

# Domestic Violence and Legal Recourse: A Study of the Protection of Women from Domestic Violence Act, 2005

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## **Abstract:**

The Protection of Women from Domestic Violence Act, 2005, is a landmark legislation aimed at addressing and mitigating the pervasive issue of domestic violence in India, a problem deeply rooted in social and cultural practices. This study provides an in-depth analysis of the Act's provisions, highlighting its role in protecting women from various forms of abuse.

The Act emerges from the constitutional framework of India, specifically aligned with Articles 14, 15, and 21 of the Indian Constitution, which uphold the principles of equality, non-discrimination, and the right to live with dignity. Recognizing domestic violence as a violation of these fundamental rights, the Act redefines domestic violence in broad terms, encompassing abuse inflicted not only by spouses but by other family members within shared households.

The study further explores the causes and manifestations of domestic violence in India, such as dowry-related issues, societal expectations, and economic dependencies, as well as the unique challenges faced by women in rural and urban areas.

The Act provides several protective measures, including protection orders to prevent further abuse, residence orders ensuring the victim's right to remain in the shared home, and monetary relief to cover medical, educational, and maintenance expenses for both the victim and her dependents. Additionally, it includes provisions for the temporary custody of children to safeguard their welfare amid domestic conflict. Despite its strengths, the Act faces challenges in its implementation. There are concerns about the misuse of provisions, particularly by women in certain contexts, which has led to a perception of bias against men. The Act's comprehensive approach marks a shift in Indian legal history, yet the study emphasizes the need for societal change, better awareness, and stricter enforcement to achieve the Act's vision of a safer, more equitable society for women.

**Keywords:** Domestic violence; Societal impact of domestic violence; Legal protections for women; Role of Protection Officers; Implementation of domestic violence laws

## **1. Introduction:**

Domestic violence has been a sad feature of our civilization since time immemorial. The contributing factors may include the desire to obtain control over another family member, the desire to exploit someone for personal advantage, the need to be in a dominating position at all times, and so on. On several occasions, psychological issues and societal influences also add to the bitterness. The phrase used to characterize this increasing problem of violence within our family is domestic violence. This violence is

directed at someone with whom we have a relationship, whether it be a wife, spouse, son, daughter, father, grandfather, or any other family member. It could be a male or a female's atrocities against another male or female. Anyone can be both a victim and a victimiser. Although the family home has traditionally been viewed as a safe haven, and marriage as our most vulnerable institution, the reality for women is that they are far more likely to be assaulted in their own homes by a "loved one" than to be assaulted by a stranger.<sup>1</sup> Domestic violence is defined as abuse that occurs when a spouse or family member physically or psychologically assaults another person. Domestic violence is commonly used to describe violence between husband and wife, but it also includes live-in partnerships and other members of families who live together. Domestic violence and domestic abuse are synonymous. Domestic abuse is common all across the world in all cultures, classes and ages. Violence can occur between men and women, persons of the same sex, or people of varying ages. Domestic violence can occur in various forms and take numerous dimensions. It may be physical, sexual, social, psychological, or pecuniary in nature. Domestic violence is a very sophisticated and brutal form of violence that occurs most frequently within the four walls of a family home and under a certain deep-rooted power dynamic and socio-economic structure, which do not allow even the acknowledgement or recognition of the violence. Domestic violence, often known as family violence, is a global issue that affects families of all social groups and cultures.

The response to the phenomenon of domestic violence is a typical combination of effort between law enforcement agencies, social service agencies, the courts and correction/probation agencies. The role of all these has progressed over last few decades, and brought their activities in public view. Domestic violence is now being viewed as a public health problem of epidemic proportion all over the world and many public, private and Governmental agencies are seen making huge effort to control it in India. There are several organisations all over the worlds — Government and non- Government—actively working to fight the problems generated by domestic violence to the human community.<sup>2</sup>

## 2. Domestic Violence against Women:

### I. Meaning

The word "domestic" refers to "the home" or "family" and the term "domestic violence" signifies the violence that takes place within the family. According to Black's Law Dictionary<sup>3</sup> the term "domestic violence" is defined as violence between members of a household, usually spouses, an assault or other violent act committed by one member of the household against another. Thus, violence that takes place within the house and is perpetrated by some members of the family against others in the family is known as domestic violence.<sup>4</sup>

As per the Lexicon, the meaning of "violence" connotes any physical force or any damage or injury to a person or property. The sociological definition of "violence" implies the illegal use of force or threats or use of such force by the patriarchal social order and their agents against women in general for perpetrating

<sup>1</sup> M. Schelong Katharine, "Domestic Violence and the State: Responses to and Rationales for Spousal Battering, Marital Rape and Stalking", *Marquette Law Review*, Vol. 78-79, (1994)— cf., Prof. (Dr.) Manjula Batra, "Protection of Women from Domestic Violence Act, 2005: A New Hope for Victims of Domestic Violence" 28, *Nyaya Kiran*, Vol. 1 (July-Sept), 2007.

