

**DISSERTATION ON**

**“IMPACT OF THE PROTECTION OF WOMEN FROM  
DOMESTIC VIOLENCE ACT, 2005 & ON OTHER  
LEGISLATION CONCERNING PROTECTION OF WOMEN  
IN INDIA”**

**PREPARED BY:**

**MISS SHILPA SINGH  
ROLL NO.18**

**LL.M ONE YEAR COURSE**

**NEW LAW COLLEGE  
BHARATI VIDYAPEETH UNIVERSITY  
PUNE**

**2014 – 2015**

**UNDER THE GUIDANCE OF:**

**DR. BENDALE UJWALA.S**

## **DECLARATION**

I, the undersigned, hereby declare that the researcher work done on the topic entitled “ **IMPACT OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AND ON OTHER LEGISLATION CONCERNING PROTECTION OF WOMEN IN INDIA**” is written and submitted under the guidance of **Dr. BENDALE UJWALA. S, New Law College, Bharati Vidyapeeth Deemed University, Pune.**

The finding and conclusions drawn in Dissertation are based on the relevant information collected by me during the period or my research study for the award of LL.M. Degree in **New Law College, Bharati Vidyapeeth Deemed University, Pune.**

I further declare that the report submitted on the research study in my original work.

Place: Pune

Miss. Shilpa Singh

Date:

(Research Candidate)

[Type text]

## **CERTIFICATE**

This is to certify that the Dissertation entitled “**IMPACT OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AND ON OTHER LEGISLATION CONCERNING PROTECTION OF WOMEN IN INDIA**” submitted by **Miss. Shilpa Singh**, is the record of work carried out during One Year Course LL.M. for the academic year 2014–15 under my supervision and guidance in conformity with the syllabus prescribed by University of Bharati Vidyapeeth.

Date:

**(DR. BENDALE UJWALA.S)**

Place: PUNE

(Guide)

[Type text]

## ACKNOWLEDGEMENT

I convey my heart full gratitude to **Dr. BENDALE UJWALA.S** for her valuable guidance, constant encouragement and valuable suggestions, without which the study would not have come to its present shape.

I know that thanks word is a very short and formal but it is the only word to express my gratitude towards her for her encouragement.

I also thanks grateful to our professor **Dr. Jyoti S. Dharm**, New Law College, Bharati Vidyapeeth Deemed University, Pune and all present faculty of Law for providing all the required academic facilities in accomplishing my research work.

I am thankful to my friends and well wishers for their help.

Place: Pune

Miss. Shilpa Singh

Date:

(Research Candidate)

[Type text]

# **CONTENTS**

**DECLARATION**

**CERTIFICATE OF SUPERVISOR**

**ACKNOWLEDGEMENTS**

**IMPORTANCE OF RESEARCH**

**SCOPE OF RESEARCH**

**HYPOTHESIS**

**RESEARCH METHODOLOGY**

**SOURCES OF DATA**

**CHAPTERISATION:**

**CHAPTER 1**

**INTRODUCTION**

- Historical Perspective of Domestic Violence
- Women Position in Pre Independence Period
  - Vedic Period
  - Post Vedic Period
  - Medieval Period
  - Women Position During British Period
- Women Position In Post Independence Period

## **CHAPTER 2**

### **CONCEPT, FORMS AND CAUSES OF DOMESTIC VIOLENCE**

- Introduction
- Meaning Of Violence
- Concept Of Domestic Violence
- Characteristics Of Domestic Violence
- Definition Of Domestic Violence Under PWDVA
- Forms Of Domestic Violence
- Causes Of Domestic Violence

## **CHAPTER 3**

### **LEGISLATIVE PROVISION FOR THE PROTECTION OF DOMESTIC VIOLENCE AND OTHER LEGISLATION**

- Protection Of Women From Domestic Violence Act
- Anti – Dowry and Criminal Provision
- Highlights of PWDVA
- Legislative Provision and Protection
- Remedy

## **CHAPTER 4**

- Judicial approach

## **CHAPTER 5**

- Impact Of The Protection Of Women From Domestic Violence Act
- Challenges and Strategies

## **CONCLUSION AND SUGGESTIONS**

## **BIBLIOGRAPHY**

## **WEBILOGRAPHY**

**CHAPTER 1**  
**INTRODUCTION**



## **INTRODUCTION**

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women...”<sup>1</sup>

### **United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution, December 1993.**

Violence against women can be seen through ages. It has been carrying out in the name of customs, rituals, religion and also in many different forms like child marriage, witch-hunting, honour killing etc.

A woman who has been the foundation stone of family and society in general who gives birth to life, nurtures life, shapes it, and strengthens it, who is the transmitter of tradition and an instrument through which culture is preserved and transmitted from generation to generation, the greatest tragedy in our country is that grave injustice is done to her. She is subjected to domestic violence irrespective of her age, race, and caste, social and economic and political status. Her vulnerability in various forms is the common phenomenon in Indian society. The silent sufferings of a woman are making her easy prey to the male domination which is supported by prevalent patriarchy. The authoritative, autocratic nature of the male member in society and victimization of the female makes the situation worst. Almost every home in India must be suffering from some kind of domestic violence where women either as a daughter, daughter-in-law, or as a wife are abused physically, mentally, verbally, and economically.<sup>2</sup>

Domestic violence is physical, sexual or psychological abuse directed towards one's spouse, partner or other family member within the household. Domestic violence occurs when a family member, partner or ex-partner attempts to physically or psychologically dominate or harm the other. It occurs

---

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

<sup>2</sup> Narwadkar, Dr. Pooja P., Law Relating to Domestic Violence in India, 1<sup>st</sup> Ed. 2014, Hind Law House, Pg.No.8.

in all cultures, people of all races ethnicities and religions can be perpetrators of domestic violence.<sup>3</sup>

Violence against women is particularly intimate partner violence and sexual violence against women is the major public health problems and violations of women's human right.

According to 2013 a global review of available data, 35 per cent of women worldwide have experienced either physical and or sexual intimate partner violence or non-partner sexual violence. However, some national violence studies show that up to 70 per cent of women have experienced physical and or sexual violence in their lifetime from an intimate partner.<sup>4</sup>

## **1.1 HISTORICAL PERSPECTIVE OF DOMESTIC VIOLENCE**

Domestic violence is as old as recorded history which has been reported in virtually every society, every civilization. Discrimination and oppression leading to physical, mental or emotional violence have been accepted as a part of every patriarchal society. Except recent reference is found, domestic violence has been both socially and legally acceptable. Some important event, laws, codes, provide historical context, within which conceptualization of domestic violence becomes crystal clear. Two major elements combined to seal the status of women are male dominance and projecting women as 'property' an object belonging to men and secondly expectations from women as an ideal 'role model' suit each other, in such a way as to make her vulnerable and subject to discrimination, oppression and all sorts of victimization and resultantly compel their subordination.<sup>5</sup>

---

<sup>3</sup> Reddy, Dr.G.B., Women & the Law, Edition 2012, Gogia Law Agency, Hyderabad, Pg.No. 144-G

<sup>4</sup> World Health Organization, Global and Regional Estimates of Violence against Women, [http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf), p. 2. For individual country information, see full compilation of data in UN Women, 2012, Violence against Women Prevalence Data: Surveys by Country - See more at: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#sthash.seMykybj.dpuf>

<sup>5</sup> Narwadkar, Dr. Pooja P., Law Relating to Domestic Violence in India, 1<sup>st</sup> Ed. 2014, Hind Law House, Pg.No.9

## **1.2 WOMEN POSITION IN PRE INDEPENDENCE PERIOD<sup>6</sup>**

The position of women before the independence period is categorized in Vedic period, post Vedic period and medieval period.

### **1.2.1 VEDIC PERIOD**

Position of women during the Vedic period was glorious on account of freedom and equality. During this period women participated in every walk of life. Women studied in gurukuls and enjoyed liberty in every sphere. The great women like Apala, Visvara, Yamini, Gargi stole the lime light and became front runners in society. They acquired efficiency in art, music and even warfare. In Upanishad, wife has been regarded as a true companion of husband. The wife has been called the root of prosperity, enjoyment and dharma in Mahabharata. The man was not religiously competent to perform religious duties without his wife. There was absence of pardah system, right to select life partners. However, the system of polygamy and dowry was only prevalent in ruling class. There was no prohibition in the remarriage of widow and also no discrimination between boy and girl. Girls were allowed to undergo thread ceremony.

### **1.2.2 POST VEDIC PERIOD**

During post Vedic period women had suffered drastic hardships and restrictions as propounded by Manu. He attempted to set up male dominated society by increasing the authority of man. The birth of girl child was treated as a disaster for the family. Girls were denied access to education. Girls were not allowed to undergo thread ceremony. During this period, pre puberty marriage system was originated, thus the marriageable age of girls was lowered to 9 or 10 years. However, girls' belonging to ruling class was allowed to receive education, training in military science, administration and fine arts to some extent. Daughters were brought up under surveillance of her father, as a wife of her husband, as a mother of her son.

---

<sup>6</sup> Tripathi, Dr.S.C., Women and Criminal Law, 1<sup>st</sup> Edition, Central law Publication, Pg.No.1-2

### **1.2.3 MEDIVAL PERIOD**

The women's position was further degraded during the medieval period with invasions of India by Alexander and the Huns. Society observed security threats with invading soldiers roaming countryside; consequently, women are placed behind the veil. Women were deprived of education and participation in community affairs. During the medieval period the social evils like child marriage, sati, and female infanticide mushroomed extensively. Further, social curse like dowry had become inevitable particularly in Rajasthan. The system of devdasi and polygamy had also spread widely in countryside. Thus, during the medieval period the women were oppressed in every sphere.

## **1.3 WOMENS POSITION DURING THE BRITISH PERIOD<sup>7</sup>**

During the British Period the position of women had undergone drastic changes mainly due to western impact on the Indian socio- cultural pattern. The concept of equality liberty and individual secularism, although, arose but limited to ruling class.

The two major movements took place during the British regime. These are:

- i. Social Reforms Movement
- ii. Nationalist Movement

### **i. Social Reforms Movement**

This movement emerged during the 19<sup>th</sup> century and raised the question of equal status of women. Social reformers showed the concern regarding problems of sati, prohibition on remarriage, denial of right to property, child marriage and education to women. The reformers were of the view that by giving women access to education and by introducing progressive legislation social reforms in respect of women can be achieved. Swami Vivekananda, Dayanand Saraswati and Annie Besant were of opinion that old Vedic period should be revived which were ideals for women's status.

---

<sup>7</sup> Tripathi, Dr.S.C., Women and Criminal Law, 1<sup>st</sup> Edition, Central law Publication, Pg.No.2-3

## **ii. Nationalist Movement**

The nationalist movement drew the attention to large no. of people and generated confidence among women to raise their voice against oppressive system. In 1927, All India Women's Conference was formed and it proved to be a crucial movement towards the right to equality of women.

Consequently, a number of legislations were enacted like Widow's Remarriage Act, Child Marriage Act and Hindu Women's Right to Property Act, which intended to eradicate certain social evils.

## **1.4 WOMEN POSITION IN POST INDEPENDENCE PERIOD**<sup>8</sup>

After independence, the most important event, safeguarding the interest of women was the framing of the constitution of India, which is held to be the base of the legal system in our country. The framers of the constitution of India were well aware of the sociology of the problem of emancipation of female sex. They have seen the position of the weaker, marginalized, vulnerable section of society and have realized the need to give them some special treatment in order to bring them to the mainstreams. They realized that equality was important for the development of the nation. In order to reduce disparity in class based system ruled for long terms in the country; it was evident that to eliminate inequality, to provide opportunities for exercise of human rights; it was needful to protect them from exploitation time immemorial and provide additional safeguards and social justice.

Various social, protective, prohibitive, regulatory enactments were made to protect and empower women by bringing them to the mainstreams. The National Commission for Women Act, 1990 established National Commission for Women and also the State Commission, which are working hard towards protection and promotion of rights of women. In 1994 National Commission for Women came up with its draft bill on Domestic Violence which was severely criticized by Women's organisations. In 2001 for political significance the Protection of Domestic Violence Bill, 2001 was once again brought in

---

<sup>8</sup> Narwadkar, Dr. Pooja P., Law Relating to Domestic Violence in India, 1<sup>st</sup> Ed. 2014, Hind Law House, Pg.No82

parliament and was opposed. Later, the Protection of Women from Domestic Violence Act, 2005 was passed by the legislature for protection and promotion of women's right.

**CHAPTER 2**  
**CONCEPT, FORMS AND CAUSES OF**  
**DOMESTIC VIOLENCE**

## **2.1 INTRODUCTION**

Violence against women's can be seen throughout the world. It is a global epidemic that kills, tortures, and maims – physically, psychologically, sexually and economically. It is one of the most pervasive of human rights violations, denying women and girl's equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms.

Violence against women is present in almost every country. Women are treated like a waste vegetable which can be seen in different culture, class, society. Indian women are always treated lower to man and she should always be under ones feet.

Through, PWDVA, 2005 has been brought to uplift the status of women; rights have been given on violation against women's right and also to examine the root cause of domestic violence under the Indian society and to give remedial relief against this social evil.

## **2.2 MEANING OF VIOLENCE**

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

**Oxford Dictionary<sup>9</sup> defines:**

“Violence as behaviour involving physical force intended to hurt, damage or kill someone or something”.

**WHO defines Violence:<sup>10</sup>**

"the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation".

---

<sup>9</sup> <http://www.oxforddictionaries.com/definition/english/violence>

<sup>10</sup> "[World report on violence and health](#)", World Health Organization, 2002.



## **2.3 CONCEPT OF DOMESTIC VIOLENCE**

According to the **Merriam-Webster dictionary** definition, domestic violence is:<sup>11</sup>

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

Domestic violence is now more broadly defined, often but not always including "all acts of physical, sexual, psychological or economic violence" that may be committed by a person who is a family member or a person that has been an intimate partner or spouse, irrespective of whether they lived together.<sup>12</sup>

In 1993, The **United Nations Declaration on the Elimination of Violence against Women** identified domestic violence as one of three contexts in which women occurs, describing it as:<sup>13</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".

'Domestic violence is violent victimization of women within the boundaries of family, usually by men. Domestic violence is in a majority of cases violence against women by the members of house where she resides. It can be the husband, his parents, or siblings or any other resident who has the overt or covert latitude for actions that can cause physical or mental agonies to women...it happens behind closed doors and is most often denied by the very women who has been victim of violence.'<sup>14</sup>

Term "**Domestic Violence against women**" means any act or conduct which has potential to injure or hurt women physically, mentally, emotionally, socially, and also spiritually within the four walls of house, however, such an act or conduct is done usually not by strangers.<sup>15</sup>

---

<sup>11</sup> <http://www.merriam-webster.com/dictionary/domestic%20violence>

<sup>12</sup> <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>

<sup>13</sup> "[A/RES/48/104. Declaration on the Elimination of Violence against Women](#)". Un.org. Retrieved 2013-09-08

<sup>14</sup> Jaising Indira, law of Domestic Violence, Universal Law Pub. Co. Pvt. Ltd. Delhi, 2001, pg.No.9

<sup>15</sup> Tripathi Dr.S.C. & Arora Vibha, Law relating to Women and Children, Central Law Publication, 1<sup>st</sup> ed.2004

According to Sec.32 (dd) of the Parsi Marriage and Divorce Act, 1936 the “Domestic violence” means any act or commission or conduct which is of such a nature as to harm or injure or has the potential of harming or injuring the health, safety or well being of the person aggrieved.

## **2.4 CHARACTERISTICS OF DOMESTIC VIOLENCE**<sup>16</sup>

The following are the characteristics of domestic violence:

- a) Domestic violence is a victimization of women within boundaries of family; women may be a girl child, married elderly or like relationship.
- b) Violence can be of any type of harm physical, psychological, emotional, spiritual, economical, etc.it includes even threat or aggressive behaviours towards her not only her physical being and even towards her self-respect and self-confidence too.
- c) Domestic violence against women is a systematic and structural mechanism of patriarchal control of women that is built up on male superiority and female inferiority.
- d) The violence takes place in private sphere i.e. home where she expects love, affection, care, warmth and the wrongdoer is her own family members.
- e) It is a sex-stereotyped role expectation of society for men to be predominant and women to be subordinate.
- f) It is a gender based violence that reflects the existing asymmetry in power relationship between men and women that perpetuates the subordination and devaluation of female as opposed to male and exists within the framework of patriarchy as a symbolic system that denies women their

---

<sup>16</sup> Narwadkar, Dr. Pooja P., Law Relating to Domestic Violence in India, 1<sup>st</sup> Ed. 2014, Hind Law House, Pg.No29

rights and reproduces the imbalance and inequality between the sexes. It is rightly described as gender specific crime occurring within family between individuals related through intimacy, blood or law.<sup>17</sup>

- g) Domestic violence refers to a pattern of violent abusive and coercive behaviour by one partner in a relationship to gain and maintain power and control over another person's life.
- h) Domestic violence is an increasing concern all over the world community as a result of feminist movements. Terms like Marital Violence, are used to connote the violence between spouses while other terms like Inter-Family violence, domestic violence are used to broadly include violence in spouses, exhibited against children, between siblings and generally between persons who shared a mutual residence and live in close relationship.<sup>18</sup>
- i) Violence against women is most shameful human right violation. It does not know boundaries, geography, culture, caste, wealth or else. It is a universal phenomenon found in developing, developed and under developed countries in varying forms and magnitude.

The violence of any type can be manifested in two forms one is institutionalized and other is direct. First type of violence is present in political economic and social system by maintaining against those who are vulnerable. Institutional violence serves as a basis for direct violence because it influences the pattern of socialization.<sup>19</sup> It brings to those Individual who suffer, accept it according to the social role played. In case of women as weak section of society both structural and direct violence are complimentary in the form of domestic violence. The basis for the violence against women in different spheres is deeply rooted in hierarchy established for sexes in power relations, where women are placed in inferior position.<sup>20</sup> Since ancient time's domestic violence against women is introduced with in predetermined form of power relations in which; violence is used as a weapon of control.

---

<sup>17</sup> Jaising Indira "Domestic Violence & Law" 1 Journal of NHRC, 2002. 73.

<sup>18</sup> Shankaran M.V., 'Intra-Family Violence & Law' 13 Indian Bar Review, 1986,86.

<sup>19</sup> Violence Against Women a Literature Review Available A [http://ihro.org.in/women\\_violence.html](http://ihro.org.in/women_violence.html).

