths occur within the four walls of the house, therefore the concept of deemed dowry death was introduced in 1983. There can be no direct evidence available for the offense of dowry death, therefore the course must rely upon circumstantial evidence and infer from the material available.

Domestic Violence sometimes may drive women to suicide. In such cases, it may be difficult to make the abuser responsible for the death under the provision of dowry death, but one may use the provision that provides punishment for abetment of suicide. If a woman has been harassed and subjected to mental cruelty, and has committed suicide because of this mental cruelty, the person who harassed the woman is liable for commitment of suicide. If a husband re marries during the subsistence of first marriage or if he was already married when he got married, he would be guilty of bigamy. Whether he is guilty or not depends on the religion that he belongs. Relevant provisions regarding bigamy are content under S. 494 and 495 IPC. If husband is having a sexual relationship with other women, he will be guilty of offence of adultery.

Protection under Domestic Violence Act Domestic violence is defined as an act of omission or commission or conduct of the respondent shall constitute domestic violence if it harms or injures or has the potential to harm or injure. It may be physical, mental, sexual, and emotional or economical. The Act stipulates the appointment of functionaries such as protection officers and service providers to assists the complainant woman in assisting the court and other support services and assisting the court during the course of proceedings and in the enforcement of orders. The protection officers are to be appointed by the State government for each district by notification in official gazette and are required to do all duties entrusted to it under the Act.

The appointment of service providers are based on registration. This provides recognition and legal protection to voluntary association such as NGOs and other registered bodies that work on women's right and provide support to women facing violence. The Act for the first time gives recognition to the right to reside. For right to secured housing for matrimonial / shared house hold. It creates certain other civil rights i.e. some declarative rights such as right to protection against domestic violence and some substantive rights such as right to maintenance, right to compensation, right to custody of children, right to medical expenses etc. Keeping with objectives of the law and the rights recognized, women is entitled to protection orders. Directing to stop violence , residence orders as to prevent disposition or allow for restoration in case the women has already been thrown out, monetary relief enabling the aggrieved women to meet the expenditure incurred due to the violence and even include maintenance, compensation orders conferring damages for the mental agony suffered and custody orders enabling the aggrieved to have temporary custody of children so as to guard her against any form of harassment over the issue of custody of children .

Act empowers the existing Criminal Judicial System to deal with the applications under the Act. It means, the competent court can grant relief and orders as per the Act. The Magistrate has been confirmed with the wide powers. To ensure that cases are disposed of in efficacious manner, he can secure the services welfare



experts, protection officers, service providers, police officers for the purpose of assisting in discharging the functions. While disposing the case he can punish not only the respondent for committing a breach of order but also the protection officers for not discharging the duty. The jurisdiction is also conferred on civil court and family court in certain cases. Application for relief may be filed by aggrieved person or a protection officer or any other person on behalf of the aggrieved before the Magistrate on prescribed form. There is no limitation prescribed for filing the application. From the order of the Magistrate an appeal may lie to the Court of Session within 30 days from the date on which the order is served on aggrieved or respondent. The Magistrate shall give opportunity to both parties to be heard about the application and shall also consider the domestic incidence report. Again, it is specifically stated that in order to determine what constitutes domestic violence the court shall consider the facts and circumstances of the case. The onus would be on the respondent to bring material on record to disprove the arguments of the aggrieved. Under the Act the offender can be punished with imprisonment of either description for a term of one year or fine of Rs. 20,000 or both. The offenders may also be charged under S. 498 A of IPC or Dowry Prohibition Act 1961.

In, *Bhagwan Das v. Kartar Singh*<sup>38</sup> the court held that the suicide was due to demand of dowry soon before death, S. 304 B of IPC can attracted whether it is a case of homicide or suicide.

In, *Kailash v. Sate of M.P.*<sup>39</sup> Wife died under suspicious circumstances. Court held that even if death is not caused by burns or bodily injury if it happens in unusual course and apparently under suspicious circumstances that can be brought under the purview of S. 304 B IPC.

Again in, *Ram Badan Sharma v. State of Bihar*<sup>40</sup> There was persistent demand of dowry and because of not fulfilling it, wife was subjected to harassment, humiliation and continuous beating by husband and in-laws. They were convicted under 304 B of IPC.

The matrimonial home is the household a woman shares with her husband, whether it is rented, officially provided, or owned by her husband or his relatives. A woman has the right to remain in the matrimonial home along with her husband as long as she is married. If a woman is being pressurized to leave her matrimonial home, she can ask court for an injunction or restraining order protecting her from being thrown out. Thus, apart from the criminal remedy the existing civil remedy is in the form of injunction. The Act is significant in the context because for the first time the term domestic violence has been widened from the culture

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<sup>38</sup> *Bhagwan Das v. Kartar Singh* AIR 2007 SC 2045

<sup>39</sup> *Kailash v. Sate of M.P* AIR 2007 SC 107

<sup>40</sup> *Ram Badan Sharma v. State of Bihar* (2006) SCC 2855

specific restriction on dowry deaths and penal provisions to positive civil rights of protection and injunction. The Act has delinked domestic violence from mere dowry related offences. The complexities of two separate issues, domestic violence and women's right over property were sufficiently deciphered in the present legislation. Although the Act reflects the need for civil law it has taken a co coordinated approach<sup>32</sup>.

In 1983, domestic violence was recognised as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman. Four types of cruelty are dealt with by this law:

Conduct that is likely to drive a woman to suicide,

Conduct which is likely to cause grave injury to the life, limb or health of the woman,

Harassment with the purpose of forcing the woman or her relatives to give some property, or

Harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.

The punishment is imprisonment for up to three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf.

There are some another forms of "cruelty" recognised by the Courts like Persistent denial of food, Insisting on perverse sexual conduct, Constantly locking a woman out of the house, Denying the woman access to children, thereby causing mental torture, Physical violence, Taunting, demoralising and putting down the woman with the intention of causing mental torture, Confining the woman at home and not allowing her normal social intercourse, Abusing children in their mother's presence with the intention of causing her mental torture, Denying the paternity of the children with the intention of inflicting mental pain upon the mother, and Threatening divorce unless dowry is given.

### **In the case of dowry-related harassment or dowry death**

Section 498-A of the Indian Penal Code covers dowry-related harassment. As with other provisions of criminal law, a woman can use the threat of going to court to deter this kind of harassment. The Indian Penal Code also addresses dowry deaths in section 304-B. If a woman dies of "unnatural causes" within seven years of marriage and has been harassed for dowry before her death, the Courts will assume that it is a case of dowry death. The husband or in-laws will then have to prove that their harassment was not the cause of her death. A dowry death is punishable by imprisonment of at least seven years. When filing an FIR (First Hand Report), in a case where a woman is suspected to have been murdered after a history of torture due to dowry demands, the complaint should be

filed under section 304-B rather than under section 306, which deals with abetment to suicide. Section 306 should be invoked when a woman commits suicide because of dowry-related harassment.

The distinction between civil and criminal law is a basic part of the Indian legal system. Civil laws deal with the rights and obligations of people and what is needed to protect them, while criminal law deals with offences and their punishment. In a criminal offence, the State takes upon itself the responsibility to investigate and collect evidence (through the police), to fight the case in court (through a public prosecutor) and enforce the punishment. Robbery, murder and kidnapping are examples of criminal offences. Criminal offences are dealt with by the Indian Penal Code (IPC).

The procedure by which a criminal trial is conducted is quite different from the processes involved in a civil trial. An important difference is that the "standard of proof" required in criminal cases is much higher than in civil cases. Since criminal law is centrally linked with issues of punishment, allegations and facts must be proved "beyond reasonable doubt", so that innocent people are not punished. In civil cases, the courts scrutinise the "balance of probabilities" before deciding in whose favour to make a judgement.

However, there are some situations in which both civil and criminal law apply. Inflicting physical violence on a wife or daughter-in-law as well as subjecting her to cruelty - physical, mental or emotional - in a marriage is not only a civil offence and provides ground for divorce (a "matrimonial offence"), but is also a criminal offence under the Indian Penal Code, for which a person can be imprisoned. The laws dealing with marital abuse have been made very stringent through amendments in the Indian Penal Code and the Evidence Act.

### **Need for Stringent Laws**

In 1983, domestic violence was recognised as a specific criminal offence by the introduction of section 498-A into the Indian Penal Code. This section deals with cruelty by a husband or his family towards a married woman. The main legislative measures at the national level for the children who become a victim of child labour include The Child Labour Prohibition and Regulation Act -1986 and The Factories Act -1948. The first act was categorical in prohibiting the employment of children below fourteen years of age, and identified 57 processes and 13 occupations which were considered dangerous to the health and lives of children. The factories act again prohibits the employment of children less than fourteen years of age.

The Government of India passed a Domestic Violence Bill, 2001, "To protect the rights of women who are victims of violence

of any kind occurring within the family and to provide for matters connected therewith or incidental thereto”\*

An act called Protection of Women from Domestic Violence Act, 2005 [DOMESTIC VIOLENCE ACT, 2005] also has been passed”. This Act ensures the reporting of cases of domestic violence against women to a ‘Protection Officer’ who then prepares a Domestic Incident Report to the Magistrate “and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction...”

Unfortunately, at present there is no single law in the Indian Constitution which can strictly deal with all the different forms of ‘Domestic Violence’ as discussed in this essay. There is an urgent need for such a law in the country. In fact, there has also been misuse of section 498-A and DOMESTIC VIOLENCE ACT, 2005 because of restricted definition of cruelty subjected to married women.

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

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on 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.