<sup>2</sup> Ankur Kumar "Domestic Violence in India: Causes, Consequences and Remedies" available at <https://www.youthkiawaaz.com/2010/02/domestic-violence-in-india-causes-consequences-and-remedies-2/>

<sup>3</sup> Black's Law Dictionary, 1564 (8th Ed.) 2004.

<sup>4</sup> Justice P.S. Narayan, "Domestic Violence on Women— Causes and Remedies", 3 SCJ 33 (2007) cf. Sheeba S. Dhar, "Domestic Violence Against Women: A Conceptual Analysis", 118, *The Academic Law Review*, Vol. XXXI, No. 1 & 2 (2007).

the goals of that group for subjugating women physically, socially and psychologically.<sup>5</sup> Thus, the key characteristics of violence, which may be drawn from several definitions of violence, are:

1. Excessive, unrestrained and unjustifiable use of force;
2. Outrage, profanation or rape;
3. Causing physical injury;
4. Causing mental injury;
5. Illegal employment of methods of physical coercion for personal or group ends;
6. Exploitation;
7. Violation of human rights of life, liberty, equality and dignity.<sup>6</sup>

## II. Rights of Women— A Constitutional Perspective:

The preamble of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act, 2005") outlines its objective: to ensure the more effective protection of the rights of women who are victims of violence of any kind that occurs within the family, as well as for the matters connected with or incidental to this, as guaranteed by the Constitution. Thus, it is necessary to make reference to women's rights as guaranteed by the Indian Constitution. Under fundamental rights in Part III of the Indian Constitution, all citizens have equal protection under the law. However, there are several articles that provide additional safeguards to women :

1. Article 15:- Prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. The Article further provides that "Nothing in this Article shall prevent the State from making any special provision for women and children."<sup>7</sup>
2. Article 16:- Equality of opportunity in matters of public employment.
3. Article 23:- Prohibition of traffic in human beings and beggars and other forms of forced labour.

Therefore, the Act, 2005, in the context of Constitutional rights provides the following protections to women, namely:

1. Protection from discrimination on the grounds of sex;
2. Protection in public employment; and
3. Protection against trafficking and forced labour.<sup>8</sup>

The infringement of any of the foregoing constitutional rights in the context of the Act amounts to a breach of the provisions of the Act within the meaning thereof. It also amounts to domestic violence attracting the respondent to criminal liability.<sup>9</sup>

## III. Causes for the Domestic Violence against Women:

One of the primary causes of domestic violence is society's traditional and irrational belief that women are physically and emotionally weaker than men. The reports of violence against women are much larger in number than against men. The most common causes for women stalking and battering include

<sup>5</sup> Preeti Misra, "Domestic Violence Against Women-Legal Control and Judicial Response" 43, (2006)—cf. Sheeba S. Dhar, "Domestic Violence Against Women: A Conceptual Analysis", 118, The Academic Law Review, Vol. XXXI, No. 1 & 2 (2007).

<sup>6</sup> Sheeba S. Dhar, "Domestic Violence Against Women: A Conceptual Analysis", 117, The Academic Law Review, Vol. XXXI, No. 1 & 2 (2007).

<sup>7</sup> Constitution of India, Article 15(3), Also see: Vishaka v. State of Rajasthan, (1997) 6 SCC 241, in which The Supreme Court held that sexual harassment of working women amounts to violation of the rights guaranteed by Articles 14, 15 and 23 (equality and dignity) of the Constitution of India.

<sup>8</sup> Dr. N. Maheshwara Swamy, "The Protection of Women from Domestic Violence Act, 2005: Whether more Effective or Less Defective", 3, A Critical Study, 2007 (1) Kar. L.J.