<sup>20</sup> Suranjita Ray , 'Understanding Patriarchy : Foundation Course Human Rights, Gender & Environment' Delhi University available at [http://www.du.ac.in/fileadmin/DU/Academics/course\\_material/hrge\\_06.pdf](http://www.du.ac.in/fileadmin/DU/Academics/course_material/hrge_06.pdf)

## **2.5 DEFINITION OF DOMESTIC VIOLENCE UNDER PWDVA, 2005**

‘The Protection of Women from Domestic Violence Act (PWDVA),2005’ defines the expression “**domestic violence**” to include actual abuse or threat of abuse-physical, sexual verbal, emotional or economic violence.

**Section 3** of the Act defines “**domestic Violence**”.

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (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; or
- (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; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

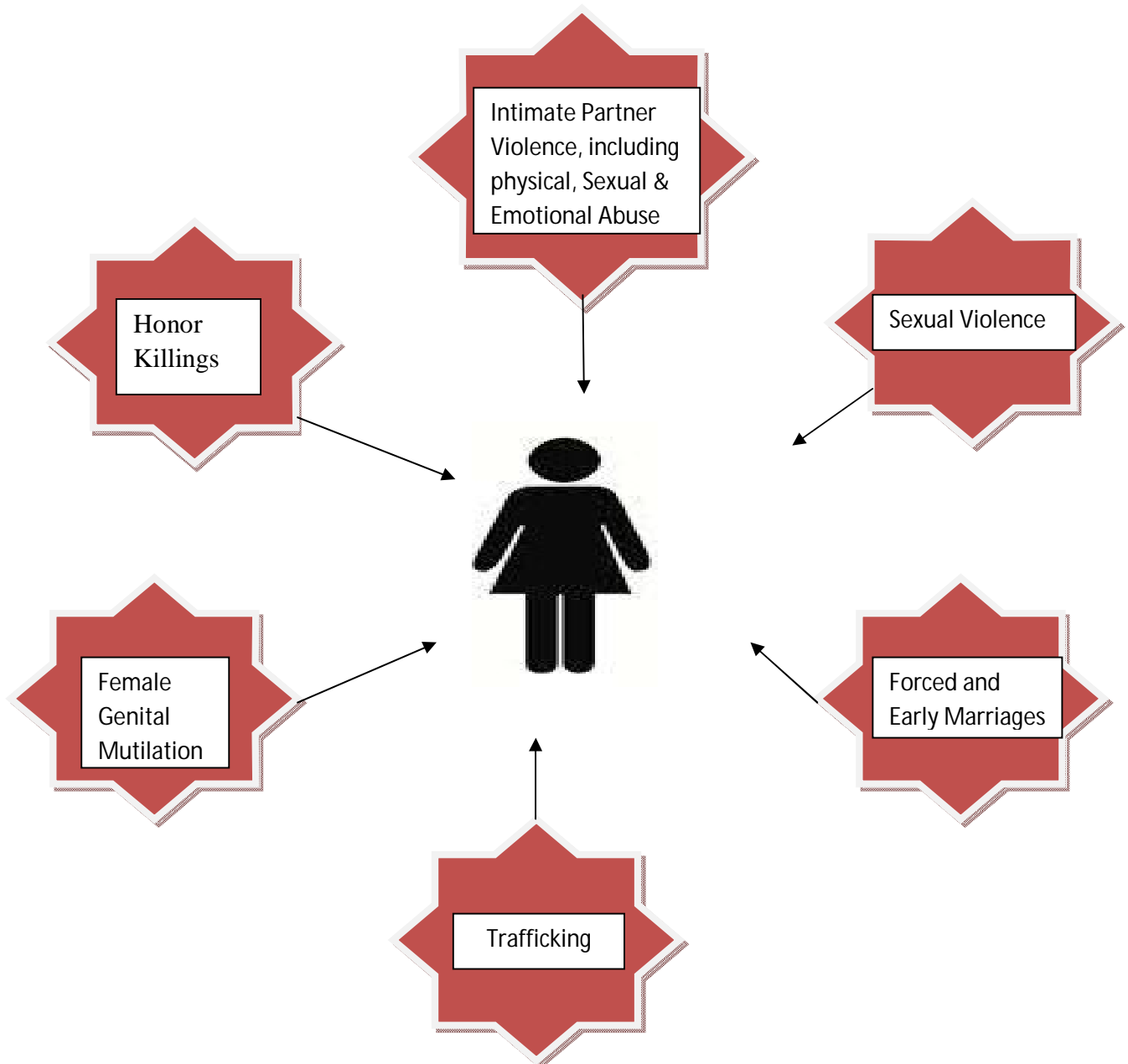
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes-
  - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
  - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) "economic abuse" includes-
  - (a) 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;
  - (b) 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
  - (c) 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.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

## **2.6 FORMS OF DOMESTIC VIOLENCE**

**VIOLENCE AGAINST WOMEN TAKES MANY FORMS, INCLUDING:**



**THE MOST COMMON TYPE OF VIOLENCE EXPERINCED BY WOMEN IS INTIMATE PARTNER VIOLENCE.**

[Type text]

## **INTIMATE PARTNER VIOLENCE**

The term *intimate partner violence (IPV)* is often used synonymously with domestic abuse or domestic violence, but it usually refers to abuse occurring within a couple relation (marriage, cohabitation, though they do not have to live together for it to be considered domestic abuse).

The **World Health Organization (WHO)** defines intimate partner violence as:

"... any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship".<sup>21</sup>

Michael P. Johnson argues that there are four major types of Intimate partner violence<sup>22</sup>. Types of violence identified by Johnson:

- Common couple violence (CCV) is not connected to general control behaviour, but arises in a single argument where one or both partners physically lash out at the other.
- Intimate terrorism (IT) may also involve emotional and psychological abuse. Intimate terrorism is one element in a general pattern of control by one partner over the other. Intimate terrorism is more likely to escalate over time, not as likely to be mutual, and more likely to involve serious injury. IT batterers include two types: "Generally- violent-antisocial" and "dysphoric-borderline". The first type includes people with general psychopathic and violent tendencies. The second types are people who are emotionally dependent on the relationship. Support for this typology has been found in subsequent evaluations.
- Violent resistance (VR), sometimes thought of as self-defence, is violence perpetrated by victims against their abusive partners.

---

<sup>21</sup> WHO: World Report on Violence and Health  
([http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/full\\_en.pdf?ua=1](http://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf?ua=1)) (2002)

<sup>22</sup> Paula Nicolson. *Domestic Violence and Psychology: A Critical Perspective* (<http://books.google.com/books?id=WSANCERMa2MC&pg=PA40>). Taylor & Francis; 14 December 2010. ISBN 9781136698613.  
p. 40.



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

## **A) ACTIVITIES OR SITUATION BASED VIOLENCE**

It includes:

### **a) Physical Abuse :<sup>23</sup>**

*Physical abuse is when an intimate partner has...*

- pushed or shoved you
- held you to keep you from leaving
- slapped or bitten you
- kicked or choked you
- hit or punched you
- thrown objects at you
- locked you out of the house
- abandoned you in dangerous places
- refused to help you when you were sick, injured or pregnant
- forced you off the road or driven recklessly
- threatened to hurt you with a weapon

### **b) Sexual Abuse :<sup>24</sup>**

*Sexual abuse is when an intimate partner has...*

- minimized the importance of your feelings about sex
- criticized you sexually
- insisted on unwanted or uncomfortable touching
- withheld sex and affection
- forced sex after physical abuse or when you were sick
- raped you

---

<sup>23</sup> Newton C. J. "Domestic Violence: An Overview" FindCounseling.com, Mental Health Journal. February, 2001. Available at <http://www.aaets.org/article145.htm>

<sup>24</sup> Newton C. J. "Domestic Violence: An Overview" FindCounseling.com, Mental Health Journal. February, 2001. Available at <http://www.aaets.org/article145.htm>

- been jealously angry, assuming you would have sex with anyone
- insisted that you dress in a more sexual way than you wanted

**c) Psychological Abuse :**

Psychological abuse which includes behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.

**d) Economic Abuse :**

Economic abuse includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment, etc.

**e) Emotional Abuse:<sup>25</sup>**

*Emotional abuse is when an intimate partner has...*

- continually criticized you, called you names or shouted at you
- insulted or driven away your friends or family
- humiliated you in private or public
- kept you from working, controlled your money or made all the decisions
- refused to work or to share money
- taken car keys or money from you
- regularly threatened to leave or told you to leave
- threatened to kidnap the children when the abuser was angry with you
- abused pets to hurt you
- manipulated you with lies and contradictions

---

<sup>25</sup> Newton C. J. "Domestic Violence: An Overview" FindCounseling.com, Mental Health Journal. February, 2001. Available at <http://www.aets.org/article145.htm>

## **B) Individual based Violence**

It is found that aged women and girl child particularly vulnerable to domestic violence. The condition of women in the families is undoubtedly still quite precarious. Unmarried girls, unwanted in their father's homes could also experience violence.

- a) Violence Against Girl Child, (Unmarried Women)
- b) Violence Against Married Women
- c) Violence Against Aged Women

### **a) Violence Against Girl Child (Unmarried Women)**

The forms and categories of violence against girl child (unmarried women) are as follows:-

#### **i. Female Foeticide : Denial of Right to be born**

Female foeticide is perhaps one of the worst forms of violence against women where a woman is denied her most basic and fundamental right i.e. "the right to life". Female foeticide is aborting the female baby in the mother's womb. The phenomenon of female foeticide in India is not new, where female embryos or foetuses are selectively eliminated after pre-natal sex determination, thus eliminating girl child even before they are born.<sup>26</sup>

#### **ii. Female Infanticide : Denial of Right to live & Sexual Discrimination**

This type of violence is divided into two types i.e. first is indirect or passive infanticide and the other is direct one. While in direct one the killing of new born female baby is direct, immediately or little after the birth of girl child by strangulating,

---

<sup>26</sup>Jena,Dr. Krushna Chandra,Female "Foeticide in India : A Serious Challenge for the Society" available at <http://www.orissa.gov.in/e-magazine/orissareview/2008/december-2008/engpdf/8-17.pdf>

poisoning and so on and I the indirect one the means utilized is starvation, sustained neglected and discrimination of various kinds and deep rooted negative attitude and deprivation of basic needs of the girl child.

**iii. Child Marriage : Child Motherhood and Child Widowhood**

Child marriages deny the girls, opportunities to have education training and income generating skills and to develop maturity, self confidence and integrated personality. In such a case the girl is fully dependent upon his husband and in laws who tend to neglect and misbehaved with her.

Child marriages increase the risk of becoming a child mother and a child widow with all the resultant ills, agonies, oppressions and violence on her.

**iv. Sexual Abuse of the Girl Child**

Sexual abuse of girl child is very complex and its range is very wide, which includes:

- Stroking the child's body with sexual intentions.
- Handling the child's genitals or making her to handle offender's genital.
- Offender's exposing private parts of the child or compelling her to expose her private parts to him.
- Oral sex
- Right from the act of attempting at penetration of vagina of the child's to the act of forced sexual intercourses, rape and
- Selling, Kidnapping, exploiting, pushing or forcing the girl child for the act of prostitution.

**v. Sexual Abuse as Incest**

One common form of sexual abuse of children is incest, which has been defined as sexual contact that occurs between family members. Most incest occurs between older male

relatives and younger female children in families of every class and colour. Other instances of sexual abuse of children are most often committed by friends who have access to children within the family setting and by people normally trusted by parents: doctors, dentists, teachers, and baby-sitters.<sup>27</sup>

**vi. Forced Prostitution and Girl child**

Most of the girls at very small age of 12 and 13 years are being sold by the family members for the purpose of making them prostitute. In India, it is at large a hidden practice and is carried out in various forms under various guises it may be in the name of religion, custom or tradition for example Devdasi of Karnataka, Jogins of Andhra Pradesh.

**vii. Neglect And Discrimination Against Girl Child**

The other kind of violence against girl child may be categorized as passive Violence. It is nothing but the denial and violation of basic human rights of women by the family members. It includes:-

- Neglect of girl child and depriving of the needed love care and other basic needs.
- Cruel treatment, exploitation and discrimination against girl child making her to carry out household duties, depriving of her opportunities of education and for the optimum development of her potentialities and personality.

**b) Violence Against Married Women**

The following forms are categorized as violence against married women:-

---

<sup>27</sup> [http://www.feminist.com/resources/ourbodies/viol\\_incest.html](http://www.feminist.com/resources/ourbodies/viol_incest.html)

**i. Cruelty – It Includes-**

**a. Physical Violence**

It is one of the most prevalent form of violence against women. The forms may vary from person to person and includes-

- Beating with hands and fist.
- Beating with stick or iron rod.
- Kicking the abdomen or sitting on the stomach while the woman is pregnant.
- Beating with utensils or knives.
- Throwing women against objects or bashing their heads against the wall.
- Burning the Brest or vagina etc.
- Excessive sexual demands or perversions.

**b. Mental Violence**

It includes:-

- Using abusive language against her parents.
- Taunting
- Insulting
- Passing abusive remarks
- Keeping doubt for her chastity against married women.

**ii. Desertion**

It is another kind of violence directly by husband and indirectly by parents. Being deserted by the husband brings more violence into a women life trough a women's parental family is her biggest support in the event of being deserted or ousted from the marriage, her having returned to her natal home sometimes brings even more violence into a women's life.

**iii. Marital Rape**

It is another form of sexual abuse and includes the sexual intercourse with a wife below 15 years of age. Very few women victims are able to take stand against this type of violence.

**iv. Bigamy**

It is psychological violence when the women find themselves tricked into bigamous marriages leaving them absolutely destitute once they are deserted or thrown out of their marital home.

**v. Abetment To Commit Suicide**

This kind of violence can be result of cruelty or torture some treatment to a omen, which leaves a lasting negative impact on an individual's personality.

**vi. Dowry Death**

Dowry deaths are deaths of young women who are murdered or driven to suicide by continuous harassment and torture by husbands and in-laws in an effort to extort an increased dowry. Dowry demand is made both before marriage and at the time of marriage, but in most of the cases it is demanded after marriage.

**c) Violence Against Aged Women**

The problems of violence against aged women arise out of their inability to adjust to their new roles and the changing family situations other problems lay mainly in the inability of both the aged and the younger generations to adjust with each other. Aged persons are seen to be the unproductive members of the family. Both old men and

women are victim, but while the males are victimized because of their age, women suffer a double 'disadvantage' that of age and their gender. Women are disadvantaged by their gender throughout their lives they continue to suffer even when they are old. The violence against aged women may be categorized as below-

**i. Harassment and Abuse of aged widow**

An aged woman in the family is often abused or harassed. Being a woman she seldom has an identity of her own. She is always seen as someone daughter, wife or mother. Thus, as soon as that source of identity ceases to exist, she faces insecurity in the family. She cannot stand against any harassment meted out to her.

**ii. Violence Against Economically Dependent Women**

When aged women are economically dependent, they are hesitant to take any step that would break the family, which is scared, to them. The fear of staying alone holds them back from moving out of their violent homes.

**iii. Violence Against Physically Weak Women**

The survival of physically weak aged women in the house, though they are economically dependent or not, depends upon her doing all household chores. They have to look after all household chores and also to take care of their grandson, grand-daughters when their sons and daughters in law are out of homes. Abusing of mother in laws by their daughter in laws is a common scene in most of the families. Consequently it may happen to ask the aged women to move out the house and they are shown the way of old homes.



## **2.7 CAUSES OF DOMESTIC VIOLENCE**

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

Following are the causes which carry on domestic violence:<sup>28</sup>

- a) Cultural
- b) Economic
- c) Legal
- d) Political

### **a) Cultural :-**

- Gender-specific socialization
- Cultural definitions of appropriate sex roles
- Expectations of roles within relationships
- Belief in the inherent superiority of males
- Values that give men proprietary rights over women and girls
- Notion of the family as the private sphere and under male control
- Customs of marriage (bride price/dowry)
- Acceptability of violence as a means to resolve conflict

---

<sup>28</sup>UNICEF (2000), Domestic Violence against Women and Girls, Innocenti Digest NO. 6, available at <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>, pg. no.7

**b) Economic :-**

- Women's economic dependence on men
- Limited access to cash and credit
- Discriminatory laws regarding inheritance, property rights, use of communal lands, and maintenance after divorce or widowhood
- Limited access to employment in formal and informal sectors
- Limited access to education and training for women

**c) Legal:-**

- Lesser legal status of women either by written law and/or by practice
- Laws regarding divorce, child custody, maintenance and inheritance
- Legal definitions of rape and domestic abuse
- Low levels of legal literacy among women
- Insensitive treatment of women and girls by police and judiciary

**d) Political:-**

- Under-representation of women in power, politics, the media and in the legal and medical professions
- Domestic violence not taken seriously
- Notions of family being private and beyond control of the state
- Risk of challenge to status quo/religious laws
- Limited organization of women as a political force
- Limited participation of women in organized political system

**CHAPTER 3**  
**LEGISLATIVE PROVISIONS FOR THE**  
**PROTECTION OF WOMEN AGAINST**  
**DOMESTIC VIOLENCE**

“Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential so that it may give that punch and have that educative factor as well as legal sanctions behind it which help public opinion to be given a certain shape”-

**Pandit Jawahar Lal Nehru<sup>29</sup>**

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

#### **NEED FOR THE LEGISLATION:**

In Indian society, there is a strong patriarchal norm which shows women have little social status in society right from birth." Sex selective abortion of female foetuses and female infanticide are widely practiced to ensure only male children are born. Indian women also have lower life expectancies and less access to education and therefore lower literacy rates in India, healthcare, and employment opportunities than Indian men. There is also a widespread belief that a woman is her father's, and later her husband's, property. This is illustrated by the traditional dowry system in which a bride's family must provide cash, property or gifts to her bridegroom's family as part of the wedding.

Against this backdrop, it is no surprise that women suffer from a high incidence of domestic violence. According with the government statistics indicate that, on average, a crime is committed against women every three minutes and that thirty-seven percent of married women experience domestic violence at some point in their marriage.<sup>30</sup> More disturbingly, eighty-seven percent of the men surveyed in a 2001 study admitted to committing some domestic violence act in that year.<sup>31</sup>

Both Section 498A and the PWDVA have been criticized for encouraging false complaints that have led to the victimization of the most frequent perpetrators of domestic violence-the male partner and his female relatives. The PWDVA defines domestic violence broadly, and includes "insults" and

---

<sup>29</sup> First Prime Minister Of India

<sup>30</sup> <http://hetv.org/india/nfhs/nfhs3/NFHS-3-Chapter-15-Domestic-Violence.pdf> (classifying the statistics on domestic abuse under female empowerment).