### **Objects and Reasons of Act:-**

The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498-A of the Indian Penal Code. The civil law does not however, address this phenomenon in its entirety.

### **Protection of constitutional rights of women**

It is therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

### **Protection of rights women who living in a relationship**

It covers those 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 through a relationship in the nature of marriage or adoption. In addition, relationships 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 the abuser are entitled to legal protection under the proposed legislation. However, whereas



the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner<sup>41</sup>, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

### **Need of Inclusive definition domestic violence**

It defines the expression ‘domestic violence’ to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

### **Rights of Women to Secure Housing**

It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

### **Speedy and Strong Remedy Against Domestic Violence**

It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the

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<sup>41</sup> See generally, The Protection of Women from Domestic Violence Act, 2005

aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence. It provides for appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

### **Domestic Violence**

According to need the legislatures provided inclusive definition of domestic violence which included following things<sup>42</sup>:

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

#### **“Physical Abuse”**

It means any act or conducts which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the

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<sup>42</sup> The Protection of Women from Domestic Violence Act, 2005

health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

**“Sexual Abuse”**

It includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

**“Verbal and Emotional Abuse”**

Insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and

Repeated threats to cause physical pain to any persons in whom the aggrieved person is interested.

**“Economic Abuse”**

Deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance,

Disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest

or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

### **Duties of Police Officers, Service Providers and Magistrate**

A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise pre-set at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

Of her right to make an application for abstaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

Of the availability of services of service providers;<sup>43</sup>

Of the availability of services of the Protection Officers;

Of her right to free legal services under the Legal Services Authorities Act, 1987 (39 to 1987);

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<sup>43</sup> The Protection of Women from Domestic Violence Act, 2005

Of her right to file a complaint under section 498-A of the Indian Penal Code (45 of 1860)

### **Duties of Shelter Homes**

If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

### **Duties of Medical Facilities**

If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

### **Protection Officers**

The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

### **Duties and Functions of Protection Officers**

To assist the Magistrate in the discharge of his functions under this Act.

To make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;<sup>44</sup>

To make an application in such form and in such manner as may be prescribed to the Magistrate if the aggrieved persons so desires, claiming relief for issuance of a protection order;

To ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987-(39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

To maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

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<sup>44</sup> The Protection of Women from Domestic Violence Act, 2005

To make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

To get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

To ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974),

The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under this Act.

### **Duties of Government**

The Central Government and every State Government, shall take all measures to ensure that-

The provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

The Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

Effective co-ordination between the services provides by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence sir established and periodical review of the same is conducted;

Protocols for the various Ministers concerned with the delivery of services to women under this Act including the Courts are prepared and put in place.

### **Application to Magistrate**

An aggrieved person or a Protection Officer or any other persons on behalf of the aggrieved persons may present an application to the Magistrate seeking one or more reliefs under this Act. Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.<sup>45</sup>

The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for

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<sup>45</sup> The Protection of Women from Domestic Violence Act, 2005



compensation or damages for the injuries caused by the acts of domestic violence committed by the; respondent. Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

Every; application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto. The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court. The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days form the date of its first hearing.

### **Counselling**

The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

### **Assistance of Welfare Expert**

In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

### **Proceedings to Be Held In Camera**

If the Magistrate considers that the circumstances of the case so warrant and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

### **Right to Reside In Shared Household**

Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.<sup>46</sup>

### **Monetary Reliefs**

While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary,

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<sup>46</sup> The Protection of Women from Domestic Violence Act, 2005

relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to-

The loss of earnings;

The medical expenses;

The loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

He maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) o the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides. He respondent shall pay the monetary relief granted to the aggrieved person within the period

specified in the order under sub-section (1). Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

### **Compensation Orders**

In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

### **Power to Grant Interim and Ex Parte Orders**

In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper. If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of

the aggrieved person under section 18, section 19, section 20, section 21 or as he case may be, section 22 against the respondent.

### **Court to Give Copies of Order Free Of Cost**

The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police station the jurisdiction of which the Magistrate has been approached and any service provider located within the local limits of the jurisdiction of the Court and if any service provider has registered a domestic incident report, to that service provider.

### **Relief in Other Suits and Legal Proceedings**

Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a Civil Court, family Court or a Criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

Any relief referred to in subs-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

## **Jurisdiction**

The Court of Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, within the local limits of which The person aggrieved permanently or temporarily resides or carries on business or is employed The respondent resides or carries on business or is employed or The cause of action has arisen Shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act. Any order made under this Act shall be enforceable throughout India.

## **Procedure**

Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974). Nothing sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

## **Appeal**

There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

## **5. Conclusion**

In this Chapter researcher explained about the need of laws to protect the women's rights against the domestic violence. As well as researcher explained in detail the Protection of Women from Domestic Violence Act, 2005 and its highlighted provisions. Researcher concluded that the Domestic Violence Act, 2005 is very well framed and protective of rights of women against domestic violence. This Act provides duties to follow by police officer, Magistrate etc. and formation of other authorities which help to reduce domestic violence.

## **Chapter-4**

### **CRITICAL ANALYSIS OF DOMESTIC VIOLENCE ACT, 2005**

The incidence of domestic violence against wives has been increasing over the years. But in India, prior to 1983, the issue of domestic violence was outside the domino law. It was only recognized in different matrimonial laws where cruelty is valid ground for divorce but there is no provision of immediate relief to stop the violence in the family. The passing of domestic violence act may be considered as an important step in addressing the issue of domestic violence. It recognizes for the first time the occurrence of continual violence within the home, which may go beyond mere physical abuse and seeks to rectify it, but domestic violence act promulgated by the Parliament of India with much fanfare and the avowed purpose of protecting the women is largely ill advised as it is structured to add to their miseries rather than providing succour. This is by no means to suggest that violence at domestic level does not exist or that there is no need for protection of women against barbarism. What needs to be emphasized is that mere creation of laws can never be the panacea for social evils. Legal reforms are meaningless unless they are preceded by social reforms. Domestic Violence Act fails, at various fronts, the must reform effective



piece of legislation aiming at social engineering<sup>47</sup>. For the starter, one may say, it is founded on the premise that domestic violence at the hands of men folk is the general rule in every next household; It creates new legal concepts that are dangerously imprecise; It promotes social norms that are in stark conflict with existing traditions, values beliefs and sense of morality; It provides a process that is lopsided as it lacks in attributes of fairness and reasonableness.<sup>48</sup>

### **Domestic Violence Act 2005**

The Domestic Violence Act 2005 is a piece of legislation meant to provide more effective protection to the right of women guaranteed under the constitution who are victims of violence of any kind occurring within the family. The very nomenclature of the Act indicates that it is not restricted to violence perpetuated against women by her husband or in-laws. It includes under its protective umbrella every women living in a domestic relationship as a member of family with the person indulging in violence<sup>49</sup>. Thus the law protects women who are victims of violence occurring within family or in domestic relationship. Moreover the Act has been designed to create certain civil rights, some declaratory (e.g., right to protection against Domestic Violence) and some substantive

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<sup>47</sup>Seema, S. 2006. "Battered Within the Four Walls:Domestic Violence and Law", *Chigunie Annual Souvenir of K.L.E Society Law College*. Bangalore. p.61

<sup>48</sup> Gulafroz Jan, 'India's Domestic Violence Act,2005': A Critical Analysis, <http://www.bangladeshsociology.org/A%20Critical%20Analysis%20BEJS%2011.1.pdf>

<sup>49</sup>Kaur Kuljit. 2007. "Domestic Violence Act 2005: A Step Towards Upholding the Rights of Women", *NYAYADEEP Journal of NALSAR* Vol. III Oct. p.81

(e.g., right to maintenance, right to compensation, right to shared household). But the law essentially falls under the criminal jurisprudence not merely because it is enforced by magistrate under CPC 1973 but also and mainly because the consequences of breach of certain orders passed by criminal court for affording to the aggrieved women the due protection of law has been made a new penal offence. It is imperative for the study of this kind to find out as to what was the legal position in domestic violence cases prior to the introduction of this new law, so that it can be examined as to what is new about this additional measure.

### **Protection under Domestic Violence Act**

Domestic Violence Act defines, “domestic violence” to include “any act omission or commission or conduct” of the man in question in relation to the aggrieved woman in case it attracts any of the four clauses:

a) 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.

b) 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.

c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause a, b or

d) Otherwise injures or causes harm, whether physical or mental, to the scope and width of the new offence relating to Domestic Violence.

Domestic Violence Act fails, at various fronts, the muster of an effective piece of legislation aiming social engineering. For the starter, one may say, it is founded on the premise that domestic violence at the hands of men folk is the general rule in every next household; It creates new legal concepts that are dangerously imprecise; It promotes social norms that are in stark conflict with existing traditions, values beliefs and sense of morality; It provides a process that is lopsided as it lacks in attributes of fairness and reasonableness. So if we talk in detail the following provisions need to be looked into again.

### **A. Protection Orders in Favour of Women – No Additional Remedy, a Camouflage**

After coming in force of the Domestic Violence Act the general perception among the public seems to be that domestic violence is an offence but contrary to this, reality is that domestic violence per-se is not an offence under Domestic Violence Act. What has been made criminal is the conduct of the male offender vis-à-vis

the women in the domestic environment amounting to breach of protection order obtained by the women from the Magistrate<sup>50</sup>.