<sup>9</sup> Dr. N. Maheshwara Swamy, "The Protection of Women from Domestic Violence Act, 2005: Whether more Effective or Less Defective", 3, A Critical Study, 2007 (1) Kar. L.J.

dissatisfaction with the dowry and exploiting women for more of it, arguing with the partner, refusing to have sex with him, neglecting children, going out of home without informing the partner, not cooking properly or on time, indulging in extramarital affairs, not looking after in-laws, etc. In some cases, infertility in females also leads to their assault by family members. The greed for dowry, desire for a male child and alcoholism of the spouse are major factors of domestic violence against women in rural areas. In urban areas, there are many more factors that lead to differences in the beginning and later take the shape of domestic violence. These include a working woman earning more than her partner, staying out of the house till late at night, abusing and neglecting in-laws, being more forward socially, and so on. Working women are often subjected to assault and sexual harassment by the employees of the organisations. At times, it could be voluntary for better pay and designation in the office.<sup>10</sup>

The patriarchal theory holds that the patriarchal social system and family structure lead to the subjugation of women and contribute to a historical pattern of systematic violence directed against women in the family. Traditionally, the basis of social differentiation was biological, as women had to through the process of childbearing and rearing and men were predisposed to earning a livelihood for the family. They were assigned the role of father and husband and treated as heads of household under a patriarchal system. As a result, they became centres of power, resources, and property, with women bound to their husbands and children by the institution of marriage and family. This dependence on men resulted in unequal distribution of power relations in the family. Under such a patriarchal system the variety of role relationships like that of wife, daughter-in-law, sister-in-law, etc., the people endowed with different sets of characteristics (personality structure and social background) leads to tensions and role conflict in the family setup which in turn leads to violence being thrown out on women.<sup>11</sup>

### **3. Legal Position:**

The enactment of the Protection of Women from Domestic Violence Act, 2005, is a significant event in the history of the women's rights movement, which has tackled the problem of domestic violence for well over decades. This enactment sets the movement from a malaise that has long plagued it of attributing all forms of violence faced by women within their families to “dowry” and broadening the reach of the term “domestic violence.”

#### **I. Legal Position before the enactment of Act, 2005:**

The oppression suffered by Indian women was severe until the nineteenth century. During this period, the British and great Indian social reformers laid the stage for major improvements in every aspect of these oppressed women's lives. Some of the customs and practices, that were banned, are the practice of sati, female infanticide, child marriage and a prohibition on widows to remarry. After adopting the Constitution in 1950, the Government enacted several laws to safeguard women's interests. But, ironically, her status in the marital home deteriorated as there has been no just and effective legal remedy to guarantee her physical safety, her mental stability, her financial and economic welfare and custody of children.<sup>12</sup> A shortcoming of our domestic violence law is that it does not contemplate the possibility of daughter-in-law mistreating their old-in-laws or other vulnerable members of the husbands' family. Domestic violence has come to be seen as a unidimensional issue, because the majority of the cases that are reported and

<sup>10</sup> Ankur Kumar “Domestic Violence in India: Causes, Consequences and Remedies” available at <http://www.youthkiawaaz.com/2010/02domestic-violence-in-india-causes-consequences-and-remedies-visited-on-20-9-2010>.

<sup>11</sup> Sheeba S. Dhar, “Domestic Violence Against Women: A Conceptual Analysis”, 117, The Academic Law Review, Vol. XXXI. No. 1 & 2 (2007) p. 129

<sup>12</sup> Ms Jesastin, “Protection of Women against Domestic Violence, 52, Nyaya Kiran, Vol.1 (April-June 2007).

reach the courts happen to be from wives complaining against husbands.<sup>13</sup> In the early 1980s in India, the criminalization of domestic violence was brought about only after a consistent campaign by feminist groups and women's organizations across the country. The fierce demand for the criminalisation of dowry death and domestic violence resulted in the enactment of Section 498-A in the Penal Code (IPC) in 1983 (Now Section 85 of Bharatiya Nyaya Sanhita, 2023), Section 304-B of IPC (Section 80 of Bharatiya Nyaya Sanhita, 2023) in 1986 and corresponding provisions Sec.113-B in the India Evidence Act, 1872 (Section 118 of Bharatiya Sakshya Adhiniyam, 2023). For the first time, an attempt was made to draw the issue of domestic violence out of the private domain of the family and out into the public domain. Despite of these legal measures, the law enacted for the protection of women has been ineffective, e.g. Section 498-A has, in a large number of cases, been misused and several reports are filed allegedly to intimate.