<sup>31</sup> <http://www.icrw.org/files/publications/Domestic-Violence-in-India-4-Men-Masculinity-and-Domestic-Violence-in-India.pdf> (noting also the types of violence used against women)

"ridicule" under the definition of "verbal and emotional abuse," without defining those terms.<sup>32</sup> Opponents of the law claim that such definitions invite women to report mere domestic fights or disputes as domestic violence under the PWDVA. These opponents have also gained traction by arguing that these laws violate a man's right to equality, citing the fact that only women (not men) can file claims under the PWDVA and Section 498A. It is nonetheless ironic that the PWDVA—which aims to protect women from domestic violence—has become notorious in Indian society as a tool to victimize other women, particularly the mothers-in-law and sisters-in-law of female complainants.

At an institutional level, rampant police corruption has led to weak enforcement of domestic violence laws, as cases against wealthy or influential suspects are not properly investigated and recorded, and other suspects escape prosecution or civil penalties through bribes. The police also exploit domestic violence laws to extort money from innocent men. For example, because Section 498A sets forth a presumption of guilt, the police have reportedly threatened to arrest many men and their relatives unless they pay substantial bribes. The Supreme Court has noted that this provision gives "a license to unscrupulous persons to wreck personal vendetta or unleash harassment" that could create a new legal terrorism.<sup>33</sup>

Thus, the PWDVA and Section 498A have been rendered ineffective, due to deeply rooted cultural norms and institutional deficiencies. These adverse effects have prevented domestic violence law from providing the sort of protection to women that the government anticipated.

### **3.1.1 Anti – Dowry and Criminal Provisions**

India became independent in 1947 and adopted a Constitution in 1950, which remains in force today. Part III of the Constitution protects fundamental rights, including the right to life, which has been interpreted to mean the right to live a life with dignity and free from violence<sup>34</sup>. Constitution also empowers the State to take affirmative measures to protect women under Article 15<sup>35</sup>. The

---

<sup>32</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005, Sec. 3

<sup>33</sup> Sushil Kumar Sharma v. Union of India, 2005

<sup>34</sup> Art. 21. Article 21 of the Indian Constitution

<sup>35</sup> Art. 15(3) ("Nothing in this article shall prevent the State from making any special provision for women and children.").

Indian Parliament has often invoked Article 15 to pass special legislative or executive measures to protect women, which have generally been upheld by the Courts.

It took India fourteen years after independence to pass its first law directly relating to violence against women. In 1961, the Dowry Prohibition Act (DPA) came into effect and criminalized the acts of giving and taking dowry. However, the Act did not effectively curb the practice of dowry. The Indian Parliament later passed the Dowry Prohibition (Amendment) Acts in 1984 and 1986, but their impact was as negligible as that of the 1961 Act.

The campaign to end dowry-related domestic violence eventually led to the passage of the Criminal Law (Second Amendment) Act in 1983, which introduced Section 498A to the Indian Penal Code (1860). Under this provision, any husband (or his relatives) who inflicts "cruelty" on his wife could face a criminal fine and imprisonment for up to three years. This is a cognizable and non-bailable offense. Cruelty is defined as any wilful conduct that "is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical)," or harassment that involves "coercing [the woman] or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand." However, as we will discuss in Part II, many actions brought under this law have been defeated due to the inaction or corruption of law enforcement officials.

In 1986, Section 304B was added to the IPC and created the new offense of "dowry death"<sup>36</sup>. This section holds a woman's husband and in-laws criminally responsible for death resulting from any burns or other injury she incurs under suspicious circumstances within seven years of marriage. There must be a demonstration, however, that the husband or his relatives subjected the woman to "cruelty" in relation to the demand for dowry.

---

<sup>36</sup> The Dowry Prohibition (Amendment) Act, 1986, INDIA PENAL. CODE Sec 304B (1860) ("(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death,' and such husband or relative shall be deemed to have caused her death... (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.").

While Section 498A includes everyday domestic violence against women within its ambit, Section 304B can only be invoked when domestic violence or the death of a woman are linked with dowry issues. Moreover, only married women facing violence at the hands of the husband or their families can claim relief under both these provisions. Thus, violence in live-in relationships and other non-matrimonial relationships are not included. These provisions also fail to provide Indian women with civil remedies such as injunctions, protective orders, interim relief, and other support services such as shelter and monetary relief.<sup>37</sup>

Additionally, neither of these provisions holds perpetrators criminally liable for physical and mental abuse unrelated to dowry demands. For example, in **Waghmare v. State of Maharashtra**, a woman suffered severe emotional and physical abuse at the hands of her husband and his family, and she eventually committed suicide<sup>38</sup>. They regularly beat her and harassed her for a motorcycle, and, most shockingly, after two months of marriage, her brother-in-law poured kerosene on her and set her on fire. She filed a petition alleging cruelty under Section 498A. The Bombay High Court, however, held that these incidents of domestic violence were not sufficient to lead her to commit suicide and that the demand for a motorcycle was not a dowry demand. Even in such a horrific case, Section 498A did not provide relief to a domestic violence victim because the Court was unwilling to characterize the acts of violence as dowry-related.

Thus, existing laws could not effectively curb domestic violence, particularly in those cases that did not relate-or were read not to relate to dowries or rise to the level of forcing women to commit suicide. The lacunae in the existing laws, coupled with powerful cultural norms against women's rights, left many domestic violence victims without an effective remedy. It was against this backdrop that the Lawyers' Collective started drafting a bill in 1993. After more than a decade of negotiation and effective lobbying; the Domestic Violence Act was passed in 2005.

International treaties, agreements, and reports have played an important role in this lobbying effort. These include the Convention on the Elimination of

---

<sup>37</sup> INDIA PENAL CODE Sec304B (providing only for a criminal punishment); INDIA PENAL CODE Sec 498A (including only a criminal punishment and monetary fine to the state).

<sup>38</sup> Waghmare v. Maharashtra, (1990) Crim.L.J. 407

All Forms of Discrimination against Women (CEDAW) in 1979, the Mexican Plan of Action in 1975, the Nairobi Forward Looking Strategies in 1985, the Beijing Declaration and Platform for Action in 1995, the Vienna Accord of 1994, and reports by the Special Rapporteur on Violence against Women. In 1992, the Committee on the Elimination of All Forms of Discrimination Against Women found that gender-based violence constitutes discrimination against women and impairs or nullifies a range of fundamental rights under international human rights law<sup>39</sup>.

The Committee stated that discrimination under the Convention is not restricted to actions by or on behalf of Governments: states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish actors of violence, and for providing compensation. The Committee further noted that states should take comprehensive measures, including the development of a proper legislative framework to deal with domestic violence. In January 2000, the CEDAW Committee recommended that India pass comprehensive legislative reforms to promote the human rights of women.

The women's rights movement in India has drawn from these sources to advocate for gender laws that meet international standards. For example, in the landmark **Vishaka v. Rajasthan** litigation, advocates urged the Supreme Court to draw on international law to fill gaps in the existing legal framework on sexual harassment<sup>40</sup>. The Court's opinion relied on CEDAW and other international instruments to adopt guidelines on sexual harassment in the workplace.

In 2001, due to pressure from both international and domestic women's rights organizations, and influenced by the CEDAW recommendations, the Ministry of Human Resources proposed a Protection from Domestic Violence Bill on behalf of the Government of India. The bill was later referred to a Parliamentary Standing Committee on Human Resource Development. The Committee suggested amendments to the bill, which it submitted in its 124th Report on the Protection from Domestic Violence Bill, 2002." The bill,

---

<sup>39</sup> General Recommendation 19, U.N. Committee on Elimination of Discrimination Against Women, f 6-7, 1992, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (finding that gender-based violence seriously inhibits a women's ability to enjoy rights on an equal standard with men).

<sup>40</sup> *Vishaka v. Rajasthan*, A.I.R. 1997 S.C. 3011



including the Standing Committee recommendation, was introduced before the Parliament on December 22, 2002.

### **3.1.2 The Protection of Women from Domestic Violence Act<sup>41</sup>**

The Protection of Women from Domestic Violence Act (PWDVA) finally became law in 2005. It was only passed after a great deal of parliamentary deliberation to bridge the gap between existing legal provisions and progressive aims enshrined in the Constitution and international human rights conventions. The PWDVA provides female victims of domestic violence legal recourse, both civil and criminal. Specifically, it allows women to seek injunctions and protective orders, along with criminal provisions for imprisonment and fines, which come into play when a perpetrator breaches a civil order. This broader response to domestic violence more effectively addresses the social realities that Indian women face, including threats of violence and mental abuse for which they often require immediate civil remedies.

The PWDVA did not limit protection against domestic violence to marital relationships. Unlike prior domestic violence legislation, the PWDVA covers "domestic relationships," which include "all relationships based on consanguinity, marriage, adoption and even relationships which were 'in the nature of marriage.'" It therefore covers all women in abusive relationships, regardless of whether the perpetrator is a spouse, domestic partner, or someone in a live-in relationship. It also protects unmarried women, siblings, and other women living with the alleged perpetrator.

The PWDVA also introduced the concept of "right to residence," which prevents women from being forced out of their marital homes. It also emphasized the concept of "shared household" that covered women in no matrimonial relationships. The term "shared household," as defined by Section 2(s), may include a property of the joint family of which the male respondent is

---

<sup>41</sup> Journal of Gender, Social, policy of Law;vol.21,issue 2, Article 4, Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality ; Rehan Abeyratne & Deepika Jain ,2012 available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1596&context=jgspl>

merely one of several members. By putting a restraint against alienation, disposal, or renunciation of rights in such a shared household, the law seeks to virtually shackle the rights of even those who may not have any role in the dispute from which the controversy has arisen.

Section 20(1) of the PWDVA empowers magistrates to grant monetary relief in favour of the aggrieved woman<sup>42</sup>. This was a very important and groundbreaking provision. It largely ensures that women who file complaints under this Act are not pushed out of their houses and, in disputed cases; women will have a share in the household or the right to residence and due process protection. Prior to the passage of the PWDVA, women were thrown out of their marital homes after disputes with their husbands. Some of them were rendered homeless. Under the PWDVA, if a woman is forced out of the marital home, a magistrate can pass an order giving her access to the home<sup>43</sup>. However, the possibility of abuse of Section 20(1) (d) is writ large when we consider that a female partner in a live-in relationship that may have only lasted for a month can claim maintenance allowance under this provision, with no restrictions attached.

The PWDVA created two new institutions to implement its provisions, the posts of Protection Officer (PO) and Service Provider (SP). The PO, who is often a woman, is assigned to help abused women seek medical assistance and follow a magistrate's instructions. The SP, on the other hand, assists with legal work, which ends with the filing of a Domestic Incident Report (DIR) before a local magistrate.

To be clear, the PWDVA does not create any new criminal offenses; however, if the domestic violence case reveals any offenses punishable under the Indian Penal Code or Dowry Prohibition Act, magistrates may frame appropriate charges against the respondent and try cases themselves or commit them to the Sessions Court as required.

Unfortunately, the PWDVA did not provide a useful definition of "respondent." Section 2(q) merely states that "respondent" means "adult male person," suggesting that women do not fall within its ambit. Several High Court

---

<sup>42</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005, Sec. 20(1)

<sup>43</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005, Sec. 19(1),

decisions have interpreted this provision to include women as respondents, recognizing that, in India, domestic violence is often perpetrated by female in-laws.

The Indian Parliament eventually clarified the definition of "respondent" by adding a proviso to this section. The proviso includes an accused man's female relatives in the definition, where the victim is a wife or woman living in a relationship in the nature of marriage. This means that victims of domestic violence can file cases against not only male but also female perpetrators.

According to the National Crime Bureau in 2006, there was an 8.2% rise in the number of reported domestic violence cases since 2005 under Section 498A of the IPC. More strikingly, the Bureau reported a 12.2% increase in the number of cases filed since 2005 under Section 304B of the IPC (dowry deaths). In total, then, reported crimes against women increased by 5.9% during 2006.

Given the private nature of domestic violence crimes-where women are either too ashamed or too afraid to report many incidences of violence this is a statistic that should be welcomed. Far from showing an increase in domestic violence, it shows that this historically underreported crime is finally being addressed with the passage of the PWDVA in 2005.

The contents of any successful law on domestic violence to be included in the following profile:

- The law specifies the basic objective of the declaration, i.e., the object of preventing domestic violence.
- Domestic violence and women recognize domestic violence as a human rights violation of a clear and unambiguous statement of the right to be free.
- With a degree of precision that captures the abuse of women experiencing domestic violence, this definition.
- The 'shared household' definition of the right to be safe within the home.
- To protect women from violence under which relief can be granted.
- Clarity and simplicity of the court proceedings.
- To check the performance of law and monitoring it.

And thus taking into account all the prerequisites for a civil law on domestic violence was created.

### **3.1.3 BASIC FEATURES OF DOMESTIC VIOLENCE**

#### **ACT:**

The Protection of women from domestic violence Act 2005 came into effect on 26th Oct. 2006. The stated objective of the Act is to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family. "The spirit behind enacting the Act was to protect the women from domestic violence and save their family and improve violent male members not to punish them." It was considered that violence against women by any of the family members if reported to the police and initiating criminal proceedings against them leads to breakdown of the family. Such an approach leads the mutually dependent relations to antagonistic and revengeful relations. Such a situation is not favourable to the women. This act attempts to safeguard the basic interest of the woman and provide her conditions for leading a dignified life.

This Act is a product of women's movement in India. Though the constitution of India recognizes and guarantees equal rights to women as individuals. The state has hardly perceived and treated them as equals. It is rightly said that in India citizenship has for long been exclusively viewed as the domain of men. Women's issues have always been dealt within the context of family and are therefore considered as "private". The women's movement made consistent efforts to drag this "private" to "public" domain. The women's movement consider "private as political" tool of suppression by men. By declaring women's affairs as private the state is itself indulge in suppression of women. The formation of this Act was celebrated by various women's groups as bringing women's ordeal and grievances out from "private to public," from gender suppression to gender justice. This Act recognizes domestic violence as a special category of offences in the domestic life.

This Act is in conformity with the UN model legislation on domestic violence. This model legislation provide comprehensive guidelines on what constitute domestic violence, what are the responsibilities of the state and what

are the rights of victim of domestic violence. Thus, this Act meets the requirements of an international standard legislation.

The unique feature of the Act is that it is a secular law applicable on all uniformly irrespective of the family's religious orientations. Thus, it is a step towards uniform law in the personal life of individuals. In India – marriage, family relations, divorce, inheritance of property are governed by the personal laws of all the communities, we have Hindu marriage law, Muslim marriage law etc. This Act is confined to women and the family and do not take religion in consideration.

The Protection of Women from Domestic Violence Act is a civil law. Its aim is to provide protection, compensation and support to women victims of domestic violence. It is not intended to penalize the perpetrators of violence. The Act emphasizes domestic violence as an undesirable state but do not recognize violence as a criminal act. This Act only restrains the perpetrators but do not punish them for any commissioning of domestic violence. This civil act is victims driven. She can directly go to the court or Protection officer for relief and justice. She is not dependent on the state, the police and prosecution. The rights and relief under the act cannot be activated without the consent of the woman. The other characteristic feature of the act is that its proceedings are not governed by the rules of criminal procedures rather the Act has laid down its own procedure or depend nearly on the rules of civil procedure. Therefore a victim woman does not need the services of legal personal or agencies for representing its case before the court/magistrates or protection officer. While using this act she need not fear for proving the allegations because she cannot be sued for unproven allegations.

This Act is gender specific act not a gender natural act. It can be invoked by women only and the respondent is invariably a male member of the family. This Act clearly defines an aggrieved person as any women who is, or has been in domestic relationship with the respondent. Sometimes it is criticized by assuming that a woman can also be perpetrator of violence to a man. However this is considered as exception not a general practice.

This Act has defined domestic violence quite comprehensively. It has covered physical emotional, sexual, economic violence in its definition. The

scope of the definition covers almost all such interactions of men which are not desirable to women. Earlier cases of domestic violence were covered under section 498 A IPC, which do not take the emotional or psychological, sexual and economic violence into consideration. Thus this act liberates the women from all sorts of abuse, oppression and suppression in a domestic relationship. It informs to the men that their above said behaviour is undesirable and they must, stop such conduct with the female members of their own families.

This Act uses the term 'domestic relationship' which include - mother, sister, daughter, wife, live- in- relationship, any other female relative who resides in the shared household. This act also covers divorced, separated wife as well as any widow in the family relationship. Thus, this act not only protect "wife" from her abusive husband but also offer protection to mother from humiliating behaviour of her son, to sister from her stubborn brothers and daughters from dominating authoritarian fathers. Any woman who is being treated violently by any of her relative may be father, son, friend, husband or any other can seek protection under this act. This act also widens the scope of complainants. This act empowers every person to make complaints or inform to protection officer regarding the act of domestic violence. There are no civil or criminal liabilities on the informant or complainant. It is a social responsibility on the members of the community to bring it to light.

This is an emergency law as the victim can take "stop violence" order immediately. The intention of the law is to give women a space free from violence, where she can evaluate her options and choose her future course of action. The law is in addition to other laws, a woman can take recourse to the other provisions for seeking the appropriate remedy later on. She can sue the perpetrator under the criminal laws, she can divorce him or she can choose any other means to deal with and maintain future relationship. This acts mandates that the magistrate shall take decision on the case within 60 days. Thus it saves the women victim from the ordeal of delayed justices.

This act provides single window clearance system in supporting women's access to the justice system. The Act makes provisions that civil relief can be claimed in any pending proceedings. The women can use this Act to ask for an injunction restraining dispersion pending in a divorce case or under section 498A. She does not need to file separate cases in different forms. She can claim

maintenance, right of residence, monetary help from the state, custody of children, compensation etc. while using the provisions of this act.

This act ensures a women access to the justice system as well as access to the support system. In the act “the protection officer” and “service providers” are inbuilt i.e. the act created these institutions. The protection officer is to serve as a link between the women and the court as well as enable her to access the support provided under the Act. The service providers provide necessary support to the woman, which she might require such as medical facilities, shelter home, schooling of children, legal support etc.

This act created the institution of the protection officer and the service providers. The protection officer is to bear all the responsibilities of providing state protection to the victim of domestic violence. The protection officer is the focal status as he or she is to receive the complaints, investigate, pass on the order to police, if required, recommend the demanded or claimed rights to the victim woman and rehabilitate her. He or she is also responsible for nominating various agencies to act as service providers and coordinate various agencies to help women victim of violence. The protection officer is to decide the procedure, refer the cases to counsellors and resolve the issues by developing mutual trust between the families or family members. The service providers are various non-governmental organizations to whom the power of the protection officer can be delegated and various others things related to protect and save the victim of domestic violence. The protection officer is a governmental functionary hence answerable.

The act has devised mechanism to provide immediate support to the woman. She may immediately need medical care or shelter. She may be penniless and has to take care of her children. The protection officer has to provide the required support to the victim. For providing adequate support the act mandated the involvement of social institutions and voluntary agencies. Thus, the act mandated that society cannot alienate such women; it too has to bear the burden of rehabilitating the victim.

