

**PROTECTION OF WOMEN FROM DOMESTIC  
VIOLENCE ACT, 2005 – A COMPARATIVE STUDY  
IN THE CITIES OF DELHI AND AGRA**

*Dissertation submitted to Jawaharlal Nehru University  
in partial fulfillment of the requirements  
for the award of the degree of*

**MASTER OF PHILOSOPHY**

**SHRADDHA DEVA**



**CENTRE FOR THE STUDY OF LAW AND GOVERNANCE  
JAWAHARLAL NEHRU UNIVERSITY  
NEW DELHI-110067  
INDIA**

**2012**

27 July 2012

## **DECLARATION**

I declare that the dissertation entitled '**Protection of Women from Domestic Violence Act, 2005 – A Comparative Study in the Cities of Delhi and Agra**' submitted by me in partial fulfillment for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any degree of this university or any other university.

**Shraddha Deva**

## **CERTIFICATE**

We recommend that this dissertation be placed before the examiners for evaluation.

**Prof. Niraja Gopal Jayal**

*(Chairperson)*

**Prof. Amita Singh**

*(Supervisor)*

*Dedicated to*

*My Brother*

*Late Capt. Ashish Deva*

## *Contents*

	Page No.
<i>Acknowledgement</i>	i
<i>List of Abbreviations</i>	ii
<i>List of Cases</i>	iv
<b>Introduction</b>	<b>1-15</b>
<b>Chapter 1: Understanding the Concept of Domestic Violence</b>	<b>16-37</b>
1.1 Concept of Equality in Indian Constitution	
1.2 Domestic Violence: Global Scenario	
1.3 Functions of Law vis-à-vis Object behind the Legislation of Domestic Violence Act	
1.4 Preventing Violence against Women in the Home: Deterrent Measures	
1.5 Domestic Violence as a Human Rights Issue	
1.6 Domestic Violence and Criminal Legislations in India	
<b>Chapter 2: Provisions of the Domestic Violence Act, 2005 and their Interpretation</b>	<b>38-75</b>
2.1 Domestic Violence Act and Article 14 of the Constitution	
2.2 Need for Special Protection to Women	
2.3 Aggrieved Person: Section 2(a)	
2.4 Domestic Relationship: Section 2(f)	
2.5 Marriage	
2.6 Shared Household: Section 2(s)	
2.7 Definition of Domestic Violence: Section 3	
2.8 Information, Powers and Duties of Protection Officers, Service Providers etc.	
2.9 Reliefs Provided by the Act.	
<b>Chapter 3: Comparative Field Study in the Cities of Delhi and Agra.</b>	<b>76-90</b>
3.1 Protection Officers	
3.2 Service Providers	
3.3 Police Officers	
3.4 Judiciary	
3.5 Conclusion	
<b>Conclusion</b>	<b>91-97</b>
<i>Bibliography</i>	<b>98-101</b>
<i>Annexures</i>	<b>102-117</b>
1. Domestic Incident Report Under Section 9(B)	
2. Application to Magistrate Under Section 12	
3. Record of Cases Filed with DPO in Agra	

## *Acknowledgement*

Though this dissertation is an individual work, a lot people have contributed to its production. It is difficult to find a word of appreciation to acknowledge their helping hand and the words of encouragement. I owe my gratitude to all those people who have made this dissertation possible and because of whom my research experience has been one that I will cherish forever.

First and foremost special thanks to my supervisor, *Prof. Amita Singh*. I have been amazingly fortunate to have a supervisor like her who gave me the freedom to explore on my own and at the same time the guidance to recover when my steps faltered. Her patience and support helped me overcome every situation and finish this dissertation.

I would also like to thank all the faculty members of Centre for the Study of Law and Governance for their encouragement and cooperation. They assisted me in getting my research started on the right foot and providing me the foundation for becoming a good research scholar.

My deepest gratitude is to my mother, Nirmal Deva, and Father, H.B.Deva, whom I owe everything I am today. Their unwavering faith and confidence in my abilities and in me is what has shaped me to be the person I am today. I am also thankful to my in-laws for their affection and support.

I owe my special thanks to my dear husband, Manish Kumar, who not only stood by me throughout but also encouraged me to be optimistic about everything in life.

I also extend my special thanks to my senior, Rukmani for her technical and moral support.

I am very thankful to District Probation Officer, Agra, Dr. A.N.Agnihotri and staff for all the support provided by them during my field study. I am thankful to Service Provider, Agra, Sudha Saxena for her useful insights. My deepest gratitude to Judicial Magistrate, Ms Anamika Chauhan whose valuable inputs helped me in drawing the inference of the work.

Last but not the least, I wish to thank all those whose names have not been mentioned here, who had helped me during dissertation work.

**SHRADDHA DEVA**

## *List of Abbreviations*

AP	Aggrieved Person
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CrI.M.C	Criminal Miscellaneous Case
Cr.P.C	Criminal Procedure Code, 1973
CSS	Centrally Sponsored Scheme
D.V.C.No.	Domestic Violence Case Number
DEVAW	Declaration on the Elimination of Violence against Women
DIR	Domestic Incident Report
DPA	Dowry Prohibition Act, 1961
DPO	District Probation Officer
DV	Domestic Violence
DWCD	Department of Women and Child Development
FCC	Family Counselling Centre
FIR	First Information Report
HAMA	Hindu Adoptions & Maintenance Act
HVR	Home Visit Report
HUF	Hindu Undivided Family
ICDS	Integrated Child Development Scheme
ICRW	International Center for Research
IO	Investigating Officer

IPC	Indian Penal Code, 1860
JMFC	Judicial Magistrate First Class
LCWRI	Lawyers Collective Women's Rights Initiative
MCD	Municipal Corporation of Delhi
MF	Medical Facilities
MSSK	Mahila Suraksha Evam Salah Kendra
MWCD	Ministry of Women and Child Development
NCW	National Commission for Women
NGOs	Non-Government Organisations
PO	Protection Officer
PWDVA	Protection of Women from Domestic Violence Act, 2005
PWDVR	Protection of Women from Domestic Violence Rules, 2006
RTI	Right to Information
SH	Shelter Home
SHO	Station House Officer
SLSA	State Legal Service Authority
SP	Service Provider

## *List of Cases*

	Page No.
Amruth vs. Chithra 2010 (88) AIC 640 (Kant): 2010	58
C. Masilamani Mudaliar v. The Idol of Sri Swaminathaswami, AIR 1996 SC 1697.	21
D.K. Basu v. State, AIR 1997 SC 610.	30
Danial Latifi vs. Union of India (2001)7 SCC 740.	44
Govindan 1978 Cr LJ 1213.	51
Joginder Kumar v. State, AIR 1994 SC 1349.	30
K.Narsimhan vs. Rohini Devanathan 2010 (87) AIC 635 (Kant) 2010.	48
Khushboo vs. Kanniammal AIR 2010 SC 3196: 2010 AIR SCW 2770.	53
M.Palani vs. Meenakshi 2008 AIHC (NOC) 629 (Mad): AIR 2008 Mad 162.	52
Meneka Gandhi v. Union of India, AIR 1978 SC 597.	20
Rajkumar vs. Sarita 2009 Cr LJ (NOC) 446 (Chhatt).	56
S.Prabhakaran vs. State 2009 Cr LJ (NOC) 547 (Ker).	55
S.R. Batra vs. Tarun Batra AIR 2007 SC 1118.	56
Sri Sujoy Kumar Sanyal vs. Shakuntala Sanyal, CRR 1835 of 2010, Manu/WB/0597/2010.	89
Valsamma Paul v. Cochin University, AIR 1996 SC571.	22
Varsha v. Union of India,2010 DMC 10 (Del).	28
Virendra Chanmuniya vs. Chanmuniya Kumar singh Kushwaha, Manu/Sc/0807/2010.	88
Vishakha v. State of Rajasthan , AIR 1997 SC 3011.	20
Yusuf Abdul Aziz v. State of Bombay, AIR 1954 SC 321.	19



# **INTRODUCTION**

## Overview

*“Violence against women is a manifestation of historically unequal power relations between men and women, which has led to domination over and discrimination against women by men and to the prevention of the full advancement of women.....”*

The UN Declaration on the Elimination of violence against women,  
General Assembly Resolution, December 1993.

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 freedoms.

Violence against women is present in every country cutting across boundaries of culture, class, education, income, ethnicity and age. Even though most societies proscribe violence against women, the reality is that violations against women’s human rights are often sanctioned under the garb of cultural practices and norms or through misrepresentation of religious tenets. Moreover, when the violation takes place within the home, as is very often the case, the abuse is very effectively condoned by the tacit silence and passivity displayed by the state and law enforcing machinery. The global dimensions of this violence are alarming, as highlighted by the studies on its incidence and prevalence. No society can claim to be free of such violence; the only variation is in the patterns and trends that exist in countries and regions. Specific groups of women are more vulnerable, including minority groups, indigenous and migrant women, women with disabilities, female children, and elderly women etc.

The most prevalent yet relatively hidden and ignored form of violence against women and girls is – domestic violence. “While reliable statistics are hard to come by, studies estimate that, from country to country, between 20 and 50 percent of women have experienced physical violence at the hands of an intimate partner or family member.”<sup>1</sup>

The term ‘domestic violence’ has been interpreted differently by different sections of thinkers. In broad terms the two main lines of thoughts are, firstly a Feminist view and secondly a more holistic and Liberal view. The Feminist view defines the

---

<sup>1</sup> WHO (1996). “Violence Against Women”. WHO Consultation, Geneva: WHO.

problem of domestic violence with a gender perspective as the violence suffered by women specifically within their homes by their male counterparts. Generally women here is narrowly construed as the wife who undergoes the sufferings by his husband, emphasizing less upon the other men –women relations persisting in the home like brother and sister, son and mother, father and daughter etc. Domestic violence is located in the unequal power relationship shared by male and female in a family embedded in socio-cultural norms.<sup>2</sup> On the other hand, the Liberal interpretation of domestic violence covers a more holistic view. It defines the problem of domestic violence as any form of violence suffered by any member of the family irrespective of gender, within the four walls of the home. This interpretation of domestic violence covers a large gamut of relationships and deals with violent acts of wives to their husbands and vice versa, violence with old parents, with small children etc. in the home. In this study we will try to confine to the Feminist approach of the problem and try to analyze all the aspects related to it.

This aim of this study is to specifically emphasize upon the comparative analysis of the implementation of law on domestic violence in the two cities of Delhi and Agra. The reasoning underlying being that - why the same law is effectively implemented at one place and not at the other. While analyzing it would also be tried to touch upon the magnitude and scope of the problem with an underlining with regard to the role of state in such socially revolutionary legislations. The study would also like to discuss the need for coordinated and integrated policy responses, enhancing partnership between stakeholders, setting up mechanisms for monitoring and evaluating programmes and policies, implementing existing legislations and ensuring greater transparency and accountability from governments in order to eliminate violence against women.

## **Role of State**

In the term “domestic violence” it is pertinent to clear our understanding on the term “domestic” because here violence is prefixed to domestic which has specific meanings attached to it. According to me, ‘domestic’ in layman terms means

---

<sup>2</sup> Amirthalingam, Kumaralingam. Women’s Rights, International Norms and Domestic Violence: Asian Perspective. Human Rights Quarterly, Vol. 24, no.2 (May, 2005).

something which is confined to home or to the territory of home. In reference to my study, it implies to a certain set of relationships which persists within the four walls of the home and is not exposed to the outer world. These relationships can be of mother-father, brother-sister, and husband-wife and many more. On the above reasoning we can call 'home' as a personal or a private sphere not open to the intervention of strangers. It is a safe and secure place where a group of people bonded to each other constitute a family. But the question which perturbs is that who will redress the acts of violence taking place within this safe and secure place called 'home'? "Isn't the policy of treating domestic violence as a family matter in cultures to some degree tolerate violence against women is problematic?"<sup>3</sup>

It is here where the affirmative role of the state comes into picture. In contrast to the conception of family as a private sphere, the Ministry of Community Development and Society in Singapore advocates a very public concept of family- "some may perceive that marriage and family are private matters, and that choices should be left to the individual. However, these can have a collective impact on our nation. When families breakdown and fail to provide support to their members, the effects reverberate across society. Therefore, it is important for the entire community to support the formation and strengthening of families."<sup>4</sup> Based on above reasoning the state action in family matters is warranted and such matters should not be precluded from public debate and scrutiny. It rather becomes the duty of the state to intrude in the boundaries of the family in times of such violence against women and mitigate it in the larger social interest. The state intervention can be backed by the sound principle that it is bound to act as the guardian of every single individual and safeguard the fundamental freedoms of every citizen rising above the distinctions of caste, class, race or gender. Advocates to reform have argued that domestic violence should be taken up as a human rights issue as violence in any form is the violation of an individual's fundamental freedom which should be redressed by the state by taking corrective and reformative measures.

The state can act in myriad of ways in order to curb the prevalent violence against the women in the society. First and foremostly, it can legislate to criminalize such

---

<sup>3</sup>Abdullah, Rashidah (1995). Battered Women in Malaysia: Prevalence, Problems and Public Attitudes. Report Available from WAO Office Kaula Lumpur.

<sup>4</sup> Ministry of Community Development and Society, Report of the Public Education Committee on Family (2002). Available on [app.mcys.gov.sg/web/serv\\_reports\\_family.asp](http://app.mcys.gov.sg/web/serv_reports_family.asp).

violence against women to create a deterrent effect so that people can think twice before indulging into such practices. The specific laws in this area can deal with the menace exclusively rather putting such acts under the general provisions of hurt, wrongful restraint, murder etc. Separate laws and separate institutional mechanisms meant to tackle a particular problem definitely bear result. The other role which state can effectively play is a reformative one by sensitizing its law enforcement institutions like judiciary and police. The police, judiciary and the administration that runs the country are the gatekeepers of the justice delivery system.

Factually speaking, the only institution that is perceived as the state by the masses in rural areas is the police. But its functioning leaves a lot to be desired. The police in itself is a male dominated institution with a lack of women personnel. The women constabulary is treated as a segregated lot without using it to the effective contribution. Police like any other segment of the society is stereotyped and hold patriarchal values. The behavioral patterns in the gender crimes like insensitivity towards the women complainants, reluctance to register cases of family quarrel and branding the complainants as insane and of low moral character are highly deplorable. On the other hand, in judiciary, delays have become a part and parcel of the justice delivery system. Analysis shows that delays partly occur due to the inadequacy of the benches and partly due to the adjournments. It is equally true, however, that the judges also come from the same society so they cannot be entirely free from the value system, prejudices and stereotypical views. The legal illiteracy is one another major factor responsible for the increase of crime against women.

It is therefore, the need of the hour that the state should sensitize its institutions towards such gender specific crimes. The police can be made more women friendly by training them and holding camps. Special women cells must be made mandatory in every district and women officers should be appointed to deal with crimes against women. The women constables should be given their due and be made more technologically sound to work as the empowered wing of police. Likewise, the judiciary should do away with the deficiency of judges and speedy trials be made essential. The state should indulge the non-state actors like media and NGOs to contribute their efforts in social welfare areas. The campaigning for such laws by media, increasing legal literacy, transparent functioning of law enforcement agencies with the help of NGOs can only bring a remarkable difference. And above this all, the

state should endeavour to bring an attitudinal change in the society as a whole to counter such anti-women tendencies, without which the gender differences cannot be overpowered.

## **Understanding the Term ‘Domestic Violence’**

Definitions of domestic violence can be broad or focused, amorphous or targeted. The reason that the definition of violence is important is because it shapes the response. Elements of the definition that need to be considered then are the boundaries of the relationship between the perpetrator and the abused, the norms of acceptable behavior and the specific acts those constitute violence. A frequent perception of domestic violence against women is that it is limited to physical harm perpetrated on adult women within a marital relationship. But the core of a definition of domestic violence consists of all the acts that constitute violence. Some definitions are narrow and focus on a specific act of violence and others are broader to incorporate the full range of acts. “In India, public discourse and the media equate domestic violence with dowry violence. For example, both Section 498A of Indian Penal Code and Dowry Prohibition Act emphasize violence within the context of dowry harassment.”<sup>5</sup> This incomplete representation undermines the awareness of the widespread, daily psychological, physical and sexual abuse women confront that is often unrelated to dowry.

“Some human rights activists prefer a broad definition that includes “structural violence” such as poverty and unequal access to health and education, others have argued for a more limited definition in order not to lose the actual descriptive power of the term.”<sup>6</sup> In any case, the need to develop specific operational definitions has been acknowledged so that research and monitoring can become more specific and have greater cross cultural applicability. The UN Declaration on the Elimination of Violence Against Women in 1993 defines violence against women as “ any act gender-based violence that results in, or is likely to result in physical, sexual or

---

<sup>5</sup> Visaria. Leela (1999). Domestic violence in India: “A Summary Report of Three Studies”. International Centre for Research on Women: Washington D.C.

<sup>6</sup> Heise L.L, Pitanguy J. and Germaine A. (1994). Violence against Women. The Hidden Health Burden. Discussion Paper no. 225,pg. 46. Washington D. C.: The World Bank.

psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”<sup>7</sup>

Thus, it can be said that domestic violence includes violence perpetrated by intimate partners and other family members and manifested through-

***Physical abuse*** - such as arm slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon and murder. It also includes traditional practices harmful to women such as female genital mutilation and wife inheritance (the practice of passing a widow and her property to her husband’s brother).

***Sexual Abuse*** – such as coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts or forcing sex with others.

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

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

“Acts of omission are also included in this definition as a form of violence against women and girls.”<sup>8</sup>

Thus, the above mentioned Declaration has given a more holistic and inclusive definition of domestic violence which has helped the member states of UN to prepare legislations accordingly, to address the issue covering all the day to day violence suffered by women in their homes.

---

<sup>7</sup> General Assembly Resolution 48/104 of 20<sup>th</sup> December 1993.

<sup>8</sup> Hayward, Ruth F. Breaking the Earthenware Jar: Lessons from South Asia to End Violence Against Women. New York: UNICEF.