## II. The Protection of Women from Domestic Violence Act, 2005:

This statute was enacted by keeping in view the rights guaranteed under Articles 14, 15, and 21 of the Constitution to provide for a remedy under civil law that is intended to protect women from being victims of domestic violence and to prevent the occurrence of domestic violence in society. However, the feminist groups unequivocally and unanimously hail the implementation of the Act while men think of being ransacked of all of their rights. The likelihood of it being misused is so immensely incalculable that it has given wakeful nights to men and has left their fate to the whims and fancies of their counterparts. Primarily, this Act was enacted to protect the wife or female live-in partner from violence at the hands of the husband or male live-in-partner or his relatives, this Act also extends its protection to women who are widows or mothers.

### Salient features of the Act:

1. The Act seeks to cover 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 a relationship in the nature of marriage, or adoption; in addition relationship 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 abusers are entitled to get legal protection under the Act.
2. The definition of “Domestic Violence” has been kept so wide and comprehensive to cover every likely form of abuse. It categorises the abuse into four categories namely;
  - **Physical Abuse:** means to cause bodily pain, harm, danger to limb or life or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.
  - **Sexual Abuse:** includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women.
  - **Verbal Abuse:** Includes insult, ridicule, humiliation, name calling specially with regard to not having a child or male child, and repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
  - **Economic Abuse:** like not providing money for maintenance, food, clothing, medicine, restriction on use/access of household assets, deprivation of economic or financial resources, alienation of assets, forcibly taking away salary, not allowing to carry up employment, disposing of “Stridhan”,

<sup>13</sup> Madhu Purnima Kishwar, “Laws Against Domestic Violence: Under Sued and Abused?” —cf., Vishruta Kaul “The Protection of Women from Domestic Violence Act, 2005: An Appraisal”, 45, Nyaya Kiran, Vol. 1, Issue 2 (Julysept., 2007)



etc.<sup>14</sup>

3. The Act protects the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in such. This right is secured by a residence order, passed by a court.
4. The Act gives the court the power to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.
5. The Act provides for the appointment of Protection Officers and NGOs to assist the women concerning medical examination, legal aid, safe shelter, etc.
6. The Act provides for breach of a 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 a fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

However, a well-framed definition of the term “Domestic Violence”<sup>15</sup> has been provided in Section (3) of the Act, 2005 as any act, omission or commission or conduct of the respondent<sup>16</sup> shall constitute domestic violence in case it—

1. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person<sup>17</sup> or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
2. 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
3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or (b); or
4. Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

#### **The relief sought under the Act:**

The Act enables the person who is a victim of domestic violence or a protection officer or any other person on behalf of the victim to obtain the following order/orders under the Act;

1. **Protection Order:**<sup>18</sup> The Act makes it possible for the aggrieved person to insist that a court while granting bail to the respondent impose conditions that would protect her from violence. However, there may be a situation when the victim is unable to move to the court in which case a petition may be filed by her or a non-Government organisation or a protection officer. The court can pass a protection order prohibiting the respondent from committing any act of domestic violence. The order may also prevent the respondent from causing violence to the dependent, other relatives any person giving assistance

<sup>14</sup> Rajesh Kumar Goel, “Domestic Violence Act, 2005: Recognition to Women's Plight”, 20, Nyaya Kiran, Vol. 1, issue 2, (July-Sept., 2007).

<sup>15</sup> Section 2(g) and Section 3 of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

<sup>16</sup> Section 2(q) of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

<sup>17</sup> Section 2(a) of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

<sup>18</sup> Section 2(o) and Section 18 of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

from domestic violence to the aggrieved person.

**2. Residence Order:**<sup>19</sup>The court, under the Act, is entitled to pass an order with the object of:

- Helping the aggrieved person to remain in the house;
- Preventing from being removed from the house;
- Prohibiting the respondent from entering the house, where the woman feels unsafe with the male because of violence;
- Restraining the respondent from alienating the house, e.g. Sale;
- Restraining the respondent in finding an alternative for the aggrieved person if it is harmful or injurious for her to live with the respondent in the shared household;
- Restraining the respondent from giving up his right or claim in the house.

**3. Monetary Relief Order**<sup>20</sup>: The court is entitled to pass a monetary relief order against the respondent providing monetary relief to the aggrieved person and her children for the expenses and losses incurred on account of domestic violence. It may include:

- Loss of earning;
- Medical expenses;
- Loss caused due to destruction, damage or removal of property from control of aggrieved person;
- Maintenance for the aggrieved person and children, if any.