The act has a unique characteristic as it introduced the concept of the right of the victim as distinct from the right of the women. In no other legislation the rights of women are specified and ensured. This act mandated that the magistrate can issue protection orders, residence orders, custody orders monetary relief, compensation orders, restoration of property orders. While issuing any order the magistrate first enquire the victim what specific order she

wants or which specific right she proclaim. These rights are not recognized by the criminal laws, if she invokes these rights in criminal laws she has to fight a long legal battle for realizing the rights.

This act has laid down a very simple procedure for using these rights. She need not go to courts, police station or legal practitioners; she need not plead her case. She is required to fill simple application form with the assistance of protection officer or service providers only. She need not represent her case with the help of advocate nor she is required to make any payments as court fee. The act has made provision for conciliation. The magistrate may direct the aggrieved person to undergo counselling. The objective of counselling is not to persuade the aggrieved woman to accept the violent relations but to help her take knowledgeable decisions and to empower her to take decision which suits to her life most. Conciliation provides opportunities to both the victim and perpetrator to rethink about their relations. It gives a chance to both of them to establish communication in a rational manner.

The act does not lay emphasis on evidence. The evidence act is not applied while assessing the depth of relationship of the victim with the violent members of the family. However, it gives due importance to many such things as evidence which are not considered as evidence in the Indian Evidence Act.

This act also laid down certain duties of the state governments for the proper implementation of the act. The state is supposed to give due publicity about the Act, prepare a trained cadre of service providers, empower the protection officers etc. No other Act has mandated these duties on government. The act also held the protection officers liable and pose penalty over him/her if fail to provide protection. The next section of this work attempts to understand the process of implementation of the act.



### **3.1.4 Historical Background of legislation:**

- 1975: Committee on the Status of women in India have taken steps to woman emancipation as the status of women in India and offers suggestions and recommendations provided a detailed account of the "similarity" to the title came out with its report.
- 1980: Indian women's movement broke the silence on Domestic violence demanding legal reforms. Dowry Prohibition was made to the Act.
- 1983: "by her married woman against her husband and in laws cruelty" is a new form of crime was added to Section 498-A Indian Penal in Code, Section 304B of the murder or similar crimes death due treatment for a portion of the IPC was added.
- 1984: Family Court Act was enacted, but it was not all States applied.
- 1992: The "Women from Domestic Violence Prevention and Protection" first draft was prepared by the Lawyers Collective.
- 1994: National Commission for Women had draft bill on Domestic violence.
- 2003: The NDA government brings a bill on domestic violence that is anti-women and women hurt in self-defence or to protect against men to protect their property. Also, an act of domestic violence is defined as "habitual." Which is the bill sparked intense protests and a parliamentary committee was referred for review. NDA government with the bill died.
- 2003-2004: 8 States from the early passage of the bill signature campaign demanding 2.5 million voices together from the ground.
- 2005: The UPA government Domestic Violence Act (PWDVA) passed the Protection of Women from. The Act received assent of the President, and entered the law books. PWDV Act passed in October 2005 after the Government of India, women's groups at work Act Keeping this in mind, it was initially proposed at the view, the action of India in February 2006 at the First National Conference called PWDVA government push for early action.

2006 (February 21 and 22) India over 300 participants from 23 States PWDVA at the First National Women's Conference (NWC), 2005 attended. National DV Act Forum was formed.

26 October 2006: The PWDVA Act is proposed.

### **3.1.5 HIGHLIGHTS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.**<sup>44</sup>

The framework and crucial aspects of this Act are as follows:<sup>45</sup>

**The PWDVA is a civil law.** While the objective of criminal laws is to punish the offender, a civil law is directed towards providing reliefs to the aggrieved party; in this case, the woman who faces violence at home.

- **Definition of “Domestic Violence”**<sup>46</sup>

The Act defines “**Domestic Violence**” for the first time in Indian law. It is a comprehensive definition and captures women’s experience of abuse and includes not only physical violence but also other forms of violence such as emotional / verbal, sexual, and economic abuse. It is based on definitions in international law such as the UN Declaration on Violence against Women and a Model Code.

**The Act recognizes domestic violence as a human rights violation.** It recognizes a woman’s right to live in a violence-free home. To realize this right, the Act recognizes a woman’s right to residence and her right to obtain protection orders under the law.<sup>47</sup>

#### **Major rights recognised under this law.**<sup>48</sup>

One of the most important features of the Act is the women’s right to secure housing. The Act provides for the woman’s right to reside in the matrimonial or shared household, whether or not she has any title or

---

<sup>44</sup> <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>

<sup>45</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>

<sup>46</sup> Sec. 3 of PWDVA

<sup>47</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>, Pg no. 221

<sup>48</sup> The Protection of Domestic Violence Act,2005 available at - <http://www.legalserviceindia.com/article/I194-Protection-of-Women-from-Domestic-Violence-Act,-2005.html>

rights in the house hold. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed anyone who is a woman. Even if she is a victim of domestic violence, she retains right to live in 'shared homes' that is, a home or homes she shares with the abusive partner. The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situation, the accommodation and her maintenance has to be paid for by her husband or partner. The law, significantly, recognizes the need of the abused woman for emergency relief, which will have to be provided by the husband.

A woman cannot be stopped from making a complaint or application alleging domestic violence. She has the right to the services and assistance of the protection officer and service providers, arranged under provision of law a women who is the victim of the domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under section 498A of the Indian Penal Code.

Rights recognized under PWDVA: According to Kanchan Mathur<sup>49</sup> includes the right to:

- A life free from fear of violence and living in safe environment. This includes women's right not to be subjected to physical, sexual or emotional violence inside the home by intimate partners or outside by people including those acting on the part of the state. Spatial mobility and ability to make decisions regarding where they can go, who they go with, how they travel and the time of the day or night they can travel.
- Make informed choices regarding sexual and reproductive health including choice in marriage - whether to marry, whom to marry and when (age) to marry and to demand the provision of sexual and reproductive health services that are sensitive to their rights and needs.

---

<sup>49</sup> Mathur, k., Economic and Political Weekly, 2008, JSTOR.

- Sexual well being and the right to a healthy and self –affirming sexuality free of violence, coercion and disease, pursuing a satisfying, safe and pleasurable sexual life.

Education on bodily integrity and awareness about bodily integrity, would not only address the dangers of violations of bodily integrity, but would allow them to care and take pride in their bodies as women. Expression of self identity and behaviour as defined by women themselves. This would include an expression of their emotional, mental and spiritual, psychological and physical spaces and desires.

The PWDVA a woman's right to live a violence free home identify. Reside has statutory rights are recognized under the law. Guard against illegal without the shared household women. The respondent faced with domestic violence, a woman is entitled to relief under the law of this State.

- **The reliefs provided in the Act are meant to provide immediate relief in emergency situations<sup>50</sup>**

The Act does not make any changes in the existing personal law regime on family matters. The reliefs under the Act are in addition to existing laws and have been recognized with the objective of empowering a woman to tide over an emergency situation. Having obtained relief under the law, a woman can still go for relief under other laws later. Under the PWDVA relief is available under Sections 18, 19, 20, 21 and 22 of the Act.

**Section 18<sup>51</sup>** is **Protection Order** in which The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favor of the aggrieved person and prohibit the respondent from-

---

<sup>50</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf> ; Pg.No.221

<sup>51</sup> Under PWDVA

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

**Section 19<sup>52</sup> is Residence Order in which:**

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order –

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
- (b) directing the respondent to remove himself from the shared household;
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

---

<sup>52</sup> Ibid.

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

**Section 20<sup>53</sup> is Monetary Relief** in which

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary 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 not limited to,-

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the 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.

(2) 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.

(3) 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.

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

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) 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

---

<sup>53</sup> Under PWDVA

respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

**Section 21 of PWDVA** which is Custody Order-

Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

**Section 22<sup>54</sup> is Compensation Order**

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.

- **Access to justice and the availability of infrastructure<sup>55</sup>**

Recognizing that a woman requires assistance with legal procedures and other forms of support, the PWDVA allows for the appointment of Protection Officers, and recognizes the role of Service Providers in providing medical, shelter, legal, counselling and other kinds of support services. The Protection Officer is the person in charge to assist women to avail of these facilities as well as assist her in obtaining the appropriate order under the Act.

---

<sup>54</sup> Under PWDVA

<sup>55</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf> ; Pg.No.221



- **Procedures to obtain orders, reporting of violence and the consequence of breaching the obtained orders<sup>56</sup>**

The Act includes provisions for making Domestic Incident Reports which will serve as important records at the stage of evidence taking. The manner in which the applications for orders under the Act have also been mentioned in the Act. Finally, the Act provides that the breach of an order obtained is a criminal offence.

- **PWDVA<sup>57</sup>**

- It is a civil law for protection orders and not meant to penalize or punish.
- It recognizes the right to residence of woman, it recognizes the right of the woman to live in a violence-free home and that she should not be facing violence.
- It provides only temporary and emergency relief.
- It is a law in response to the needs of the woman.
- It has certain crossovers from civil to criminal law—so when the protection order or Magistrate’s order is violated, criminal law will start.

- **Procedures involved under the PWDVA<sup>58</sup>**

**Step 1:** Informing the Protection Officer: Any person who has reason to believe that such an act has taken place or is likely to take place can inform the Protection Officer.

**Step 2:** Aggrieved woman should be informed of her rights under the law: A police officer, Protection Officer, Service Provider or Magistrate who has received a complaint shall inform her of:

---

<sup>56</sup> Ibid.

<sup>57</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg. No.221

<sup>58</sup> Ibid.

- Her right to make an application for obtaining relief by way of protection order, an order for monetary relief, a custody order, a residence order, a compensation order;
- The availability of services of the Protection Officers, Service Providers, including shelter homes, medical facilities, etc.
- Her right to free legal services under the Legal Services Authorities Act 1987; and her right to file a complaint under section 498 A of the Indian Penal Code.

**Step 3:** Making the Domestic Incident Report and other responsibilities of the Protection Officer: The Protection Officer makes a Domestic Incident Report to the Magistrate and forwards copies thereof to the Police Officer in charge. She/he ensures that:

- The aggrieved person gets all the benefits mentioned.
- A list of all Service Providers is maintained and that the aggrieved person has access to counselling, shelter homes and medical facilities where required;

**Step 4:** Once the matter is with the Magistrate: The Magistrate shall fix the first date of the hearing, which shall not ordinarily be beyond three days from the receipt of the application by the Court, and shall endeavour to dispose every application within a period of 60 days from the date of the first hearing.

**Step 5:** Informing the respondent of the date of hearing: A notice of the date of hearing shall be given by the Magistrate to the Protection Officer who shall serve it on the respondent and on any other person as directed by the Magistrate within a maximum period of two days.

**Step 6:** Other options with the Magistrate: The Magistrate may

- Direct either of the parties, singly or jointly, to undergo counselling;
- Seek assistance of a person, preferably a woman, engaged in promotion of family welfare, for assisting him/her in discharging his/her functions;
- Conduct the proceedings in camera.

**Step 7:** Where does she stay in the meantime? Aggrieved person has the right to reside in a shared household, whether or not she has any right, title or beneficial interest in the house and shall not be evicted.

**Step 8:** How is she protected in the interim? The Magistrate, after giving both parties an opportunity of being heard, and satisfied that domestic violence has taken place, can pass a protection order or a residence order, direct the respondent to pay the aggrieved person monetary relief and in addition, can pass compensation orders, custody orders and ex-parte orders.

- The Magistrate shall ensure that a copy of any such order shall be given free-of-cost to the parties.

**Step 9:** What if the protection order is breached? If the protection order has been breached, it shall be punished with either imprisonment or fine or both.

**Step 10:** Who will ensure that all this is done? The Central and the State Government shall take measures to ensure that:

- Provisions of this Act are given wide publicity through media;
- Central and State government officers including police officers, members of the judicial services, etc., are given periodic sensitization and awareness trainings on issues addressed by this Act;
- There is effective coordination between the services provided by concerned Ministries and Departments dealing with law, home affairs, health and human resources, and that there is a periodic review of the same

#### ■ Rules <sup>59</sup>

- This is a Central law and hence the Centre is framing the Rules— but the appointment of POs will be by the State Governments.
- The PO is the first point of contact for the woman—hence a very important cadre.

---

<sup>59</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.No.223

- The Rules specify the rights of the victim and the duties of the authorities under the Act.
- The Rules specify the procedure for exercise of powers under the Act including eligibility and appointment of authorities, manner of counselling, disposal of applications, service of summons etc.

■ **Heads for which Rules are to made listed under the Act**<sup>60</sup>

- Eligibility, appointment, terms and conditions of service etc. of the Protection Officer
- Form and manner of making a Domestic Incident Report
- Form and manner of making applications for protection order
- Duties of the Protection Officer
- Registration and regulation of Service Providers
- Form of making applications
- Means of serving notices
- Qualification and experience of counsellors
- Form of affidavit to be filed by the applicant

■ **Shelter and medical assistance to the aggrieved person**<sup>61</sup>

- The shelter homes and the medical facility are under a legal obligation to provide shelter or medical facility to the aggrieved person.
- Copy of medical examination report is to be provided free of cost to the aggrieved person

■ **Qualifications and appointment of Protection Officer under the Act**<sup>62</sup>

- Protection Officer either to be a government servant or a social worker working for women and child welfare, with a post graduate degree in Humanities or Law

---

<sup>60</sup> Ibid.

<sup>61</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.No.223

<sup>62</sup> Ibid.

■ One or more Protection Officer within the jurisdiction of each Judicial Magistrate

■ **Functions and duties of Protection Officer<sup>63</sup>**

- To inform aggrieved person of her rights under the Act
- To provide all forms and applications and assistance to the aggrieved person
- Make a safety plan and take adequate measures in view of the safety plan
- Enforce the orders of the Court as and when directed by the Court

■ **Service Providers include shelter homes, medical facilities and counselling services.<sup>64</sup>**

- The Service Providers should be registered and fulfil the statutory requirements for running a medical facility or a counselling centre, etc

■ **Form and manner of making complaint—(Domestic Incident Report) and applications for relief under the PWDV Act<sup>65</sup>**

- Complaints and applications under the Act can be made by filling in the prescribed forms.
- The forms can be availed of from any source including Service Providers, Protection Officers or Police Stations.
- The aggrieved person has a right to seek assistance for filling in the forms or filing the applications before the Court.
- The aggrieved person can also file the complaint or applications directly before the Court.
- In case the aggrieved person files the complaint or applications through the Protection Officer or a Service Provider; she has a right to receive a copy of the complaint or the applications free of cost.

---

<sup>63</sup> Ibid.

<sup>64</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; pg.no.224

<sup>65</sup> Ibid.

- The service of the notice or summons shall be by handing over the same to the respondent or any male member of his family.
- The summons / notice can be delivered by registered post.
- Court can direct service in accordance with the Code of Criminal Procedure or the Civil Procedure Code or employ

#### ■ **Appointment of counsellors and counselling**<sup>66</sup>

- The Court can direct counselling for an amicable of the matter by the parties.
- Counselling can be directed on admission of alleged misconduct and undertaking not to repeat the same by the respondent.

#### ■ **Enforcement of orders passed under the Act and consequences of breach of protection order.**<sup>67</sup>

- The breach of orders of the court under the Act shall amount to cognizable, non-bailable offence warranting immediate arrest and summary trial.

#### ■ **Computerized user-friendly forms for making complaints and applications**<sup>68</sup>

- The forms for making complaints and applications are in computerized format and user friendly.
- The aggrieved person can easily provide the required details.
- Filling in the forms will take care of all the legal requirements to be fulfilled by aggrieved person.

---

<sup>66</sup> Ibid.

<sup>67</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.No. 224

<sup>68</sup> Ibid.

## ■ Important features<sup>69</sup>

- POs will be appointed by State Government on deputation basis. Deputation will be on a voluntary basis and will be for a minimum of 3 years.
- Direct Incident Reports—DIRs have been simplified. POs should know how to document. NGOs might need training on how to document DIRs—to be used as evidence in Courts
- A woman need not always approach the PO—she can go to Court directly. She can also seek help of police, friend, NGO, Service Provider—but each of them should refer her to the PO. She/he then takes on the role of doing all the needful to provide the woman with immediate and emergency services.
- Letter of demand has been sent to Minister of State; Ministry of Women and Child Development
- Training and awareness sessions with the implementing State partners
- Building linkages with the State Gender Resource Centers
- Speedy implementation at all levels
- Introduction of the PWDVA as a part of the Course Curriculum at the school level
- Protocols for the various Ministries concerned with the delivery of services to women under this Act, including the Courts, are prepared and put in place.

## ■ Framework of the Rules<sup>70</sup>

The broad categories under which the Rules for the Act have been framed are as follows:

### **Appointment and functions of the Protection Officer<sup>71</sup>**

#### **Appointment of Protection Officers**

---

<sup>69</sup> Ibid. ; Pg.No.225

<sup>70</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.no.225

<sup>71</sup> Ibid.

There was a great deal of controversy relating to the appointment and the qualifications of the Protection Officer. The ideal situation would be to create a new cadre of paralegals to serve exclusively as Protection Officers. However it is not possible to put in place a new system in the Rules as such, since a 'new cadre' would require involvement of the Ministry of Personnel Affairs. Also, the question of whether responsibility of the new cadre will vest with the Centre or the State will arise since law and order is a State subject. Hence, under Rule 7, it has been suggested that Protection Officers be appointed from a particular section of people who are already employed as government officials. These officials will be on deputation to serve exclusively as Protection Officers.

Hence, under the Rules 7, there is a mention of various departments and sectors from which such officers may be deputed. Emphasis has been given on voluntary deputations. Provisions for the appointment of persons employed in Non Governmental Organizations as Protection Officers have also been included. The issue that remains unresolved is who will be responsible for paying volunteers from the NGOs. If the remuneration is minimal, volunteers may be discouraged from applying to the post. As the State Government is responsible for the appointment of Protection Officers, this is a matter that will have to be put for its consideration.

### **Tenure of Protection Officers<sup>72</sup>**

Rule 8 provides for a minimum term of 3 years for serving as a Protection Officer.

### **Jurisdiction of Protection Officers<sup>73</sup>**

In Rule 8, it is made clear that there shall be not less than one Protection Officer for the area of a Judicial Magistrate. This provision

---

<sup>72</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.no. 225

<sup>73</sup> Ibid.;Pg.No.226



also allows the State Government to appoint more than 1 Protection Officer, keeping in mind the area and the volume of the work involved.