## Evolution

“Domestic violence is an age old phenomenon. According to available statistics from around the globe, one out of every three women has experienced violence in an intimate relationship at some point in her life. This is an average based on available national surveys across industrialized and developing countries.”<sup>9</sup> Women’s issues as apart of international discourse received boost during 1970s and 1980s when United Nations General Assembly promoted the International Decade for Women between 1975 and 1985. The single most important instrument for women’s rights was created in 1979 when the Women’s Convention was adopted by General Assembly. A revitalization of global women’s movement at the end of the International Decade for Women resulted in several conferences and the recognition of violence against women as a human rights issue. It began in 1991 with the inaugural campaign of “16 Days of Activism Against Gender Violence”, which linked violence against women with human rights. The 1993 Vienna Conference on Human Rights condemned gender based violence and instructed the UN General Assembly to adopt a draft declaration on violence against women. “The General Assembly subsequently adopted a Declaration on Elimination of Violence Against Women (Vienna Declaration)”<sup>10</sup>, which called upon member states to commit to preventing all forms of violence against women without distinction between private and public arenas. This was followed by a series of international conferences where women’s issues, in particular violence against women, were brought to the fore. Further Declarations affirming and strengthening the ideals of the UN Declaration were made.

In India the specific law dealing with the subject of domestic violence came very lately in the year 2005. It is important to examine the historical background of these law reforms and existing criminal law provisions against domestic violence. Domestic violence since 1983 been recognized as a crime in India. Criminalization of domestic violence in India was brought about in the early 1980s after a sustained campaign by feminist groups and women’s rights activists all over the country. The demand for criminalization of dowry death and domestic violence was a culmination of all these struggles ending in the enactment of Section 498A Indian Penal Code in 1983 and

---

<sup>9</sup> WHO. 1997. Violence Against Women. Geneva: WHO.

<sup>10</sup>Declaration on the Elimination of Violence Against Women, GA Res. 48/104, adopted on 20 Dec. 1993, UN GAOR, UN Doc. 1993.



Section 304B in 1986 and corresponding provisions in the Indian Evidence Act 1872. But despite these legal reforms, societal responses to domestic violence still largely excluded legal intervention. Male batterers were rarely arrested, prosecuted and sentenced and police discouraged the complainants of these “domestic disputes”. “Since the important campaign issue for feminist groups was dowry related harassment, all violence faced by women within homes was attributed to dowry both by activists and by the state.”<sup>11</sup> This campaign of women’s group turned out to be a narrow and short-sighted and wrongly formulated programme. It applies only to violence faced by married women at the hands of their husbands and their husband’s relatives in relation to the demand of dowry. “The provisions therefore neglected and legitimized the everyday violence faced by married or unmarried women at the hands of other male members of the family”<sup>12</sup>. For such forms of violence perpetrated by other members of the victim’s family, the criminal law Section 498A did not provide any remedy. The remedies available under the criminal law for such forms of violence were general offences of Indian Penal Code like hurt, rape, outraging modesty etc. Due to these inherent lacunae the Protection of Women from Domestic Violence Act was passed by Parliament of India in the year of 2005 to deal with the menace of domestic violence holistically.

## **Reported Domestic Violence in India and Selected Cities**

Statistical evidence on the actual prevalence of domestic violence in India is very scant. “The few studies available indicate that physical abuse of Indian women is quite high ranging from 22 percent to 60 percent of women surveyed.”<sup>13</sup> Most of the available information consists of qualitative studies of very small sample size. The basic premise of my work is the comparative study of the implementation of Domestic Violence Act, 2005 in two places of India namely, National Capital Territory of Delhi and Agra, a district in the state of Uttar Pradesh. What motivated me to this comparative analysis is the fact that so far Delhi has been adjudged as the

---

<sup>11</sup> Agnes, F (1998). Violence Against Women: Review of Recent Enactments in S. Mukhopadhyay, In the Name of Justice, Manohar Publishers and Distributors, New Delhi.

<sup>12</sup> Kothari, Jayana. Criminal Law on Domestic Violence: Promises and Limits. Economic and Political Weekly,

<sup>13</sup> Rao, V. 1997. “Wife Beating in Rural South India: A Qualitative and Econometric Analysis.” Social Science and Medicine, 44 (8).

best place to implement the above mentioned enactment. This fact gave birth to a curiosity that – what makes the same legislation effectively implementable at one place and a fail at another? In order to explore the responses to my queries, I came across certain very interesting and thought provoking revelations which I would discuss in detail under the following paragraphs.

Firstly, the literacy indicators published by Ministry of Home Affairs, Government of India in the census 2011 to provide the foundation to my analysis. According to census 2011, “the literacy rate of females in Delhi is 80.9 percent in contrast to 59.3 percent in Uttar Pradesh. The gender gap in literacy is 9.1 percent in Delhi as compared to 19.9 percent in Uttar Pradesh”<sup>14</sup>. According to the Census 2001, the average female literacy rate in Delhi was 74.71 percent whereas, the average female literacy rate in the district of Agra was 48.3 percent. The statistics by Ministry of Health and Family Welfare (2007-2008) reveal that the mean marriage age of girls in Delhi is 21.6 and in Uttar Pradesh is 16.9, which is less than the legal marriageable age of girls in India. This set of indicators clearly draws a comparison between the conditions of women in both the places. Education is the basic factor which makes an individual empowered to realize his or her capabilities and to achieve a decent standard of life for oneself. Education makes one aware of one’s legal, constitutional rights and develops an inherent power to raise voice against their violation. It brings the skills to have the recourse to the law enforcement agencies in the hour of need. The women in Delhi are more educated and aware to their human, constitutional and other legal rights. The legal literacy is quite high here as compared to other states in India. Unfortunately, the scenario is just opposite in the case of Uttar Pradesh and its districts as the females are not exposed to such healthy and equal environment. Women and girls are still treated as the secondary members of the family as compared to males and boys, and are devoid of equal opportunities in the field of education. Their socio-economic, health needs are rarely a priority due to which they are accustomed to this subjugation. Marriage at an early age is like a double blow which hardly let them face an opportunity of knowing that they barely have certain “rights”. Violence in such conditions is acceptable to them as they are completely isolated from the outer world. Torture or violence by male members of the family brings them in the state of helplessness and make them handicapped. The low literacy levels in females

---

<sup>14</sup> Census 2011, Ministry of Home Affairs, Government of India.

in a way helps to perpetuate the unequal power relations between male and female in the society.

	<b>Delhi (in %)</b>	<b>U.P. (in %)</b>
Literacy Rate	80.9	59.3
Gender Gap	9.1	19.9
Female Literacy Rate	74.71	52.4
Mean Marriage Age (Girls)	21.6	16.9

One another major factor contributing to the effective implementation of the Act in Delhi as compared to Agra is the measures adopted for effective policing in the capital. I would again like to corroborate this fact with the statistics made available by the National Crime Records Bureau. According to the Bureau, “the number of police personnel recorded per lakh of population in the year of 2009 was 362 in Delhi and it was 76 in the state of Uttar Pradesh. Density of police personnel in Delhi stood at 4345.4 against 61.3 in Uttar Pradesh in the year 2009. The number of women police personnel in the same year was 4,480 and 2,411 in Delhi and Uttar Pradesh respectively.”<sup>15</sup> It is also important to note here that only 15 States and UTs have women armed police force including Delhi but Uttar Pradesh women police is not equipped with such skills. These are some of the startling facts which draw a huge difference between the law enforcement agencies working in the two places. In addition to this the Crime Against Women Cells were set up in year 1983 at the central level in Delhi police. It was the first police response meant specifically for women in India. Due to public outcry and media attention and rising number of cases firstly a specialized unit to look into dowry harassment and death cases Anti-dowry cell was established in 1982. Though it is true that Uttar Pradesh police also has Special Women Cells to exclusively deal with the crimes against women but the apathy among the masses and the police is the hindering factor. The other revolutionary steps taken by the Delhi police are electronic and media campaigning, round the clock helpline, twenty four hours police patrolling etc. The most distinguishing steps undertaken include periodic training programmes conducted for police personnel to cope up with the emerging needs to curb crime, to equip the force

<sup>15</sup> National Crime Records Bureau. [www.ncrb.nic.in](http://www.ncrb.nic.in)

with latest techniques, undergo gender sensitization programmes and to become more and more people friendly. Various self-defense training programmes are conducted at regular intervals by Delhi Police for common women and girls to generate skills to defend themselves from anti-social elements. But it is unfortunate that no such reformative steps have been undertaken by the Uttar Pradesh police on the ground which can instill faith of the common man in the organization. The attitude of police is highly biased towards women complainants and they always try to discourage them to report crimes against them. Moreover, Uttar Pradesh seems to be very remote from this reformative and revolutionary form of policing.

In spite of these reasons the other ones can be listed firstly, Delhi being the Capital is more open to “global liberal currents”. The impact of global women movements and feminist activism can be felt more effectively due to the various national and international conventions and conferences taking place there. The other reason being the vigilant monitoring and supervision of the National Commission of Women in the capital which has proved to be a lifeline for women. The media being hyperactive in reporting the crimes against women and has created an exceptional awareness among the general public. The non-government sector is yet another very functional lobby in Delhi which holds a great voice in shaping public opinion and decision making. In my view, all the above mentioned factors are responsible for the effective implementation of The Domestic Violence Act, 2005. This analysis is expected to lay at rest many myths prevailing and will also explore new dimensions attached to my study which can resolve many complexities and will provide responses to many unanswered queries.

## **Objective of the Study**

The purpose of this study is to develop an in-depth understanding of the term domestic violence and to explore the implementation dimension of the new Protection of Women From Domestic Violence Act, 2005. It is attempted to study the role and functioning of various state and non-state agencies involved, on a comparative basis with an aim to figure out the best practices. It will also examine the areas where law is

silent and in the manner in which practices adopted affect collective outcomes in terms of efficiency and effectiveness.

## **Research Question**

To study the relative effectiveness of the implementation of the Protection of Women from Domestic Violence Act, 2005.

## **Methodology**

The research attempted here is basically an exploratory analysis, using both primary as well as secondary resources. The primary resources include various reports of national and state governments and interviews of government officials, members of NGOs while secondary resources comprises of books and journal articles which focus on issues pertaining to the effective implementation of the Domestic Violence Act.

The information gathered from governmental sources includes the intensive person to person interviews with the officials concerned based on questionnaires. It also includes the various reports and records provided by the concerned departments. The personal interviews with the Aggrieved Persons and the non-governmental players like Service Providers, Shelter homes provided the required guideline and deeper insight to the study.

## **Outline of Research**

Having explored the slippages in the implementation process of the PWDVA and keeping the objective in mind this work is structured to comprise of three chapters (excluding introduction and conclusion).

Chapter 1 of the study deals with the theoretic framework of the menace of domestic violence and its evolution. This chapter briefly discusses the problem at international level and the various steps taken to counter it. It further highlights the Law prevailing

in India to check domestic violence and why the need was felt for an exclusive piece of legislation to deal with the problem.

Chapter 2 of the study deals with the definitional aspect of the PWDVA. It defines various definitions which forms the base of the legislation, various functionaries under the Act and their duties and powers, various reliefs provided and interpretation with specific reference to cases decided by Supreme Court and High Courts.

Chapter 3 of the study is the analysis of the objective of this work with the help of statistics and interviews of various stake holders and government officials in order to examine the problem thoroughly.

Finally, the study concludes itself with a positive note with specific observations emerging out the research made and the recommendations made in order to make the implementation process more effective to make this welfare legislation meet its objective.

## **Conclusion**

This chapter is a prelude to a deeper description and analysis in later chapters. It lays down an understanding of selected topic, justification for methodology and objectives mentioned. From the above analysis it is an established truth that domestic violence is an omnipresent phenomenon. According to available statistics from around the globe, one out of every three women has experienced violence in an intimate relationship. Concludingly, I would like to discuss that the most disturbing aspect of this menace is that the socio-economic costs of violence are very high. Direct costs are the value of goods and services used in treating or preventing violence such as medical, political, criminal justice system, housing and social service cost. “Non-monetary costs are the pain and suffering that are the direct result of the violence and include increased morbidity, increased mortality via homicide and suicide, abuse of alcohol, drugs and depressive orders.”<sup>16</sup> The social effects are the impacts on interpersonal relationships, reduced quality of life and reduced participation in democratic process. And finally, the economic multipliers like decreased labour market participation, reduced

---

<sup>16</sup> Investing in Gender Equality: Global Evidence and Asia-Pacific Gender Mainstreaming Programme UNDP Regional Centre in Colombo, 2008.

productivity in job, lower earnings, decreased savings and lower education of children. Thus, it can be inferred that domestic violence is against the enshrined principle of equality in the Indian Constitution and the violation of an individual's fundamental human rights. It shall be the endeavour of every citizen to condemn such practices and set the law in motion at the earliest.

## **CHAPTER 1**

# **UNDERSTANDING THE CONCEPT OF DOMESTIC VIOLENCE**



India is a patriarchal state. In the holy land of Rama, Sita is worshipped for her indomitable spirit to follow her husband unquestionably. This is the most appropriate example which beautifully carves out the philosophy of patriarchy in India. According to conservative opinion the primary function of a woman is procreation and therefore, she should be married at the first occurrence of puberty. Patriarchy, true to its definition in the Indian context, prevails in the form of domination, a mode of family coercion and cultural construct of property ownership. It is a form of appropriation of women's labour, sexuality and fertility and it is a form of the right of the male which should be enforced by physical violence. The components of patriarchy corresponding to ideology and institutional practices are as follows: (i) the most important goal of life of woman is to act as vehicle for procreation of sons. The seed (male) has primacy over soil (female). Even in the act of reproduction man is superior to woman. (ii) The 'samskaras' (religious sacraments) lead to spiritual excellence but woman is entitled to only one of them, i.e., marriage. (iii) Women could be owners of property but they could not dispose it of not even the 'stridhan' (bridal wealth) whereas man has full property rights over house, land, livestock, sons, wives and maids. Thus, she was deprived of participation in economic process. (iv) Woman was also excluded from public life as she was alleged to have: uncontrollable sexuality and she could, therefore, be polluted. (v) Man is the insider in kinship relations whereas woman is the outsider having loyalty only to her husband. A woman's status was determined in terms of her usefulness. She is used - from early childhood by early con,- summation in child marriage; after the death of her husband she becomes 'unuseful' soul.<sup>1</sup>

This patriarchal setup in India has given birth to certain complex equations of power sharing between male and female in society. The family, with its division of labor by sex, is the principal institution that underlies the sex/gender system. The subordinate role of women in the family is duplicated in society as a whole. Socioeconomic disparities, such as low wages and poor health care and education for women, have been justified by the assumption that women's employment and physical well being are less important than men's. There is, therefore, a close connection between the family and the organization of the politico-economic system. In other words, the family structure legitimizes the subordination of women in policy making also.

---

<sup>1</sup> Altekar, A.S (1991): The Position of Women in Indian Civilization, Motilal Banarasidas, Delhi, 162-65.

Women are subordinate to and thereby dependent on men because men may own land and hold tenancies while women by and large cannot. Customary practices preclude daughters from inheriting land except in the absence of male heirs. Despite the Hindu Succession Act, which put daughters on an equal footing with sons in regard to property in heritance, in most of the cases, daughters waive their land rights in favor of their brothers. Otherwise, they would be denounced as "selfish" sisters and would risk alienation or severance from their natal families. In her marital home woman is subordinate to her husband and in-laws. Here her life is at the mercy of her husband and his relatives.

This unequal equation of power sharing unfortunately reduces women to a disadvantaged class based on gender. Gender in biological terms can be easily defined as a distinction between sexes. This implies two classes one as a male gender and the other as a female gender. But the social definition of term gender would be a bit difficult to define. Female gender in sociological terms can be defined as a class which has been since long identified as a deprived class. A class which is powerless, poor, illiterate, economically weak, unrepresented, and the list continues. In short, a weak class in common parlance called "women" which is more or less without basic human rights.

## **1.1 Concept of Equality In Indian Constitution**

Article 14 Of the Indian Constitution states that "The state shall not deny to any person equality before law and equal protection of laws". The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons. It does not mean that every law must have universal application for, all persons are not, by nature, attainment or circumstances in the same position. The varying needs of different classes of persons often require separate treatment. From the very nature of society there should be different laws in different places and the Legislature controls the policy and enacts laws in the best interest of the safety and security of the State. In fact, identical treatment in unequal circumstances would amount to inequality.

So, a reasonable classification is not permitted but is necessary if society is to progress.

Thus, what Article 14 forbids is class-legislation but it does not forbid reasonable classification. The classification, however, must not be “arbitrary, artificial or evasive” but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons “arbitrarily selected” from a large number of persons all of whom stand in the same relation to the privilege granted that between whom and the person not so favored no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

Article 15 (3) is one of the two exceptions to the general rule laid down in clauses (1) and (2) of Article 15. It says that nothing in Article 15 shall prevent the State from making any special provision for women and children. Women and children require special treatment on account of their very nature. Article 15 (3) empowers the State to make special provisions for them. The reason is that women’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigor of the race. Thus, under Article 42 women workers can be given special maternity relief and a law to this effect will not infringe Article 15 (1). Again, it would not be violation of Article 15 if educational institutions are established by the State exclusively for women. The reservation of seats for women in a college does not offend against Article 15 (1).

In *Yusuf Abdul Aziz v. State of Bombay*<sup>2</sup>, Section 497 of Indian Penal Code which only punishes man for adultery and exempts the woman from punishment even though “she may be equally guilty as an abettor was held to be valid since the classification was not based on the ground of sex alone. Similar provisions apply to children. The provision of free education for children or measure for prevention of

---

<sup>2</sup> *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321.

their exploitation would also not come within the inhibition of Article 15 (1). It has, however, been held, that Article 15 (3) provides for only special provisions for the benefits of women and children and does not require that absolutely identical treatment as those enjoyed by males in similar matters must be afforded to them.

