



PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005- AN OVERVIEW

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Abstract

Patriarchy has created an environment in which violence within the family is tolerated and considered necessary to maintain women's low status in society. Violence against women and girls continues to be 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 girls equality, security, dignity, self-worth, and their right to enjoy fundamental freedomsⁱ. In this paper, the Indian position in this regard has been highlighted. In India the central government has taken several steps to protect woman through enactment of legislation and the prosecution of those who perpetrate violence against them. The Protection of Women from Domestic Violence Act, 2005 is one of them. In this paper what are the rights available to the victim women such as rights to be free of violence, right to dignity, right to shelter and right to reside in husband's rented premises are discussed. This paper has also highlighted the different protective order issued by the magistrate for welfare being of the women and the problems of proper implementation of the Domestic Violence Act.

Key words: Domestic Violence, Protective Order, Right to Shelter.

Introduction

"For most of recorded history, parental violence against children and men's violence against wives was explicitly or implicitly condoned. Those who had the power to prevent and/or punish this violence through religion, law, or custom, openly or tacitly approved it.The reason violence against women and children is finally out in the open is that activists have brought it to global attention and it must be stopped at all cost" - *Riane Eisler*

Patriarchy has created an environment in which violence within the family is tolerated and considered necessary to maintain women's low status in society. Statistics on the prevalence of domestic violence indicate that it is a widespread phenomenon-affecting woman of all ethnic groups, religion, and socio-economic background.

Violence against women within families is often justified and condoned as being necessary to establish men's authority over women, to discipline them and to punish them for derelictions of duty. This view is held not only by men, but also often by women themselvesⁱⁱ

There is increasing evidence to show that all women, regardless of age, class, caste and community are vulnerable to domestic violence; marriage, a joint family, education, economic security and social status do not provide any real protection. The reasons for domestic violence are equally disturbing and the most trivial of causes apparently justifies extreme punishmentⁱⁱⁱ

In General Recommendation 19, the CEDAW Committee makes the following observation: "*Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.*"

According to General Recommendation 19, the rights impaired by domestic violence include:

1. The right to life,
2. The right not to be subjected to torture or to cruel, inhuman or degrading treatment,
3. The right to equal protection according to humanitarian norms in the time of international or internal armed conflict,
4. The right to liberty and security of person,
5. The right to equal protection under the law,
6. The right to equality within the family,
7. The right to the highest attainable standard of physical and mental health, and
8. The right to just and favorable conditions of work.



Protection of Women from Domestic Violence Act, 2005^{iv}

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

Statement of Objects and Reasons

Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

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

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

Salient Feature of the Domestic violence Act, 2005.

1. It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.
2. It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
3. It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.
4. It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.
5. It provides for appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.
6. It provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term, which may extend to one year or with fine, which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also made to be sought an offence under the Act with similar punishment.
7. The Provisions of Code of Criminal Procedure, 1973 made applicable to all proceedings under The Protection of Women from Domestic Violence Act, 2005.

The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill

Rights of Women under Domestic Violence Act, 2005

1. The Right to Be Free of Violence

In *Francis Coralie Mullin v. Union Territory Delhi, Administrator*,^v the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.



This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.

2. The Right to Dignity

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*^{vi}, the Supreme Court emphasized the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition and held that every woman has the right to lead her married life with dignity and freedom, care and support by her spouse, without abuse, violence (emotional, mental or physical), neglect, fear or humiliation of any kind.

3. Right to Reside in Husband's Rented Premises

In *Kavita Dass v. NCT of Delhi & Another*^{vii}, the Hon'ble Supreme Court, held that the Phrase "shared household" includes any household owned or tenanted by either of the parties in respect of which either the woman or the respondent or both, jointly or singly, have any right.

4. The Right to Shelter

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

Battling for a better life for women after separating from the husband, the Bombay high court has said that a woman can seek more maintenance under the Protection of Women from Domestic Violence Act (DV Act) of 2005, even if she has been awarded maintenance any under other law.^{xi}

5. Right To Residence in Property Belonging Exclusively to The in-Laws

In *Sou.Sandhya Manoj Wankhadevs Manoj Bhimarao Wankhade and others*,^{xii} where the appeal in respect of vacating the appellant from her matrimonial house on the application of respondent No 2&3 the widow mother in-law and sister-in-law respectively on the ground of they being women could not be made respondent in view of section 2(q) of the PWDV, Act having been affirmed by the lower court and Nagpur Bench of Bombay High court, the supreme court has held that the legislature never intended to exclude female relative of the husband or male partner from the ambit of a complaint that can be made under the provision of the Domestic Violence Act, 2005.