### **Functions of the Protection Officer<sup>74</sup>**

Rule 21 enlists the functions of the Protection Officer. The primary function of the Protection Officer would be to protect the victim from any further act of domestic violence. The Protection Officer should serve as a liaison between the woman, police and the Service Provider. Caution must be exercised to ensure that the functioning of the Protection Officers do not impinge on the right to privacy and the autonomy of women complainants.

The duties of a Protection Officer have been divided into two parts:

### **Functions of the Protection Officer under the Act<sup>75</sup>**

On receipt of any complaint from an aggrieved person, the Protection Officer will have to make a Domestic Incident Report and forward it to the concerned authority for further action if the woman so desires.

- It shall be the duty of the Protection Officer to also assist the victim in
  - making a complaint or an application under the Act,
  - accessing legal aid and obtaining medical/shelter facilities,
  - becoming aware of her rights, remedies and services available under this Act.
  - receiving all possible assistance

Thus, the Protection Officer is the authority charged with the duty of doing everything possible to assist the woman in getting the remedies provided under the Act and live a life free of violence. The Protection Officer will be the interface between the victim and the Court, and between the victim and the police, the medical facility and the shelter home.

---

<sup>74</sup> Ibid.;Pg.No.226

<sup>75</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.No.226

## **Functions of the Protection Officers under court orders<sup>76</sup>**

On receipt of an order from a Court, the Protection Officer can conduct a home visit, and can make appropriate enquiries regarding the salary, assets, bank accounts, and emoluments of the respondent liable to pay maintenance. The Court can also direct the Protection Officer to assist the aggrieved person in regaining the custody of her children and assist the Court in enforcement of the order passed.

It is an effort of creating a synergy between institutions of society, all of which are responsible for preventing violence against women, but till now have not performed the role that is expected of them.

Whereas there has been a challenge to domestic violence over the years from the civil society, there has been no institutional response to this. The Police, performing their role under Section 498 A, is not an institution to challenge domestic violence. There are no institutions charged with liaising between different institutions charged with the duty to combat domestic violence. Therefore, there is a need to create such institutions.

An apprehension was expressed that a woman should not be denied direct access to the Court. It was clarified that a woman can approach the Court directly and approaching a Protection Officer is purely optional for the woman and is voluntary.

## **Form and manner of making application for orders<sup>77</sup>**

Rule 12 states that on receipt of a complaint, the Protection Officer shall make a Direct Incident Report. An application under Section 12 shall be made in the format included in Form C in Schedule I. The Protection Officer shall assist her in making the application. Attached with the Rules are various forms for obtaining different orders (Forms E–Form J). Rules 14 to 20 state the various Sections under which these applications/forms are to be filed.

---

<sup>76</sup> Ibid.Pg.No.226

<sup>77</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf;Pg.No.227>

## **Registration and duties of Service Providers<sup>78</sup>**

The Rules provide for the registration of Service Providers. The important issue that arises in this regard is that if NGOs are not registered, does it mean that they cannot continue providing services to women facing domestic violence? This is not the case. All Service Providers can continue to perform all the functions they are at present performing without any need to register. Registration under the Act is purely voluntary for the Service Provider. The objective of providing for the registration of Service Providers is that if they are registered, then their records will have authenticity in the court of law. The record of a registered NGO and a Domestic Incident Report ('DIR') recorded by them will form part of the evidence or the previous history of violence in a court of law and will be very helpful in getting a protection order. Record keeping is, therefore, crucial. If the NGOs are registered, then the records maintained would be authentic records. The status that is accorded to the NGOs will also give them the authority to insist that the victim be provided the facility offered by other registered Service Providers such as medical facilities and shelter homes. Minimum standards can be enforced in the facilities. What is required is a need to liaison between different institutions such as the police, legal authority, Service Providers etc. This role will be played by the Protection Officer.

## **Counselling process<sup>79</sup>**

Section 14 provides that a Magistrate can, at any stage of the proceedings, direct the aggrieved person and the respondent, either singly or jointly, to undergo counselling. Under Section 15, a Magistrate can requisition the services of a person engaged in "promoting family welfare" to assist him/her in discharging his/her functions. Both these provisions did not form part of the Draft Bill submitted to the Ministry. But since these provisions are present in the law, it becomes imperative to lay down a comprehensive procedure that ensures that these provisions will not be used against women in their struggle for justice. Hence, the

---

<sup>78</sup> Ibid.

<sup>79</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.No.227

format and manner in which the Rules have been formulated reflect this concern.

### **Stage at which a counsellor can be appointed and the purpose of counselling<sup>80</sup>**

The first important step in this regard is that, Under Rule 35, counselling can be directed only after passing an order for interim relief. It has to be kept in mind that counselling can take place only in an atmosphere free of violence. Only once the violence stops can equality be restored and negotiations can take place on a level playing field. The purpose of counselling would be to tell the aggressor not to commit any form of domestic violence towards the complainant. To this extent, an undertaking may be obtained from the perpetrator. Rule 38 clearly lays down that that the perpetrator shall not be allowed to plead any justification for the alleged act of domestic violence during the process of counselling.

### **Appointment of counsellors Rule 33 refers to the appointment of counsellors.<sup>81</sup>**

The qualifications and disqualifications for the appointment to the position of counsellors have also been provided in detail. The disqualifications include any form of association with either of the parties to rule out bias. Further, the appointment of the counsellor is subject to the consent of both the parties. Care must be taken to ensure that Protection Officers are not appointed as counsellors under the Act.

### **Settlements arrived at during the process of counselling<sup>82</sup>**

Rule 39 provides that negotiations for a settlement can be initiated at the behest of the aggrieved person.

---

<sup>80</sup> Ibid.

<sup>81</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.No.227

<sup>82</sup> Ibid.;Pg.No.228

The aim of counsellor would be to arrive at a settlement of the dispute by suggesting measures for redressing the grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties.

During the course of counselling, Rule 40 provides that the counsellor shall not be bound by the provisions in the Indian Evidence Act, 1872 or by the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 and shall be guided by the principles of fairness and justice.

On arriving at a settlement, the counsellor, under Rule 41, will record the terms of settlement and get the same endorsed by both the parties. The Court shall accept the terms only after it is satisfied subsequent to conducting a preliminary enquiry to rule out fraud, force and coercion. The Court will then record its reasons. Thereafter the Court can pass appropriate orders. Any orders in existence can be discharged if a proper and fair settlement has been arrived at.

If a settlement is not arrived at, the case will be continued with, and the record of the counselling proceedings shall not be deemed to be material on record for the purpose of the case.

### **Means of serving Notices<sup>83</sup>**

Rules 29–32 refer to the service of notice and summons. In these provisions, it is stated that notices shall be served at the place where the respondent is residing or where the respondent is employed. For any further process, the procedure as prescribed in the Code Of Criminal Procedure, 1973 or the Code of Civil Procedure 1908 shall be followed.

### **Enforcement of orders and breach of protection orders<sup>84</sup>**

Rules 44–50 refer to the procedure to be followed in cases where there is a breach of a protection order. An aggrieved person may report the breach of a protection order to a Protection Officer who shall then inform the concerned Magistrate or may directly make a complaint to the

---

<sup>83</sup> Overview of the Protection of Women from Domestic Violence Act 2005 (PWDVA); available at - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>; Pg.No.228

<sup>84</sup> Ibid.

Magistrate. A simple affidavit by the woman that a particular Protection Order has been breached is enough to trigger off the procedures prescribed to address breaches. Section 31 of the Act provides that the breach of a protection order is an offence and shall be punishable with imprisonment of either one year and/or a fine. The procedure laid down in the CrPC shall govern arrest, summary trial, sentence etc.

### **Safety Plan for the aggrieved person<sup>85</sup>**

Under Rule 23, it is also stated that on an application being moved under Section 12, the Protection Officer shall prepare a “safety plan” which shall include measures to prevent further violence after making an assessment of the dangers involved.

## **3.2 LEGISLATIVE PROVISION AND PROTECTIONS**

At present only those protections which are related to the problem of domestic violence directly or indirectly are highlighted. The general laws and special laws for the protection of women are discussed in this Chapter 3.

The legislative protections against domestic violence can be divided in three major categories –

### **A. CONSTITUTIONAL PROTECTIONS**

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.<sup>86</sup>

---

<sup>85</sup> Ibid.

<sup>86</sup> <http://nlrd.org/womens-rights-initiative/legislations-laws-related-to-women/constitutional-and-legal-provisions-for-women-in-india>

The relevant protections for women enshrined in Part III of the Constitution are as follows-

Articles 14 to 18 of the constitution of India guarantees of equality for every citizen of India. Equality before law for **women (Article 14)**.

The State not to discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them (**Article 15 (i)**). The State to make any special provision in favour of **women** and children (**Article 15 (3)**).

Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (**Article 16**).

**Article 21** of the Constitution of India protects human dignity. It imbibes the principles of natural justice and fairness and confers on every person the fundamental right to life and liberty. In the words of J. Bhagwati in case of *Francis Coralie vs. Union Territory of Delhi*.<sup>87</sup>

*“We think that the right to life includes the right to live with human dignity and it all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the heads and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings”.*

Through various other judgements the courts have held that right to livelihood is included in the right to life. As regards the expression of ‘personal liberty’, it includes right to socialize with family members and friends. The right acknowledged under Article 21 is subject to the ‘Procedure established by Law’, firstly, there must be law justifying interference with the person’s life or personal liberty and, secondly, the law should be a valid law, and, thirdly, the procedure laid down should be strictly followed. It needs to be added that protection in Article 21 has to be “fair, just and reasonable, non fanciful, oppressive or arbitrary and the ‘law’ in Article 21, is reasonable law, not any enacted piece.”<sup>88</sup>

Article 23 protects women from traffic in human beings and the prohibition applies not only to state but also to private person, bodies or organizations and contravention of the prohibition shall be an offence punishable in accordance with law.

---

<sup>87</sup> A.I.R 1981, SC. P.753

<sup>88</sup> Maneka Gandhi vs. Union Of India, A.I.R. 1978, SC,P.597

For the purpose of this Article, traffic in human Beings includes traffic in women and children for immoral purposes and it means dealing in human beings like goods. Article 24 protects children below the age of fourteen years from employment in any factory or mine or hazardous work.

The relevant provisions contained in **Part IV of the Constitution** are listed below:

These are not enforceable by court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be duty of the state to apply these principles in making laws.

The State to direct its policy towards securing for men and **women** equally the right to an adequate means of livelihood (**Article 39(a)**); and equal pay for equal work for both men and **women** (**Article 39(d)**).

To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (**Article 39 A**).

The State to make provision for securing just and humane conditions of work and for maternity relief (**Article 42**).

The State to take steps for establishing a uniform code throughout the territory of India, a code incorporating equal rights for women and children (**Article 44**).

The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (**Article 46**).

The State to raise the level of nutrition and the standard of living of its people (**Article 47**).

To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of **women** (**Article 51(A) (e)**).

Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Panchayat** to be

[Type text]



reserved for women and such seats to be allotted by rotation to different constituencies in a **Panchayat (Article 243 D(3))**.

Not less than one- third of the total number of offices of Chairpersons in the **Panchayats** at each level to be reserved for **women (Article 243 D (4))**.

Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Municipality** to be reserved for **women** and such seats to be allotted by rotation to different constituencies in a **Municipality (Article 243 T (3))**.

Reservation of offices of Chairpersons in **Municipalities** for the Scheduled Castes, the Scheduled Tribes and **women** in such manner as the legislature of a State may by law provide (**Article 243 T (4)**).

## **B. PROTECTION UNDER CRIMINAL LAW**

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as ‘Murder’, ‘Robbery’, ‘Cheating’ etc, the crimes, which are directed specifically against women, are characterized as ‘Crime against Women’.

Protection available to women under criminal law are as under:-

### **a) Female Foeticide – (Causing miscarriage)**

Offences relating to the birth, death, exposure etc. of the children are made punishable to protect the female foetuses.<sup>89</sup> Female foeticide is violence against unborn child. It is a silent violence even before the birth of a female child and this practice is used to get the rid of female foeticide. The female foeticide is identified as crime against life, relating to birth, and death of children.

---

<sup>89</sup> Sec. 312-318 of IPC

## **b) Female Infanticide**

To protect girl child from female infanticide. The offences of infanticide are made punishable under IPC. Causing infanticide is offence against life after birth.

## **c) Rape<sup>90</sup>**

Rape is not strictly offence committed by the family members but there is a possibility of such occurrences within four walls also. Rape is the most heinous and most common crime against women, against her will and without her consent or with consent,

- i. Obtained by putting her under fear of death of hurt, or
- ii. At the time of giving her consent, she is unable to understand the nature and consequences of that to which she gives consent, by reason of unsoundness of mind or intoxication or the administration by the rapist or through another or unwholesome substances, and
- iii. With or without her consent when she is under 16 years of age. The rape is punishable, with imprisonment for life or 10 years and fine.

Sexual intercourse by a man with his own wife who is below the age of 15 years is considered as marital rape.<sup>91</sup>

## **d) Kidnapping or Abduction For Different Purpose**

Kidnapping or abducting a woman, to compel her to marry any person, against her will or to force or seduce her to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. This section prescribes punishment for any person who abuses his authority to criminally intimidate women or induce her to go from any place with intent that she may be forced or seduced to have illicit intercourse.<sup>92</sup>

Section 366-A and section 366-B deal with the procurement of minor girls for the aforesaid purpose while Sections 373 and 374 IPC deal

---

<sup>90</sup> Sec.376 IPC

<sup>91</sup> Sec. 375 of IPC

<sup>92</sup> Sec. 366 IPC

with buying and selling of minor girls for purpose of prostitution. For a prosecution under these Sections it is essential to show that the accused intended that the girl shall be employed for immoral purposes. The word 'prostitution' is not confined to natural sexual intercourse; it includes any act of lewdness or surrender of girl's chastity for money. The dedication of minors to the temples as 'Devdasis' amounts to this crime.

e) **Murder**<sup>93</sup>

Murder is the most dangerous offence against the life of any person though it is not directly concerned with the offences of women but it includes the incidence of dowry deaths and sati, thus, thus the cases of dowry deaths can be covered under section 302 and 309 of IPC (attempt to commit suicide.)

The newly added (Added by the Amendment in 1986) of IPC defines 'Dowry Death' as where the death of a women is caused by any burns or bodily injury or occurs otherwise, than under normal circumstances within seven years of her marriage, and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband or any relative of her husband for or in connection with, any demand for dowry, such death shall be called 'Dowry death' and such husband or relative shall be deemed to have caused her death.<sup>94</sup>

The offence as defined under newly amended section has **three** ingredients:

**Firstly**, the death of the women must have occurred otherwise than under normal circumstances within seven years of her marriages,

**Secondly**, it must be shown that just before her death, she subjected to cruelty or harassed by her husband or a relative of her husband, and

**Thirdly**, such cruelty or harassment must be for or in connection with any demand for dowry. Under this provision the offence the offence is punishable with a minimum of 7 years of imprisonment and can be extended to life imprisonment.

---

<sup>93</sup> Sec. 300 IPC

<sup>94</sup> Sec. 404-B IPC

#### **f) Immoral Traffic in Human Beings**

Traffic in human beings means selling and buying of men and women like goods. And includes immoral traffic in women and children for immoral or other purposes. The law prohibits the sale and purchase of minors for immoral purposes these provisions relate to selling or buying of persons less than eighteen years of age for immoral purposes.<sup>95</sup>

#### **g) Indecent Representation of Women**

These are the offences against public morals and decency. The sections of IPC do not expressly include obscenity against women but indirectly these sections protect women from being annoyed and hence aims at preventing obscenity. IPC prohibits selling, distributing, importing, printing (for sale or hire) on publicly exhibiting any obscene book, pamphlet, paper, drawing, painting, representation or figure or any obscene object whatsoever or attempting or offering so to do. It also prohibits singing, reciting or uttering in public obscene song or words to the annoyance of other.

#### **h) Cruelty and Torture**

The Indian Penal Code prohibits a husband or a relative of a husband of women subjecting her to cruelty,<sup>96</sup> and punishment of imprisonment for a term which may extend to three years or fine or both. The Section 498-A was introduced with intent to combat the ever increasing menace of dowry deaths in India.

#### **i) Bigamy**

The penal code protects women from being exploited by the husbands and provides that, whoever marries during the lifetime of husband or wife is guilty of 'bigamy'. And if the first marriage is concealed from the person with whom the marriage is contracted, it is

---

<sup>95</sup> Sec. 372 – 373 IPC

<sup>96</sup> Sec 498-A IPC

punishable with imprisonment for ten years and fine under section 495 of IPC whereas in other cases, imprisonment for 7 years and fine.<sup>97</sup>

### **C. PROTECTIONS UNDER SPECIAL LAWS**

Various special legislations are enacted to protect the victims of domestic violence. The following laws are directly or indirectly related to the problem of domestic violence:

#### **1. Medical Termination Of Pregnancy Act, 1971**

For the purpose of prevention the occurrence of miscarriage, the state has enacted special legislation. If the termination of pregnancy is been carried out to get rid of female foetus and if it is hazardous for a women's health, is punishable under this act.

#### **2. Pre-natal Diagnostic Techniques Act, 1994**

It suggests stringent action by law enforcing bodies and to put check on the occurrence of the female foeticide. One who contravenes any of the provisions' of the act or rules is made punishable with imprisonment for a term which may extend to three years or with fine and on any subsequent conviction with imprisonment which may extend to five years and fine.<sup>98</sup>

#### **3. The Dowry Prohibition Act, 1961 (Amendment in 1984)**

The Government of India passed the Dowry Prohibition Act, 1961 as it was the need in country. This act prohibits the system of 'Dowry' i.e. means a property or valuable security given or agreed to be given either directly or indirectly, by parents of either party to a marriage or by any other party to the marriage and by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person at or before (or anytime after the marriage)(in connection with the marriage of the said parties

---

<sup>97</sup> Sec.494-496 IPC

<sup>98</sup> Sec 23 of Pre-Natal Diagnostic Techniques Act, 1994

but does not include) Dowry or Mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

The penalty for demanding dowry is imprisonment for a term which shall not be less than six months but which may extend to two years and with fine up to Rs.10, 000.<sup>99</sup>

#### **4. The Commission of Sati (Prohibition)Amendment Act, 1987**

To force any women to go on 'Sati' is an offence which comes under the definition of murder and if any woman tries to commit Sati, it is presumed as an attempt to commit suicide and is punishable under the Indian Penal Code. The Glorification of Sati is made an offence under this Act.<sup>100</sup>

#### **5. Immoral Traffic (Prevention ) Act, 1956**

To prevent the practice of selling and buying of minor girls for immoral purposes this act was passed. Traffic in human beings i.e. selling and buying of men and women as goods, Article 23 of the Constitution of India prohibits such acts for immoral purposes. And in pursuance of this Article Parliament under Article 35 has passed the legislation, the suppression of Immoral Traffic act (SITA) for punishing acts which results in human beings. The Immoral Traffic (Prevention) Act, 1956 was passed with the objectives of prevention of Exploitation of female from sexual abuse.