In order to understand the true meaning of this, it is very important to know how and what kind of protection order can be obtained by the woman whose breach amount to offence under Domestic Violence Act. As per Sec. 18 of Domestic Violence Act magistrate is empowered to issue protection order upon prima facie satisfaction that domestic violence has taken place or is likely to take place i.e., woman can approach magistrate not only when she is actually subjected to violence but even if she is apprehending such violence. Now, this protection order is actually a prohibiting relief calling upon respondent to refrain from certain acts against the complainant. The jurisdiction vested in magistrate to pass these prohibiting orders goes against the legal principles that are applicable to law of injunction e.g., injunction cannot be granted when equally efficacious relief can be obtained by other usual mode of proceeding. Since all the acts which have been treated as unlawful under Domestic Violence Act, have been the part and parcel of criminal law of the country and therefore every person is expected, even without a prohibiting order (in the form of protection order) to refrain from causing any harm or injury to mental or physical health of women. The question arises: is that husband against whom no protection order has been passed free to

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<sup>50</sup>Gauba R.K. 2007 "Domestic Violence Law: A Recipe for Disaster," *National Legal Service Authority Journal*, Vol. III July.

cause harm to his wife? If the answer is obviously “no”, then it is beyond comprehension that how the issuance of protection order would add to her protection against the repetition of violence in the future. Hence, it is submitted that the remedy in the name of protection order is a camouflage. Moreover, the order which may be passed by the magistrate to protect the aggrieved women from possible domestic violence includes an injunction asking the respondent from being in the vicinity of any place that may be frequented by aggrieved persons or from operating a bank account enjoyed by parties, even if it were held singly by the respondent. The law makers in their anxiety to provide legal protection to the women seem to have gone overboard. The place frequented by the aggrieved person would undoubtedly include house where both parties may have been living together before their relations turned sour. By asking the male respondent to stay away would in fact be throwing out the male respondent from his own house; similarly, by asking the male respondent to refrain from operating bank account held singly by him only because he had shared its credit assets with the aggrieved woman at some stage, the magistrate would in fact be depriving the former from his daily substance, in the name of affording protection to the woman.<sup>51</sup>

Furthermore, Sec. 23 of Domestic Violence Act empowers the magistrate to pass an interim order in the course of any proceedings

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<sup>51</sup> Gulafroz Jan, 'India's Domestic Violence Act, 2005': A Critical Analysis, <http://www.bangladeshsociology.org/A%20Critical%20Analysis%20BEJS%2011.1.pdf>

before him that would include under Sec. 18. Under some provision, upon prima facie satisfaction (on the basis of affidavit) interalia, that application discloses that there is likelihood of domestic violence being committed, he may grant ex parte protection order. There is nothing in the entire statute to indicate as to how long such an ex parte order would remain in force. In this view, dicta of Sec. 25 that a protection order under Sec. 18 shall be in force till the “aggrieved person applies for discharge” would operate with equal force even for an interim order. The general rule under CPC is that in case ex parte injunction has been granted, the application for injunction has to be finally decided within thirty days cannot apply to these proceedings under Domestic Violence

Act, as Sec. 28 renders it subservient to CrPC. In the face of provision contained in Sec. 28 this shall be the position even if relief under Sec. 18 is claimed by virtue of Sec. 26 before civil court. Bearing in mind the above referred provisions of law, the possibility cannot be ruled out that women should introduce some doubts about the conduct of the male respondent with whom she has lived for some time in a shared household and in her anxiety to bind him, approach a magistrate with an application under Sec. 18 read with Sec. 23 asserting, an affidavit, that the latter is likely to subject her to some emotional abuse and seek an ex parte interim protection order prohibiting him from entering his own house or operation of his own bank cannot thereby by rendering him totally at her mercy. The incongruity of the impact hits in the face when

one reads these provisions in conjunction with the penal clause under Sec. 31 that renders breach, even of interim order, a cognizable offence attracting substantive sentence. In this scenario, the concerned male respondent is likely to be deprived of all possibility of presenting his side of the story since there is nothing stopping an unscrupulous woman from following the grant of an ex parte interim order immediately with an application of that order has been passed.

### **B. Right to Reside**

There are numberless cases whereupon the breaking up of marital bond, women have been thrown out of the matrimonial homes. In such situations the victims, in particular from orthodox background find it totally unacceptable to go back to their parental family for shelter or support. The provisions of maintenance allowance under Sec. 125 of CrPC was essentially created as a measure of protection to such vulnerable group in as much as there is possibility to abuse, when in lurch, is a cause of concern of orderly society. The courts, in recent times, have shown innovation by binding the husband (or male relative) with responsibility to provide some residential accommodation even in the matrimonial home to save the helpless women from vagrancy. The statutory right to live in a shared household in favour of aggrieved wife or dependent women relative under Domestic Violence Act is

undoubtedly a positive step. But the framers of the law, in their anxiety to cast the net wide, seem to have lost touch with reality and gone overboard. The relevant provisions that need to be examined in this context are Sec. 17 & 19 of Domestic Violence Act.<sup>52</sup>

### **C. Shared Household**

Section 17 of the Domestic Violence Act talks of right to reside in a shared household. It creates a statutory right in favour of “every woman in a domestic relationship,” an expression given the wide meaning assigned to the word “domestic relationship” includes not only the wife or women related by blood but also a female friend who has lived, even for a small period under the same roof with the male respondent without entering into a marriage. The right declared is that every such woman whether or not she has any right title of beneficial interest of her own in the premises in question, shall be entitled to reside in the shared household. The right is absolute and subject to denial only in the event of eviction or being excluded in accordance with procedure established.

But then it needs to be seen that how far this provision proves helpful in reality. It gives statutory recognition and thereby encouragement to extramarital relationships or relation between

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<sup>52</sup> Gulafroz Jan, 'India's Domestic Violence Act, 2005': A Critical Analysis, <http://www.bangladeshsociology.org/A%20Critical%20Analysis%20BEJS%2011.1.pdf>



persons of opposite sex outside of, or without marriage. To put it simply adopting a modern day lingo, women involved in live-in-relationships or adulterous connections are also covered as beneficiaries to the Act. Moreover, as per Sec. 17 the beneficiary can be evicted by procedure established by the law. But then Domestic Violence Act nowhere makes a mention or makes it clear as to by what procedure an affected respondent would be able to secure an order of eviction or exclusion against such women.

Furthermore, the word 'shared household' may include a property of joint family of which the male respondent is merely one of the several members. By putting a restraint against alienation, disposal or enunciation of rights in such a shared household, the law seeks to virtually shake the right of even such persons who may not have any role to play in the dispute from which the controversy has arisen.

Also, there is no time limit prescribed for which the said "right to reside" would operate in favour of the women. Since right to reside has been created by this special law in favour of a special class of women, it will not be controlled by the existing legal framework including Transfer of Property Act, in as much as, and particularly, because the right to reside thus brought in existence is irrespective of the "right, title or beneficial interest." In the absence of any provision or medium to such effect within the special law, the male respondent is without a legal remedy against a woman for whose

benefit the right to reside was never intended. This is because Sec. 17 does not set out sufficient parameters as to which claim to this right is to be tested by magistrate and in this view, the availability of the forum of appeal under Sec. 29 is also of no solace.

#### **D. Residence Orders - Sec. 19**

Sec. 19 of Domestic Violence Act permits an order to be passed, in the event of domestic violence to facilitate enjoyment of right to reside in the shared household against the backdrop of feud between the parties. The jurisdiction to restrain respondent from disturbing this right to reside even after souring of relation between the parties can be understood, at least to the extent of married wives declining to go back to their parental home. But, some of the possible restraint orders indicated under Sec. 19 seem wholly unjustified and unfair. Some of residence orders amongst other such nature are:

- i) Direction to male respondents to remove himself from the shared household.
- ii) Restraining the respondent from alienating or disposing off the shared household.
- iii) Restraining the respondent from renouncing his rights in shared household except with the leave of the magistrate.

The provisions seem to be unjust and unfair to the male respondent, a person in whom right, title or interest in the property

vests is not only restrained to exercise his rights but it also restricts the prospect of reconciliation between the parties. In this view, with no guidelines provided, such an order, if permitted to be passed by the magistrate would work, in the long run, against the interest of the woman herself. The husband having been thrown out by the law, it is not conceivable as to how the system expects the parties to even broach the subject of coming together through conciliation.<sup>53</sup>

### **c) Right to Monetary Reliefs**

Sec. 20(1) empowers the magistrate to grant monetary reliefs in favour of the aggrieved woman. The purpose of this clause is amelioration viz to help out the woman to meet the expenses incurred and losses suffered “as a result of Domestic Violence”. In this context, one can understand the quantum, taking into account the loss of earnings, the medical expenses or loss caused due to damage to the property etc. Inclusion of clause (d) of Sec. 20(1) however is misplaced. The jurisdiction of the magistrate to grant maintenance allowance is governed by Sec. 125 of CrPC. There was absolutely no reason why it should be mentioned amongst the monetary reliefs meant to help meeting the expenses consequent to domestic violence. This is bound to create not only utter confusion but also multiplicity of proceedings and consequences which would be grossly unfair to both parties. In spite of secular law of

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<sup>53</sup> Gulafroz Jan, 'India's Domestic Violence Act, 2005': A Critical Analysis, <http://www.bangladeshsociology.org/A%20Critical%20Analysis%20BEJS%2011.1.pdf>

maintenance available under Sec. 125 CrPC to all sections of society, now rendered not even subject to ceiling, a quantum of allowance that can be fixed (after amendment brought about to Act 50 of 2001) is made to said statutory remedy in addition to, and not as alternative to, the right to secure maintains allowance under the personal laws. Thus, even under the existing arrangement almost every set of parties is locked in litigation over the issue of maintenance simultaneously in the civil as well as criminal courts. A need to simplify the procedure to avoid multiplicity of proceedings, particularly in family disputes has been long felt. Some hope was generated in this regard when the family courts Act was enacted. But then, the said law has not been brought in force in all parts of the country. The creation of another statutory provision permitting maintenance allowance to be claimed would undoubtedly be construed by ill-aDomestic violenceised parties as yet another forum where opposite party could be dragged for similar relief to be agitated. This is bound to add to the multiple proceedings in which the parties may already be spending out their time, energy and resources.