6. Domestic Relationship Included Blood Relation of Husband and the Right to Reside

In *Smt Sarita Vs Smt Umarao*^{xiii} the Hon'ble high court held that the term "relative" is quite broad and includes all relatives of husband irrespective of sex and stated that the women can be made respondents under PWDVA.

7. Divorced woman claim a right to residence in the shared household of her ex-husband

The Supreme Court has clarified that a divorced woman's right to residence in the shared household of her ex-husband depends on the terms and conditions within the order of divorce. It stated that if she did not expressly give up the right to residence in the divorce proceedings, she would be entitled to return to and reside in the former shared household.^{xiv, xv, xvi}

8. Right to Monetary Reliefs under section-20

The monetary relief to be ordered under Section 20 of the Act should be to meet the expenses incurred and the loss suffered by the aggrieved as a result of the domestic violence. The loss suffered is nothing but the loss of financial resources to be paid by the husband towards her maintenance. Thus, if the husband neglects the wife or refuses to maintain her, the said act of the husband surely amounts to domestic violence and therefore, the aggrieved wife is entitled for monetary relief and such monetary relief may include, but not limited to the maintenance for the wife as well as to her children. The monetary relief paid by way of maintenance can be an order under Section 125 of the Code, which is evident from a plain reading of Section 20(1)(d) of the Act. Thus, it is crystal clear that a wife, who has suffered domestic violence by the act of the husband in neglecting or refusing to maintain her is entitled to approach the Judicial Magistrate seeking an order under Section 125 of



the Code, which itself is a monetary relief under Section 20 of the Act. Any such maintenance order made under Section 20 of the Act is appealable to the Court of Sessions under Section 29 of the Act^{xvii}.

Other Reported Case Laws

In *Manish Kumar Soni & Others v. State Of Bihar & Another*^{xviii} the Court held that it is clear from the Statement of Objects and Reasons of the Protection of Women from Domestic Violence Act is enacted to provide for a remedy under the civil law, which is intended to protect the women from being the victims of domestic violence and to prevent the occurrence of domestic violence in the society. Therefore, essentially the reliefs provided under the Act are civil remedies. The penal provisions are only Sections 31 and 33. Therefore, service of notice on an application filed under Section 12 or interim relief under Section 23, must be in the manner provided under the Code of Civil Procedure.

In *Smt. P.Sugunamma And Others V.State of A.P*^{xix}, it was held that in order to arraign a person as a respondent in a DV case filed under section 12 of the Act, there must be a domestic relationship either in present or in the past between the aggrieved person and the respondent. In any case, the **domestic** relationship must be in existence at the relevant time.

In *Giduthuri Kesari Kumar And Others V. State of Telangana*^{xx} precisely the observation of the learned Judge is that orders passed under Sections 18 to 22 of Protection of Women from Domestic Violence Act, 2005 (for short D.V Act) are in the nature of civil reliefs and none of the orders treat the concerned respondent as an offender and it is only the violation of the order passed under Sections 18 and 19 is treated as an offence under Sections 31 and 32 of DV Act and therefore, mere impalement of a person as a party respondent in a Domestic Violence Case, does not give rise to a criminal offence to quash the proceedings at the initial stage. Hence aggrieved person has been subjected to any act of domestic violence.