#### **6. Indecent Representation Of Women (Prohibition ) Act , 1986**

Any person who contravenes the provision of the act shall be punishable with first conviction with imprisonment of either description for a term which may extend to two years and fine. And in the event of second or subsequent conviction with imprisonment

---

<sup>99</sup> The Dowry Prohibition Act, 1961(Amendment in 1984)

<sup>100</sup> Sec 5 of Commission of Sati (Prohibition)Amendment Act, 1987

for a term of not less than six months but which may extend to five years and with fine.<sup>101</sup>

## **7. The Child Marriage Restraint Act,1929 (Amendment in 1978)**

Girls being considered a liability are often married off by their families at an early age. The Child Marriage Restraint Act, 1929 after an amendment in 1978, thus raised minimum age of marriage of girls to 18 years and for boys 21 years. The act authorizes police officer to investigate cases of child marriage as if they are cognizable, but does not authorize them to arrest any person without a warrant or an order of magistrate. The Act clearly makes 'child marriage' a criminal offence, which is punishable by law but it does not invalidate the marriage.

## **8. The Hindu Minority And Guardian Ship Act,1956**

It applies to Buddhists, Sikhs and Jains. It applies to minors i.e. any child legitimate or illegitimate, who has not attained the age of 18 years of age.<sup>102</sup> In case of illegitimate boy or illegitimate unmarried girl, the natural guardian is the mother, and after her father and in the case of a married girl it is her husband.

## **9. Guardianship And the Wards Act, 1890**

It says that where a guardian of the minor is to be appointed or where the questions of custody of the minor is to be decided the courts take into consideration various factors which may vary in each particular case, the paramount consideration being the welfare of the minor.

Under the Muslim Law, the father is the sole guardian of the child. The mother, however, has a prime right to the custody of the child. There is no any specific Provision in the Shariat for taking account of the child's wishes in these matters, but the court has to

---

<sup>101</sup> Sec 6 of Indecent representation of women (prohibition) Act, 1986

<sup>102</sup> Sec. 4(a), section 5 (a),(b)and (c) of the Hindu Minority And Guardian Ship Act,1956

bear in mind the welfare of the child and other circumstances in deciding the matter.

All other communities are governed by Guardianship and Wards Act, 1890 which lays down that the natural guardian of the child is the father unless he is found unfit.

#### **10. The Parsi Marriage And Divorce Act,1936 And The Indian Divorce Act 1869**

These Acts are applicable to Parsis and Christians, do not provide for considering the wishes of the child in matters related to his or her custody.<sup>103</sup>

#### **11. The Hindu Adoptions And Maintenance Act, 1956**

A Hindu male or female is bound, during his or her lifetime, to maintain his or her minor (under the age of 18 years) children, legitimate or illegitimate or adopted. Maintenance under Sec.3 (b) here includes food, clothing, residence, education and medical attendance and treatment. In case of unmarried daughter, it includes, 'the reasonable expenses of and incident to her marriage'.<sup>104</sup> The right of a child of maintenance from parent is granted in all personal laws.

#### **12. The Family Courts Act, 1984**

In cities, where the family courts Act, 1984 is implemented, matter relating to maintenance, custody and access come under the jurisdiction of the Family Court.<sup>105</sup>

---

<sup>103</sup> The Parsi Marriage And Divorce Act,1936 And The Indian Divorce Act 1869

<sup>104</sup> Sec.20 and sec 3 (b) of the Hindu Adoption and Maintenance Act 1956

<sup>105</sup> The Family Courts Act 1984.



### **13. Juvenile Justice Act, 1986**

This Act is meant for the protection of neglected, uncontrolled and delinquent juveniles. The Act considers ‘Cruelty’ to juveniles as a special offence. Putting children under begging is another form of child labour and also child abuse, which is considered a serious offence under both IPC and Juvenile Justice Act, 1986,(JJA). A ‘Juvenile’ means a boy or a girl who has not attained the age of the 18 years of age (age of child is Fixed by the Amended Law in 2002).

Whoever, having actual charge of or control over, a juvenile, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months or with fine or both. The drawbacks of this provision lies in sec,41(2), which says, ‘ No court shall take cognizance of an offence punishable under subsection (1) unless the complaint is filed with the previous sanction of the State Government or an officer authorized by it in this behalf’.<sup>106</sup> Many cases of the neglect of children remain invisible or unreported, thus the Act has very limited application.

#### **D. SPECIAL INITIATIVES FOR WOMEN<sup>107</sup>**

- **National Commission for Women**

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

---

<sup>106</sup> Sec 41 (1) and (2) of Juvenile Justice Act, 1986

<sup>107</sup> <http://nlrd.org/womens-rights-initiative/legislations-laws-related-to-women/constitutional-and-legal-provisions-for-women-in-india>

- **Reservation for Women in Local Self –Government**

The 73<sup>rd</sup> Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

- **The National Plan of Action for the Girl Child (1991-2000)**

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

- **National Policy for the Empowerment of Women, 2001**

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “**National Policy for the Empowerment of Women**” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

### **3.3 REMEDIES AND PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE:**<sup>108</sup>

Indian legal system provides remedies and protection for the victims of domestic violence these are:

- (A) Remedy in tort
- (B) Remedy in criminal law and
- (C) Remedy in civil law.

---

<sup>108</sup> Jaising, Indira, Handbook On Law Of Domestic Violence, Lawyers Collective, 1<sup>st</sup> ed., Lexis Nexis Butterworths Wadhwa, Nagpur.

## **(A) Remedy in tort**

A tort is any action or inaction that damages or injures another person. Such injury may be caused to the person or property of another person. Since acts of domestic violence cause harm, they are considered tort or civil wrongs. Tort law deals with the liability of a person for wrong committed against another including the wrong of a trespass to the person i.e. physical and psychological injury committed upon a person.

There are three categories of trespass to the person **battery, assault and false imprisonment.**

### **Battery:**

Battery is any physical interference with a person. It is not necessary that the physical interference be excessively violent; the merest touching of a person can amount to battery if it is unwanted. Hitting by an object also counts as battery.

### **Assault:**

Any action that causes a person to fear that a battery will be committed upon him is an assault. Making gestures of hitting and threats of violence are treated as assault.

### **False Imprisonment:**

False imprisonment is the infliction of any unlawful bodily restraint upon a person so, for instance being locked up in a room against one's will is false imprisonment.

### **Other Torts:**

The other torts are negligence, intentional infliction of emotional distress, loss of consortium and defamation. The failure to take proper care is termed negligence; intentional infliction of emotional distress refers to intentional or reckless inflicting by extreme and outrageous conduct of severe emotional and mental distress. In the context of domestic violence, ill treatment and

[Type text]

particularly harassment for dowry may cause a tort. Loss of consortium applies to ill treatment meted out to married women. It may be used as basis of a tort claim by a woman, if her partner refuses to cohabit. Such a tort claim may compensate for the loss of spouse's support, services, love, companionship, affection, society, sexual relations and solace. Defamation may be made out when an individual makes, either orally or in writing a false statement about another which may result in harm.

### **Remedies for Tort:**

There are **two types** of remedies for torts. These are: damages and injunctions and restraining orders.

#### **Damages:**

Damages are monetary compensations for harm caused and injunction is a court order whereby a person is ordered to do or restrain from doing something. For example, medical expenses, compensation for mental and physical injury, compensation for loss of income, compensation for nervous shock can be claimed.

Compensation for mental injury has been clearly contemplated in the PWDVA as Compensation order under Section 22.<sup>109</sup>

#### **Injunctions:**

An injunction is a court order where by a person is order to do or refrain from doing something. An injunction can be both permanent or temporary and mandatory or prohibitive. Injunctions can be obtained by applying under section 37 to 44 of the specific Relief Act 1963.

### **Remedies in Criminal Law:**

A woman facing violence at home may approach criminal courts for saving herself. Criminal law in India does not specifically recognize domestic

---

<sup>109</sup> Jaising, Indira, Handbook On Law Of Domestic Violence, Lawyers Collective, 1<sup>st</sup> ed., Lexis Nexis Butterworths Wadhwa, Nagpur, Pg.No. 159

violence as an offence; there are provisions of criminal law that could be of help to women. These provisions are –

- Murder, culpable, homicide, not amounting to murder (Section 302 and 304, IPC)
- Causing dowry death (section 304B IPC)
- Abetment to suicide (section 306 IPC)
- Hurt and grievous hurt (section 332-338 IPC)
- Wrongful restraint and wrongful confinement (section 341 to 348 IPC)
- Word, gesture or act intended to insult modesty of women (Section 509 IPC)
- Assault with the intent to outrage modesty (section 354, IPC)
- Rape (section 376, 376B, 376C, 376D, IPC)
- Criminal breach of trust (section 406 IPC)
- Cruelty by husband or his relative (section 498A, IPC)
- Bigamy (section 494, IPC)
- Fraudulent marriage ceremony (section 496, IPC)
- Deceitfully causing a person to believe that she is lawfully married (section 493, IPC)
- Adultery (section 497, IPC)

The offence of cruelty is quite mean to the domestic violence. Cruelty in criminal law is different from cruelty in civil law. In criminal law cruelty of four types is considered as an offence. These are:

- Willful conduct that is likely to drive the woman to commit suicide.
- Willful conduct that is likely to cause grave injury to the life, limb or health of the woman.
- Harassment with the view to forcing the woman or her relatives to give some property.
- Harassment because the women or her Relatives did not give some property.

In the above discussed forms of cruelty terms “willful” and “harassment” are clearly specified willful refers to deliberate conduct or behaviour of the offender. Harassment includes the following:

- Persistent denial of food.
- Insisting on perverse sexual conduct.
- Constantly locking the woman out of the home.
- Denying the women access to children, thereby causing mental torture.
- Taunting, demoralizing and putting down the women with the intention of causing mental torture.
- Confining the woman at home and not allowing her normal social intercourse.
- Repeatedly abusing the children in the presence of mother with the intention of causing mental anguish to the mother.
- Constantly denying the paternity of the children with the intention of causing pain to the woman.
- Constantly threatening divorce unless dowry is given.

Cruelty is a cognizable and non bailable offence. This is noncompoundable also. It can be tried before first class magistrate. This offence is punishable up to three years of imprisonment and fine. The prosecution has to prove that:

- The abuser is married to the woman or related to the man married to the woman.
- The abuser is treating or has treated the woman with cruelty.
- Exact nature of harassment to be disclosed with instances; and
- Consequences of cruelty.

In trying the offender the burden of proof falls upon the woman or the prosecutor. There are certain specific Acts which are also protecting a woman from domestic violence. These are: The dowry prohibition Act 1961, the commission of sati prevention Act, 1987, The Pre-conception and Pre-natal diagnostic Techniques (Prohibition of sex selection) Act, 1994 and The Child Marriage Restraint Act 1929.<sup>110</sup>

---

<sup>110</sup> Bare Act of Govt. Edition

The basic flaw of the remedies in criminal law is:

The woman can get the husband punished by the state, but she cannot reform either her husband's behaviour or her relationship with her husband. It tears the family apart as the relations between husband and wife become revengeful and devoid of love. It was constantly felt by women's organizations and judiciary that these provisions are not sufficient for protecting the women from domestic violence. A woman victim of domestic violence requires that her husband must treat her and the children with love, affection and respect. She wants to live with dignity in her matrimonial home and her requirement of finances to feed and maintain herself and children be met. By punishing the offender her requirements are not fulfilled rather her problems increase manifold with the punishment of her husband she ceases all relations with the husband's family and has to bear all sort of burden – financial, taking care of the children etc. on her own shoulders. Hence, what was needed was a civil law to protect women from domestic violence; such a law was enacted in 2005 as **“The Protection of Women from Domestic Violence Act 2005”**.

**CHAPTER 4**  
**JUDICIAL APPROACH**



Domestic violence is a form of violence against women which is one of the most earlier forms of violence recognised and acknowledged by the legislators. However, the law relating to domestic violence, despite a large number of cases that are brought in is still developing. A recent of this fact is also the aspect that through the judiciary has also pronounced various judgement cases, brought in by women complaining of domestic violence, except one or two cases, there has not been a radical development in the law. Violence against women assumes totally different dimension in the case of domestic violence. For a long time, there was a great deal of hesitation to enter into people's home to understand and intervene in situations of domestic violence. It took number of women in dreadful circumstances and persistent lobbying by women for a long period of time for legislators to accept that domestic violence does indeed exist, and that there is serious need to have legislative protection for women.

In 2005 the Indian government has approved a domestic violence act and protected the civil rights of women in cases of domestic violence. This is one of the major steps for the protection of women's right.

The domestic violence cases which have been registered in court after the enactment of the PWDVA, 2005 under physical violence, sexual violence, verbal violence, mental, emotional and economical violence and relief granted under this Act is discussed below:

In this case, *Smti Rita Rani Tickoo Vs. Sri Debashish Sharma & Ors.*<sup>111</sup> The petitioner faced both physical and mental violence. The Magistrate ruled under this case and provided the relief to the victim of Rs. 3000 per month as maintenance, Rs. 2000 per month as house rent, as well as a protection order restraining the respondent from committing any further acts of physical or mental violence. In this case, *Tasima Begum Vs. T. Bora*<sup>112</sup>, also the petitioner as well as her two minor children were granted a protection orders. In yet another case of domestic violence that involved a non-resident Indian (NRI) being violent towards his wife, the father of the respondent refused to disclose the whereabouts of his son, disallowing the notice from being served to him.

---

<sup>111</sup> Misc. Case No. 62M/2009

<sup>112</sup> DV Case No. 101M/09

Thus, in many cases, the families of the respondent attempt to place numerous impediments between the courts and the respondents.<sup>113</sup>

*Smt. Rachna Rao Vs. Family Court Bilaspur, Chhattisgarh*<sup>114</sup> in this case challenged the conduct of the family court of Bilaspur, Chhattisgarh, for refusing to accept an application under Section 26 of the PWDVA. This application included a written complaint about the conduct of the presiding judge of the family court who had refused to accept the application, due to which the aggrieved had been compelled to send the application by post. Copies of the applications were annexed along with the Writ Petition and Writ Application in the High Court, but despite scheduling hearings six times, the matter was kept pending by High Court. *Smt. Pratipha Gayakwad Vs. Ravendra Gaikwad* before the Judicial Magistrate first Class in Raipur, Chhattisgarh: Despite protection order from the magistrate, the accused very openly beats, scandalizes, threatens, wrongfully restrains, insults, tortures, and mentally and physically aggrieves the petitioner. Despite the fact that reports were then filed to the Police under Section 156(3) of the Code of Criminal Procedure, complaining that the police had failed to register a cognizable offence, no preventative measures were adopted by the Police, Magistrate, Protection Officer, or Service Provider. Under this case now preparing to file a writ to enforce the statutory provisions and to secure the protection under the Act. It is emphasized that cases under the PWDVA have suffered from severe delays. Section 12(5), which states that, “the Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing” is not paid any attention to by the Chhattisgarh courts. Furthermore, no time limit is affirmed on any of the cases by the High Court, despite the clear directions of the PWDVA Rules, which state that the family courts should dismiss of the cases within a period of sixty days.<sup>115</sup>

Despite some unfavourable judgments by the High Court of Delhi and the Supreme Court, there are some recent cases that can potentially set positive

---

<sup>113</sup> <http://www.hrln.org/hrln/images/stories/pdf/NC-Protection-Women-Domestic-Violence-Act-2005.pdf> - NATIONAL CONSULTATION ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, Pg no. 34

<sup>114</sup> (W.A. 273/09):

<sup>115</sup> <http://www.hrln.org/hrln/images/stories/pdf/NC-Protection-Women-Domestic-Violence-Act-2005.pdf> - NATIONAL CONSULTATION ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, Pg no. 37

case-law precedent on domestic violence. *Nidhi Kumar Gandhi v. The State & Ors.*<sup>116</sup>: This judgment can be of significance if the situation requires immediate residence order relief, in a shared household alleged to belong to the in laws or other family members. As per the law laid down by the Supreme Court in *S.R. Batra v. Taruna Batra*<sup>117</sup>, a woman cannot claim residence rights if the property does not belong to the concerned male person (full or part ownership). However, in this case, the High Court of Delhi ruled that if an interim residence relief is sought, the issue before the court is one of granting immediate relief and this immediate relief cannot be delayed on the ground that conclusive evidence as to ownership of the property has not been provided. This judgment can be relied upon for getting immediate residence relief, even when the property in question does not belong to the respondent. The case can be particularly useful if the magistrate refuses to grant residence relief on the ground that evidence has to be led with regard to ownership of the property. *Kajal Gohri v. Surinder Gohri*<sup>118</sup> This case is currently pending at the Patiala House Courts but has received a good order. The aggrieved person was receiving interim maintenance in divorce proceedings; however, since the interim maintenance proved to be insufficient for the aggrieved, the Magistrate in the PWDVA case ordered that the husband pay the child's fee directly to the school.<sup>119</sup>

In this case, *Bharati Naik v/s Ramnath Halarnkar*<sup>120</sup> the petitioner was challenging the ruling by the court of the Judicial Magistrate First Class, Mapusa, stating that being a divorced woman; she was not entitled to receive maintenance from the respondent. The petitioner had been divorced from the respondent for the past 12 years. The High Court Judge quashed the orders of the lower courts, stating, "in my view, the relationship by consanguinity, marriage, etc. would be applicable to both the existing relationship as well as the past relationship and cannot be restricted to only the existing relationship as otherwise the very intent and purpose of enacting the said Act would be lost as it then would protect only an aggrieved person who is having an existing relationship by consanguinity, marriage, etc.". The High Court of Mumbai at

---

<sup>116</sup> 157(2009) DLT472

<sup>117</sup> (2007) 3 SCC 169

<sup>118</sup> MP/106/107

<sup>119</sup> <http://www.hrln.org/hrln/images/stories/pdf/NC-Protection-Women-Domestic-Violence-Act-2005.pdf> - NATIONAL CONSULTATION ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, Pg no. 38

<sup>120</sup> Cri Writ Petition 18/09, 64/09 High Court of Goa; order dated 17/02/10

Goa thus ruled that a divorced woman can receive maintenance under Section 12 of the PWDVA.<sup>121</sup>

### **Application not needed in Specified Proforma**

In cases where the court refuses to accept proformas, a judgment passed by the High Court of Gujarat at Ahmedabad, *in Pushpaben Umeshbhai Patel & Ors. Vs. State of Gujarat & Anr.*<sup>122</sup> Under this judgment states that it is not necessary to file every application in a specified proforma.<sup>123</sup>