Moreover the possibility of abuse of Section 20(1) is writ large when seen against the prospect of a female friend having lived with the male respondent under the same roof in what is called as live-in-relationship

(i.e. without marriage) even for a month or so claiming maintenance allowance under the said provision, with no restrictions attached and so possibly for the rest of her life.

### **E. Live-in Relation a Boost to Immorality**

Live-in-relationship is the arrangement in which a man and a woman live together without getting married.<sup>54</sup> This is nowadays being taken as an alternative to marriage especially in the metropolitan cities. Currently the law is unclear about the status of such relationship though a few rights have been granted to prevent gross misuse of the relationship by the partners.

The position of live-in Relationships is not very clear in the Indian context but the recent landmark judgments given by the Hon'ble Supreme Court provides some assistance when we skim through the topic of live-in and analyse the radius of the topic in Indian legal ambit. The couples tied with the knots of live-in relationships are not governed by specific laws and therefore find traces of assistance in other civil laws. The law is neither clear nor is adamant on a particular stand, the status is dwindling.

The Privy Council in *A. Dinohamy v. W. L. Blahamy*<sup>55</sup> laid down the principle that, "Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the

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<sup>54</sup>Virendra Kumar. 2012 "Live-in Relationship: Impact on Marriage and Family System", *Supreme Court Cases (J)*, vol 4.

<sup>55</sup>*A. Dinohamy v. W. L. Blahamy* , (1928) 1 MLJ 388 (PC)

contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage”.

Furthermore the Supreme Court granted legality and validity to a marriage in which the couple cohabited together for a period of 50 years. The Supreme Court held that in such a case marriage is presumed due to a long cohabitation. Furthermore the Hon’ble Allahabad High Court stated that a live-in relationship is not illegal. J. Katju and J. Mishra stated that, “In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality.” The Hon’ble Supreme Court accepted the principle that a long term of cohabitation in a live-in relationship makes it equivalent to a valid marital relationship. The Supreme Court also held that live-in relationships cannot be considered as an offence as there is no law stating the same.

In the well talked about case of *S. Khushboo v. Kanniammal*<sup>56</sup>, the Supreme Court gave its landmark judgment and held that there was no law which prohibits live-in relationship or pre-marital sex. The Supreme Court further stated that live-in relationship is permissible only in unmarried major persons of heterogeneous sex.

In another case the Supreme Court stated that if a man and a woman are living under the same roof and cohabiting for a number

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<sup>56</sup>S. Khushboo v. Kanniammal (2010) 5 SCC 600

of years, there will be a presumption under section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate. Hence the High Courts and the Hon'ble Supreme Court in a number of decisions delivered until recently have showed the positive signs of recognizing the legitimacy of the live-in relationships and have also shown the inclination for a legislation to be enacted with the objective of protecting the rights of couples in a live-in relationship.<sup>57</sup>

The decisions by the Indian courts is discerning as in some cases the courts have opined that the live-in relationship should have no bondage between the couples because the sole criteria for entering into such agreements is based on the fact that there lies no obligation to be followed by the couples whereas in some instances the courts have shown opposite views holding that if a relationship cum cohabitation continues for a sufficiently and reasonably long time, the couple should be construed as a married couple infusing all the rights and liabilities as guaranteed under a marital relationship.

It also appears strange if the concept of live-in is brought within the ambit of section 125 of the Cr.PC where the husband is bound to pay maintenance and succession as the ground of getting into live-in relationship is to escape all liabilities arising out of marital relations. If the rights of a wife and a live-in partner become

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<sup>57</sup> Gulafroz Jan, 'India's Domestic Violence Act, 2005': A Critical Analysis, <http://www.bangladeshsociology.org/A%20Critical%20Analysis%20BEJS%2011.1.pdf>

equivalent it would promote bigamy and there would arise a conflict between the interests of the wife and the live-in partner. Apart from lacking legal sanction the social existence of such relationships is only confined to the metros, however, when we look at the masses that define India, there exists no co-relation between live-in relationships and its acceptance by the Indian society. It receives no legal assistance and at the same time the society also evicts such relationships. The status of the female partner remains vulnerable in a live-in relationship given the fact that she is exploited emotionally and physically during the relationship. The Domestic Violence Act provides protection to the woman if the relationship is “in the nature of marriage”.

The Supreme Court in the case of *D. Velusamy vs. D. Patchaiammal*<sup>58</sup> held that, a ‘relationship in the nature of marriage’ under the 2005 Act must also fulfil some basic criteria. Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’. It also held that if a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage’.

The apex court in *D. Velusamy* held that, not all live-in relationships will amount to a relationship in the nature of marriage

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<sup>58</sup>*D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469



to get the benefit of the Act of 2005. To get such benefit the conditions mentioned below must be satisfied, and this has to be proved by evidence.

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In India we cannot afford to grant such alimony otherwise it will decay the family system in general and civil culture in particular. The same will give rise to many issues connected therewith such as maintenance, custody, right of inheritance, legitimacy succession etc. Hence the author is of the view that the maintenance should not be granted to female or male involved in live-in relationship. Now the problem is not just limited to the legality of the relationship but people are coming up about the rights of the live-in partners and the status of children born out of such relation legalizing live-in relationship means that a totally new set of laws need to be framed for governing the relations including protection

in case of desertion, cheating in such relationships, maintenance, inheritance etc. Litigation would drastically increase in this case.<sup>59</sup>

### **Conclusion:**

In a society that treats issues of the welfare of women too casually, some stringent measures are necessary to keep in check the unscrupulous and unbridled male of the species. But this needed to be brought about not by adding to the statute book with-ill-advised measures but through proper enforcement of the existing legal framework. In an endeavour to strike a balance between the mutual rights and obligations of men and women the framers of the law seem to have gone overboard to load the dice totally against the former. The above mentioned facts of the Domestic Violence Act are only some of its features that leave one in a disturbed state of mind. The Act has created a framework which is leading towards anarchy and representing a paradigm shift of tectonic plates supporting civil society. The consequences are bound to be disastrous for the “wife” as the “other woman” now has equal claims over man in matters of maintenance and shelter, two issues that count the most. The law projected as welfare measure for women might boomerang destroying the life of the women who reposed trust in the sanctity of marriage as institution. One dreads at the prospect of a day when society and the polity would be picking up pieces of aftermath, may be within a decade from now.

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<sup>59</sup> Gulafroz Jan, 'India's Domestic Violence Act,2005': A Critical Analysis, <http://www.bangladeshsociology.org/A%20Critical%20Analysis%20BEJS%2011.1.pdf>

## Chapter – 5

# POSITION OF DOMESTIC VIOLENCE IN OTHER COUNTRIES

### Domestic Violence in USA

Domestic violence in United States is a form of violence expressed by one partner or partners against another partner or partners in the content of an intimate relationship in the United States. It is recognized as an important social problem by governmental and non-governmental agencies, and various Violence Against Women Acts have been passed by the U.S. Congress in an attempt to stem this tide. Women are more likely to suffer domestic abuse (also referred to as 'intimate partner violence' or 'IPV') in the U.S., although the issue affects many. Victimization due to violent assault in general is common in the U.S. among both sexes, with an estimated 1.9 million women and 3.2 million men physically assaulted annually, and domestic violence is a large part of that problem, with 22.1% of women and 7.4% of men having been physically assaulted by a current or former spouse, cohabiting

partner, boyfriend, girlfriend or date in their lifetime (the preceding data is according to a 2000 U.S. Department of Justice Report)<sup>60</sup>.

Victimization from domestic violence transcends the boundaries of sexual orientation and gender, with significant percentages of LGBT couples facing these issues. Men are subject to domestic violence in large numbers, such as in situational couple violence as mentioned above, but they are less likely to be physically hurt than female victims. Social and economically disadvantaged groups in the U.S. regularly face worse rates of domestic violence than other groups. For example, about 60% of Native American women are physically assaulted in their lifetime by a partner or spouse.<sup>61</sup>

Many scholarly studies of the problem have stated that is often part of a dynamic of control and oppression in relationships, regularly involving multiple forms of physical and non-physical abuse taking place concurrently. Intimate terrorism, an ongoing, complicated use of control, power and abuse in which one person tries to assert systematic control over another psychologically, often results after the violence against women described. For both sexes, shelters exist in many states as well as special hotlines for people to call for immediate assistance, with non-profit agencies trying to fight the stigma that men and women both face in reporting these issues.

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<sup>60</sup> Tjaden, Patricia; Thoennes, Nancy (November 2000). "Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women". National Institute of Justice, United States Department of Justice.

<sup>61</sup> <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC446227/>

According to the Merriam-Webster dictionary definition, domestic violence is: "the inflicting of physical injury by one family or household member on another; also: a repeated or habitual pattern of such behaviour."