The State is also competent under Art. 15(3), 16(2) and 16(4) of the Constitution to give preference to women in government jobs where they are equally meritorious but more suited than men. The Supreme Court made it clear that giving preference to women is only an affirmative action and not a reservation which normally implies a separate quota which is reserved for a special category of persons who are less meritorious.

Article 21 of Indian Constitution provides that – “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

Earlier the term “personal liberty” was given a restrictive definition meaning nothing more than the liberty of the physical body. However, in *Meneka Gandhi V. Union of India*<sup>3</sup>, the Supreme Court held that the expression “personal liberty” in article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man. This decision of Supreme Court was extended to prevent sexual harassment of women in working place, by necessary implication. In a landmark judgment in *Vishakha v. State of Rajasthan*<sup>4</sup> the Supreme Court laid down exhaustive guidelines to prevent sexual harassment of working women.

It is clearly evident from the above holdings of the Supreme Court that sexual harassment and sexual violence against women is a serious encroachment on their right to life and personal liberty which is a guaranteed fundamental right in the Constitution of India. Violence against women within the four walls or in public or in working places is irrespectively the violation of their right to their person as well as personal liberty.

Personal liberty of an individual is not only a Fundamental Right but also a Human Right, which is a very basic requirement to live life in a dignified manner.

---

<sup>3</sup> Meneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>4</sup> Vishakha v. State of Rajasthan , AIR 1997 SC 3011.

## 1.2 Domestic Violence: Global Scenario

Domestic violence, that is, violence within the family, is also called intimate partner violence, battering or spouse abuse. It has existed as long as people have lived in family group. Although both men and women experience domestic violence, the empirical literature attests to the fact that women are much more often victimized and suffer physical and psychological harm as a consequence. Apart from the physical injuries sustained, ranging from bruises to death, abused women suffer from health and psychological problems and they have a significantly higher level of anxiety, depression and somatic complaints than women who have not suffered such abuse. The Supreme Court in *C. Masilamani Mudaliar v. The Idol of Sri Swaminathaswami*<sup>5</sup> observed that-

“As per the U.N. Report 1980, women constitute half the world population, perform nearly two-thirds of work hours, receive one-tenth of the world’s income and own less than one hundredth per cent of world’s property”. Half of the Indian population too is women. Women have always been discriminated and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.

According to the World Health Organization (2005), domestic violence is the most common form of violence against women across the globe. In addition, women are subjected to many forms of torture and cruelty, extending to murders, in a supposedly domestic environment. And because of most uncongenial and unbearable atmosphere in the matrimonial homes, many women are reluctant to live there lest they would lose their freedom to live with respect and dignity.

Theoretically, there is no difference between domestic assault and non-domestic assault. For while the two types of assault are legally identical, they are sociologically distinct. Domestic violence, it perhaps cannot be disputed, is different from most other crimes, at the root of which is the power theory of violence.

Probably the most widely cited and respected theory of wife abuse has been developed by researchers affiliated with the University of New Hampshire’s Family

---

<sup>5</sup> *C. Masilamani Mudaliar v. The Idol of Sri Swaminathaswami*, AIR 1996 SC 1697.

Violence Research Program, headed by Straus. On the basis of two nation-wide surveys conducted in the United States in 1975 and 1985, Straus and his associates have developed a power theory of violence. Most of their research has focused on inequality and the balance of power in the family.

Straus and his colleagues view the family as a cybernetic system in which the strains of everyday interaction generate accommodation and conflict, including violence. Violence tends to increase under conditions of positive feedback, which involves social circumstances that augment the propensity to violence (e.g., experiencing or witnessing family violence as a child). Violence also tends to increase in the absence of negative feedback, which involves social circumstances that limit or decrease the propensity to violence (e.g. experiencing secondary socialization that emphasizes the importance of negotiated conflict resolution). Other factors, such as confronting high levels of stress and facing serious problems that lack easy solution, are precipitants of violence.”<sup>6</sup> But, how big is the problem? According to the United Nations’ Universal Declaration of Human Rights, domestic violence is a human rights violation.

Human Rights are derived “from the dignity and worth inherent in the human person. Human Rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedom are interdependent and have mutual reinforcement. The human rights for woman, including girl child, are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights.

In another decision in *Valsamma Paul v Cochin University*<sup>7</sup>, the Supreme Court further added:

---

<sup>6</sup> Domestic Violence, edited by Mangai Natarajan of John Jay College of Criminal Justice, New York, USA.

<sup>7</sup> Valsamma Paul v. Cochin University, AIR 1996 SC571.

“Convention for Elimination of all forms of Discrimination Against Women (for short CEDAW) was ratified by the U.N.O. on December 18,1979 and the Government of India had ratified as an active participant on June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.”

Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article 1 of CEDAW defines “discrimination against women” to mean “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Article 2(b) enjoins upon the State parties, while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting “appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women; to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause (C) enjoins upon the State to ensue legal protection of the rights of women on equal basis with men, through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article 3 of CEDAW enjoins upon the State parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 of CEDAW states that “the State parties shall take all appropriate measures to

eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women.”

Studies conducted around the world show that violence within the family is a social problem of great proportions. In this regard there is no difference between the developed and developing countries. In poor countries the percentage of domestic violence may even be higher; but the oppressed females generally take it as part of their lives. Justice means equality in substance and not in form.

### **1.3 Functions of Law vis-a-vis Object Behind Legislation of Domestic Violence Act**

For centuries, jurists and legal scholars have debated about the functions of law, viz., why do we need law, and what does it do for society? More specifically, what functions does the law perform? Though there may not be unanimity amongst the scholars of law on the precise functions, it is widely recognized that the recurring theme of law includes:

- (i) Social Control,
- (ii) Disputes Settlement; and
- (iii) Social Engineering.

Though there are many methods of social control, law is considered one of the forms of former social control by prescribing social norms within which individual members of the society have to behave. Likewise, law discharges the functions of disputes settlement, i.e. disputes are settled by application of the law of land providing for legal rights and obligations. Apart from these, many scholars are of the view that principal function of law in modern society is social engineering. It refers to purposive application and direct social change initiated, guided and supported by law. Roscoe Pound captures the essence of this function of law when he states:

“For the purpose of understanding the law of today, I am content to think of law as a social institution to satisfy social wants-the claims and demands involved in the existence of civilized society -by giving effect to as much as we need with the least



sacrifice, so far as such wants may be satisfied or such claims give effect by an ordering of human conduct through politically organized society. For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence -in short, a continually more efficacious social engineering.”

Roscoe Pound is considered to be the ‘American leader’ in the field of sociological jurisprudence. Pound concentrates more on the functional aspect of law, that is why some writers name his approach as ‘functional school’. For Pound, the law is an ordering of conduct so as to make the goods of existence and the means of satisfying claims go round as far as possible with the least friction and waste. According to him, the end of law should be to satisfy a maximum of wants with a minimum of friction. Pound’s main thesis is that the task of law is ‘social engineering.’ He say:- “ for the purpose of understanding the law of today, I am content with a picture of satisfying as much of the whole body of human wants as we may with the least sacrifice. I am content to think of law as a social institution to satisfy social wants, the claims and demands involved in the existence of civilized society- by giving effect to as much as we may with least sacrifice, so far as such wants may be satisfied or such claims given effect to by an ordering of human conduct through politically organized society. For the present purpose I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence- in short, a continually more efficacious social engineering”.<sup>8</sup>

By ‘social engineering’ Pound means a balance between the competing interests in society. He entrusts the jurist with a commission. He lays down a method which a jurist should follow for ‘social engineering’. He should ‘study the actual social effects of legal institution and legal doctrines, study the means of making legal rules

---

<sup>8</sup> R.Pound, Social Control Through Law, Extracted in Lloyd’s Introduction to Jurisprudence. pp. 578-579.

effective, sociological study in preparation of law-making, study of judicial method, a sociological legal history and the importance of reasonable and just solutions of individual cases'. He thinks it to be the duty of the jurist to classify and expatiate upon the interests to be protected by law. He himself enumerates the various interests which are to be protected by law. He classifies them under three heads:

- Public Interests;
- Private Interests &
- Social Interests.

The private interests to be protected by the law are: (a) the individual's interests of personality: These include his physical integrity, reputation, freedom of volition and freedom of conscience. They are safeguarded by the Criminal Law, Law of Tort, Law of Contracts and by limitation upon the power of Government to interfere in the matter of belief and opinion, (b) Individual's interests in domestic relations: These include marriage, relations of husband and wife, parents and children, and claims to maintenance, (c) Interests of substance: These include proprietary rights, inheritance and testamentary succession, and occupational freedom. The principal public interests are: (a) interests in the preservation of the state as such, and (b) interests of state as the guardian of social interests.

The Social interests deserving legal protection are: (a) Interest in the preservation of peace and order and maintaining general security, (b) Interest in preserving social institutions like marriage and religious institutions, (c) Interest in preserving general morals by counteracting corruption, discouraging gambling and invalidating transactions repugnant to current morality, (d) Interest in conserving social resources. (e) Interest in general progress which is to be achieved by freedom of education, freedom of speech and expression, freedom of property, trade, and of commerce, and (f) Interest in the promotion of human personality. Logic, and history, and custom, and utility, and the accepted standards of right conduct are the forces which singly or in combination shape the progress of the law. One of the most fundamental social interests is that law shall be uniform and impartial. There must be nothing in its action that savours of prejudice or favour or even arbitrary whim or fitfulness. Therefore, in the main there shall be adherence to precedent. There shall be symmetrical development, consistently with history or custom when

history or custom has been the motive force, or the chief one, in giving shape to existing rules, and with logic or philosophy when the motive power has been theirs. But symmetrical development may be bought at too high a price. Uniformity ceases to be a good when it becomes uniformity of oppression. The social interest served by symmetry or certainty must then be balanced against the social interest served by equity and fairness or other elements of social welfare.

Pound states: “A generation ago I sought to formulate the juristic postulates of civilized society in our time and place, for the purposes of systematic exposition of private law i.e., the law governing individual interests and relations of individuals with the fellows in five propositions, with certain corollaries”<sup>9</sup>. For the present purpose we need not look at one of his the corollaries. Which is- In civilized society men must be able to assume that those who are engaged in some course of conduct will act with due care not to cast an unreasonable risk of injury upon others.

1. Study of the actual social effects of legal institutions, legal precepts of legal doctrines.
2. Sociological study in preparation for law-making.
3. Study of the means of making legal precepts effective in action.
4. A sociological legal history; study of the social background and social effects of legal institutions, legal precepts, and legal doctrines, and of how these effects have been brought about.
5. The functional attitude.
6. Study of law in relation to and as part of the whole process of social control.
7. The movement for preventive justice.
8. The valuing of interests.
9. The means of informing judges, jurists and law-makers as to the social facts involved in legislation and in the judicial finding, shaping, and application of legal precepts.

Though it will remain a matter of never ending debate as to whether law brings social change or social changes in society brings law (i.e. whether law “leads” change or “follows” change), it has to be accepted that many times laws are passed

---

<sup>9</sup> R.Pound, *Outlines of Jurisprudence*. in *Jurisprudence* by Mani and Tripathy, Allahabad Law Agency, 2002.

to ensure normative changes in the society. Abolition of Sati Pratha by an appropriate enactment is a sterling example. In broad terms “change” is of two types: continuous or evolutionary and discontinuous or revolutionary. The most common form of change is continuous. This day-to-day incremental change is a subtle, but dynamic, factor in social analysis.

No law purported to ameliorate the sufferings of the have-nots and the oppressed class of the society, may not fulfill its object. It cannot perhaps be disputed that 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, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate position compared with men.

To give a handle to the women, sec. 498A, IPC was enacted. Soon it was noticed that it had serious ramifications. Not only that the said punitive provision has been misused, the aggrieved wives do not always seek for ‘pound of flesh’, rather they need food and shelter. That cannot be obtained under sec. 498A, IPC.

Accordingly, need was felt to have civil law on domestic violence inasmuch as there was no law enabling the court to give protection order to give monetary relief in case women go to court Complaining violence. In order to provide such remedies, Domestic Violence Act has been enacted.

The Division Bench of Delhi High Court in *Varsha v. Union of India*<sup>10</sup> has concluded by saying: “The journey from enacting Dowry Prohibition Act, 1961 to Amendment in Indian Penal Code by incorporating Sections 498A and 304B to the passing of Domestic Violence Act is aimed at bringing desirable and much needed social change in this particular sphere. Therefore, Courts are required to give an interpretation which subserves the aforesaid purpose with which the law is enacted.

---

<sup>10</sup> Varsha v. Union of India, 2010 DMC 10 (Del).

## **1.4 Preventing Violence Against Women in the Home: Deterrent Measures**

Sociologists since Durkheim have speculated about how the punishment of individuals affects their behaviour. Two bodies of literature, specific deterrence and labeling, have developed competing predictions. Durkheim, for example, implicitly agreed with Bentham that the pains of punishment deter people from repeating the crimes for which they are punished, especially when punishment is certain, swift and severe. But more recent work has fostered the ironic view that punishment often makes individual more likely to commit crimes because of altered interactional structures foreclosed legal opportunities and secondary deviance. Sociologists like Lamest, Sahuartz, Skalnack and Becker favour this view.<sup>11</sup>

The 'pro-arrest' policy refers to policy which encourages, or less frequently, requires police to arrest for domestic violence under certain circumstances. But it is our common experience that police have been typically reluctant to make arrests for domestic violence, as well as for a wide range of other kinds of offences, unless the victim demand an arrest.

The most common argument used, to justify pro-arrest policies is that arrest is the best form of deterrent of repeat violence. In fact, many feminist activists suggest that arrest sends important messages to assailants, victims and the community at large that domestic violence is a serious crime which society will not tolerate. But does arrest really deter? It seems that mandatory arrest can only have an initial deterrent effect. In real life, unless the relation between the aggrieved woman and the respondent has gone to a breaking point or to a point of no return, many women do not want the police to arrest/charge in the first place, or wish to withdraw charges at a later point. This is one side of the coin, but other side of it reveals a horrible picture. Now it is almost an admitted position that misuse of sec. 498-A, Penal Code is wide spread. This is a cognizable offence. Violation of protection order or interim protection order is also a cognizable offence. But, the police for obvious reasons will delve deep into the matter before arresting the accused. Section 41 of the Code of Criminal Procedure Code does not mandate that an accused against whom the commission of a cognizable offence has been reported, has to be arrested without

---

<sup>11</sup> Domestic Violence edtd by Mangai Natarajan, article by Lawrence W. Sherman.

anything more. This approach may hurt the hard core feminists but the Supreme Court of India has made the legal position clear in the cases of *Joginder Kumar v State*<sup>12</sup> and *D.K. Basu v State*<sup>13</sup>. Even the most successfully implemented criminal justice policies cannot be relied upon as the key preventive response to domestic violence. The Protection of Women from Domestic Violence Act, 2005 has proceeded with a conscious endeavor to strike a balance between reapproachment or reconciliation and deterrent policies.

## 1.5 Domestic Violence as a Human Rights Issue

It has been observed that “The concept of human rights is one of the few moral visions ascribed to internationally.” Domestic violence violates the principles that lie at the heart of this moral vision: “the inherent dignity and worth of all members of the human family, the inalienable right to freedom from fear and want, and the equal rights of men and women”<sup>14</sup>. International human rights law evolved in order to protect those individual rights from limitations that might be imposed on them by states. States are bound by international law to respect the individual rights of each and every person and are thus accountable for abuses of those rights. The aim of the human rights movement is to enforce states’ obligations in this regard by denouncing violations of their duties under international law. International human rights law is facially gender-neutral<sup>15</sup>. The rights embodied in the Universal Declaration of Human Rights are defined as belonging to “all human beings,” not just to men. All the major human rights instruments include sex as one of the grounds upon which states may not discriminate in enforcing the rights set forth.

Although international law is gender neutral in theory, in practice it interacts with gender-biased domestic laws and social structures that relegate women and men to separate spheres of existence: private and public. Men exist as public, legal entities in all countries, and barring an overt abuse by the state, participate in public life and enjoy the full extent of whatever civil and political rights exist. Women, however,

---

<sup>12</sup> *Joginder Kumar v. State*, AIR 1994 SC 1349.

<sup>13</sup> *D.K. Basu v. State*, AIR 1997 SC 610.

<sup>14</sup> Preamble to the Universal Declaration of Human Rights, signed on 10 Dec. 1948

<sup>15</sup> Rebecca Cook. *International Protection of Women’s Reproductive Rights*. N.Y.U.J. International Law and Pol. 24(1992).

are in every country socially and economically disadvantaged in practice and in fact and in many places by law. Therefore, their capacity to participate in public life is routinely circumscribed. This gender bias, if unchallenged, becomes so embedded in the social structure that it often assumes the form of a social or cultural norm. Nowhere is the effect on international human rights practice of the public/private split more evident than in the case of domestic violence which literally happens “in private.” States dismiss blatant and frequent crimes, including murder, rape, and physical abuse of women in the home, as private, family matters, upon which they routinely take no action. Moreover, the state’s failure to prosecute violence against women equally with other similar crimes or to guarantee women the fundamental civil and political right to equal protection of the law without regard to sex have largely escaped international condemnation.