The Human Rights Law Network (HRLN), practicing in Mumbai, emphasized that the PWDVA can be effective for women who aren't legally married but are in live-in relationships, or divorced. HRLN has experimented with the Act in a number of different types of cases, attempting to get to get protection, residence, maintenance, monetary relief, and compensation orders in cases of domestic violence against minor girls, women in non-marital relationships, or by women facing violence there natal families. Three cases filed by HRLN in Mumbai are significant in the regard. *Geeta Majkar vs. Jayesh Suresh Ghare* (in the Sessions Court, Mumbai): Geeta and Jayesh were in a live-in relationship for one and half years. Jayesh deserted Geeta under the influence of her parents. Geeta, after finding herself helpless approached the special cell at Kandivali, who referred the case to HRLN. HRLN filed a case under the PWDVA for protection, residence, maintenance, monetary relief and compensation orders. Although the matter is still being contested, it got the following interim orders: The respondent was directed to pay interim maintenance to the applicant Rs. 5000/- per month from date of the filing this petition, was restrained from causing any act of domestic violence, and a protection officer was hereby appointed. Information was also conveyed to the concerned police authority about this order. *Sana Sheikh vs. Ibrahim Shiekh* (Sessions Court, Mumbai): Sana Sheikh has two siblings, one brother who is mentally retarded and one sister who is an autistic child. Along with their mother they are victims of domestic violence at the hand of her father. The father has refused to take any responsibility of the children and has thrown them out of the house. He has also divorced their mother. Sana was a minor when she approached HRLN for help. Looking into the urgency of the matter a complaint

---

<sup>121</sup> <http://www.hrln.org/hrln/images/stories/pdf/NC-Protection-Women-Domestic-Violence-Act-2005.pdf> - NATIONAL CONSULTATION ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, Pg no. 41

<sup>122</sup> Sp.Cr.Ap. 2115/2007

<sup>123</sup> Ibid:83 , Pg No.43

was filed under the PWDVA for a residence order, protection order, monetary order and compensation order. The other party has appeared and filed their objection on the maintainability of the petition as Sana being a minor cannot initiate proceedings without seeking permission of the court or taking help of natural local guardian, hence arguing the application is not maintainable under the law. After arguing at length, the maintainability of the petition was allowed. In order to provide case law for this case, the judgments in the cases of *Bodhisattwa Gautam vs. Subra Chakrabarti*<sup>124</sup> and *Tulsa and Ors. vs. Durghatiya and Ors*<sup>125</sup>. , in respect of long cohabitation and legitimacy of relationship and presumption of marriage, were used. The judge in Sana's case ruled: "It does not mean that a child under 18 years of age is prevented to make any allegation of domestic violence when that child is related by the Consanguinity for the purpose of domestic relationship. It is provided by Section 28 of the Act that the magistrate is not prevented from laying down its own procedure for disposal of an application under Section 12 or of Section 23(2) of the Act. Moreover, scope of jurisdiction of the court for enforcing the relief is throughout India which in itself inherently fetch the meaning that any magistrate throughout India." Therefore, the definition of 'complaint' does not debar the child from making a complaint as per the meaning suggested in Section 190 of the Code of Criminal Procedure. *Naseem Bano Shaikh Mahmood vs. Naeem and Nadeem Shaikh Mahmood*: Naseem is a deserted woman staying with her natal family along with her two children. Facing physical and verbal violence at the hands of her brothers and sister in laws, she was being forced into prostitution. On her behalf, HRLN filed a complaint under the PWDVA for a residence order, protection order, monetary order and compensation order. The case obtained interim restraining orders, stating that the respondents are restrained from disturbing the applicant from residing in the shared household. Although Naseem's brother went in appeal to session court, the appeal was dismissed and the residence order was upheld.<sup>126</sup>

In this case, *Pragya vs. Vishnu*<sup>127</sup> which was decided in the district court at Banda on 05/12/2006: This case was decided within less than two months of the passage of the PWDVA in India. This case was filed under Sections 12 & 23

---

<sup>124</sup> Cri. No.2675/1995

<sup>125</sup> 2008 (1) UJ SC 0156

<sup>126</sup> <http://www.hrln.org/hrln/images/stories/pdf/NC-Protection-Women-Domestic-Violence-Act-2005.pdf> - NATIONAL CONSULTATION ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, Pg no. 57-58

<sup>127</sup> 772/IX/2006

of the PWDVA as the complainant was the mother of the respondent and had been thrown out of the house by the respondent. Being 60 years old and having no money of her own, the complainant appealed to the court under the PWDVA. The judge found that this was a case of domestic violence, ordered the respondent to allow his mother residence in the household, passed a protection order, and ordered the respondent to pay Rs. 10,000 to the complainant, in the presence of the Protection Officer. The PWDVA provides relief to any woman: not just wives, but also to mothers, daughters, sisters, or live-in partners.<sup>128</sup>

---

<sup>128</sup> <http://www.hrln.org/hrln/images/stories/pdf/NC-Protection-Women-Domestic-Violence-Act-2005.pdf> - NATIONAL CONSULTATION ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, Pg no. 70-71

## **CHAPTER 5**

# **IMPACT OF THE PROTECTION OF WOMEN FROM THE DOMESTIC VIOLENCE ACT**

Domestic violence is a violence of human right within a family. Domestic violence has been made to protect the women from the violence which occurs in their daily life. To protect the women from the violence which they face as a mother, wife, daughter, girl by any male member of their family. This law protect the women who all are the victims of the domestic violence. It also prevents the occurrence of domestic violence in the society.

As we all are familiar with our Indian society, from the earlier generations the women's are victims of domestic violence. They are always treated lower position in society. Violence against women occurs in many forms such as rape, dowry, murder, abuse, sexual violence, beating, kicking, torture, mental disturbance and also in the form of economic violence.

Before this act, there was no any such law to safeguard a woman against domestic violence. And the position of women in society was also too bad. Man treated the women as dirt. Women were physically, mentally and emotionally tortured in every house. Women were either killed for not bringing sufficient dowry which was demanded by the grooms family, women were being tortured for not bringing money from her parents home and also they were not allowed to give birth to a girl child if the family members came to know about child in mother's womb is female, these all incidents took place in society. Women's are also killed by the family for marrying against the parent's wishes. In the case of *Sujith Kumar vs. State of U.P.* in which the Allahabad H.C. stated that harassment, ill treatment or killing for bringing 'dishonour' to the family must be prevented. Such practice of Honour Killing is a blot on society<sup>129</sup>. Women face violence each second in society. It can be said that women's are not safe within their own home.

Violence against women occurs mainly due to the male dominated society as the male member always think they are superior to women, due to socio economic perspective, cultural and ideological factors in society.

A numerous number of violent practices occur in recent years against women in the form of harassment, exploitation, bride burning, dowry death, female foeticide and infanticide, sexually exploiting, stalking, rape, abusing and many other forms. We all are very exposed to more and more reports of sexual

---

<sup>129</sup> Patil ,B.B, Asst. Prof. College of Law, Latur, article on 'law Justice And Women' : John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Concience of Humanity', 1<sup>st</sup> ed 2013.,Asia Law House.



harassment and domestic violence which frequently lead to suicide and murder. Life specially the life of young women has become endangered.

After the Domestic Violence Act came into existence in 2005 there was a great reform for women's right. Domestic Violence Act provides immediate emergency remedies for women facing violence. The definition of domestic violence under this Act includes physical, sexual, verbal and economic abuse. Before this act there was no legislation for women defining physical, sexual, emotional, verbal and economic abuse. It also covers single women in live-in-relationships and women living in joint families.

The scope of the domestic violence has been widened after this legislation came into force. Under section 2 of the Domestic Violence act defines domestic violence as "any act of physical, mental or sexual violence actually perpetrated or an attempt of such violence as well as the forcible restriction of individual freedom and of piracy, carried out against individuals who have or have had family or kinship ties or cohabit or dwell in the same home". Thus this section provides protection against any act or conduct or omission or commission that harms or injures or has the potential to harm or injure, and it will be considered as '*domestic violence*'<sup>130</sup>. This law includes physical, sexual, emotional, verbal, psychological and economic abuse or threats. Any single thing under this act which includes physical, sexual, verbal or emotional abuse will come under the domestic violence. By the enactment of this legislation women's do not have to suffer for a longer period. Domestic violence is broadly related to human rights. Now the judiciary will interpret the law whether the act comes under the violation of human rights or whether it comes under the protection of women from domestic violence. Further the judges will decide the cases and discrete according the provisions under the legislation.<sup>131</sup>

This law is also applicable to domestic relationship. Under the PWDVA the meaning of shared household <sup>132</sup> has also been explained in which the law recognizes the aspect of live-in-relationships. In which if a women live with a man who abuses her then she can get relief under this Act she has given right to complaint under this act even though if she is not married to him and living

---

<sup>130</sup> <http://www.legalserviceindia.com/article/I194-Protection-of-Women-from-Domestic-Violence-Act,-2005.html>

<sup>131</sup> <http://swd.kerala.gov.in/index.php/domestic-violence>

<sup>132</sup> Sec 2 (s) of PWDVA

with him as a couple and sharing the household. Accordingly any relationship between two persons who live, or have at any point of time lived together in a shared household, is considered a 'domestic relationship'. This includes the relation of consanguinity, marriage, or through relationship in the nature of marriage, adoption or joint family thus, 'domestic relationship are not restricted to the marital context alone. The law also protects women in fraudulent or bigamous marriages, or in marriages deemed invalid in law. It empowers a women to file case against a person with whom she is having a 'domestic relationships' in a 'shared household', and who has subjected her to 'domestic violence'.<sup>133</sup>

Domestic violence gives only a right to a woman to file a complaint under this Act. These complain can be made against any adult male person or his relations (it include women also) who have been in a relationship with aggrieved women. For Example, husband or male partner or mother-in-law. The complain can be made by a women to protection officer, police officer, service provider, judicial Magistrate First Class or Metropolitan Magistrate.<sup>134</sup>

One of the most important features of the Act is the woman's right to secure housing. The Act provides for the women's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by the residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman. Even if she is a victim of domestic violence, she retains right to live in 'shared homes' that is, a home or homes she share with the abusive partner. The law provides that if an abused woman requires, she has to be provide alternate accommodation and in such situations, the accommodation and maintenance has to be paid for by her husband or partner. The law significantly recognises the need of the abused women for emergency relief, which will have to be provided by the husband.

A woman under the PWDVA she cannot be stopped from making any complaint or application claiming domestic violence. Under the provision of domestic violence she is entitled to get protection, assistance and services of the Protection Officer and Service Providers. A domestic violence victim also has a right to get the service of the police, shelter homes and medical establishments.

---

<sup>133</sup> <http://www.legalserviceindia.com/article/I194-Protection-of-Women-from-Domestic-Violence-Act,-2005.html>

<sup>134</sup> [http://www.old.kerala.gov.in/dept\\_socialwelfare/Domestic%20Violence%20Act.htm](http://www.old.kerala.gov.in/dept_socialwelfare/Domestic%20Violence%20Act.htm)

Domestic violence not only violates human rights, but also hampers productivity, reduces human capital and undermines economic growth. It greatly affects the right and health of women. The impact can last for years even a life time. It can affect physical and mental health and it can change behaviour and life of women. Beijing Declaration and Platform for Action, 1995 declares that ‘violence against women is an obstacle to the achievement of the objectives of equality, development and peace.’<sup>135</sup>

Due to violence women’s are unable to access their most basic rights such as right to safety, health, schooling and work. Mentally, physically and emotionally women is affected. Violence limits women’s access to land, water and food and their ability to participate in work, education, travel and community meetings. It also stops women and their family’s development.<sup>136</sup>

Violence against women has economic costs for both the individual and society, including missed work, health care for survivors. Because of it, they lose their confidence, it create inability to earn. It takes away the ability and brings dullness in life of these reasons; violence against women constitutes a major obstacle to development, peace and security.<sup>137</sup>

Victim may also suffer depression, which can disturb their personal life. Victim may have guilt or shame on her person, many times it happens that women abuse may not come out from that incidence due to which she may face anxiety and panic attacks. These types of incidence have general sense of fear, fear of men, hate against men, revenge feeling which provoke them from crime. After suffering violence they may have lonely feeling in their mind because they feel helpless. Violence suffering women cannot get confidence to go out publicly; they suffer from emotional numbness, self-hate or self blame feelings.<sup>138</sup>

After facing violence victims common actions are thought of suicide or self injury, avoiding doctor visits, scarcity to face doctor, eating disorders.

---

<sup>135</sup> John Dr.Mrs.Annie, ‘Violence Against Women need to Awaken the Concience of Humanity’, Pg. No. 499,1<sup>st</sup> ed 2013.,Asia Law House.

<sup>136</sup> John Dr.Mrs.Annie, ‘Violence Against Women need to Awaken the Concience of Humanity’, Pg. No. 500 ,1<sup>st</sup> ed 2013.,Asia Law House.

<sup>137</sup> <http://www.womankind.org.uk/policy-and-resources/violence-against-women/>

<sup>138</sup> John Dr.Mrs.Annie, ‘Violence Against Women need to Awaken the Concience of Humanity’, Pg. No. 500, 1<sup>st</sup> ed 2013.,Asia Law House.

Because of guilt women may become frustrate, always showing anger etc. these are some common action experienced after violation.<sup>139</sup>

Firstly health is affected by violence, study conducted by National Commission of Women<sup>140</sup> in collaboration with CHETNA<sup>141</sup> and UNEFPA<sup>142</sup> on basic information of VWA<sup>143</sup> reveals that it leads to numerous Physical health outcomes such as Injury (from lacerations to fractures and internal organ injuries), Unwanted Pregnancy, Gynaecological problems, STDs including HIV, Headaches, Permanent Disabilities, Self-injurious behaviour (e.g. smoking, unprotected sex) esteem, Sexual Dysfunction, Eating problems, Obsessive- compulsive disorder, Post-Traumatic stress disorder, all of which can lead to suicide, Homicide, maternal death and HIV or AIDS.<sup>144</sup>

The reality which cannot be denied is that anytime the mother is abused, the children are also affected. When a mother is abused the children may feel guilty that they cannot protect her, or they are the cause of the conflict. They may themselves be abused, or neglected while the mother attempts to deal with the trauma. Children get hurt while they see their parents being yelled at, pushed, or hit. They may feel confusion, stress, fear, shame, or think that they caused the problem. Children who see their mothers beaten develop emotional problems. Boys who see their fathers beat their mothers are ten times more likely to be abusive in their adult intimate relationships.<sup>145</sup>

Children who grow up in violent homes have much higher risks of becoming drug or alcohol abusers or being involved in abusive relationships, as a batterer or a victim. Data suggests that girls who witness maternal abuse may tolerate abuse as adults more than girls who do not. These negative effects may be diminished if the child benefits from intervention by the law and domestic violence programs.<sup>146</sup> They are more likely to experience or commit violence in

---

<sup>139</sup> John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Conscience of Humanity', Pg.no. 500, 1<sup>st</sup> ed 2013.,Asia Law House.

<sup>140</sup> [http://www.google.co.in/url?sa=t&rct=j&q=types+of+violence+against+women&source=web&cd=5&cad=rja&ved=OCF8QFJAE&url=http%3A%2FIndia.unfpa.org%2Fdrive%2Finformationbooklet.pdf&ei=EwLDUIZn0Oe\\_sB9PLgCGC&usg=FOJCNEGd1\\_8YHh4ZniGnCDCacAPOLVEbA](http://www.google.co.in/url?sa=t&rct=j&q=types+of+violence+against+women&source=web&cd=5&cad=rja&ved=OCF8QFJAE&url=http%3A%2FIndia.unfpa.org%2Fdrive%2Finformationbooklet.pdf&ei=EwLDUIZn0Oe_sB9PLgCGC&usg=FOJCNEGd1_8YHh4ZniGnCDCacAPOLVEbA)

<sup>141</sup> Centre for Health, Education, training and nutrition Awareness.

<sup>142</sup> United Nation Population Fund

<sup>143</sup> Violence Against Women

<sup>144</sup> John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Conscience of Humanity', 1<sup>st</sup> ed 2013.,Asia Law House.

<sup>145</sup> John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Conscience of Humanity', Pg.No. 501, 1<sup>st</sup> ed 2013.,Asia Law House.

<sup>146</sup> <http://www.clarkprosecutor.org/html/domviol/effects.html>

future. Watching violence children becomes num which affects to their development. Their studies, childhood, innocence, love towards parents, affection everything is to be affected. Experience of violence may also make them violent. It is not only loss of that child's life but it is also loss of country's assets. Our futures depend on our children. So to create a good nation we want good human beings for that we have to mould our children's life. .for their happiness, peaceful life, security, safety we have to fight against violence. The only answer to this problem is to treat domestic violence as a crime. We must fight the societal values that reinforce the stereotypes that encourage men to act aggressively and use violence to solve problems; that women are weak and submissive and should accept male dominance as the norm. Children must be taught at an early age non violent conflict resolution.<sup>147</sup>

Violence has indirect effect on the society. It represents the drain on the economically productive workforce and generates a climate of fear and insecurity: because of violence, balance between man and woman is disturbed. One, committing violence is lesson for others; it is giving bad message to society. It hampers peace, safety, security and dignity of women. Violence make women inferior to men, it only gives the feeling of superiority. Due to which women has to overcome social problems which are more painful than physical injuries such as stigma and discrimination, strained relationship with friends and family, most dangerous thing that is social isolation and harassment for medical, social and legal services. These things break the woman badly.<sup>148</sup>

Many times violence against women leads them to enter in immoral practices. In most of such cases women are compelled in prostitution by their parents, husband, boyfriends, sometimes in difficult economic and social conditions also women are being forced to submit in flesh trade.<sup>149</sup> In India majority of women depend throughout their life on male member of family right from birth to death as a daughter, wife or mother. Discrimination against women starts right from her womb and continues till her death in various forms like there, nutrition, education, health, employment so when she get abuse and neglect from family member, she has to live in a bad practices. At the resort the women will enter into prostitution.

---

<sup>147</sup> John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Concience of Humanity', Pg.No. 502, 1<sup>st</sup> ed 2013.,Asia Law House.

<sup>148</sup> John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Concience of Humanity', Pg. No. 502 ,1<sup>st</sup> ed 2013.,Asia Law House.