### **Governmental definitions**

The following definition applies for the purposes of subchapter III of chapter 136 of title 42 of the US Code:

The term 'domestic violence' includes felony or misdemeanour crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.<sup>62</sup>

It was inserted into the Violence Against Women Act of 1994 by section 3(a) of the Violence Against Women and Department of Justice Reauthorization Act of 2005.<sup>63</sup>

It also applies for the purposes of section 7275 of subpart 17 of Part D of subchapter V of chapter 70 of title 20<sup>64</sup>, section 1437F of

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<sup>62</sup> US Code. Title 42. Chapter 136. Subchapter III. Section 13925(a)(6)

<sup>63</sup> The Violence Against Women and Department of Justice Reauthorization Act of 2005

subchapter I of chapter 8 of title 42, and subchapter XII-H of chapter 46 of title 42 of the US Code.

The U. S. Office on Violence Against Women (OVW) defines domestic violence as a "pattern of abusive behaviour in any relationship that is used by one partner to gain or maintain power and control over another intimate partner". The definition adds that domestic violence "can happen to anyone regardless of race, age, sexual orientation, religion, or gender", and can take many forms, including physical abuse, sexual abuse, emotional, economic, and psychological abuse<sup>65</sup>.

A global problem

Kofi Annan, Secretary-General of the United Nations, declared in a 2006 report posted on the United Nations Development Fund for Women (UNIFEM) website that:

Violence against women and girls is a problem of pandemic proportions. At least one out of every three women around the world has been beaten, coerced into sex, or otherwise abused in her lifetime with the abuser usually someone known to her<sup>66</sup>.

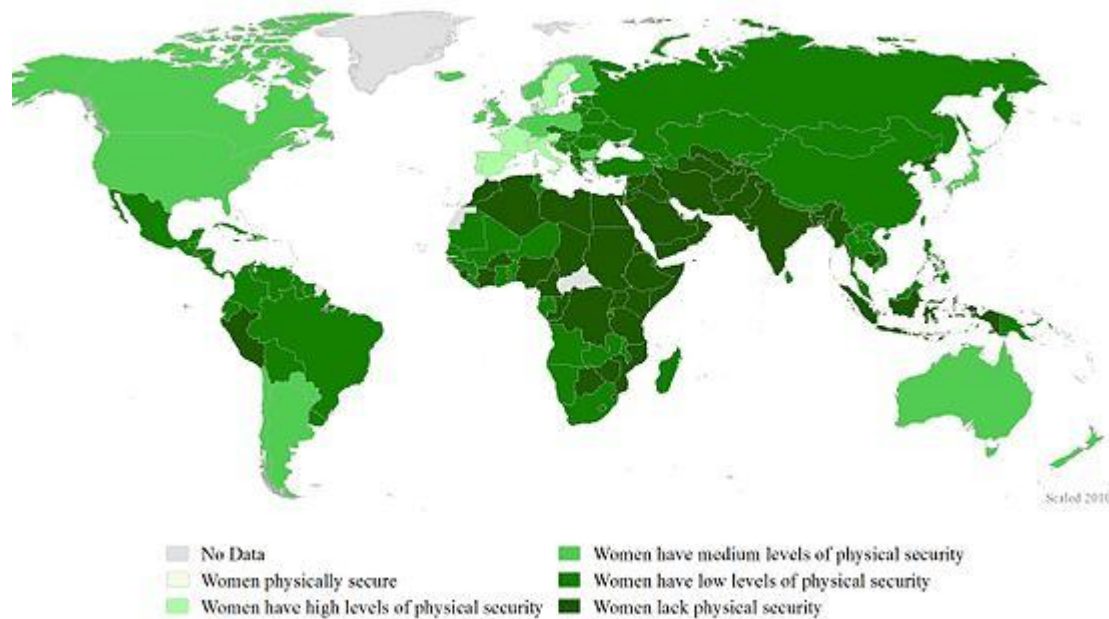
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<sup>64</sup> US Code. Title 20. Chapter 70. Subchapter V. Part D. Subpart 17. Section 7275(a)(1).

<sup>65</sup> "About Domestic Violence". Office on Violence Against Women.

<sup>66</sup> Moradian, Azad. *Domestic Violence against Single and Married Women in Iranian Society*. Tolerancy International. September 2009

## Women's Physical Security



A world map showing countries by women's physical security, 2011.

### Forms

Domestic violence may include verbal, emotional, economic, physical and sexual abuse. All forms of domestic abuse have one purpose: to *gain and maintain control* over the victim. Abusers use many tactics to exert power over their spouse or partner: dominance, humiliation, isolation, threats, intimidation, denial and blame<sup>67</sup>.

The dynamics between the couple may include:

Situational couple violence, which arises out of conflicts that escalate to arguments and then to violence, is not connected to a

<sup>67</sup> Smith, Melinda, M.A.; Segal, Jeanne, Ph.D. (December 2014). "Domestic Violence and Abuse: Signs of Abuse and Abusive Relationships". <http://www.helpguide.org>. Helpguide.org.

general pattern of control, generally infrequent, and likely the most common type of intimate partner violence. Women are as likely as men to be abusers, however, women are more likely to be physically injured, require police intervention and become fearful of their mates<sup>68</sup>.

Intimate terrorism (IT), involves a pattern of ongoing control using emotional, physical and other forms of domestic violence and is what generally leads victims, who are usually women, to women's shelters. It is what the definition of domestic violence was traditionally and is generally illustrated with the "Power and Control Wheel" to illustrate the different and inter-related forms of abuse<sup>69</sup>.

Violent resistance (VR), or "self-defense", is violence perpetrated by victims against their abusive partners. It is generally used infrequently because men are usually able to physically overpower women. Michael Johnson finds that "Most women who resist violently soon turn to other means of coping with their abuse."

Common couple violence, where both partners are engaged in domestic violence actions.

Mutual violent control (MVC) is a rare type of intimate partner violence that occurs when both partners act in a violent manner, battling for control.

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<sup>68</sup> *A Sociologist's Perspective on Domestic Violence*,

<sup>69</sup> *Power and Control Wheel*, National Center on Domestic and Sexual Violence.



## Laws

Victims of Domestic Violence are offered legal remedies, which include the criminal law, as well as obtaining a protection order. The remedies offered can be both of a civil nature (civil orders of protection and other protective services) and of a criminal nature (charging the perpetrator with a criminal offense). People perpetrating Domestic Violence are subject to criminal prosecution, most often under assault and battery laws. Other common statutes used include, but are not reduced to, harassment, menacing, false imprisonment. Perpetrators of DOMESTIC VIOLENCE can be charged under general statutes, but some states have enacted specific statutes dealing only with DOMESTIC VIOLENCE. Under South Carolina code, the crime of "Criminal domestic violence" states that *"it is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril."* If aggravated circumstances are present, people can be charged with the crime of "Criminal domestic violence of a high and aggravated nature." Criminal domestic violence is not the only charge possible in South Carolina, people can also be charged under other general statutes<sup>[70][71][72]</sup>

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<sup>70</sup> "Definitions of Domestic Violence". Childwelfare.gov.

<sup>71</sup> "South Carolina Legislature Mobile". Scstatehouse.gov.

## **Violence Against Women Acts**

October is observed as domestic abuse month in the United States. This poster was issued by various branches of the United States Military to educate and prevent domestic abuse.

Three Violence Against Women Acts (VAWA) (1994, 2000, 2005) United States federal laws have been signed into law by the President to end domestic violence, sexual assault, dating violence, and stalking. The law helped victim advocates and government agencies to work together, created prevention and victim support programs, and resulted in new punishments for certain violent crimes, which by 2005 resulted in:

49.8% reduction of non-fatal, violent victimizations committed by intimate partners.

In the first six years, an estimated \$14.8 billion in net averted social costs.

51% increase in reporting of domestic violence and 18% increase in National Domestic Violence Hotline calls each year, evidence

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<sup>72</sup> [http://www.courtinnovation.org/sites/default/files/Case\\_Processing\\_Report.pdf](http://www.courtinnovation.org/sites/default/files/Case_Processing_Report.pdf)

that as victims become aware of remedies, they break the code of silence<sup>73</sup>.

## **Family Violence Prevention and Services Act**

The Family Violence Prevention and Services Act (FVPSA) provides federal funding to help victims of domestic violence and their dependent children by providing shelter and related help, offering violence prevention programs, and improving how service agencies work together in communities.

Formula Grants. This money helps states, territories, and tribes create and support programs that work to help victims and prevent family violence. The amount of money is determined by a formula based partly on population. The states, territories, and tribes distribute the money to thousands of domestic violence shelters and programs.

The 24-hour, confidential, toll-free National Domestic Violence Hotline provides support, information, referrals, safety planning, and crisis intervention in more than 170 languages to hundreds of thousands of domestic violence victims each year.

The Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Program teaches people ways to prevent violence.

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<sup>73</sup> *The Violence Against Women Act of 2005, Summary of Provisions.* National Network to End Domestic Violence.

## **Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA)**

The DELTA program, funded by Centres for Disease Control and Prevention (CDC), works towards preventing Intimate Partner Violence (IPV) in certain funded communities. The way that the DELTA program works towards prevention is by understanding factors that influence violence and then focusing on how to prevent these factors. This is done by using a social ecological model which illustrates the connection between Individual, Relationship, Community, and Societal factors that influence violence.

## **Domestic Violence Offender Gun Ban**

The Domestic Violence Offender Gun Ban is a United States federal law enacted in 1996 to ban firearms and ammunitions to individuals convicted of misdemeanour domestic violence, or who are under a restraining (protection) order for domestic abuse in all 50 states<sup>74</sup>.