The concept of state responsibility defines the limits of a government’s accountability for human rights abuses under international law. “Of course, all acts are done by real people, individually or with others, and not by the fictive “person” of the state”<sup>16</sup>. Therefore, responsibility is generally understood to arise only when an act by a real person or persons can be imputed to the state. Traditionally, the idea of vicarious responsibility for acts is a perfectly acceptable one: such responsibility flows from the authorized acts of agents of the state, or persons acting with the apparent authority or condonation of the state. In traditional human rights practice states are held accountable only for what they do directly or through an agent, rendering acts of purely private individuals—such as domestic violence crimes—outside the scope of state responsibility. More recently, however, the concept of state responsibility has expanded to include not only actions directly committed by states, but also states’ systematic failure to prosecute acts committed either by low-level or para-state agents or by private actors. In these situations, although the state does not actually commit the primary abuse, its failure to prosecute the abuse amounts to complicity in it. The test of the state’s responsibility for an act differs depending upon whether the actor is the state or a private individual. To hold a state accountable for the actions of state actors, one of two things must be shown: (1) the state explicitly authorized the act (i.e., a senior official committed or authorized it); or (2) the state systematically failed to prosecute abuses committed by its agents,

---

<sup>16</sup> Ian Brownlie, *Principles of Public International Law*, 4<sup>th</sup> ed. Oxford: Clarendon Press, 1990.

whether or not these acts were ordered by senior officials. In the latter case, one must usually show a pattern of non prosecution of acts that violate human rights, and that the state has agreed to enforce those human rights. For example, the state is responsible if it fails systematically to prohibit or prosecute torture, because the right to be free from torture is guaranteed under international law.

As noted, domestic violence generally has been understood as a “private” matter in which governments should not interfere and for which they are not accountable. Traditionally the home has been idealized as a place of safety and security, a sanctuary from duty, responsibility, and work. The relationships between members of the family were also idealized as respectful and supportive. “The reality is quite different, “modern studies suggest...that far from being a place of safety, the family can be [a] ‘cradle of violence’ and that much of this violence is directed at the female members of the family.”<sup>17</sup>

## **1.6 Domestic Violence and Criminal Legislations in India**

Criminalization of domestic violence in India was brought about in the early 1980s after a sustained campaign by feminist groups and women activists all over the country. The demand for the criminalization of dowry death and domestic violence was a culmination of all these struggles ending successfully in the enactment of Sec 498A in the IPC in 1983, Sec 304B in 1986 and corresponding provisions in the Indian Evidence Act, 1872. These criminal law reforms held great promise at the time of their enactment. The criminalization of domestic violence in the form of Sec 498A and 304B (dowry death) sought to increase the certainty and severity of legal responses, thereby correcting historical, legal, and moral disparities in the legal protections afforded to abused women. It sought for the first time to bring the issue of domestic or family violence out of the protected private realm of the family and into the public domain in India. The demand for criminal law reform came about because of the large number of women that were dying in their matrimonial homes due to dowry-related harassment. Therefore, the initial demand was for a law to prevent only dowry related violence. Sec 498 A was thus introduced in the IPC in

---

<sup>17</sup> Jane Francis Connors, *Violence Against Women in the Family*. New York: United Nations, 1989.



1983 closely followed by Sec 304B which defined the special offence of dowry-related death of a woman in 1986 and the related amendments in the Indian Evidence Act 1872. It is believed that Sec 498A and Sec 304B were introduced to complement each other and be part of a scheme, since Sec 304B addresses the particular offence of dowry death and Sec 498A sought to address the wide-scale violence against married women for dowry.

Since the important campaign issue for feminist groups was dowry-related harassment, all violence faced by women within homes was attributed to dowry both by activists and by the state [Agnes 1998]. This resulted in their articulating a demand for a law on domestic violence only for married women. The IPC was thus amended in 1983 and Sec 498A was added. It reads as follows: Sec 498A: Husband or relative of husband of a woman subjecting her to cruelty. Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine. Explanation - for the purpose of this section, "cruelty" means: any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

This campaign of the women's groups turned out to be a narrow, short-sighted and wrongly formulated programme as it placed dowry-related violence on a special pedestal. Fortunately, although conceived as a protection against dowry harassment, the text of Sec 498A was wide enough to apply to other situations of domestic violence. However, it applies only to violence faced by married women at the hands of their husbands or husband's relatives. The definition therefore neglects and delegitimizes the everyday violence faced by married women at the hands of other relatives and by unmarried women and children in their homes, for it is a fact that women and children face violence at the hands of other male relatives as well - their fathers, brothers, uncles, boyfriends, live-in partners or other household members. This is sought to be addressed by the new Protection from Domestic Violence Bill, 2005. For such violence perpetrated by other members of the victim's family, the

criminal law of Sec 498A does not provide any remedy. The only remedies available under criminal law is if such forms of violence fall into other general offences of the IPC such as hurt, grievous hurt, rape outraging of modesty. etc.

Another significant problem with Sec498A is that its definition of cruelty is vague and limited and does not include all forms of violence experienced by women within the home. While the text of Sec 498A contains one part that specifically addresses cruelty as harassment for dowry, the ambit of the section is meant to be much wider than that as it seeks to address all forms of cruelty that cause grave injury or danger to life, limb or health whether mental or physical. Domestic violence in Sec 498A is therefore articulated in terms of "cruelty" and cruelty is defined to mean:

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to 'meet any unlawful demands for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Women experience violence within the home in varied forms and not only physical or mental abuse. Women's real life experiences show that they face violence in the form of physical, mental, verbal, psychological, sexual and economic violence. Sexual violence particularly needs to be recognised as a form of cruelty not only because of its high prevalence within marriage but also because the definition of rape within Sec 376 IPC specifically excludes marital rape as an offence. In the last 20 years of criminal law reform a common argument made against laws relating to violence against women in India has been that women misuse these laws. The police, civil society, politicians and even judges of the High Courts and Supreme Court have offered these arguments of the "misuse" of laws vehemently. The allegation of misuse is made particularly against Sec 498A of the IPC, and against the offence of dowry death in Sec 304B. One such view was expressed by former Justice K T Thomas in his article-titled 'Women and the Law', which appeared in The Hindu. The 2003 Malimath Committee report on reforms in the criminal justice system also notes, significantly, that there is a "general complaint" that Sec 498A of

the IPC is subject to gross misuse; While it is true that many of the cases under this provision are withdrawn, it is not because the women are misusing it, but more because they are often coerced into withdrawing the cases by their in-laws, relatives, families and the police. Very often, women who do complain to the police for protection from domestic violence are reluctant to take their husbands to court - they may fear reprisals, the family unit could be broken and financial hardship could result, should he be sent to prison. In addition it is quite common for wives to feel that they do not want to be the cause for their husband's imprisonment. It must be accepted that wives can still love their spouses and hope that the marriage can be saved despite the husband's past actions. They may also fear the negative publicity incurred by the family as a result of the criminal proceedings.

Lastly, for effective implementation of Sec 498A and other criminal law remedies in terms of providing protection to women victims of domestic violence, it is crucial that civil law remedies in the form of protection orders, injunctions, non-molestation orders, etc, are in place as well. In India till date, a woman has not been able to obtain a restraining order against a violent husband unless she was willing to file for divorce or judicial separation at the same time. Even in such cases, when injunction orders are available their enforcement is weak with absolutely no penalties for violations. Also injunctions and protection orders are rarely granted by the courts on an emergency basis. This ancillary nature of an injunction in India is one of the most serious flaws in civil laws in India today as it forces a woman into legal action of the kind that she may not have wanted.

Reforms in protective and restraining order civil legislation is needed to enable emergency, ex parte relief that includes not only 'no contact' provisions but also economic and other tangible reliefs for battered women. These reliefs, and the application of criminal laws, should be extended to women in unmarried cohabiting couples and to divorced or separated women.

To address this gap, the new civil law on domestic violence, the Protection of Women from Domestic Violence Bill, 2005 which was approved by the cabinet and passed by both houses of Parliament in the monsoon session of 2005 is extremely significant. It provides for emergency and ex parte injunctions and non-molestation orders, whether or not any other relief is sought in the proceedings by the victim.

Most notably, the law seeks to protect all women and children facing violence at the hands of their family members such as husbands, fathers, brothers, live-in partners, etc, and not merely from their husbands. Having a civil law which provides emergency protection and tangible relief in addition to criminal law remedies of arrest would be necessary to give complete protection and safety to women facing violence. The Domestic Violence Act is a welfare legislation which aims at resolving the intricate family matters between family members by counseling the parties involved. It further addresses the problem by passing appropriate orders like-protection orders, order for medical assistance, compensation orders for injuries suffered by the AP, free legal aid, residence orders etc. which directly aims at restoring the AP to his or her normal usual course of life so that the basic unit of society i.e a family can be nurtured. But the remarkable feature of the Act is that in case of frequent failure on the part of the respondent to fulfill his marital duty of respecting the dignity of his spouse, he can be inflicted with the penalty in the form of imprisonment of one year. This can be seen as the deterrent measure in the Act which somehow checks the erring spouses.

The exclusive legislation dealing with the menace of domestic violence was a much awaited one in India. Concludingly, I look at this Act as a winning outcome of the prolonged struggle between the women groups on one hand and the State on the other. Here it is important to have a mention of “Social Contract” thesis of the eminent jurist Henry Maine, who belonged to the Historical School of jurisprudence. He divided societies into two categories as under-

- Static Societies.
- Progressive Societies.

According to him, societies which relied upon law as law made by the ruler under divine inspiration, customary law, law by priests and law as codification were termed as static societies. On the contrary, societies which go on developing their law by new methods are termed as progressive societies. Progressive societies develop their law by new methods of equity and legislation. Equity consists of such principles which are just and fair whereas legislation is most direct and systematic method of law making.<sup>18</sup> A progressive society also represents a kind of society

---

<sup>18</sup> Dias, Jurisprudence (4<sup>th</sup> Edi.) p.535.

where individuals are strengthened enough to bargain with the State for their rights. They establish contracts with the State and State is therefore duty bound to fulfill its obligations. The movement for women rights can also be seen in the same frame, where women as a community came up together and collectively bargained with the State for their basic right to a dignified life. The Domestic Violence Act clearly represent that women have passed the stage of being a member of a static society and proudly entered in the phase of progressive society where they hold their share in the law making for their own welfare.

## **CHAPTER 2**

# **PROVISIONS OF THE DOMESTIC VIOLENCE ACT, 2005 AND THEIR INTERPRETATION**

**Preamble of Domestic Violence Act** – The Preamble of the Act runs as follows:

*“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.”<sup>1</sup>*

The beginning words of the preamble makes it clear that although the rights sought to be protected in the Act are available and also enforceable under other Acts, the purpose of the Act is to provide “more effective protection of the rights of women.” This means that the Act provides reliefs in addition to what are available under different statutes. This aspect is specially enacted in sec. 36 of the Act. It further follows that the beneficiaries of the Act are only women who are victims of violence of any kind occurring in the family. Matters connected with or incidental to domestic violence are also taken care of in the Act and effective protection in these regards are also provided in the Act.

The preamble further stipulates that the Act seeks to protect those rights of the women which are protected under the Constitution. The drafting of this part of the preamble does not appear to be quite appropriate inasmuch as in spite of rule of equality under Art. 14 and prohibition against discrimination on grounds only of sex, the women are heavily favored in the Act and that too sometimes at the cost of males.

In these state of affairs it cannot perhaps be said that those rights of women which are guaranteed under the Constitution are only protected in the Act. But by the words “guaranteed under the Constitution” the legislators might have intended to refer to Art. 15(3). The said Article says despite the prohibition contained in Art. 15(1), “nothing in this Article shall prevent the state from making any special provision for women and children”. The Domestic Violence Act is a “special provision” within the meaning of Art. 15(3) for women. At last that is what the preamble of the Act purports to say.

---

<sup>1</sup> Protection of Women from Domestic Violence Act, 2005, Gazette of India, 17<sup>th</sup> Oct. 2006 available at [www.gazetteofindia.org](http://www.gazetteofindia.org)

## **2.1. Domestic Violence Act and Article 14 of the Constitution**

“What Article 14 of the Constitution prohibits is ‘class legislation’ and not ‘classification for purpose of legislation’. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well defined class, it is not open to challenge on the grounds of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is two-fold: (i) that the classification must be founded on intelligible differential which distinguishes persons grouped together others who are left out of the group and (ii) that differential must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory; though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differential required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.”

## **2.2. Need for Special Protection to Women**

It is historical reality that the women in our society have been subjected to discrimination, misbehavior and ill-treatment, not only outside but also inside their house, the main causes for their plight being (i) illiteracy (ii) economic dependence on men and (iii) insensitivity to their rights and their dignity. Even a working woman, whether she is a construction worker who works side by side with her husband or a well-educated and a suitably employed professional is not always accorded the dignity and respect, which ought to be given to her on the home front. Despite concept of equality of sex in all respects being a hallmark of our Constitution, having been recognized in Articles 14, 15, 21, 39 and 51(A), it is a harsh reality that the women in our Country continue to be subjected to what we generally term as domestic violence. The legislature has from time to time been making efforts to impart justice and fair play to the women by means of various statutory enactments and Protection of Women from Domestic Violence Act, 2005 is a landmark initiative



taken by the Parliament to confer certain important benefits including right of residence on a woman and to penalize those, who fail to provide those benefits to the women despite judicial mandate in the form of order passed by a Court under the provisions of the Act. The legislation comprehensively addresses many issues relating to women, including those in live-in relationships and extends protection to relationship other than marital such as mothers and sisters and gives a new dimension to the expression “abuse” by including not only physical, abuse but also threat of abuse whether physical, mental, sexual, verbal or economical. Verbal abuses such as name calling character assassination, insult for not bringing enough dowry and insult for not giving birth to a male child, though dowry trivialized quite often have the potential to seriously impair the self esteem of a woman and has therefore been rightly addressed. Economic violence such as not providing food, shelter, clothes and medicines particularly to those women who are not economically independent has for the first time been statutory recognized as an act of violence”.

At this juncture it would be profitable to make a resume of different provisions of the Act.

Section 12 of the Act entitles an aggrieved person or a Protection Officer or any other person acting on behalf of the aggrieved person to apply to the Magistrate for grant of one or more reliefs under the Act. Section 18 of the Act enumerates the orders which the Magistrate can pass in favor of the aggrieved person. These orders include order prohibiting the respondent from (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 or school in the case of the child, of the aggrieved person; (d) attempting to communicate with the aggrieved person; (e) alienating any assets or operating bank accounts and bank lockers used or enjoyed by both the parties, or singly by the respondent and (f) causing violence to the dependents or other relatives of the aggrieved person. The list of protection orders mentioned in sec. 18 of the Act is not exhaustive and it is open to the Magistrate to pass any other appropriate order in consonance with the objective of the Act. Section 19 of the Act confers power on the Magistrate to pass a Residence order on being satisfied that domestic violence had taken place. Such order may restrain the respondent from dispossessing the aggrieved person or disturbing her possession from the shared household, restrain him or any of his relatives from entering any portion of the shared household where the aggrieved

person resides, restrain him from alienating or disposing of the shared household, restrain him or any of his relatives from entering any portion of the shared household where the aggrieved person reside, restrain him from alienating or disposing of the shared household or creating encumbrances on it, restrain him from renouncing his rights in the shared household and may also direct the respondent to remove himself from the shared household or to secure same level of alternate accommodation for the aggrieved person as was enjoyed by her in the shared household or to pay rent for the same. Under sec. 20, the Magistrate while disposing of an application under sec. 12 of the Act can direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, problems caused due to destruction, damage or removal of any property from her control and maintenance of the aggrieved person as well as her children. He can also order a lump sum payment or monthly payment of the maintenance. Under sec. 21 of the Act the Magistrate may grant temporary custody of the children to the aggrieved person and may deny visit of the respondent to the children of the aggrieved person. Under sec. 22, the Magistrate can direct payment of compensation and damages for the injuries, including mental torture and emotional distress. Under sec. 23, the Magistrate is competent to pass such interim order as he deems fit in the facts and circumstances of the case. It would thus be seen that the orders which the Magistrate can pass under various provisions of the Act are essentially civil in nature.

The Act by itself does not make any act, omission or conduct constituting violence, punishable with any imprisonment, fine or other penalty.

Section 31 of the Act provides for punishment only if a person commits breach of protection order passed under sec. 18 or an order of interim protection passed under sec. 23 of the Act. Thus, commission of acts of domestic violence by themselves do not constitute any offence punishable under the Act and it is only the breach of the order passed by the Magistrate either under sec. 18 or under sec. 23 of the Act which has been made punishable under sec. 31 of the Act. No criminal liability is thus incurred by a person under this Act merely on account of his indulging into acts of domestic violence or depriving a woman from use of the shared household. It is only the breach of the orders passed under sections 18 and 23 of the Act, which has been made punishable

### **2.3. Aggrieved Person: Section 2(a)**

“Person” in general usage means ‘a human being, irrespective of sex. ‘Aggrieved person’ means a person whose legal right is invaded by the act complained of. But, for the purpose of the Act, the aggrieved person must be a woman of any age whose legal rights created and guaranteed by the Act have been invaded or likely to be invaded by any person – male or female. The *sine qua non* for becoming an aggrieved person is that she has domestic relationship with the respondent. Of course, a complaint by the aggrieved person would also lie against the relative of her husband or male partner.

One who comes under the Act as an “aggrieved person” must satisfy the following conditions:

- i) the person must be a women of any age;
- ii) she must live or has, at any point of time, lived together with the person (respondent) against whom an accusation of domestic violence has been made in a ‘shared household’;
- iii) she is related with that person (respondent) through ‘domestic relationship by consanguinity, marriage or through a relationship in the nature of marriage, adoption or as members living together as a joint family; but where the complaint is by the aggrieved wife or female living in a relationship in the nature of marriage, relatives of the husband or male partner, as the case may be, may be prosecuted even if the complaint has or had no domestic relationship with them;
- iv) she has been subjected to any act of domestic violence within the meaning of sec. 3 of the Act; and

If any of the above conditions is absent, no person can be an “aggrieved person” for the purpose of the Act.

### **2.3.1. Persons Entitled to Come as Aggrieved Persons**

An aggrieved person must be woman of any age. In fact a female child in terms of sec. 17 (c) is entitled to a protection order. To this extent there is no ambiguity. But it is wrong to suppose that the wife or daughter of the respondent is the only person competent to seek redress under the Act. The term “domestic relationship” as defined in clause (f) of section 2 takes in its ambit different female relations like wife, daughter, sister, mother etc. of the respondent. Even a widow or single woman also can come as an aggrieved person. Though the proviso to clause (q) enables the wife or female living in a relation in the nature of marriage to file a complaint against any relative of the husband or the male partner, as the case may be, it does not enable the female relative of the husband or the male partner to file a complaint against the wife or the female partner.