<sup>149</sup> Singh, Prof.Anil Kumar, Human rights of Womenin Indian Perspective, Dialectics and Dynamics of Human Rights,Pg.No.247 Asia Law House, Hyderabad

Due to violence victim women have to face economic problems example she may lose her job or she may not be able to continue with her job. Loss of income from missed work or partner who withholds money is basic reasons for financial problem. Medical bills, legal fees, extra child care and protection cost put extra burden on victim. So from one side she has to face violence and from other side she has to suffer financial burden. It means violence not only affects women mentally and physically but also it affects economically.<sup>150</sup>

## **CHALLENGES AND STRATEGIES**<sup>151</sup>

Achieving success in prevention of violence against women is a complex and challenging task. While violence prevention programmes have shown promise in changing attitudes supportive of violence against women, at least in the short term, efforts to change attitudes at the individual level can easily be undermined by social level norms and cultural contexts. Comprehensive strategies are needed that involve social institutions, cultural norms, attitudinal change at the individual level and supports for victims. They must incorporate a gender perspective. In order to achieve a change in attitudes and in rates of violent behaviour, it is important to address, familial, organizational, community and societal norms, traditional gender role attitudes, and structural relations and social practices. It is also important at this juncture to more fully integrate efforts to prevent violence against women into mainstream violence prevention and to reduce the current separation between actions aimed at preventing intimate partner violence and those targeting women's safety on the street. As recommended by the US National Research Council (Kruttschnitt et al 2004: 3). At this point in its development, some level of integration of research on violence against.. Women with the larger literature on crime and violence would enrich the former research intellectually increase the amount of attention it receives, extend the lessons that can be learned about violence against women, and provide a sounder basis for prevention and deterrence strategies. The research agenda on violence against women would benefit from its integration with efforts to determine causes, consequences, prevention, treatment and deterrence of violence more broadly. Moreover, we believe that

---

<sup>150</sup> John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Conscience of Humanity', Pg.No. 503, 1<sup>st</sup> ed 2013.,Asia Law House.

<sup>151</sup> Goge, Adv.Priti Sagar, Aurangabad; John Dr.Mrs.Annie, 'Violence Against Women need to Awaken the Conscience of Humanity', Pg.No.436, 1<sup>st</sup> ed 2013.,Asia Law House.

the government's research agenda would encompass forms of violent victimization of women other than intimate partner violence. A more fully integrated conceptualization of all forms of violence against women into crime and violence prevention initiatives and an expanded program of evaluation is recommended in order to address this problem in more comprehensive way. Good evidence exists on the risk factors for the penetration of violence against women and about the elements of successful prevention strategies. Resources are needed to ensure that these strategies are integrated into school curricula and other training and education forums and are subjected to a long term evaluations. In addition general violence preventions programme should be evaluated in order to understand the potential impact of these programmes on preventing various forms of violence against women.<sup>152</sup>

---

<sup>152</sup> [http://www.cps.gov.uk/publications/equality/vaw/vaw\\_strategy.html#p07](http://www.cps.gov.uk/publications/equality/vaw/vaw_strategy.html#p07)

## **CONCLUSION AND SUGGESSTIONS**

[Type text]



Domestic violence against women it is one of the old age phenomenon and women are victims because they are considered to be weak, vulnerable and are exploited. Family which distinguishes the love, affection, class, society, background of any family are one among centre of exploitation. Violence includes slapping, hitting, abusing, and murder within the member of family. These all exploitation takes place behind the closed doors and within the family itself. In India different types of domestic violence are rooted in society and also by deep rooted patriarchal society of gender bias and discrimination against them. In this deep rooted patriarchal society male child is treated as a future of the family and who will be the securer of family and who will bring up new generation and where girls are look down as a burden and liability to the whole family and also the family violence in case of girl child. Domestic violence is not only visible but it is a part and parcel of life of women in India. Violence starts with her from the day her mother conceives her existence in the womb and since then in every phase of her life span she has to fight for her survival in this rude society. Most of the women in our country are illiterate and they are not aware of the basic law provision and also about their rights, due to which most of the time they do not register the cases against those person who violate their rights and commit crimes against them. Lack of awareness about the law and rights guaranteed under that legislation for them but most serious problem is that the women's are not aware about their rights which are due to traditional customs. Victims are unable to get the legal remedies which are guaranteed by the government for the protection of women. In our society which is said to be tradition bound and a male dominated, women are still treated as secondary sex which makes her to suffer the violence silently. The fact in India women is made to suffer human right abuses in a gender specific way. She is often ignored and underestimated.

The Protection of Women from Domestic Violence Act (PWDVA), 2005 is passed by the Parliament in response to worldwide demand for such legislation and also the outcomes of the continuous efforts of Women Organizations working for women. The Act gives right and Protection to the women's.

The remedies available to the victim prior to the PWDVA 2005 were in the form of punishment of the offender under IPC, the civil remedy of divorce and maintenance were not giving her ultimate relief, the remedies which were available that were related to matrimonial proceeding and also according with

court proceeding. The statutory provision and constitutional provision were available to women but these provisions were insufficient and the most important problem about it was lack of awareness about their rights which constitution provide for the protection of women.

PWDVA 2005 was brought to answer the inconsistency and provide victim the relief. This act gives protection to women and instant remedy on the violence against her. This Act also face a lot of criticism as in many families like 498 A misuse of this Act has also been come up, it add a real threat to in-laws and male member.

To make a real and effective implementation of this Act and to give support to the victims of domestic violence the authorities are required to be trained. These and such other issue raise the doubts in respect of effective implementation and throws a challenge for the Government.

Domestic Violence goes beyond the boundaries of race, caste, religion, and class. In 2013 according to the Global Review Data, 35% of women worldwide have experienced either physical and sexual intimate partner violence or non-partner sexual violence. However, some National Violence studies show that up to 70% of women have experienced physical or sexual violence in their lifetime from an intimate partner.<sup>153</sup> In New Delhi, a 2010 study found that 66 % of women reported experiencing sexual harassment between two and five times during the past year.<sup>154</sup>

The object of passing the Protection of Women From Domestic Violence (PWDVA), 2005 was to protect the women's from domestic violence which they face within the four walls in their life span, to stop the violence against women, to provide the opportunity for her development and to encourage them to fight for their rights and also to support them to the full extent.

The government has passed the law and now it's time for the proper implementation of these laws for the protection of women against violence. The government has to facilitate and encourage the registration of Service Providers,

---

<sup>153</sup> <http://www.unwomen.org/en/whatwedo/endingviolenceagainstwomen/factsandfigures> ; World Health Organization, *Global and Regional Estimates of Violence against Women*, [http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf), p. 2. For individual country information, see full compilation of data in UN Women, 2012, *Violence against Women Prevalence Data: Surveys by Country*

<sup>154</sup> JAGORI and UN Women (2010). Report on the Baseline Survey. Available at: [http://jagori.org/wpcontent/uploads/2011/03/Baseline-Survey\\_layout\\_for-Print\\_12\\_03\\_2011.pdf](http://jagori.org/wpcontent/uploads/2011/03/Baseline-Survey_layout_for-Print_12_03_2011.pdf) ; <http://www.unwomen.org/en/whatwedo/endingviolenceagainstwomen/factsandfigures>

Protection Officer and to give them a proper training so that they can protect the women and provide protection to them against violence. The government will also have to take initiative for the upliftment of women and also to initiate a campaign for public awareness. It is also necessary to implement the training programmes for the police media and judiciary about the dimensions scope and functions of the Act.

There is a challenge before civil society and NGO to make the use of the Act and making awareness about this new law within the different class of women. The financial implications of the Act are also serious and they have to be tackled positively by the government.

### **SUGGESTIONS:**

- i. **Women's vulnerability is the Root Cause**  
The problem of domestic violence in India is required to be understood in the real sense. To understand the reason behind why women become vulnerable and positioned themselves to be exploited. Most of the women's are illiterate and face a silent violence and they are also under the pressure of tradition in society.
- ii. **Attitudinal Change is needed among men and women**  
The basic social structure from long time in India is Patriarchal structure where we can see a male dominated society. There is unequal distribution of power relationship is the root cause of violent attacks. There should also be change in the attitudes between men and women to overcome the victimization of violence.
- iii. **Internalization of Legal Norms with Public Consensus**  
Domestic violence in our country is yet held to be "interfamilial affair" and disallow the intervention of the close relatives and outsiders and the state. The real effective implementation of any legislation has to undergo a security of strong public consensus and acceptance in democratic processes.
- iv. **Evaluation and Monitoring Bodies and Constant Scrutiny through Impartial Bodies**

The legislative framework provided under the PWDVA, 2005 gives a broad and wide definition of domestic violence and a number of rights to the victim of domestic violence and extreme powers to the Protection Officers and service providers but had not created any evaluating and monitoring body to scrutinize their work therefore the chances of misuse and abuse of power is much. So there is need for an independent body for monitoring the implementation and enforcement of rights of victim.

v. Act to Rule Out Male Bias

Regarding the coverage of the person under the act i.e. “aggrieved persons” still continued to be married women, and sometimes a widow but unmarried daughters, mothers, it is observed that the applications are less in number. The act yet seems to be predominantly a matrimonial law, and in respect of “respondent” any adult man should be also have a right to complain against a woman. It is not always true that men are perpetrators and women only are the victims.

vi. The strong legal mandate prescribed for officers and stake holders

The officers and institution is responsible for the more effective implementation of Act. It is needed to wipe out the gender discrimination, traditional relation of patriarchal society and male dominance.

vii. Gender Perspective training is necessary

Gender perspective training should be mandatory by the law and is crucial for changing the crucial mind set of patriarchal society, police, service providers, medical practitioners, protection officers, and especially of magistrates, who often advise women to put up with the violence and “stop complaining”.

viii. Counselling by Expertise

At the pre litigation stage, counselling to the aggrieved person for the restoring self-esteem, providing emotional support and assist her in making decision as to the initiation of legal proceedings.

ix. Creating Awareness about the Legislative provisions

Though the considerable span of five years have passed, people are not aware of the law, as a result the civil remedial options are yet not opted but still the options of criminal law are used. There is need to take the efforts to make the legislation people friendly by creating awareness among the masses through media, mass education, public services, and with the help of the NGOs like institution.

- x. Urgent Help to Victim through Police Support Cells  
Special cell for Women and Children or the women cells in all police stations should get recognition to try to settle the matter and stop the violence at the very early stage through counselling and other means and an aggrieved can take the prior settlement through the women's cell as evidence in her support.

## **AMENDMENTS REQUIRED TO THE PRESENT ACT**

Domestic violence Act is comprehensive law and addresses all issues related to woman. It is for the first time that an act has been made to address women's issues in such a detail way. Domestic Violence Act thoroughly feels some flaws in the act needs to be amended for effective implementation of the act.

- i. There is a greater possibility that Domestic Violence Act can be misused by woman by legally permitted manner. The fact is that after making a complaint by woman it is prima facie treated as "true and genuine". The innocent men will be accused and implicated in the false case as he refuses to oblige the unreasonable demands of his wife. It often destroys the life of many innocent people. As soon as the complaint is made the accused is to put behind the bars till the case is finalized. If the court is declared him as an innocent and acquitted then the wrongdoer did not get any punishment for wrongfully dragged him to the court. So there should be provision in the act to punish the wrongdoer. So I feel that the domestic violence act should be made gender neutral and equal protection should be provided to man and women against physical, emotional, verbal and economical abuse.
- ii. Domestic violence act must be followed the general principles of law, every person presumed to be innocent till the guilt is proved in the

court of law beyond the reasonable doubt. All the provision of act are in favor of women whether she is having a good or bad intention. Disputes are very common in every family some disputes are for small thing and some are big they are the part of the family the court should avoid to take the cognizance of the trivial matters. In order to proper use of the existing law it should be strengthen by inserting new section to the extent.

- iii. According to law after confrontation with her husband she is allowed to share the household now the question is how far she is able to mingle amicably with the members in the family after filing a case against her husband? There is no possibility of congenial atmosphere prevailed in the house after confrontation so n order to protect the victims of domestic violence from household and relocated to another shelter the expenses to be borne by the husband or there should be a provision for monetary compensation to the accused to that extent an amendment is necessary to the act.
- iv. A wider social movement is necessary to educate the rights of women to conquer the menace, particularly in rural areas, as their less aware of their legal rights and fall an easily prey to their exploitation. Educating women will certainly work as a deterrent of domestic violence. So there should be provision in the act the complainant should be minimum qualified.

## **BIBLIOGRAPHY**

- i. N.K.Acharya , Commentary on *The Protection Of Women From Domestic Violence Act,2005*, 5<sup>th</sup> Edition , Asia Law House
- ii. Dr. Pooja P. Narwarkar , *Law Relating To Domestic Violence In India*, 2014,Hind Law House
- iii. Indira Jaising, *Handbook On Law Of Domestic Violence*,Lawyers Collective, 1<sup>st</sup> Edition 2009, Lexis Nexis Butterworths Wadhwa, Nagpur Publication.
- iv. Dr. Mrs. Annie John, *Violence Against Women Need To Awaken The Conscience Of Humanity*, 1<sup>st</sup> Edition 2013, Asia Law House
- v. Dr. S.C. Tripathi, *Women And Criminal Law*, 1<sup>st</sup> Edition,Central Law Publication
- vi. Dr.S.C.Tripathi & Vibha Arora, *Law Relating To Women And Children*, 1<sup>st</sup> Edition 2004, Central Law Publication
- vii. Dr. Jaswinder Singh, *Legal Essay & Articles For Competions*, Chawala Publications Pvt. Ltd.

## **WEBLIOGRAPHY**

1. <http://www.hrln.org/hrln/images/stories/pdf/NC-Protection-Women-Domestic-Violence-Act-2005.pdf> - NATIONAL CONSULTATION ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
2. <http://hrln.org/hrln/images/stories/pdf/Report-national-consultation-violence-against-women.pdf> - national consultation on laws and legal strategies to combat violence against women
3. <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf> - Annex 4: Overview of the Protection of Women from Domestic Violence Act 2005
4. <http://www.studymode.com/essays/Domestic-Violence-On-Women-In-India-652986.html> - Domestic Violence on Women in India
5. <http://en.wikipedia.org/wiki?curid=3634424>- violence against women
6. <http://en.wikipedia.org/wiki?curid=42199068>- violence against women in India



7. <http://www.hawaii.edu/hivandaids/Domestic%20Violence%20Against%20Women%20and%20Girls.pdf> – domestic violence against women and girls, UNICEF
8. <http://lawasprofession.blogspot.in/>- LAW-IN-PERSPECTIVE COMMITTED TO THE CAUSE OF PROVIDING INSIGHTS INTO LAW'S WHYS AND HOWS. FOCUS ON THE CONTENT FROM INDIA BUT COVERING THE LEGAL ARENA FROM ALL OVER THE WORLD.
9. <http://narirakshasamiti.com/world.htm>- WORLD CONFERENCE ON FAMILY VIOLENCE- By Vandana Sharma in Singapore
10. [http://www.ncdsv.org/images/IJCA\\_Application-of-TOPSIS-method-to-analyze-causes-of-suicide-thought-in-DV\\_10-2013.pdf](http://www.ncdsv.org/images/IJCA_Application-of-TOPSIS-method-to-analyze-causes-of-suicide-thought-in-DV_10-2013.pdf)- APPLICATION OF TOPSIS METHOD TO ANALYZE CAUSES OF SUICIDE THOUGHT IN DOMESTIC VIOLENCE
11. <http://en.wikipedia.org/wiki?curid=46112>- violence
12. <http://en.wikipedia.org/wiki?curid=35596710> – Gender Equality Bureau
13. <http://en.wikipedia.org/wiki?curid=3317874> – cycle of violence
14. [http://www.old.kerala.gov.in/dept\\_socialwelfare/Domestic%20Violence%20Act.htm](http://www.old.kerala.gov.in/dept_socialwelfare/Domestic%20Violence%20Act.htm) –DOMESTIC VIOLENCE ACT
15. <http://swd.kerala.gov.in/index.php/domestic-violence> ; [http://kerala.gov.in/index.php?option=com\\_content&view=article&id=3937&Itemid=3124](http://kerala.gov.in/index.php?option=com_content&view=article&id=3937&Itemid=3124) - Domestic Violence
16. [http://en.wikipedia.org/wiki/Domestic\\_violence](http://en.wikipedia.org/wiki/Domestic_violence)
17. <http://www.bbc.com/news/worldasiaindia29708612>
18. <http://www.amen.ie/reports/27002.htm>
19. <http://commons.pacificu.edu/spp/92>; Grovert, Amanda J. (2008). Domestic Violence Against Women: A Literature Review (Master's thesis, Pacific University)
20. <http://www.aaets.org/article144.htm> ; Domestic Violence and Abuse: Types, Signs, Symptoms, Causes, and Effects
21. <http://www.aaets.org/article145.htm> ; Domestic Violence: An Overview
22. <http://www.unwomen.org/en/whatwedo/endingviolenceagainstwomen/factsandfigures> ; Facts and Figures: Ending Violence against Women | UN Women – Headquarters
23. [http://en.wikipedia.org/wiki/Protection\\_of\\_Women\\_from\\_Domestic\\_Violence\\_Act\\_2005](http://en.wikipedia.org/wiki/Protection_of_Women_from_Domestic_Violence_Act_2005)

24. [http://highcourtchd.gov.in/hclsc/subpages/pdf\\_files/1.pdf](http://highcourtchd.gov.in/hclsc/subpages/pdf_files/1.pdf)
25. <http://www.lawyerscollective.org/files/FAQonProtectionOfWomen1.pdf> ;  
LAWYERS COLLECTIVE WOMES RIGHT INITIATIVE
26. <http://medind.nic.in/jal/t11/i3/jalt11i3p261.pdf> ; DOMESTIC  
VIOLENCE AGAINST WOMEN : PAST,PRESENT AND FUTURE
27. [http://www.academia.edu/1342148/Protection\\_of\\_Women\\_from\\_Domestic\\_Violence\\_Act](http://www.academia.edu/1342148/Protection_of_Women_from_Domestic_Violence_Act) ; Protection of Women from Domestic Violence Act
28. <http://www.mainstreamweekly.net/article1936.html> ; PROTECTION OF  
WOMEN FROM DOMESTIC VIOLENCE ACT 2005—AN  
APPRAISAL ; Mainstream, Vol XLVIII, No 11, March 6, 2010 ;  
Saturday 6 March 2010, by Rachana Kaushal
29. <http://www.legalserviceindia.com/article/1194ProtectionofWomenfromDomesticViolenceAct,2005.html>
30. <http://www.legalserviceindia.com/articles/dmt.htm> ; The Domestic  
Violence Act: Constitutional Perspectives;
31. [http://www.legalserviceindia.com/articles/dv\\_era.htm](http://www.legalserviceindia.com/articles/dv_era.htm) ; Protection of  
Women from Domestic Violence Act,2005:DAWN OF NEW ERA –  
AUTHOR-BHARAT BUDHOLIA

[Type text]