United States federal probation and supervised release for domestic violence offenders

The United States federal probation and supervised release law:

Requires first-time domestic violence offenders convicted of domestic violence crimes to attend court-approved non-profit

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<sup>74</sup> [http://en.wikipedia.org/wiki/Domestic\\_violence\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Domestic_violence_in_the_United_States)

offender rehabilitation programs within a 50-mile radius of the individual's legal residence.

Makes probation mandatory for first-time domestic violence offenders not sentenced to a term of imprisonment<sup>75</sup>.

### **United States asylum for victims of domestic violence**

In 2014 the Board of Immigration Appeals, America's highest immigration court, found for the first time that women who are victims of severe domestic violence in their home countries can be eligible for asylum in the United States<sup>76</sup>. However, this ruling was in the case of a woman from Guatemala and thus applies only to women from Guatemala<sup>77</sup>.

### **Law enforcement**

In the 1970s, it was widely believed that domestic disturbance calls were the most dangerous type for responding officers, who arrive to a highly emotionally charged situation. This belief was based on FBI statistics which turned out to be flawed, in that they grouped all types of disturbances together with domestic disturbances, such as brawls at a bar. Subsequent statistics and analysis have shown this belief to be false.

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<sup>75</sup> 18 U.S.C. § 3561(b)

<sup>76</sup> [http://www.nytimes.com/2014/08/30/us/victim-of-domestic-violence-in-guatemala-is-ruled-eligible-for-asylum-in-us.html?\\_r=0](http://www.nytimes.com/2014/08/30/us/victim-of-domestic-violence-in-guatemala-is-ruled-eligible-for-asylum-in-us.html?_r=0)

<sup>77</sup> [http://www.nytimes.com/2014/08/30/us/victim-of-domestic-violence-in-guatemala-is-ruled-eligible-for-asylum-in-us.html?\\_r=0](http://www.nytimes.com/2014/08/30/us/victim-of-domestic-violence-in-guatemala-is-ruled-eligible-for-asylum-in-us.html?_r=0)

Statistics on incidents of domestic violence, published in the late 1970s, helped raise public awareness of the problem and increase activism. A study published in 1976 by the Police Foundation found that the police had intervened at least once in the previous two years in 85% of spouse homicides. In the late 1970s and early 1980s, feminists and battered women's aDomestic violenceocacy groups were calling on police to take domestic violence more seriously and change intervention strategies. In some instances, these groups took legal action against police departments, including Los Angeles's, Oakland, California's and New York City's, to get them to make arrests in domestic violence cases. They claimed that police assigned low priority to domestic disturbance calls.

The Minneapolis Domestic Violence Experiment was a study done in 1981–1982, led by Lawrence W. Sherman, to evaluate the effectiveness of various police responses to domestic violence calls in Minneapolis, Minnesota, including sending the abuser away for eight hours, giving aDomestic violenceice and mediation for disputes, and making an arrest. Arrest was found to be the most effective police response. The study found that arrest reduced the rate by half of re-offending against the same victim within the following six months. The results of the study received a great deal of attention from the news media, including The New York Times and prime-time news coverage on television.

Many U.S. police departments responded to the study, adopting a mandatory arrest policy for spousal violence cases with probable cause. By 2005, 23 states and the District of Columbia had enacted mandatory arrest for domestic assault, without warrant, given that the officer has probable cause and regardless of whether or not the officer witnessed the crime. The Minneapolis study also influenced policy in other countries, including New Zealand, which adopted a pro-arrest policy for domestic violence cases.

However, the study was subject of much criticism, with concerns about its methodology, as well as its conclusions. The Minneapolis study was replicated in several other cities, beginning in 1986, with some of these studies having different results; one of which being the fact that the deterrent effect observed in the Minneapolis experiment was largely localized. In the replication studies which were far broader and methodologically sound in both size and scope, arrest seemed to help in the short run in certain cases, but those arrested experienced double the rate of violence over the course of one year<sup>78</sup>.

Each agency and jurisdiction within the United States has its own Standard Operating Procedures (SOP) when it comes to responding and handling domestic calls. Generally, it has been accepted that if the understood victim has visible (and recent) marks of abuse, the suspect is arrested and charged with the appropriate crime.

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<sup>78</sup> [http://en.wikipedia.org/wiki/Domestic\\_violence\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Domestic_violence_in_the_United_States)

However, that is a guideline and not a rule. Like any other call, domestic abuse lies in a grey area. Law enforcement officers have several things to consider when making a warrantless arrest:

Are there signs of physical abuse?

Were there witnesses?

Is it recent?

Was the victim assaulted by the alleged suspect?

Who is the primary aggressor?

Could the victim be lying?

Could the suspect be lying?

Along with protecting the victim, law enforcement officers have to ensure that the alleged abusers' rights are not violated. Many times in cases of mutual combatants, it is departmental policy that both parties be arrested and the court system can establish truth at a later date. In some areas of the nation, this mutual combatant philosophy is being replaced by the primary abuser philosophy in which case if both parties have physical injuries, the law enforcement officer determines who the primary aggressor is and only arrests that one. This philosophy started gaining momentum when different government/private agencies started researching the effects. It was found that when both parties are arrested, it had an aDomestic violenceerse effect on the victim. The victims were less likely to



call or trust law enforcement during the next incident of domestic abuse.

### **State due diligence**

International law requires that States exercise due diligence to reduce domestic violence and, when violations occur, to provide effective investigation and redress to victims. In 2011, Rashida Manjoo, the United Nations Special Rapporteur on Violence Against Women, urged the United States to "[e]xplore more uniform remedies for victims of domestic violence," "[r]e-evaluate existing mechanisms at federal, state, local, and tribal levels for protecting victims and punishing offenders," "[e]stablish meaningful standards for enforcement of protection orders," and "[i]nitiate more public education campaigns."<sup>79</sup> After the Supreme Court of the United States held in Town of Castle Rock v. Gonzales<sup>48</sup> that Jessica Lenahan, a victim of domestic violence, had no constitutional right to the enforcement of her restraining order, the Inter-American Commission on Human Rights found that the United States "failed to act with due diligence" to protect Jessica Lenahan and her daughters Leslie, Katheryn, and Rebecca Gonzales from domestic violence, "which violated the state's obligation not to discriminate and to provide for equal protection before the law". The Commission further held that "the failure of the United States to adequately organize its state structure to

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<sup>79</sup> <http://www.ohchr.org/>.

protect [Leslie, Katheryn, and Rebecca] from domestic violence was discriminatory and constituted a violation of their right to life."

### **Freedom from domestic violence resolution movement**

Since 2011, twenty-two local governments in the United States have passed resolutions declaring freedom from domestic violence to be a fundamental human right, rooted in the recognition of governmental responsibility to ensure this right. These resolutions were passed by Albany Common Council (NY), Albany County Legislature (NY), Austin City Council (TX), Boston City Council (MA), Cayuga Heights Town Board (NY), City Council of Baltimore (MD), City Council of Chicago (IL), City Council of Jacksonville (FL), City Council of the City of Miami Springs (FL), Council of the City of Cincinnati (OH), Council of Washington, D.C., Erie County Legislature (NY), Ithaca Common Council (NY), Ithaca Town Board (NY), Lansing Town Board (NY), Miami-Dade County Board of County Commissioners (FL), Montgomery City with Montgomery County (AL), Seattle Human Rights Commission (WA), Tompkins County Council of Governments (NY), Tompkins County Legislature (NY), and Travis County Commissioners Court (TX).<sup>80</sup>

Although the resolutions are not identical, most declare that freedom from domestic violence is a fundamental human right, and further resolve that the state and local governments should secure

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<sup>80</sup> [http://en.wikipedia.org/wiki/Domestic\\_violence\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Domestic_violence_in_the_United_States)

this human right on behalf of their citizens and should incorporate the resolution's principles into their policies and practices.

## **Support organizations**

### **Christian**

A contributing factor to the disparity of responses to abuse is lack of training. Many Christian seminaries had not educated future church leaders about how to manage violence against women. Once pastors began receiving training, and announced their participation in domestic violence educational programs, they immediately began receiving visits from women church members who had been subject to violence.

The first Theological Education and Domestic Violence Conference, sponsored by the Centre for the Prevention of Sexual and Domestic Violence, was held in 1985 to identify topics that should be covered in seminaries. When church leaders first encounter sexual and domestic violence, they need to know what community resources are available. They need to focus on ending the violence, rather than on keeping families together.

One of the Salvation Army's missions is working with victims of domestic abuse. They offer safe housing, therapy, and support.

### **Hotlines**

The National Domestic Violence Hotline is a 24-hour, confidential, toll-free hotline created through the Family Violence Prevention

and Services Act. Hotline staff immediately connect the caller to a service provider in his or her area. Highly trained domestic violence advocates provide support, information, referrals, safety planning, and crisis intervention in 170 languages to hundreds of thousands of domestic violence victims.

Loveisrespect, National Teen Dating Abuse Helpline, launched February 8, 2007 by the National Domestic Violence Hotline, is a 24-hour national Web-based and telephone resource, created to help teens (ages 13–18) experiencing dating abuse, and is the only helpline in the country serving all 50 states, Puerto Rico and the Virgin Islands.<sup>81</sup>

## **Reduction programs**

### **Community activism by men**

Men's groups against domestic violence and forced rape, found around the world, take measures to reduce their use of violence. Typical activities include group discussions, education campaigns and rallies, work with violent men, and workshops in schools, prisons and workplaces. Actions are frequently conducted in collaboration with women's organizations that are involved in preventing violence against women and providing services to abused women. In the United States alone, there are over 100 such men's groups, many of which focus specifically on sexual violence.