### **2.3.2. Divorced Wife, if can seek reliefs against her former husband**

The term “wife” for the purpose of sec. 125 of the Code of Criminal Procedure includes a ‘divorced wife’ and she is entitled to maintenance from her former husband. The claim of a divorced wife cannot be defeated even where the husband obtains divorce on proof of adultery of his wife, although she will forfeit her right of maintenance during the subsistence of marriage in case she lives an adulterous life. In other words, living an adulterous life during the subsistence of marriage disentitles her from getting maintenance till the marriage is dissolved. After dissolution of marriage, the right to maintenance revives and continues till she remarries, provided she is unable to maintain herself. A divorced Muslim wife stands in a better position because in addition to the benefits available under the Code, additional benefits would be available to her under the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 – see the decision of the Constitution Bench in *Danial Latifi v Union of India*.<sup>2</sup>

The question is whether the Domestic Violence Act has given further benefits to a divorced woman. To be more precise, whether a divorced wife can seek relief under the said Act against her former husband? Additional benefits provided in the Act

---

<sup>2</sup> *Danial Latifi vs. Union of India* (2001)7 SCC 740.

would be available if it is found that a divorced wife is legally competent to file a complaint under sec. 12 of the Act against her former husband. Anyone who comes as a complainant must show that she has domestic relationship with the respondent. The 'domestic relationship' between the husband and wife arises "when they are related by ..... marriage". Clause (f) does not say 'when they are or were related by marriage'. The use of the words are "related by marriage" in clause (f) reflect the legislative intendment that not a divorced wife but only a wife whose marriage is subsisting can proceed against her husband. This conclusion is inescapable. Domestic violence refers to violence within the family. After divorce the wife ceases to be a family member of her former husband. In other words, they no more remain member of the same family.

In order to come under the Act the aggrieved woman must aver and establish that a domestic violence was committed (or likely to be committed) by the respondent. Section 3, by an inclusive definition, lays down the different ways of commission of domestic violence. Each of those acts constituting domestic violence, barring economic abuse, constitutes a distinct offence under the Penal Code. After divorce, the former wife and the former husband are virtually strangers to each other

### **2.3.3. Child: Section 2(b)**

A 'child' means any person – male or female – below the age of eighteen years and it includes adopted, step or foster child. In case a child wants to seek reliefs under the Act, the said child need not necessarily only a female child. Inclusion of male child in the definition of "child" in clause (b) makes the legal position clear. An aggrieved woman can seek relief under the Act, the said child need not necessarily only a female child. Inclusion of male child in the definition of "child" in clause (b) makes the legal position clear. An aggrieved woman can seek relief under the Act for the benefit of her male child also. But problem may arise in a different way and in a different situation. This can be explained by a simple illustration.

The wife of A died leaving her husband and a minor son. A thereafter remarried. After sometime both A and his second wife became very unkind to the child. Their behavior towards the child squarely fell within the purview of 'domestic violence' as defined in

sec. 3. The stepmother is, so to say, a *particeps criminis* and she will not take any action against her husband. Under the circumstance, can it be said that the minor has no remedy under the Domestic Violence Act? When the Act has vested some right in a person, there must be some procedure or mechanism in the Act itself for enforcement of that right. A minor himself cannot take any legal action. His natural guardian or next friend can act for and on behalf of the minor. The natural guardian is the father but the claim is against him. The stepmother, as stated above, has hostile animus against the minor. So, a complaint can be filed by the minor through his next friend. The next friend need not invariably be a woman. The complaint will not be bad if a male acts as the next friend of the minor. In the eye of law it is a complaint by the minor. Though the legal position is quite clear in this regard, one way profitably look at sec. 12(1) of the Act. The said sub-section authorizes a Protection Officer or any other person to file complaint on behalf of the aggrieved person. The Protection Officer can also file a complaint on behalf of the minor. The expression “any other person” in sec. 12(1) takes within its sweep the next friend of the minor. Section 4(1) provides further guide in this regard. Information about commission of domestic violence to the Protection Officer may be given by “any person”. The ball starts rolling as soon as a complaint is lodged under sec. 5 before the Protection Officer. Accordingly, the expression “aggrieved person means a woman” has to be construed rationally having regard to the factual matrix of each case. The legislators have used the expression ‘aggrieved person’ and not ‘aggrieved woman’. When the ‘aggrieved person’ happens to be a woman she has to satisfy the requirements of clause (a) of sec. 2. But where a child comes as an aggrieved person against the father, he or she has to satisfy two conditions: (i) that he or she is the child (legitimate or illegitimate) of the respondent, and (ii) the respondent-father has perpetrated domestic violence on him or her. In this regard there cannot be any distinction between a male child or a female child.

#### **2.4. Domestic Relationship: Section 2(f)**

Clause (f) provides the most important provision of the Act. Subject to the exception provided in the proviso to clause (q), no action under the Act would lie unless the aggrieved person (woman) is related to the respondent with domestic relationship

within the meaning of clause (f). Whenever the *locus standi* of the complainant is challenged, and otherwise also the court should see at the first place whether the complainant and the respondent are related to each other by domestic relationship.

Clause (f) has two distinct parts. The following is the result of scan of clause (f):

1. “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption.
2. “domestic relationship” means a relationship between two persons who are family members living together in a shared household as a joint family.”

The relationship between the complainant and the respondent must arise in either of the above two ways. It is evident that the sweep of the first part is extensive enough to take in its fold different persons differently related with the complainant. The question of applying the second part will arise when the first part is inapplicable in a given case. Each part of clause (f) is independent of the other part, though the possibility of overlaps remains.

Domestic relationship between two persons may arise in different ways. Clause (f) of sec. 2 while defining the term “domestic relationship” has specifically laid down how domestic relationship between two persons can be formed. The use of the word “means” clearly indicates that for the purpose of the Act the domestic relationship may arise in any of the ways stated therein and in no other way.

Though the domestic relationship can be formed in different ways as enumerated in clause (f), two things must be present in each case: (i) the two persons forming domestic relationship live or have, at any point of time, lived together and (ii) such residence of their must be in a shared household. These twin conditions are the *sine qua non* for having domestic relationship between two persons.

The way ‘domestic relationship’ is in link with living together in a shared household or as a joint family member, it may not achieve the purpose for which the Act has been enacted. This position can be explained by an illustration, A and B secretly and without the knowledge and consent of their parents married in a temple (or before a Marriage Registrar) and after the marriage they went back to their respective homes.

They had no occasion to live together. For some reason or other, A the husband was no more willing to take any responsibility and even did not agree to accept B. Can B under such circumstance, come under the Domestic Violence Act for reliefs against A? Morally she should get relief; but there appears an insurmountable difficulty. Domestic relationship within the meaning of clause (f) between the parties is the *sine qua non* for preferring an application under sec. 12. But, as stated earlier, for having domestic relationship the parties either live or have, at any point of time, lived together in a shared household, or they are living together as a joint family. Neither of the said two conditions is fulfilled in the illustration cited above. So if there be any claim by B, the same will be resisted taking advantage the loopholes of clause (f). It was held by the Karnataka High Court that when the aggrieved woman and the respondent never stayed together in the same household, allegations made against the respondent, if accepted, would not constitute domestic violence “in the absence of an ingredient of shared household” in *K. Narsimhan v Rohini Devanathan* 2010<sup>3</sup>. Curiously, clause (f) intends to bring within its fold different persons, but has ignored a situation which is not at all uncommon in the society. The legislators may think of making suitable amendment so that the Act though purports to benefit the women, may not become illusory where the question of its assistance for a genuine cause arises.

**Domestic relationship between two persons when they are related by consanguinity -**

The actions and remedies provided by the provisions of the Domestic Violence Act are not restricted to the disputes between the spouses. Undoubtedly, domestic relationship is formed by marriage. But, apart from marriage a domestic relationship is formed by marriage. But, apart from marriage a domestic relationship as contemplated in the Act may be formed between two persons when they are related by consanguinity. The word “consanguinity” means “kinship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor”. Consanguinity may be lineal or collateral. Lineal consanguinity is that which subsists between persons of whom one is descended in a direct line from the

---

<sup>3</sup> K.Narsimhan vs. Rohini Devanathan 2010 (87) AIC 635 (Kant) 2010.



other; whereas collateral consanguinity is that which subsists between persons who have the same ancestors, but do not descended or ascends one from the other. However, no distinction is made between lineal consanguinity and collateral consanguinity in clause (f) of section 2.

Under the scheme of the Act any woman aggrieved by the act of domestic violence by any person with whom she is related by consanguinity may come under sec. 12 and pray for protection order under sec. 18 of the Act. There is no bar, at least theoretically, to pray for other reliefs like residence order, monetary relief etc. But in that event the question which will arise at the very outset is whether the respondents have any obligation under law to meet the demands of the claimant. A fair and reasonable construction of the provisions of the Act will make it clear that no new obligation between them under any other law, the same may be enforced in accordance with the provisions of the Domestic Violence Act. For example, a minor or unmarried daughter can seek redress against her father. It is provided in clause (ii) of Form 1 that preventing a girl from marrying person of her choice or forcing her to marry a person of his/their own choice would amount to domestic violence. Not only the father but any other person who is related with the girl by consanguinity may be held responsible for domestic violence if they are involved in the above acts.

## **2.5.Marriage**

“Marriage” means legal union of one man and one woman as husband and wife. Marriage, as distinguished from the agreement to marry and from the act of becoming married, is the legal status, condition, or relation of one man and one woman united in law for life, or until divorced, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.

Whenever the word “marriage” is used in a status it always refers to a legal and valid marriage subsisting at the time when any claim is lodged against her husband. The word “marriage” is used in clause (f) twice; the first one refers to only legal marriage.

Under Shia Muslim Law, a Muta marriage remains a legal and valid marriage till the expiry of the contractual period. With the expiry of the contractual period, the marriage automatically comes to an end and thereby all marital rights and obligations cease.

In the case of ceremonial marriage, especially in a Hindu marriage, mutual consent, strictly speaking, is not a must. But where marriage is regarded as a civil contract there must be mutual consent of the parties, provided the parties are legally capable of contracting the marriage and there has been actual contracting in the form prescribed by law.

### **2.5.1. “Through a relationship in the nature of marriage”**

The words “in the nature of a marriage” clearly indicate that though there was some sort of marriage between the parties, such marriage, in view of the law governing the marriage between them, was not a legal and valid marriage in the eye of law. Where bigamous marriage is during the life time of his first wife, such a marriage is no marriage. The wife by this marriage is not entitled to claim maintenance under sec. 125 of the Criminal Procedure Code.

In order to obviate such difficulty and to give the deprived (and sometimes cheated) woman her dues, the Act recognizes these types of invalid marriages. A marriage may be invalid for various other reasons e.g. marriage within the prohibited degree, non-performance of ceremonies required to be performed mandatorily etc. Whenever a marriage is challenged in defense, it is to be whether there was any sort of marriage or not and whether the wife of such marriage believed or made her to believe that there was a legal marriage. Under Muslim law certain marriages are treated ‘battil’ or ‘fasid’. But if it is proved that there was a marriage and the spouses lived together as husband wife, the wife of this void marriage would be entitled to seek under the Act.

That there was some sort of marriage which can be proved in various ways. If there is no direct evidence to establish the alleged marriage, it can be proved from the conduct of the parties, especially by acknowledgement. By the husband – acknowledgement of the children of the marriage as the children of the husband; acknowledgement of the wife to the neighbors and others as his legally married wife etc.

By using the expression “through a relationship in the nature of marriage” the legislators wanted to provide reliefs under the Act to the wife of common-law marriage. In case of a common-law marriage, a couple live together as husband and wife, intended to be married or even married, which was for some reason or other not legal under the law, but hold themselves out to others as a married couple. When a man and woman are united by a legal marriage there is no scope to say that they are related “through relationship in the nature of marriage”; such a relationship may grow in two ways: (i) there was a *de facto* marriage but it was not a *de jure* marriage, that is the marriage is not recognized as a legal marriage. In this category comes even a clandestine marriage; or (ii) a couple living together as husband and wife, intended to be married but never married, and hold themselves out to others as a married couple.

In *Govindan*<sup>4</sup>, a Hindu male married a Christian female without following either the Hindu or the Christian rites and ceremonies and the marriage was conducted according to the custom to which the parties belonged. The wife claimed maintenance under sec. 125 of the Code. High Court allowed the claim. Even if it is argued that the claim under sec. 125 of the Code could not be allowed, there cannot be an iota of doubt that the claim for maintenance under sec. 20 read with sec. 12 of the Domestic Violence Act shall be allowed. When there was marriage it would be immaterial whether such marriage was legal or not. The crux of the whole thing is whether there was some sort of marriage between the parties.

### **2.5.2. Mistress or woman living together with respondent without marriage, if can come under the Act –**

A mistress or a woman living together with the respondent cannot claim domestic relationship under first part of clause (f) of this Act unless it can be shown that there was some sort of marriages between the parties. The right enjoyed by a woman, who is related to the respondent either by a legal and valid marriage or through a relationship in the nature of a marriage, cannot be extended to the respondents’ mistress or to a woman who is living with the respondent without having a sort of marriage. It cannot be disputed that law does neither encourage nor stand for

---

<sup>4</sup>Govindan 1978 Cr LJ 1213.

concubinage. Concubinage is the relationship of a man and woman who cohabit without the benefit of marriage.

### **2.5.3. Parties having close relationship and consensual sex, when can be said to have domestic relationship –**

It has been held in *M. Palani v Meenakshi*<sup>5</sup> that any woman who is or has been in a domestic relationship with the respondent can make a complaint under the provisions of the said Act. Further the “domestic relationship” is defined as a relationship between two persons, who live or have, at any point of time, lived together. The provision does not say that they should have lived together for a particular period. Even as per the case of the petitioner, he had *consensual sex with her, but there was no promise to marry her*. Thus, the averments made in the plaint as well as in the counter affidavit will make it very clear that the petitioner and the respondent has a close relationship and had sex. The Act does not contemplate that the petitioner and the respondent should live or have lived together for a particular period or for few days. From the averments made by the petitioner in his plaint and in his counter affidavit, one can infer that both of them seem to have shared household and lived together at least at the time of having sex by them. Accordingly, the application filed by the aggrieved woman under sec. 12 of the Act was held maintainable.

The words “in the nature of marriage” mean there is ‘a kind or sort or type of marriage, between the parties. As such, a concubine or mistress even living with the respondent in his house for a limited or short period and having consensual sex cannot satisfy the requirements “domestic relationship” as defined in sec. 2(f) of the Act. Similarly, a man and woman when decide to live together cannot ordinarily fort a ‘domestic relationship’ unless it could be shown that there was a kind or sort or type of marriage between them or the woman was made to believe that she was the wife of the person with whom she is living. It is to be remembered in this context that living together for a long period raises a presumption of marriage between the parties.

In *M. Palani v Meenakshi* it was the admitted position that there was neither any sort of marriage nor there was promise by the respondent to marry the complainant. They

---

<sup>5</sup> M.Palani vs. Meenakshi 2008 AIHC (NOC) 629 (Mad): AIR 2008 Mad 162.

were just enjoying sex. It was also not the case of the complainant that they even intended to marry or held themselves out to others as a married couple. Accordingly, mere living together and having consensual sex cannot create a domestic relationship between the parties within the meaning of clause (f) of sec. 2 of the Act. As such, the complainant, it is submitted, had no right to seek any relief under Domestic Violence Act.

#### **2.5.4. Live-in relationship and presumption –**

Though of late live-in relationship between a man and woman is seen in India, it is by no means a common practice and judged by Indian standard, it is viewed as a shameful act. But, the question may arise whether a man and woman living together for long time, even without proof of a valid marriage, would raise a presumption of a valid marriage or some sort of marriage.

But, no presumption of a valid and legal marriage can arise in spite of live-in relationship between the parties where the marriage between them would be bad and void under law. For example, a Hindu male in spite of his first marriage and during the lifetime of the first wife has been living with another woman for a long time. Similarly, in case of Muslims, the marriage which would be *battil* under Muslim Law, will negative the presumption of valid marriage where there has been long and continuous live-in relationship between the parties. The Domestic Violence Act aims at to remove this difficulty. The wife of a void marriage can have domestic relationship between the parties. The Domestic Violence Act aims at to remove this difficulty. The wife of a void marriage can have domestic relationship with the person with whom she has been living for a considerable period. The presumption, though rebuttable, will be that there was some marriage and they are related “through a relationship in the nature of marriage”. The Act requires that there must be a marriage between the parties, though the said marriage need not be legal and valid.

When an adult man and an adult woman decide to live together like husband and wife, it is not *per se* an offence. Held in *S. Khushboo v Kanniammal*<sup>6</sup> that adults willingly engaging in sexual relations outside the marital home is not an offence, with

---

<sup>6</sup> Khushboo vs. Kanniammal AIR 2010 SC 3196: 2010 AIR SCW 2770.

exception of adultery as defined in sec, 497 IPC. By reason of such living the male partner does not automatically incur any liability or responsibility towards her female partner, unless it can be shown by evidence or it transpires from the circumstance, that because of the conduct and/promise of the male partner, the female partner had a reasonable belief that she was the wife of the person whose bed is sharing for a reasonably long period. Of course, one need not think of anything else and look after any other circumstance where there is even slight dependable evidence showing there was some sort of marriage between them. For the purpose of Domestic Violence Act, there is no need for the court to delve deep into the question of legality of the marriage.

## **2.6. Shared Household: Section 2(s)**

The legislators have coined the expression “shared household” and have also given its meaning in the context of the Domestic Violence Act. The word “household” as a noun means “a family living together. Those who dwell under the same roof and compose a family”.

Ordinarily, “shared household” means a household which is shared by two or more persons. As the word “household” relates to a dwelling house of the family members, the ‘sharing’ in a “shared household” should ordinarily refer to sharing of occupation. But the legislators have given the meaning of “shared household” in clause(s), explaining the situations which will be sufficient to form domestic relationship with the respondent.