**4. Custody Order**<sup>21</sup>: Whenever there is discord in marital relationships or domestic violence committed against the woman a constant fear lurks in her mind that she would not be allowed to see her children or that her children would be separated from her. The Act takes care of her emotional needs towards her children and gives her the right to ask for a temporary custody of order for her children.

#### **Duties of Police:**

As soon as the complaint is received, the police shall inform the aggrieved person<sup>22</sup>:

1. of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more such other orders under the Act;
2. of the availability of services of service Provider;
3. of the availability of services of the Protection Officer;
4. of her rights to free legal services under the Legal Service Authorities Act, 1987;
5. of her right to file a complaint under Section 498-A IPC, wherever relevant;
6. if the aggrieved person doesn't want to initiate criminal proceedings, then the police shall make a daily diary and enter to this effect that complaint wants to pursue civil remedy;
7. make domestic Incident Report in the prescribe form and forward it to the Magistrate for passing appropriate protection order; and
8. forward the victim to hospital for proper medical aid, if necessary.

#### **Penal Provision:**

1. When the case of Domestic Violence is reported for the first time, there is no penal provision against

<sup>19</sup> Section 2(p) and Section 19(1) of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

<sup>20</sup> Section 2(k) of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

<sup>21</sup> Section 2(d) and section 21 of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

<sup>22</sup> Section 2(5) of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

the offender/abuser, yet there lies the civil remedy in the form of protection or relief order passed by the court;

2. If there is a violation or breach of the protection order of the court by the respondent, then it is a cognizable and non-bailable offence for which imprisonment up to one year or a fine up to Rs 20,000 or both can be imposed.<sup>23</sup>

The Supreme Court has interpreted the constitutional provisions on the fundamental rights and directive principles of the State policy to compel the State to respect human rights. The Court has given direction to the State and its administrators for the implementation of these rights. It has appointed monitoring and expert committees, or has taken the help of the National Human Rights Commission to make these rights a reality. Creating a socio-economic and political order that respects human rights is today the goal of development. Realising that family violence is a major denial of human rights, the first step is towards its prevention.<sup>24</sup>

### Conclusion:

The “Protection of Women from Domestic Violence Act, 2005” represents a landmark efforts to address domestic violence, establishing a robust framework for protecting women from physical, emotional, sexual, and economic abuse within familial and domestic contexts. This Act is notable for its comprehensive definition of domestic violence, encompassing not only physical harm but also verbal, emotional, and economic abuse, thereby reflecting a nuanced understanding of the various forms of control and exploitation that women may encounter within family. By recognizing and addressing these multifaceted abuses, the Act aligns with constitutional principles of equality, dignity, and human rights, underscoring the State’s commitment to safeguarding women’s well-being within the family structure.

However, the Act’s effectiveness is constrained by practical challenges in its implementation. Such as the potential misuse of its provisions, particularly in cases where allegations may be unfounded, highlight a need for balanced judicial oversight and nuanced enforcement. Additionally, the Act fails to address abuses by individuals other than husbands or male partners, such as female family members, which underscores the need for possible amendments or supplementary measures to address a wider range of domestic violence scenarios.

To enhance the Act’s impact, it is imperative that law enforcement, judicial authorities, and social organizations engage in cohesive, collaborative efforts to ensure the consistent application of the law. Adequate training for officials, efficient legal processes, and supportive measures, such as counseling services and financial aid for victims—are essential in achieving this objective. Furthermore, a cultural shift is necessary to dismantle deep-rooted patriarchal norms and societal attitudes that perpetuate domestic violence. Public awareness campaigns, educational programs, and community-based initiatives are critical for fostering societal change and empowering women to seek protection and support.

Ultimately, while this Act lays down a crucial legal foundation for protecting women, its success in creating a safe and equitable environment for women in India hinges on sustained institutional commitment, proactive community involvement, and a transformative approach to social norms. Only through these combined efforts can the Act’s vision of a just, secure, and supportive society for women be fully realized.

<sup>23</sup> Section 31(1) of The Protection of Women from Domestic Violence Act, 2005. [Act 43 of 2005 As Amended upto Act 34 of 2019].

<sup>24</sup> Justice Sujata Manohar, “Family Violence and Human Rights” cf., Swati Shirwadkar (Ed.), “Family Violence in India”, 477, Rawat Publication (2009) New Delhi.