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<sup>81</sup> [http://en.wikipedia.org/wiki/Domestic\\_violence\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Domestic_violence_in_the_United_States)

## **Domestic Abuse Intervention Project (Duluth Model)**

The Duluth Model Domestic Abuse Intervention Project (Duluth Model), featured in the documentary *Power and Control: Domestic Violence in America*, was the first multi-disciplinary program designed to coordinate the actions of a variety of agencies in Duluth, Minnesota dealing with domestic violence for a more effective outcome and has become a model for programs in other jurisdictions. A nationwide study published in 2002 sponsored by the federal government found that batterers who complete programs based on the "Duluth Model," are less likely to repeat acts of domestic violence than those who do not complete any batterers' intervention program<sup>82</sup>.

## **Legal remedies in UK**

### **The criminal law**

Domestic violence is not a specific statutory offence. However, there are a number of possible criminal offences for which perpetrators could be prosecuted, ranging from murder, rape and manslaughter through to threatening behaviour.

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<sup>82</sup> [http://en.wikipedia.org/wiki/Domestic\\_violence\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Domestic_violence_in_the_United_States)

## **The civil law**

Civil remedies to deal with domestic violence have existed for many years. The Family Law Act 1996 attempted to rationalise the system, which had been seen as inconsistent and anomalous. The 1996 Act brought in two important civil law remedies – occupation orders and non-molestation orders. The Domestic Violence Crime and Victims Act 2004 amended these with the intention of improving protection for victims.

Two important remedies are non-molestation orders and occupation orders, although the Protection from Harassment Act 1997 also introduced important civil and criminal remedies, including restraining orders.

One issue which has caused concern has been the fall in some recent years in the number of applications for these civil protection orders, and in the number of orders made in some cases. Some commentators have suggested that this may have been due to an improved response from the criminal justice system, whilst others have argued that there are still plenty of obstacles in the criminal system, and that there are other explanations. Specialist domestic violence courts (SDOMESTIC VIOLENCECs) have been created since a Government initiative in 2005. Further information is available from the Crown Prosecution Service website.

## **Non-molestation orders**

Non-molestation orders can prohibit either particular behaviour or general molestation. The 2004 Act made breach of a molestation order a criminal offence with effect from 1 July 2007. There has been concern about the downward trend in applications for non-molestation orders. For example, the Conservative Party in their December 2008 strategy document ending violence against women reported concerns from the judiciary that women might be less willing to apply for the orders for fear of criminalising their partners. A literature review by the Legal Services Commission found that the downward trend in protection orders began before the Family Law Act 1996 came into force, but also noted a sharp drop in the six months after the criminalisation of breaches in the 2004 Act came into force. It concluded that the impact of the 2004 Act would have to be kept “under review”.

## **Occupation orders**

Occupation orders can define or regulate rights of occupation to the home – for example excluding a perpetrator from the family home, and also possibly from the surrounding area. The numbers of applications and orders made have both been falling. The chart below shows the numbers of orders made (as opposed to applied for) in the county courts since 1998:

## **Remedies in the Protection from Harassment Act 1997**

### **Criminal offences**

Section 1 of the Protection from Harassment Act 1997 prohibits people from pursuing a “course of conduct” which amounts to harassment of another person, and which they know or should know amounts to such harassment.

Sections 2 and 4 of the Act created two criminal offences of harassment, and of “putting people in fear of violence”. It also provided for restraining orders. These would forbid a perpetrator from pursuing further conduct against the victim amounting to harassment, or causing fear of violence. Breach without reasonable excuse is an arrestable offence. Originally, these orders were available to courts for people convicted of the criminal offences under the Act. However, changes made by section 12 of the Domestic Violence Crime and Victims Act 2004, which came into force (after some delays) on 30 September 2009 mean that the orders are now available for courts to restrain people convicted of any offence, and also people who have actually been acquitted, if the court decides that this is necessary “to protect a person from harassment by the defendant”.

### **Civil remedies**



The civil remedies are covered by section 3, which creates a statutory tort of harassment. This does not expressly set out the power to make the injunction; this power is a general one, derived from other legislation. The important points are:

Anyone can instigate civil proceedings under the section for an “actual or apprehended breach” of section 1.

Damages may be awarded for (amongst other things) anxiety or financial loss.

The court hearing the civil proceedings – either the High Court or the County Court – can issue an injunction restraining the defendant from doing something which amounts to harassment

If the plaintiff (i.e. the victim) considers the defendant has done something prohibited by the injunction, and the judge has reasonable grounds for believing that this is true, then a warrant can be issued for the defendant’s arrest.

Breach of an injunction under the Act without reasonable excuse may be treated either as a criminal offence or as contempt of court (but not both).

If it is treated as an offence, the maximum penalty for a breach is five years’ imprisonment and/or a fine (if the case is heard in the crown court) or six months imprisonment or a £5,000 fine in the magistrates’ court. The maximum penalty for contempt of court would be two years imprisonment.

## **Role of the Act in relation to domestic violence**

A literature review, published in 2011, summarises the role of the Act as follows:

The Protection from Harassment Act (1997), which extends to both civil and criminal law, deals with violence from outside the home. Whilst the Protection from Harassment Act 1997 was originally designed to combat the problem of stalking, it is used by those who cannot apply for any order under the Family Law Act 1996 (Smart, 2006). The Protection and Harassment Act 1997 is useful when dealing with post-separation harassment or violence with a non-cohabitant partner and for stalking. Hague (2005) argues that limitations of this Act are that it did not include occupation orders, or consider children; or the possibility that the attacker is a close relative (e.g. father, son or brother).

## **New stalking offences**

The Government amended the Protection from Harassment Act 1997 from November 2012 to introduce two new explicit offences of stalking. These are the subject of a separate Library Standard Note 6261, Stalking.

Recent campaigns have drawn attention to the risk that the address of a victim of domestic violence and abuse might be revealed in court documents relating to civil cases.

### **Domestic homicide review November 2013**

Norman Baker, junior Home Office minister, deposited in the Library the Home Office publication *Domestic Homicide Review: Common themes identified as lessons to be learned* on 25 November 2013. This sets out common themes that arising from the first 54 Domestic Homicide Reviews that have been considered by the Home Office Quality Assurance Panel. The review followed the implementation of section 9 of the Domestic Violence, Crime and Victims Act 2004 which means that local areas are expected to undertake a multi-agency review, following a domestic homicide to identify lessons learned.

### **Domestic Violence Protection Orders**

The previous Government legislated in the Crime and Security Act 2010 for the introduction of Domestic Violence Protection Notices (DVPN) and Domestic Violence Protection Orders (DVPO) – dubbed “go orders” by some.

Under section 24 of the Act, a senior police officer may issue a DVPN to a person over 18 if that officer has reasonable grounds for believing that the person “has been violent towards, or has threatened violence towards, an associated person” and that the DVPN is necessary to protect that person from violence or a threat of violence. The DVPN prohibits the suspected perpetrator from molesting the victim and, where they cohabit, may require the suspected perpetrator to leave those premises. The issue of a

DVPN triggers an application for a Domestic Violence Protection Order (DVPO). This is a court order lasting between 14 and 28 days, which prohibits the perpetrator from molesting the victim and may also make provision about access to shared accommodation. The magistrates' court must hear the application within 48 hours to limit the length of time for which the suspected perpetrator can be excluded from his home without the chance to defend himself.

The present Government reviewed the policy before bringing the provisions into force. The November 2010 Strategy Document Call to end violence against women and girls (see below) announced that the Government would be proceeding with a pilot of these orders, and this began on 30 June 2011 in three police force areas: West Mercia, Wiltshire and Greater Manchester Police. The pilot closed on 30 June 2012, In the meantime, the Government produced interim guidance for the pilot schemes.<sup>30</sup> Research and analysis: Evaluation of the pilot of Domestic Violence Protection Orders [Home Office] Domestic Violence and abuse page on the Gov.UK website provides further details.

The Home Office evaluation of the pilot suggests that DOMESTIC VIOLENCEPOs were generally seen positively by practitioners and victim-survivors and were associated with a reduction in re-victimisation, particularly when used in 'chronic' cases. While a negative cost impact was found over the pilot period, there are likely to be further benefits that the evaluation could not quantify

(e.g. preventing escalating violence), and over the long term the benefits increase relative to costs.

On 25 November 2013 Theresa May, the Home Secretary, announced in a written ministerial statement that both domestic violence protection orders and the domestic violence disclosure scheme would be rolled out across England and Wales from March 2014.<sup>31</sup> Further detail about the operation of the new scheme is available from the Domestic Violence and Abuse page of Gov.uk

### **Government strategies**

Both the current Government and the previous one have published strategies on combating violence against women and girls. A range of measures taken against domestic violence and abuse are highlighted in a Gov.uk webpage, most recently a campaign aimed at 13- to 18-year-old boys and girls. It is designed to encourage teens to rethink their views of violence, abuse, controlling behaviour and sexual abuse and what consent means within their relationships. The Labour Government's strategy was called Together we can end violence against women and girls (November 2009). An overview of the strategy's approach is available on the archived version of the Home Office website:

The strategy sets out a range of actions for the police, local authorities, and the NHS and government departments across three key areas: protection, provision, and prevention.