Shared *household* is a household, where the aggrieved person (woman) lives or at any stage lived in domestic relationship.

- a) singly, or
- b) along with the respondent.

The household in question –

- i) is owned or tenanted by the aggrieved person and the respondent, or

- ii) is owned or tenanted by either the aggrieved person or the respondent in respect of which either of them or both jointly or singly have any right, title, interest or equality, or
- iii) belongs to the joint family of which the aggrieved person is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in it.

The term ‘equity’ in clause (s) denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men.

The word “interest” in clause (s) means any right in the nature of property, but less than title.

“Shared household” as defined in sec. 2 (s) of the Act is an inclusive definition and it will take within its fold a household over which the aggrieved woman’s husband in his capacity as a member of joint family has some subsisting right even assuming he does not have any exclusive right, title or interest – *S. Prabhakaran v State*<sup>7</sup>. Further held in this case that the aggrieved wife has a right to reside in the shared household be it joint family house of husband or residential building of parents-in-law, if the wife lives or has at any stage lived in a domestic relationship either singly or along with her husband. Accordingly, in respect of such a building a residence order under sec. 19 can be passed in favor of the wife.

Clause (s) of sec. 2 merely defines “shared household”. Actually the legislators have provided an inclusive definition in clause (s) specifying what types of properties are to be treated as shared households of the aggrieved person (woman). Whenever the question of her right to reside in a shared household arises, one should read conjointly clause (s) of sec. 2 and sec. 17. In *S. Prabhakaran*, Kerala High Court has gone into the question of the aggrieved person’s right to reside in a shared household. No doubt sec. 17 has created a new right in favor of the aggrieved person (woman) in terms of which she, when in domestic relationship, “shall have the right to reside in the shared household”. But the law laid down in *S. Prabhakaran* is no longer good law so far as it has recognized the right of the daughter-in-law (aggrieved person) in the residential

---

<sup>7</sup> S.Prabhakaran vs. State 2009 Cr LJ (NOC) 547 (Ker).

building of her parents-in-law and in which her husband has no proprietary interest. This is the decision of the Supreme Court in *S. R. Batra v Taruna Batra*<sup>8</sup>.

The ratio of the decision of the apex court is that a household, in which the aggrieved person's husband has neither any ownership nor any interest of any kind, cannot be construed as a shared household within the meaning of clause (s).

“Interest” is the most general term that can be employed to denote a right, claim, title or legal share in something. More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title.

The term “equity” denotes the spirit and habit of fairness, justness and right dealing which would regulate the intercourse of men with men. The word “equity” is used in clause (f) of sec. 2 in the sense of ‘natural equity’, which denotes in a general way, that which strikes the ordinary conscience and sense of justice as being fair, right and equitable. It is little more elastic than the law.

The apex court has observed that “sec. 2(s) of the Act is not very happily worded, appears to be the result of clumsy drafting”. In the circumstances the apex court has proposed “to give it an interpretation which is sensible and which does not lead to chaos in society”. And it is held that the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member – *S.R. Batra v Taruna Batra* (2007)3 SCC 169.

In *Rajkumar v Sarita*<sup>9</sup>, the husband inherited a share in the house in question. The said house has been declared as a shared household.

It must not be lost sight of that right to property though no more a constitutional right, yet it is a human right. Accordingly, the law and the procedures laid down for deprivation thereof must be judged pragmatically. This view gets support from the decisions of the Supreme Court, though in a different context, in *Vimlaben v Vatsalaben* (2008)4 SCC 649;

---

<sup>8</sup> S.R. Batra vs. Tarun Batra AIR 2007 SC 1118.

<sup>9</sup> Rajkumar vs. Sarita 2009 Cr LJ (NOC) 446 (Chhatt).



The following households come under the sweep of ‘shared household’:

- i) household where the aggrieved woman lives or at any stage has lived in domestic relationship;
- ii) the household owned jointly by the aggrieved woman and the respondent;
- iii) the household tenanted jointly by the aggrieved woman and respondent;
- iv) the household owned by either of the aggrieved woman and respondent;
- v) the household tenanted by either of the aggrieved woman and respondent.

In respect of the households enumerated above the aggrieved woman or the respondent or both jointly and singly have any right, title, interest or equity.

- vi) the household belonging to the joint family of which the respondent is a member and has right, title or interest in it.

***“Aggrieved person”, “domestic relationship” and “shared household”: Inter se relationship*** – ‘Aggrieved woman’ is defined in sec. 2 (a) and ‘domestic relationship’ in sec. 2 (b) of the Act. Reading of the definition of “aggrieved person” indicates that, a woman, who is or has been in a domestic relationship with the respondent and who has been subjected to any act of domestic violence by the respondent.

Domestic relationship requires a relationship between two persons and who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, through a relationship in the nature of marriage, adoption or members of the family living together as a joint family. Under this definition, a reference is made only to the relationship between two persons and such relationship may be any one of the relationship mentioned therein.

“Shared household” is a household in which an aggrieved person lives or lived at any stage in a domestic relationship either singly or with respondent or by virtue of relation mentioned there in. It may be owned or tenanted either jointly or by aggrieved person or by respondent over which they have right, title, interest or equity. In addition to this, shared household also includes joint family shared household of which the respondent is a member of the joint family. Reading of this definition indicates that, if aggrieved person or respondent or both jointly or singly have any right, title, interest or equity in respect of shared household where aggrieved person had lived or is living, she can make a claim for shared household.”

“A careful reading of these definitions, in their plain meaning, shows that the aggrieved person must be woman and must be in domestic relationship with respondent. Insofar as aggrieved person as defined shows her domestic relationship only with the respondent. Definition of ‘domestic relationship’ also recognizes the relationship only between two persons” – *Amruth Kumar v Chithra*<sup>10</sup>.

In terms of sec. 2 (f) of the Act the aggrieved person and the respondent, that is the person against whom an action has been taken must “live or have, at any print of time, lived together in a shared household”. The expression, given its face value, would mean that staying together in a shared household is a condition precedent for taking an action under the Act. This cannot be the legal position as would be evident if the whole thing is judged with reference to a simple illustration.

A couple immediately after their marriage (reception party took place in a premises hired for one day) went elsewhere for honeymoon and stayed in a hotel. For some reason or other the relation between the couple become so strained that the wife straightway went to her father’s place and never came back again. Under the circumstance the place where they stayed during honeymoon period cannot be treaded as a “shared household”. It will be travesty of justice, and the legislators also never been intended, that the wife cannot claim monetary relief under sec. 20 read with sec. 12 of the Act, alleging domestic violence within the meaning of sec. 3. The question of living in “shared household” becomes important only where there is claim for residence in particular premises under secs. 17 and 19. This aspect is noticed in *Amruth Kumar v Chithra*, wherein it is observed:

“Section 17 of the Act, which deals with right to reside in shared household, recognizes the right of a woman, who is in domestic relationship, shall have right to reside in a shared household. This provision does not limit to the domestic relationship with the respondent, but it confers right on every woman in domestic relationship to reside in the shared household. Her relationship may be by consanguinity, marriage or in the nature of marriage, adoption or family member living together as joint family. Thus, it protects the right of woman to the shared household. But when it comes to the protection under sec. 18 of the Act, it only provides for passing of prohibitory order against respondent only.”

---

<sup>10</sup> *Amruth vs. Chithra* 2010 (88) AIC 640 (Kant): 2010.

## **2.7. Definition of Domestic Violence: Section 3**

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 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 1- 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 an 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 2- 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.

Section 3 defines the expression “domestic violence”. any act,. omission of commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse which are also explained in the Act. in determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, the overall facts and circumstances of the case shall be a guiding factor.

In Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1981 declaration adopted by the United Nations General Assembly, “Violence against women” is defined as –

“Any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm to women including threats to such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life”.

CEDAW declaration speaks of violence occurring within the family as well as occurring within the general community, but the preamble of the Domestic Violence Act makes it quite clear that the said Act provides more effective protection to the rights of women who are victims of violence of any kind “occurring within the family”. Of course there are various other statutes like the Protection of Human Rights Act, 1993 etc. operating more or less in the same field. Article 15(3) of the Constitution provides that “nothing in this Article shall prevent the State from making any special provision for women and children”. Even the Fundamental duties contained in Part IV – A of the Constitution also enshrine the principle of dignity of women [*vide* Art. 51A (e) of the Constitution]. Thus, the spirit of gender equality, dignity and justice pervades the entire framework of our Constitution.

Section 3 enumerates those acts, omissions, commissions, or conduct which will be treated as ‘domestic violence for the purpose of the Act because of use of the word “includes” clause (a) purports to be inclusive and not exhaustive. But reading clauses (a), (b) and (c) it will appear that the subjects dealt with in these three clauses are exhaustive. Only with the aid of clause (d), other acts etc. which are not specified in the earlier three clauses, may also come within the purview of sec. 3 if they injure or cause harm, physical or mental, to the aggrieved person. Besides causing harm or injury etc., clause (a) speaks of four different types of abuses – physical abuse, sexual abuses, verbal and emotional abuses, and economic abuse. What will come within these abuses has been specified, but not exhaustively, in Explanation I. Clause (a), when read along with Explanation I, would make it clear that on ultimate analysis the said clause is not exhaustive.

#### Incidents of domestic violence

- i. Sexual violence
  - Forced sexual intercourse
  - Forced to watch pornography or other obscene material
  - Forcibly using aggrieved woman to entertain others

- Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of aggrieved woman's dignity (the word 'entertain', in this context, means "to amuse or please")
- ii. Verbal and emotional abuse
- Accusing/aspersion on aggrieved woman's character or conduct, etc.
  - Insult for not bringing dowry, etc.
  - Insult for not having a male child
  - Insult for not having any child
  - Demeaning, humiliating or undermining remarks/statement
  - Ridicule
  - Name calling
  - Forcing aggrieved woman to not attend school, college or any other educational institution
  - Preventing aggrieved woman for taking up a job
  - Preventing aggrieved woman from leaving the house
  - Preventing aggrieved woman from meeting any particular person
  - Forcing aggrieved woman to get married against her will
  - Preventing aggrieved woman from marrying a person of your choice
  - Forcing aggrieved woman to marry a person of his/their own choice
  - Any other verbal or emotional abuse
- iii. Economic violence
- Not preventing money for maintaining aggrieved woman or her children
  - Not providing food, clothes, medicine, etc. for her or her children
  - Forcing aggrieved woman out of the house she lives in
  - Preventing aggrieved woman from accessing or suing any part of the house
  - Preventing or obstructing aggrieved woman from carrying on her employment
  - Not allowing aggrieved woman to take up an employment
  - Non-payment of rent in case of a rented accommodation

- Not allowing aggrieved woman to use clothes or articles of general household use
- Selling or pawning aggrieved woman's *stridhan* or any other valuables without informing her and without her consent
- Forcibly taking away aggrieved woman's salary, income or wages etc.
- Disposing aggrieved woman's *stridhan*
- Non-payment of other bills such as electricity, etc.
- Any other economic violence

iv. *Dowry related harassment*

- Demands for dowry and any other matter related to dowry

In addition to the incidents referred to above, the aggrieved woman may suffer from mental ill health or mental trauma under the following circumstances:

- i. attempts at strangulation;
- ii. beating to the children;
- iii. attempts to commit suicide by the respondent;
- iv. false accusation of unchastity;
- v. insults for not having a male child;
- vi. making verbal threats to cause harm to aggrieved woman/her children/parents/relatives threatening to kidnap the child/children
- vii. threat to the child/children's safety resulting in constant fear and mental trauma and depression of the aggrieved woman
- viii. respondent having criminal history for which the respondent is under constant fear of violence
- ix. preventing the aggrieved woman to leave the house

Again the above list is also not exhaustive. New circumstances may arise in view of peculiar circumstance of a given cause justifying the Magistrate to infer that such a circumstance by its very nature is domestic violence as contemplated in the Act.

The word "physical" means, relating or pertaining to the body, as distinguished from the mind or soul or the emotion. But, physical abuse is likely to cause emotional abuse also. "Physical abuse" has been enumerated in Explanation 1. It means and

includes an act or conduct of the respondent which causes any or more of the following to the aggrieved person:

i) bodily pain; ii) harm; iii) danger to life, limb or healthy; iv) impairment of the health or development; v) assault; vi) criminal intimidation; vii) criminal force

Physical violence can be caused by different acts. Some of the ways of doing such acts are enumerated in Form IV provided in the Rule. Those are:

i) Beating; ii) Slapping; iii) Hitting; iv) Biting; v) Kicking; vi) Punching; vii) Pushing; viii) Shoving; or ix) Causing bodily pain or injury in any other manner

Overall facts and circumstances of the case shall be taken into consideration – An important, if not the most important, provision of law has been enacted in Explanation II. What has been laid down here is a mandate to all concerned, especially to the Protection Officer and the Magistrate. It is clearly laid down that for the purpose of determining whether there has been domestic violence or not, the law enforcing authorities must take into account “the overall facts and circumstances of the case”. The use of the word “shall” is sufficient to indicate that this provision of law must be followed. Otherwise also, it is the cannon of law that any decision on a factual issue must be taken upon a review of all the materials on record, lest one may be unable to see the wood for the trees.

## **2.8. Information, Powers and Duties of Protection Officers, Service Providers etc**

### **2.8.1. Information to Protection Officer and exclusion of liability of informant -**

1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1)



Section 4 seeks to provide that any person who has reason to believe that an act of domestic violence has been or is being committed; such person may inform the Protection Officer. It also lays down that the person who is providing the information in good faith shall be exempt from any civil or criminal liability for giving such information

Who can give information? – The aggrieved person (woman) undoubtedly can give *information*. But she is not the only person having right to give such *information*. Any person who has reason to believe that an act of domestic violence has been or is being, or is likely to be committed, can give information. Thus, theoretically even a stranger can give information. In case the information is *bona fide*, the informant is immune from being sued or prosecuted. No civil or criminal action would lie against him. As a corollary to it, the informant will forfeit the above immunity if he gives information with some *mala fide* or oblique motive.

Information, if can be oral – Section 3 does not say whether information can be given orally or not. Sub-rule (1) of Rule 4 provides that “any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed may give information about it to the Protection Officer having jurisdiction in the area either orally or in writing” .

Sub-rule (2) of rule 4 further provides:

In case the information is given to the Protection Officer under sub-rule (1) orally, he or she shall cause it to be reduced to in writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection Officer shall satisfy and keep a record of the identity of the person giving such information

Liability, if any, of informant – One is bound by his own commissions or omissions, if that infringes the legal right of any other person. A deliberate false information is likely to infringe the legal right including the reputation of the respondent. If a false information is given by a third person without the knowledge and consent of the alleged aggrieved person, it may also infringe her legal right. As such, for any deliberate false information the informant may be held liable both under civil and

criminal law. But, sub-sec (2) gives immunity from being sued to that informant who has given information in “good faith”.

### **2.8.2. Duties of police officers, service providers and Magistrate: Section 5 –**

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

- a) 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 than one such order under this Act;
- b) of the availability of services of service providers;
- c) of the availability of services of the Protection Officers;
- d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence

Section 11 enacts that it shall be the duty of the Central Government and every State Government to give wide publicity of the Act so that the women, by and large, may know their rights and may also avail themselves of their rights. It seems that with the idea of giving more publicity to rights created by this Act, an advisory role is prescribed in sec.5.

### **2.8.3. Duties of shelter homes: Section 6–**

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

Section 6 provides that the person in charge of a shelter home shall be bound to provide shelter to the aggrieved person on being requested by the aggrieved person or, on her behalf by a Protection Officer or a service provider

The person in charge of a shelter home must accommodate the aggrieved person (woman) in his shelter home, if such a request comes from (i) the aggrieved person (woman), or (ii) the Protection Officer, or (iii) a service provider

In order to supplement the provision of law enacted in sec. 6, Rule 16 of the Protection of Women from Domestic Violence Rules, 2006 provides as under:

*“Shelter to the aggrieved person – (1) On a request being made by the aggrieved person , the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6*

*(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:*

*Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home*

*(3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.”*

Provide a accommodation to the aggrieved woman in a shelter home may be viewed as a part of the “Safety Plan” as envisaged in Rule 8 (1) (iv) of the Domestic Violence Rules, because this ensures safety of the concerned woman so long she will be in the

shelter home. Of course, Safety Plan as set forth in Form V having as many as five columns contains many more thing and it is provided in para 1 of the Safety Plan that when a Protection Officer, police officer or any other service provider is assisting the woman in providing details in this form, then details in columns C and D are to be filled in by the Protection Officer, police officer or any other service provider, as the case may be, in consultation with the complainant and with her consent when the aggrieved person leaves the said columns blank

#### **2.8.4. Duties of medical facilities: Section 7 –**

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

The procedure for availing of the medical aid is laid down in Rule 17 of the Protection of Women from Domestic Violence Rules, 2006 as under:

“(1) The aggrieved person of the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7

(2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility

(3) If no domestic incident report has been made, the person in charge of medical facility shall fill in Form 1 and forward the same to the local Protection Officer.

(4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.”

### **2.8.5. Duties and functions of Protection Officers: Section 9 –**

(1) It shall be the duty of the Protection Officer –

- (a) to assist the Magistrate in the discharge of his functions under this Act;
- (b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;
- (c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- (d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987), and make available free of cost the prescribed form in which a complaint is to be made;
- (e) to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- (f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- (g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
- (h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);
- (i) to perform such other duties as may be prescribed

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

### **2.8.6. Service providers: Section 10 –**

(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860), or a company registered under the Companies Act, 1956 (1 of 1956), or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purpose of this Act

(2) A service provider registered under sub-section (1) shall have the power to –

- (a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;
- (b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
- (c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence

### **2.8.7. Duties of Government: Section 11–**

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

- (a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular interval;
- (b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;
- (c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;
- (d) 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.