Having scanned the anatomy of the 2005 Act, *In V.D. Bhanot v. Savita Bhanot*^{xxi} the question arose whether the provisions of the 2005 Act can be made applicable in relation to an incident that had occurred prior to the coming into force of the said Act. Be it noted, the High Court had rejected the stand of the respondent therein that the provisions of the 2005 Act cannot be invoked if the occurrence had taken place prior to the coming into force of the 2005 Act. This Court while dealing with the same referred to the decision rendered in the High Court which after considering the constitutional safeguards under Article 21 of the Constitution vis-à-vis the provisions of Sections 31 and 33 of the 2005 Act and after examining the Statement of Objects and Reasons for the enactment of the 2005 Act, had held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that Parliament enacted the 2005 Act in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of **violence** occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them and further that a petition under the provisions of the 2005 Act is maintainable even if the acts of **domestic violence** had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. After analyzing the verdict of the High Court, the Court concurred with the view expressed by the High Court

In *Krishna Bhattacharjee v. Sarathi Choudhury And Another*,^{xxii} the Supreme Court held that, in the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. “Economic abuse” as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, orelevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. The concept of “continuing offence” gets attracted from the date f deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

In Ajay Kumar Jain vs. Baljit Kaur Jain^{xxiii} the court observed that a wife cannot have right to live in a particular property and the same cannot become a clog on the property denying the right of the husband to deal with the property when he is willing to provide an alternative matrimonial home to her. It was also held that she cannot insist on residing in the suit property alone when the husband had offered a suitable alternative arrangement for her.

On the decisions of the Supreme Court in *S.R.Batra v. Taruna Batra*^{xxiv}, in *Sameer Vyas v. State*^{xxv}, in *Lokesh Kiran Kumar Shah v. Shruddha Lokesh Shahs*^{xxvi} and in *Vijay Vasant Sawant v. Shubhangi Shivling Parab*^{xxvii} learned counsel for the 1st respondent-sister-in-law submitted that the petitioner has no right to seek for any residence order to live in a house, which would not fall under the definition of share household, under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and that she cannot maintain an application against the other respondents. According to him, when the



husband himself has no right or title to the property, the petitioner-wife cannot derive a better right to seek for residence order^{xxviii}.

In *B.Prakash : vs Deepa*^{xxix} the Court held that, as per the definition of the term "domestic violence", economic abuse shall also constitute the domestic violence. The term "economic abuse" has been defined by way of Explanation (1)(iv) of Section 3 of the DVAct,2005.

Different kinds of order issued by the Magistrate

Protection orders

After giving an opportunity to the aggrieved person and respondent of being heard and the magistrate is satisfied that a prima facie case of domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person prohibiting the respondent from the following acts such as committing any acts of domestic violence.

1. Aiding or abetting in the act of domestic violence.
2. Entering the place of employment of aggrieved person or if the person is child, its school or any other places
3. Attempting to communicate in any form including personal, oral or written, electronic or telephonic contact
4. Alienating any assets, operating bank account, bank locker held or enjoyed by both parties jointly or singly by the respondent including her stridhan.
5. Causing violence to the dependents, or other relative or any other person who give the assistance to the aggrieved person or.
6. Committing any other acts specified by the protection officer.

Residence orders

The magistrate being satisfied that a domestic violence has taken place, pass residence order-

1. Restraining the respondent from dispossessing or in any manner disturbing the peaceful possession of the shared household.
2. Directing the respondent to remove himself from the shared household.
3. Restraining the respondent or his relatives from entering any portion of the shared house hold where the aggrieved person lives.
4. Restraining the respondent from alienating or disposing of the shared house hold or encumbering it.
5. Restraining the respondent from renouncing his right in the shared household.
6. Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her or to pay rent for the same if the circumstances so require.

No order shall be made against women under this section. Magistrate may impose additional condition and pass any other order to protect the safety of the aggrieved person or her child. Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person r to assist in implementing his order. Magistrate may also impose on the respondent to direct stridhan or any other property or valuabale security she is entitled

Monetary relief

The magistrate may direct the respondent to pay monetary relief to meet the expenses of the aggrieved person and any child as a result of domestic violence and such relief include

1. Loss of earnings.
2. Medical expenses.
3. Loss caused due to destruction or removal or damage of any property.
4. Pass order as to maintenance for the aggrieved person as well as her children if any including the order under or in addition to an order of maintenance under section 125 criminal procedure code or any other law.

Custody orders

Magistrate can grant temporary custody of any child or children to the aggrieved person or to the person making application on her behalf and specify the arrangements for visit of such child by the respondent. Magistrate can refuse the visit of such respondent in such case if it may harmful to the interest of the child.

Compensation orders

Magistrate may pass order directing the respondent to pay compensation to the petitioner for injuries including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.

Copies of orders passed by the magistrate shall be supplied free of cost to the parties concerned and police officer and service provider.