These include: funding (over £13m) to help support victims of sexual and domestic violence increased investment delivering a four-fold increase in family intervention projects to support 10,000 families a year development of a dedicated stalking and harassment helpline so emerging violence can be nipped in the Bud a new online directory of services for victims of violence against women and funding for new 24-hour sexual violence helpline the piloting of domestic violence protection orders (or 'Go' orders) to exclude perpetrators from their homes. The present Government has developed a similar cross-departmental strategy, which was launched by the Home Secretary in November 2010: The Government's ambition is nothing less than ending all forms of violence against women and girls. This is a key priority for us and today, on the international day for the elimination of violence against women, we have set out our guiding principles for this over the coming spending review period. This includes a commitment to provide more than £28 million for specialist services for victims of domestic and sexual violence over the next four years.

We will take a cross-departmental integrated approach to ending violence against women and girls by tackling its root causes and dealing fully with its effects. For the first time we have also

included the work that we do at an international level to promote women's rights globally and reduce the impact of conflict on women and girls.

The “strategic narrative” referred to in the above statement is Call to end violence against women and girls (November 2010). It was followed up in March 2011 with publication of the Call to end violence against women and girls: action plan, which listed 88 separate actions the Government planned to take in this area. The archived Home Office website summarises the intention behind these measures as being to:

Prevent violence from happening by challenging the attitudes and behaviours which foster it and intervening early where possible to prevent it provide adequate levels of support where violence does occur. Work in partnership to obtain the best outcome for victims and their families take action to reduce the risk to women and girls who are victims of these crimes and ensure that perpetrators are brought to justice

A progress review of these 88 actions, Call to end violence against women and girls (VAWG): Action Plan Progress Review, was published on 25 November 2011, and a further update, Call to end violence against women and girls: Taking action – the next chapter was published on International Women’s Day, 8 March 2012. This set out progress on the 88 actions and sets out a further twelve, taking the total to 100. In a Written Ministerial Statement, the

Home Secretary, Theresa May, noted that more than 88 actions had been completed “including the provision of almost £40 million of earmarked funding for specialist support services over the spending review period.”



## Chapter - 6

### CONCLUSION

Human rights are inalienable rights and it has pivotal place in the life of human beings. Human right is a universal right. For the proper functioning of society, these rights should not be violated on any cost. Women are given lower status in the society as compared to men. So, the rights of women should not be infringed, not being men.

For the purpose of strengthening their status, women have been empowered by various legislations. At international level, various attempts were made to bring such kind of change. In India also, the law of land has provided equal rights to women. Further, various Acts were enacted for the betterment of women. By such attempts, legislatures tried to uplift the status of women. So violence against women is a serious threat.

Domestic violence is kind of abuse, spousal abuse or family violence. It is a pattern of behavior which involves the abuse by one partner against another. The definition of the term traditionally, domestic violence was mostly associated with physical violence. But, this scenario has been totally changed. To prevent violence against women and to protect the rights of aggrieved women, the legislation 'The Protection of Women from Domestic Violence Act, 2005' was passed by the parliament. Through this enactment,

the women are very much protected now-a-days. A country in which women are respected and protected can develop very well. So, domestic violence is a human right issue and it is obstacle in the development of country.

Domestic violence is an extremely complex. It is a different form of abuse, committed most often within four walls of the family house. Domestic violence is defined as an act of omission or commission stressing the fact that omission can cause as much heat burn as acts of commission. Now women do not have to suffer a prolonged period of abuse before taking recourse to the law. The legislation has widened the scope of domestic violence and can be broadly related to human rights. A woman of any age, she may be a girl child, and unmarried, married or elderly women including a widow are such women with whom men have marriage like relationship. Violence can be both physical and psychological. It indicates threats or aggressive behaviour towards her not only to her physical being, but towards her self -respect and self-confidence. Supreme Court has evolved new trends in the concept of domestic violence from time to time and expanded its scope.

The recent scenario against threat to women is very serious issue. The society can change the position of women by treating them equally with them. To sum up, researcher would like to say society is wall built up by equality, fraternity, good conscience and justice. Men and women should stand at equal footing by respecting each other's right as well as by following respective

duties. It will not only protect the rights of women but bring at equal par with men.

In a society that treats issues of the welfare of women too casually, some stringent measures are necessary to keep in check the unscrupulous and unbridled male of the species. But this needed to be brought about not by adding to the statute book with-ill-advised measures but through proper enforcement of the existing legal framework. In an endeavour to strike a balance between the mutual rights and obligations of men and women the framers of the law seem to have gone overboard to load the dice totally against the former. The above mentioned facts of the Domestic Violence Act are only some of its features that leave one in a disturbed state of mind. The Act has created a framework which is leading towards anarchy and representing a paradigm shift of tectonic plates supporting civil society. The consequences are bound to be disastrous for the “wife” as the “other woman” now has equal claims over man in matters of maintenance and shelter, two issues that count the most. The law projected as welfare measure for women might boomerang destroying the life of the women who reposed trust in the sanctity of marriage as institution. One dreads at the prospect of a day when society and the polity would be picking up pieces of aftermath, may be within a decade from now.

## **BIBLIOGRAPHY**

### **Books Referred**

Anil Sachdeva, An Exhaustive Commentary on the Protection of Women from Domestic Violence Act and Rules (Delight Light Publishers, Jodhpur, 2<sup>nd</sup> edn., 2008).

Dr. S. R. Myneni, Legal Research Methodology (Allahabad Law Agency, Allahabad, 4<sup>th</sup> edn., Reprint 2010).

Dr. Vijay Chitanis and Jitendra Chitanis, Research Methodology (Arti.&Co., Mumbai, 2<sup>nd</sup> edn., 2009).

M.P.Jain, Indian Constitutional Law (Kamal Law House, Calcutta, 5<sup>th</sup> edn., 1998).

P. K. Das, Universal Handbook on Protection of Women from Domestic Violence Act and Rules (Universal Law Publishing Co. Private Limited, Delhi, 2007).

Seervai H.M., Constitutional Law of India (Universal Law Publishing Co. Private Ltd, New Delhi, 4<sup>th</sup>edn., 1996).

Shilpa Agarwal, Legal Research Methodology (Shri Sai Law Publication, 1<sup>st</sup>edn., 2003).

Shukla V.N., Constitution of India (Eastern Book Company Publisher, Lucknow, 10th edn., 2001).

## WEBLIOGRAPHY

The status of women in world religions, available at:

<http://proutglobe.org/2011/05/the-status-of-women-in-world-religions/>,

The Dharma Driven Identity Of Women Mahabharatas Kunti  
available at:-

[http://www.academia.edu/221361/Examining\\_the\\_Dharma\\_Driven\\_Identity\\_of\\_Women\\_Mahabharatas\\_Kunti](http://www.academia.edu/221361/Examining_the_Dharma_Driven_Identity_of_Women_Mahabharatas_Kunti)

Women and Law, available at:-

<http://www.scribd.com/doc/44220533/Women-and-Law>

Women Rights and Human Rights, Available at:-

<http://www.wwda.org.au/wp-content/uploads/2013/12//whrintro1.pdf>

Available at:- <http://www.legalindia.in/domestic-violence-against-women-in-india> (Visited on November 18, 2013)

Available at:- <http://www.merriam-webster.com/dictionary/violence>

Available at:-

<http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=210> (Visited on November 18, 2013)

Available at:-

<http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Family+Violence/What+is+family+violence/>

Available at:-<http://www.legalindia.in/domestic-violence-against-women-in-india>

Dr. A.K. Pandey, Protection of Women from Domestic Violence in India, available at:-

[http://www.lawcollegedehradun.com/lawreview/vol3\\_issue1\\_nov10/article6.html](http://www.lawcollegedehradun.com/lawreview/vol3_issue1_nov10/article6.html)

## CASE LAWS

*Satvir Singh v. State of Punjab* 1998 Cri LJ 405 at 413 (P & H)

*P. Bayamma v. Peteti Mariyadass* 1998 Cri LJ 3247 at 3250, 3251 (AP)

*Chanda Lakshminarayana v. State of A.P.* 1996 Cri LJ 2670

*Anand Kumar v. State of M.P.* 1997 Cri LJ 1005 at 1010 (MP)

*Pragati Varghese v. Cyril George Varghee* (1983) 2 SCWR 164

*re, Shri Bhagwan Singh* 1987 Cri LJ 1127

*Kailash Kaur v. State Of Punjab* 1987 Cri LJ 1127

*Sheela Barsev. State of Maharashtra* (1983) 2 SCC 96

*Soni Devrajbhai Babubhai v. State of Gujarat & Others* (1991) 4 SCC 298

*Hem Chand v. State of Haryana* (1994) 6 SCC 727

*Satvir Singh & Others v. State of Punjab & Another* (2001) 8 SCC 633

*HiraLal's case* 2003 AIR SCW 3570,



*Harjit Singh v. State of Punjab* AIR 2006 SC 2855

*L.V. Jadhav v. Shankarrao Abasaheb Pawar* AIR 1983 SC  
1219

*Sheldon v. Sheldon* (1966) 2 All ER 257 (259)

*Gollins v. Gollins* (1963) 2 All. E.R. 966 (1972):

*Narayan Ganesh Dastane v. Sucheta Narayan Dastane* (1975)  
3 SCR 967 (978)

*Shobha Rani v. Madhukar Reddi* AIR 1988 SC 121

*Kuandalabala v. State of A.P.* (1993) 2 SCC 684

*Vishakha v. State of Rajasthan* AIR 1997 SC 3011

*Yousuf Abdul Aziz v. State of Bombay* AIR 1954 S.C. 321

*Bhagwan Das v. Kartar Singh* AIR 2007 SC 2045

*Kailash v. State of M.P.* AIR 2007 SC 107

*Ram Badan Sharma v. State of Bihar* (2006) SCC 2855