## **2.9. Reliefs Provided By the Act**

### **2.9.1. Protection orders: Section 18 –**

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 favour of the aggrieved person and prohibit the respondent from –

- (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 aggrieved is a child, its school or any other place frequently 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 dependents, 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

### **2.9.2. Residence orders: Section 19 –**

(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 of the shared household or encumbering the same;
- (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 – 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.

### **2.9.3. Monetary reliefs: Section 20 –**

(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 officer-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 respondent, which amount may be adjusted towards the monetary relief payable by the respondent

#### **2.9.4. Custody orders: Section 21 –**

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 interest of the child or children, the Magistrate shall refuse to allow such visit

#### **2.9.5. Compensation orders: Section 22 –**

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

#### **2.9.6. Penalty for breach of protection order by respondent: Section 31 –**

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions .

## **CHAPTER 3**

# **COMPARATIVE FIELD STUDY IN THE CITIES OF DELHI AND AGRA**

Under the Domestic Violence Act central responsibility of infrastructure development was given to state government. Nodal department of state government are responsible to look after infrastructure, appointment of POs, notifying SPs, SHs etc. These are the stake holders under the act who play a very important role in the implementation process of the PWDVA. Their roles, duties, functions and powers provided under the Act and their functioning on the ground on the comparative basis between Delhi and Agra forms the main focus area of this chapter.

### **3.1 Protection Officer**

PO under the Act is created as a mechanism to coordinating link between the victim and court. This is a vital & integral link to facilitate judicial access to the AP.

POs work under the control & supervision of the government & Magistrate. They have to primarily perform duties imposed upon them by the Magistrate. They are also required to assist AP in filing DIR, filing an application under the Act. Their secondary role constitutes of helping AP to find access to SPs, SHs or MFs, and implementing court orders.

#### **3.1.1. Appointment of POs-**

Under the PWDVA it is the duty of the state government to appoint POs. The state government by notification shall determine the number of POs to be appointed along with jurisdiction of the POs Rule 3(1) PWDVR, 2006 provides that POs may be draw from among the government cadre or members of the NGO.

Rule 3(4) PWDVR, 2006 further makes provision for office assistance to POs in order to discharge their responsibilities and duties under the Act efficiently.

In Delhi the preference has been for independent POs who are appointed from NGOs having special experience in the field of social work. Delhi at present has 17 independent POs and they are all women. They are recruited on contractual basis at the district level. (All of them are post graduates and over half of them have

specialized in social work.) The interviews with POs however revealed the fact that courts give more importance to POs who are government staff, as compared to independent POs. Besides this, they lack infrastructural facilities like office space, basic amenities etc. It was also felt that salaries offered to them are not as per their expectations due to which they lack the required enthusiasm and interest towards their job. Women POs definitely develop a sense of better understanding with women APs due which they feel secure and talk freely about the acts of violence with them.

On the other hand, an interview with the POs appointed in Agra revealed a different story. He is a State Government employee coming from Public Service Commission of the State. He is designated as District Probation Officer. He is holding the additional charge under seven such social welfare legislations like Juvenile Justice Act, Indecent Representation of Women Act, DVA etc. The very first problem which surfaced was that the general public was found confused with designations of Protection Officer and District Probation Officer. The other problem was the overburdening of his office due to additional charges which in turn incapacitates them to function solely as a PO.

The two trends of appointing POs have their own merits and demerits. Independent POs on one hand solely have the responsibility to look after matters of Domestic Violence. They are qualified and specialized in the field of social work which definitely helps them in functioning proficiently. But their remuneration, non-acceptability in courts and government cadres and lack of infrastructure and logistics are yet another problem areas which choke their efficiency.

However, POs with additional charges are eased on the areas of infrastructure and logistics. They are a part of the bureaucratic hierarchy therefore they can make quick referrals and interlinkages with different departments of the government. Their acceptance in courts is not an issue. But their additional charges certainly over pressure them and restrict their efficient functioning as a PO. The lack of clerical staff accentuates the problem. The inherent bureaucratic apathy and lack of specialized knowledge in social work raises questions on this integral link. Thus, this discussion between the appointment of independent POs as opposed to additional POs continues.

### **3.1.2. Role of Protection Officers-**

Section 2(e) of PWDVA defines DIR as a “report made in the prescribed form on receipt of complaint of DV from an AP”<sup>1</sup>. Under PWDVA the first person to be approached by the AP is PO. Among all other functions of PO, the primary one is to assist the AP with the preparation of DIR and to make an application under section 12 to the Magistrate. Proviso to section 12(1) of PWDVA states that before passing any orders on such an application, the Magistrate shall take into consideration any DIR received by him from PO or SP. In the past years, it has been observed that there has been no uniform practice followed by Magistrate as well as by POs.

In Delhi, in response to a question “who can file DIR ?” there seems to be an utter confusion. Some POs reported that lawyers can file DIR while others replied that SPs can file it. In their interviews, POs stated that DIRs are filed when a complaint has to be filed in the court, and court directed DIRs are also filed. Therefore, POs were completely confused of the knowledge of filing DIR everytime the woman approaches them. What came as surprising was the fact that POs themselves developed a trend of counselling APs without filing DIR and application to court.

In Agra also the trend has been the same. The interview with PO stated the fact that DIR is filed at the direction of court. In fact the chain of action is that the AP approaches the lawyers first and files complaint through him in court. Thereafter the court directs the PO to file DIR. However in a case if AP approaches the PO at first instance, the PO counsels the AP and encourage to settle the dispute amicably. In case that does not work, PO files DIR and files application in court.

These anomalies in functioning do not let one uniform practice to be followed all over. The law is not interpreted correctly and moulded as per the convenience.

### **3.1.3. Service of Notice-**

Rule 12(3) PWDVR, 2006 provides for the service of notice as the first stage of legal proceedings after the application is filed and before the trial begins. Once the date of

---

<sup>1</sup> Protection of Women from domestic Violence act,2005, Gazette of India, 17<sup>th</sup> Oct. 2006 available at [www.gazetteofindia.org](http://www.gazetteofindia.org)

hearing is fixed, the Magistrate shall provide a copy of the notice to the PO. The PO, in turn, is conferred with the duty of serving the notice to the respondent to appear in court. Although, section 13(1) of PWDVR explicitly states that the PO may direct “any other person” to serve notice on their behalf.

In Delhi, initially after passing of the Act, Magistrates in most cases asked the POs to personally serve notice. However, in the subsequent years a change in trend was observed. Now the notices are primarily served through the Police. The High Court of Delhi has from time to time issued directions to the Police to depute personnel for the service of notice & provide adequate protection to the PO whenever they serve notice in person.<sup>2</sup> This changed trend was the outcome of the difficulties faced by independent POs in inconvenience to serve notice due to lack of infrastructure and support staff. The High Courts directive put the state of affairs in right direction by stimulating the Police personnel to provide their support without which service of notice is a herculean task.

In Agra, on the other hand, the APs do not disseminate his work of service of notice upon any other person. Here the service of notice through police is not that regular in practice. The lack of support staff and overburden of work are the limiting factors in service of notices. Another major hurdle in the process are geographical limitations, multiplicity of parties and vague addresses provided by the APs.

#### **3.1.4. Breach of Order-**

According to Rule 15 of PWDVR, an AP is required to submit a written report of breach of order duly signed by her to the PO, who should then forward the complaint, along with the copy of the protection order, to the concerned Magistrate. If the AP desires, she may also make a direct complaint of the breach to the Police or Magistrate.

In Delhi, almost all POs interviewed were aware of the fact that in case of breach of orders issued by court, police should be reported. In practice, awareness among POs asking police for assistance in implementing court orders is high. Though, all POs are

---

<sup>2</sup> Laywer’s Collective & The International Centre for Research on Women, “Staying Alive: Third Monitoring & Evaluation Report on Protection of Women from Domestic Violence Act, 2005.”(2009).



not having knowledge of the fact that breach of order is a cognizable and non-bailable offence. Time to time court also direct police to assist POs in execution of orders and provide required support in case of breach. In Agra, the interviewed PO complained of the indifferent attitude of the police. The lack of coordination between two government agencies causes great difficulty in the execution as well as redressal of breach of orders issued by court. The Police action comes into picture when it is directed by the court.

### **3.1.5. Attitudes of POs Towards Domestic violence & The Act-**

As mentioned earlier PO is the integral link between AP and the court. He is the person who guides and support the AP in seeking remedies under the Act. The law confers on the PO, the responsibility of giving information to the AP on her rights and remedies under the PWDVA. The number of duties like filing of DIR, service of notice, enforcement of court orders, etc imposed upon the POs make examination of their attitudes indispensable.

The examination of participating POs was based on some basic questions. The analysis of answers provided by them give an in depth insight into the problem of domestic violence. The questions asked to the participants are as follows-

Question1- Is DV a family affair ?

Question2- Does the filing of case brings social stigma to the family ?

Question3- Does counselling resolves the problem of DV ?

Question4- Is it predominantly the poor who beat their wives ?

Question5- Once in a while slapping does not amount to DV ?

Answer1- Unfortunately, there is hardly any change over time in the notion that DV is a family affair. This opinion is held by participants irrespective of their location, whether Agra or Delhi. The POs interviewed in Delhi and DPO in Agra, Strongly hold the belief that DV is something which is personal between the parties. It is always preferable to sort out such issues within the four walls of the home. They put forward the reasoning that intervention by third party sometimes even worsens the state of affairs between the parties. Moreover, females are seldom ready to take stringent action against the erring husband which gives birth to an unacceptable

position to third party intervention. In such conditions, therefore it is advisable sort family affairs at family level.

Answer2- In response to the second question, the participants replied positively but further added that there has been a considerable shift in the mindset of the APs as well as among their family members. Undoubtedly, it is believed that when personal or domestic affairs are brought and discussed in public domain, it causes social stigma to the AP as well to her family. In spite of this social belief, the increased literacy levels and better awareness of for rights and laws has certainly brought about a significant change. It is not only the upper class educated women who come out and demand their rights, but women from all economic strata behave in similar fashion. It is not only in metropolitan cities like Delhi, but also in small cities like Agra women are irked by instances of DV and seek legal remedies. It can be said that they have started realising their self- respect over the reputation of their families.

Answer3- the response to question 3 does not draw a clear picture. The participating POs are not themselves sure of the fact that whether counselling solves the problem. The inference to this question can be put as- in some cases counselling works as temporary resolution of dispute. It is observed that parties keep coming back after intervals with new disputes. Sometimes, the parties are so rigid to respond positively to counselling. It is only in very few cases that the issue of DV is resolved completely by counselling.

Answer4- In response to question number four, again there has been observed a shift in statistics. Earlier, the most of the APs which approached belonged to low income strata. However, in the recent years, the women from every economic strata is approaching for legal action. It is the women who are economically dependent and the women economically independent as well. Therefore, the economic demarcations are fading away gradually.

Answer5- For once in a while slapping, it is seldom constituted as DV in India. In fact the women themselves are not resistant of such kind of violence. They actually do not put once in a while slapping under the category of violence. The POs put forward no such matter has been reported so far, in which such 'minimal' form of violence has caused women to step out for redressal. The similar situation was reported in Agra as well.

From above discussion on the set of questions it is clear that undoubtedly, the increased literacy and legal awareness among the women have reflected a positive shift but still the deep rooted notions and social myths are dragging the law behind.

From the interaction with POs it has also been noticed that most of them are lacking clear knowledge of the legal provisions under the Act. For example, the Act gives a comprehensive definition of DV as inclusive of all forms of violence. Irrespective of this they are uncertain about matters coming under mental, economic violence etc. In a case like husband scolding his wife, the POs are not certain about under which category of violence it falls. Besides this, filling of DIR by POs counselling, breach of protection order etc are some such gray areas which we have already discussed earlier in this chapter.

### **3.2. Service Providers**

Section 2(r) of PWDVA Provides for Service Providers (SPs). The main services provided by SPs and vocational training centers too. Most SPs have helplines. The SPs keep a register to record all the women who approach them and follow up cases that have been counseled. Some assist women during the court proceeding too. More counsellors in these organizations have not undergone any training under PWDVA.

Of the interviewed SPs in Delhi most were not well versed with the provisions of the PWDVA. Only few were active and they coordinated well with the Police and POs. The interviews with them revealed that SPs provide legal aid to women and help them in filling up DIR. According to them, the most common relief sought by AP is maintenance and residence order. The courts sometimes send the women to them for SHs and counselling, and they are directed to submit counselling report as well. For purpose of counselling, joint sittings are done with both the parties. The main emphasis is on the re-union of the parties. The SPs categorically complained that the POs are never available and cannot be contacted in cases of emergency.

The sole SP providing services in the city of Agra when interviewed came up with not a very positive picture. She first of all complained meager funding by the State Government. There is a complete lack of infrastructure and skilled staff. The detailed

interview with SP actually was surprising to the effect that they have been originally a State Government funded NGO explicitly working in the field of domestic violence, dowry cases, cruelty by husband and relatives etc. Later on they were recognized as SP by the DPO.

The total absence of cooperation and among police, DPO, court and SP leads to independent functioning of SP. The SP creates awareness and reach out to people personally at their own level to provide their services. The counselling provided by them is not DPO or court directed rather it is their personal effort to re-unite breaking households.

SP further revealed that the funding by State Government is not only meager but besides that, is given in exceptionally delayed installments. This in turn leads to apathy among the counselors. The counsellors are neither qualified nor skilled for their job. There is no provision for training them.

When asked about the women approaching them, they referred to women coming from low economic strata. They disclosed drinking among men as one of the major causes of DV. After being drunk, the culprit indulges into practices of beating, sexually abusing and making AP economically dependent for pennies on them. It is not only the poor people who are into drinking but also the economically well off people who are very much into it. Even the well educated and independent women undergo similar treatment when their husbands are drunk. It is reported that men after being drunk have an enhanced tendency to sexual desire, to which resistance by women leads to DV.

SP further stated that red tapeism among police and DPO make their functioning futile. Whenever there are cases in which the men are violent and counselling becomes difficult, there is no help provided by the police. Similarly, when as a part of counselling they pay home visits and men behave violent with AP or SPs being drunk, no assistance is provided by police in such cases.

When asked about SHs, SPs stated that they started up with the shelter home but due to no funding by State Government it met with a bad fate. The residents of SH also developed the tendencies of idleness and apathy, which led to disorganisation and mismanagement. The efforts to start vocational training in sewing and knitting all

proved futile due to the apathy of residents. Gradually, the SH became a place of cheap residence and food. Due to these factors it was closed within a short span of time.

Thus, the interview with SP in Agra gave an opportunity to have a look at the practical insights of the implementation dimension of the Act. It was realised that it is still a long way to go.

### **3.3. Police Officer**

The Police are the most known, accessible and obvious structure, whom women facing violence approach for help. The guidance and directions provided by the police is critical in the sense that it frames her future course of action. Under the PWDVA, the police are one of the stakeholders with critical responsibilities at two points in the implementation of the Act. First, when they receive a complaint of DV, the police are expected to inform the AP of her rights under the Act and under Section 498-A, the right to free legal aid and specific reliefs available. They are also expected to inform women about POs and SPs and refer them to concerned POs. Secondly; the role of the police comes into play automatically upon the breach of a Protection Order or interim Protection Order.

Since the role of police is important under the Act, it becomes indispensable for them to be well versed with the provisions of the Act. The Police officers interviewed in Delhi reflected a very positive attitude towards the Act. The Police officers interviewed in Delhi reflected a very positive attitude towards the Act. But the further interaction with them revealed that they substantially lack in the knowledge of the provisions of PWDVA. It was shocking to know that some of them believed that police have no role under the Act. Some stated that there is no provision of arrest under the Act and breach of protection order is a bailable compoundable offence.

Nearly three-fourth of the officers reported that a women getting maintenance from her husband cannot file an application under the PWDVA which is completely a wrong notion.

However, the Police informed that the women approaching Police Stations under the Act has significantly increased, which is certainly the result of positive attitude of police. The majority of the police officers mentioned that women primarily want them to counsel their husbands and other family members to stop violence. Though, the PWDVA require police to inform AP of their rights under section 498A and referring them to POs but on the contrary APs are sent to Crime Against Women cell generally. Only very few number of women are sent to APs.

### **3.3.1. Interaction with POs-**

The interaction between these two stake holders is not as cohesive as is required under the Act. While the POs sought their assistance in enforcement of the court order, in the restoration of dispossessed women, preparing and implementing safety plans, providing protection to POs and arresting respondents in case of breach of protection orders. Though, most of the above demands by POs are met with by the Police Officers but sometimes it is reported by POs that the Police is not that active as is the need of the hour. Although POs report that police shown a remarkable positive attitude in responding to their demands but a little more needs to be done.

In Agra, on the other hand, the situation is not that good. The Police is most of the times not receptive to the demands of POs and their duties under the PWDVA. Their rigid attitude makes it very difficult for POs to seek their help in the disposal of their duties. Moreover, it is only in the cases of utmost emergency when the Police responds appropriately.

### **3.3.2. Interaction with SPs-**

The Police Officers reported that very few SPs approach their police stations for any assistance. It was reported that SPs generally approached to request for orders like restoration of dispossessed women, provide protection to women and filing of FIR in case of breach of court order.

In Agra, the Police is seldom cooperative with SPs barring few female police officers. In fact, the police department of the district independently hold sittings in their

“Parivar Paramarsh Kendra” rather than assisting SPs approach police, most of the times their demands have not been paid head to.

### **3.3.3. Inter-agency coordination-**

Irrespective of Delhi or Agra, it is reported that, on receipt of report of breach of protection order hardly any FIR is reported by the Police Officers. Even after five years of implementation, not all police officers have the phone numbers of all the stake holders including POs, SPs, SH, MF, and State Legal Service Authority. The situation is worse in Agra. This is clearly evident of the fact of lack of coordination among the various agencies especially the Police.

The main cause behind this weak and apathetic functioning of police is the lack of training. Though, if some police officers have received training, discussing it with colleagues is not a common practice.