Any relief available under this Act may also be sought in any other legal proceedings before a civil court, family court or criminal court and such relief may be sought in addition to and along with relief sought for in suit, or legal proceeding before civil or criminal court.

Negative impact of Domestic Violence Act

1. Victimization of Male Partners and Their Female Relatives
2. Police Harassment
3. Misuse of Section 498A of Indian Penal Code and Section 304B The dowry Prohibition Amendment Act

Problems of effective implementation of law

1. Delay in Justice Delivery System.
2. Stigma of reporting domestic violence.
3. Lack of enforcement of measures to protect women.
4. Lacuna in the police and security forces.
5. Failure of All women police stations.
6. Other support services regarding the role of NGOs.

Conclusion And Suggestion

No doubt after a long battle of women's movement government has passed the Domestic Violence Act, which is a victory but an incomplete one. In a democratic country citizens have a right to participate in the forming of legislation.

We must insist that

1. "Domestic Violence" should be defined in accordance with the UN framework for model legislation on domestic violence.
2. Law should enable grant to monetary relief, custody and compensation.
3. There should be no procession for mandating counseling for the women.
4. Protection officers should be appointed through an open process of inviting applications from all qualified persons through advertisements in a transparent manner.
5. The government should commit substantial funds for the appointment of protection officers and for the implementation of the Act.
6. Widest possible publicity of the law should be given.
7. The government should provide for training of the law enforcement machinery.
8. The coordination for the prevention of domestic violence should be appointed.
9. Legal aid to victims of domestic violence should be readily available.
10. Need to be vigilant against tortuous denial of benefits.

End Notes

ⁱ www.igc.apc.org/iwraw

ⁱⁱ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," *op. cit.*, p. 73

ⁱⁱⁱ Kalyani Menon-Sen A K Shivakumar, "Women in India how free? How equal," *op. cit.*, p. 74

^{iv} Received the assent of the President on September 13, 2005 and published in the Gazette of India Extra, Part I section 1 dated 14th September 2005, pp. 1-12, No. 49

^v 1981 AIR 746, 1981 SCR (2) 516

^{vi} 11 October, 1996

^{vii} [Crl. M.C. 4282/2011: Decided On: 17.04.2012]

^{viii} Appeal (civil) 12122 of 1995

^{ix} 1995 AIR 55, 1994 SCC (6) 349

^x 17. Right to reside in a shared household.—

1. Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
2. The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

^{xi} www.dnaindia.com

^{xii} *iSou.Sandhya ManojWankhade vs ManojBhimarao Wankhade and ors* [2011(2) SCALE 94

^{xiii} *Smtsarita Vs SmtUmarao* [2008(1) R.Cr.D 97(Raj)]



- ^{xiv} *BP AchalaAnand vs. Appi Reddy & Another (2005) 3 SCC 313*
- ^{xv} *RumaChakraborty vs. Sudha Rani Banerjee & Another (2005) 8 SCC 140*
- ^{xvi} *reiterated in Komalamamma vs. Kumara PillaiRaghavan Pillai & Others AIR 2008 SC 1594*
- ^{xvii} <http://indiakanoon.org/doc/80664820>, *Farhan Haji Gafar Gudda vs Rijwanaben Usmanbhai Patel & on 8 March, 2013*
- ^{xviii} *On14th Oct.2015*
- ^{xix} *19 January, 2015 Criminal Petition No.8112 of 2012*
- ^{xx} *Criminal Petition Nos.7289 of 2014,on Feb 2015.*
- ^{xxi} <http://indiakanoon.org/23917768>
- ^{xxii} *Criminal appeal no. 1545 of 2015 (@ slp(crl) no. 10223 of 2014).on 20th Nov2015*
- ^{xxiii} *reported in 160 (2009) DLT 401 (DB),*
- ^{xxiv} *AIR 2007 SC 1118,*
- ^{xxv} *2010 (2) MLJ (Crl.) 254,*
- ^{xxvi} *2013 (3) Crimes 479 (Bom.)*
- ^{xvii} *2014 (1) Crimes 436 (Bom.),*
- ^{xxviii} *V.P.Anuradha vs S.Sugantha @ Suganthi on 4 February, 2015.*
- ^{xxix} *On July2015,www.indiakanoon.org.*

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