## **3.4. Judiciary**

The role of Higher Judiciary has been absolutely affirmative since the passing of the PWDVA since 2005. From time to time the decisions of Honourable Supreme Court and High Courts of various states have set a path to be followed by interpreting the provisions of the said Act proactively. This has resulted in the wider interpretation of the provisions aiming at the welfare of the largest number of the victims in the society. Here it is pertinent to mention two recent judgments to describe how the judiciary is making the law more and more effective.

### **3.4.1. “In the nature of marriage”-**

The intention of the PWDVA was to provide women protection from DV, to ensure the “right to residence” and all other rights under the Act, to all women living in a “domestic relationship” and living at any point of time in a “shared household”. Accordingly, the definition of “domestic relationship” which forms the basis of reliefs provided for and against whom the reliefs may be claimed under the Act, includes

within its scope “*relationship in the nature of marriage*”. This unequivocal inclusion of women living in a “relationship in the nature of marriage” as beneficiaries under the Act has generated considerable debate since the Act came into force.

In the case of *Virendra Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha*<sup>3</sup>, the appellant contended that she was married as per prevalent custom and usage, after the death of her first husband, to his younger brother, the respondent. The parties lived together as husband and wife and discharged all marital obligations towards each other. The respondent, after a few years, started harassing and torturing the appellant and refused to provide her with maintenance. Proceedings under Section 125 Cr PC were initiated by the appellant. The present Special Leave Petition was filed by the appellant against the judgment of the High Court upholding the respondent’s contention that he was not the husband of the appellant, and therefore, she was not entitled to maintenance from him, since only legally married women could claim this under the provisions of 125 Cr PC. The judgment accordingly restricts itself essentially to validity of a claim for maintenance under 125 Cr PC, by a woman in a case where strict proof of marriage is not available and lays down the ratio that where partners have lived together for a long time as husband and wife, a presumption would arise in favour of a valid wedlock. In establishing the above ratio, G.S. Singhvi and Asok Kumar Ganguly, JJ examined in detail the provisions of the PWDVA and noted that the Act gives “a very wide interpretation to the term 'domestic relationship' as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of 'domestic relationship' under Section 2(f) of the Act”. The wide coverage under the definition of domestic relationship, according to the judgment, is the most significant provision under the Act. The effect of such inclusion ensures that “women in live-in relationships are also entitled to all the reliefs given in the said Act”. The judgment concludes that “if monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in proceedings under Section 125 of Cr PC” and upheld the claim of maintenance sought on the ground that parties though not married, have lived together for a long period.

---

<sup>3</sup> *Virendra Chanmuniya vs. Chanmuniya Kumar Singh Kushwaha*, Manu/Sc/0807/2010.



This judgment is significant from the point of view of the PWDVA as it draws directly on the relevant provisions from the Act to expand the category of relationships which can legitimately benefit from the maintenance provisions under Section 125 Cr PC, by interpreting the basic social intent<sup>11</sup> and purpose behind both enactments.

### **3.4.2. Residence Order-**

In the case of *Sri Sujoy Kumar Sanyal vs. Shakuntala Sanyal*<sup>4</sup>, the High Court of Calcutta upheld the interim order of residence passed by the lower court in favour of the wife. Dismissing the husband's appeal, the High Court observed that the wife was suffering from various ailments and is entitled, along with her minor daughter, to the care of her husband. The Magistrate's Court has, accordingly, granted her the "right to reside" in the shared household. Such an order is therefore neither illegal nor opposed to public policy, but consistent with the object of this beneficial legislation. The contention of the husband that the impugned order suffers from illegalities as it had been passed *ex parte* was dismissed by the High Court. It was noted that Section 23(2) provides that if the magistrate is satisfied that an application *prima facie* discloses the existence of DV, he may grant an *ex parte* order. The Magistrate has dealt with the matter in a manner specifically provided for by the law by granting temporary relief subject to final disposal and cannot therefore be said to have committed any illegality. The judgment affirmed that temporary "right to reside" in a "shared household" may be granted *ex parte*, if the facts of the case *prima facie* indicate that the woman is in urgent need of such relief.

### **3.5. Conclusion**

From the above analysis it can be inferred that domestic violence is a deep rooted phenomenon which defies all the norms of equality in a civilized society. It is prevalent in society irrespective of economic, educational, religious and caste considerations. It revolves around the patriarchal framework of the society where the

---

<sup>4</sup> Sri Sujoy Kumar Sanyal vs. Shakuntala Sanyal, CRR 1835 of 2010, Manu/WB/0597/2010.

unequal power sharing of relations between two genders tilts the balance in the favour of male gender that enjoys the privileged position despite of age old struggle. The positive intervention by the State from time to time has been a welcome measure but the road is long ahead.

Talking specifically with respect to the welfare legislation tackling domestic violence in particular, as deduced from above, foremostly need an attitudinal change among the society as a whole. The interactions in the field with various governmental officials especially in Agra, revealed a reserved attitude for the awareness of the legislation as they feared for the gross misuse of it. They also blamed the increased professional education leading to economic independence as a factor responsible for the breakdown of family units. One other reason influencing the public perception in the negative direction was the hyperactive role of electronic and print media. The interviews revealed that the media sometimes behave irresponsibly to make minor family disputes into a spicy story of the city. It therefore, makes difficult to solve the dispute by conselling and giving the AP a limelight status which instills a sense of prohibition to compromise and infusing energy to fight her way out. They also complained about the vague and unreasonable questionnaires set up against them by the mushrooming NGOs which bad hampers their day to day functioning.

On the other hand, the APs and their family members, SPs complain about the rigid attitude of the bureaucracy which is happy with its inertia and does not want to come out of its comfort zone. The bureaucracy never opens up with the general public and media. It is always anti to any kind of check mechanism upon it neither finds it accountable to any non governmental agency. This brings the unnecessary tussle between the actors involved in the implementation of the law.

It is therefore, required that all the agencies involved under the law should have a sense of duty and responsibility. They should function in their own spheres without encroaching in each other's areas of work. A cooperative and holistic approach is the need with aim set on eradicating the practices plaguing the society.

## **Conclusion**

The indepth study of the field gave a chance to witness and analyse the problem of domestic violence with varied angles. It gave the opportunity to discover the phenomenon at the grassroot level and revisit the notions and beliefs gathered from the textual knowledge. The interaction with APs, SPs, DPOs, NGOs made certain revelations which were informative as well as learning experience towards the implementation dimension of the PWDVA. On the basis of interviews, reports, records etc. as mentioned in the Chapter 3 following observations and can be made in the direction of effective implementation of this welfare legislation.

### **Observations**

During the field work various methods of appointment of Protection Officers was witnessed. In Agra and nearby areas of Mathura & Firozabad the public servants in government employment have been given additional charge as POs. this very obviously overburdens the already burdened public servant. Due to excessive work pressure, that public servant cannot function successfully as PO and discharge his duty in court. In contract to this, POs in Delhi are appointed on contract basis, often with a qualification in social work. This practice of appointing POs has proved to be quite effective in Delhi but it also has certain limitations attached to it. The POs appointed as contract basis acutely lack the infrastructure required to function well. They are usually placed in the office of nodal departments due to which they have to share office space and lack privacy while interacting with the AP. Besides, they do not have the authority of public servants and are therefore not taken seriously by the courts and police. Poor salaries and inconsistent reimbursement for official expenses are again demotivating factors.

The primary role of POs is to provide information to the AP about her rights & remedies under PWDVA and to record complaints in DIR is the primary duty and basic function of the PO, whether the woman approaches directly or through someone. The DIR is meant to be a record of violence the woman has faced as reported by her to P.O. But unfortunately this function suffers due to lack of clarity with regard to its significance and purpose. While interacting with POs in Delhi as well as in Agra. I came to know that POs do not fill DIR every time a woman

approaches them. They are confused on the purpose of DIR as a record of violence against woman. They misunderstood it as a report to be filled only when a woman is keen to take the case to the court. Interviews with POs in Delhi also revealed their confused state of mind which reflected that DIRs are to be filled when the case goes to the court or on the directions of the court. This came out to be a major lacuna in the reporting and recording of domestic violence cases. Due to the uncertainty of the significance of DIR, lots of cases on domestic violence go unreported.

One other practice that is being noticed is the pre-litigation counseling by POs. This role is nowhere envisaged in the Act for the POs. The POs are required to fill DIR and provide information to the AP about her rights provided by the PWDVA. The role of counseling is required to be done by experts. Therefore, the practice of counseling and settling disputes before filling DIR should be checked strictly.

The role of POs is to bridge the gap between the AP and the courts. He tries to save the AP from the stigma and hardships in directly approaching the police. But this objective sought by the PWDVA is failed when many a times a PO is seen stationed in the police station. It should be clearly understood that POs and police have distinct roles to play and both should function independently for effective implementation of the PWDVA.

The role of SPs under the PWDVA is almost a kin to POs. But in practice, their role is restricted only to counseling. However, in places like Delhi they have been assisting in serving notices, providing legal aid besides their primary role of counseling. There is actually a lack of uniform protocol for their functions which leads to utter confusion.

The role of police even after six years of implementation of the Act is not at all commendable. Police is the first recourse to the victim of domestic violence whether she is aware of the PWDVA or not. Police on the other hand try to mitigate their FIR graphs by counselling and settling cases at police station, without taking appropriate action. Police seldom provide adequate information to the AP regarding her rights under the PWDVA on the contrary continue to discourage her to file a FIR under section 498 (A) IPC. Apart from this, it has been observed that police have been reluctant to heap POs & SPs.

As far as Judiciary is concerned, Section 12 of PWDVA provides a timeline of 60 days for passing of orders from the date of filing of application. But this provision of the Act has not since been complied with in practicality by any court. There is no uniform practice with regard to accepting applications with a DIR by a PO.

Some do, others do not. It is always beneficial to accept applications under section 12 PWDVA without a DIR from a PO. Direct access to courts should be the right of the AP and PO should not be the arbitrary authority to decide who can and who cannot access courts.

Medical facilities (herein after MFS) and Shelter Homes (herein after SHs) have been given a crucial role to play under the PWDVA. But in practice, they are nowhere in the picture. The MFs & SHs face severe funding crises due to which they face shut downs. Section 11 of PWDVA provides for periodical training to stakeholders by the state to sensitize them which is missing barring few exceptions.

Overall gender sensitization of stakeholders is a pivotal issue. In cities like Delhi there is a great shift in the attitudes of stakeholders showing a positive trend. The interviews with POs in Delhi reflect equitable attitudes towards APs whereas in small cities like Agra, POs continue to hold rigid and patriarchal state of mind. The police in small cities continue to discourage APs and have no human rights perspective towards them.

Women are always hampered by the costs of the litigation involved. Though, the PWDVA provides for free legal aid facility to APs but it is shocking there is complete absence of the Legal Services Authority. Therefore, it plays as a dominating limitation in the implementation of the Act.

The legislature enacted PWDVA keeping in mind the delicate nature of domestic violence. The Act involves multi-agency structure giving their due role to POs, SHs, MFs, NGOs, Police. But interviews reveal a complete absence of coordination between these agencies which ultimately end up into a complete chaos. It was shocking in most cases police had no due regarding POs, SHs, and MFs.

Other lacuna in the implementation of PWDVA can be flogged as under. Monitoring and evaluation are essential tools to ensure accountability of the state for effective implementation of the law. State parties to CEDAW are under an obligation to

develop a mechanism for zero tolerance to domestic violence. India despite of being a party, has failed to develop any such mechanism.

Allocation of budgets by the central government is yet another a grey area in the implementation process. The centrally sponsored scheme drafted by New raises the issue of funds loudly.

## **Recommendations**

1. DIR is the most important document under the Act. It is advisable that DIR must be filled in all cases, whether the AP wishes to go to court or not. Judiciary and Nodal Departments must instruct POs for filling DIR in every case so that proper records can be maintained.
2. Nodal departments must issue direction to the POs instructing them to maintain a register to record all meetings with AP and settlement between AP & PO. If the case is pending in the court, the settlement should be recorded in order of the court.
3. SPs provide a deliberate and strengthening link. They should be necessarily appointed by the state so that their services can be availed by the AP.
4. A uniform procedure should be applied all over the country for the appointment of POs. preferably, a public servant should be appointed by the State Government and awarded the class first status. Practice of delegating additional charge should be discouraged.
5. If the POs are appointed on a contractual basis, a proper remuneration should be provided which would replicate in effective discharge of their duties.
6. The POs should not be located in the police stations but in the court premises. This is advisable for the removal for influence of police and confidentiality of conversation between AP & PO.
7. POs should be qualified social workers. An eligibility should be set like a degree in MSW.

8. The role of SPs is not certain yet or the ground. A uniform protocol of their functions should be set up. They should be given the powers to fill DIR.
9. The role of police should be that of a welfare organization. Which instills a sense confidence among the APs, POs, SPs.
10. A good coordination tried to be developed between these agencies for effective implementation of the Act.
11. The Judicial Magistrates receive intensive training under PWDVA and other related laws, to enable them to pass appropriate orders grant reliefs to APs.
12. Section 12 should be applied in letter and spirit.
13. Courts must develop a set of guidelines for granting compensation to women.
14. Judges must be trained as per the international protocols and an exchange programme should be conducted by government of different countries to develop best practices.
15. Judges must develop a human mind set by their decisions so that domestic violence should be taken as a violation of human rights.
16. State must direct nodal departments to organise training camps to increase the level of training and awareness among POs, Police Officers, Judicial Officers and various other stake holders. This training should in particular aim at developing a gender sensitive approach towards the victims of domestic violence.
17. Proper legal knowledge of PWDVA and other related laws like IPC and CrPC is must for all the functionaries and stake holders.
18. Women POs and SPs should be preferred in recruitment so that the AP can feel protected and secure.
19. National Legal Services Authority and State Legal Services Authority must work holistically to provide free legal aid to victims of domestic violence taking into account the weak situation of women in the country.
20. Filling of DIR should be made mandatory to do away with the problem faced in assessing the statistics.
21. Proper budget allocation by the central government must be done.



22. Concerned states must also utilize the funds received and funds generated by them, dividing them under various heads as per the requirement.
23. A proper publicity for the Act should be generated by various models. They can be by newspapers, magazines, by organizing awareness camps, by display of hoarding at public places and especially in schools by organising small workshops.
24. An attitudinal change is need to be inculcated in women who take violence with them as a matter of natural course. The victims are required to charged up and made aware of their rights by virtue of being a human being. A societal change is the need of the hour where a women raising a voice against violence should not suffer social stigma and must not be discouraged at any level. She should be rather taken as an example setting forth a new trend.
25. Lastly, a holistic approach and honest effort is required from all whether government, agencies like Police, judiciary, stakeholders, links POs, SPs and above all a common man to rise against this evil and raise voice whenever or wherever he/she is.

Thus, from above observations and recommendations I conclude that domestic violence is a question mark upon the conscience of a civilized society. India today boasts itself as the forerunner among developing nations. It has created awe among developed nations which look upon it as a super power in Asia. It has proved itself in its technological prowess, its space missions, its domestic values, its cultural diversity to name a few. Women in India have form time to time contributed towards national growth in every sphere of life. Today female population contributes 48.46 % to the total population of India. In terms of human resource, it is almost an equal pool to then. Therefore, it is the duty of state being a welfare state to provide women a congenial environment where they can develop and strengthen themselves and contribute their part towards national growth. Practices like violence against women should be curbed in all forms to strengthen to walk shoulder to shoulder. It is high time; women should be given their due.

## ***BIBLIOGRAPHY***

## PRIMARY SOURCES:

- Annual Report 2008- 2009 by National Commission for Women Available at [www.ncw.nic.in](http://www.ncw.nic.in)
- Annual Report 2009-2010 by National Commission for Women Available at [www.ncw.nic.in](http://www.ncw.nic.in)
- Annual Report 2010-2011 by National Commission for Women Available at [www.ncw.nic.in](http://www.ncw.nic.in)
- Census of India, Ministry of Home Affairs, Government of India. Available at [www.mha.nic.in](http://www.mha.nic.in)
- Laywer’s Collective & The International Centre for Research on Women, “Staying Alive: Third Monitoring & Evaluation Report on Protection of Women from Domestic Violence Act, 2005.”(2009).
- Ministry of Community Development and Society, Report of Public Education Committee on Family (2002). Available on [app.mcys.gov.sg/web/serv\\_reports\\_family.asp](http://app.mcys.gov.sg/web/serv_reports_family.asp).
- The Protection of Women from Domestic Violence Act, 2005. Gazette of India, 17<sup>th</sup> Oct. 2006 Available at [www.gazetteofindia.org](http://www.gazetteofindia.org).
- TISS: The Specific Cell for Women and Children: A Research study in Mumbai, 1996. Available at [www.cedpa.org/publications/specialmumbai.pdf](http://www.cedpa.org/publications/specialmumbai.pdf).
- [www.censusindia.gov.in](http://www.censusindia.gov.in).
- [www.kanoonindia.com](http://www.kanoonindia.com)
- [www.lawyerscollective.org](http://www.lawyerscollective.org)
- [www.mahilaayog.up.nic.in](http://www.mahilaayog.up.nic.in)
- [www.manupatra.com](http://www.manupatra.com)
- [www.ncrb.nic.in](http://www.ncrb.nic.in)
- [www.ncw.nic.in](http://www.ncw.nic.in).

## SECONDARY SOURCES:

- Abdullah, Rashidah (1995). Battered Women in Malaysia: Prevalence, Problems and Public Attitudes. Report Available from WAO Office Kuala Lumpur.
- Agnes, F. (1998). Violence against Women: Review of Recent Enactments in S. Mukhopadhyay, In the Name of Justice, Manohar Publishers and Distributers.
- Altekar,A.S (1991): The Position of Women in Indian Civilization, Motilal Banarasidas, Delhi, 162-63.
- Amirthalingam, Kumaralingam. Women's Rights, International Norms and Domestic Violence: Asian Perspective. Human Rights Quarterly, vol. 24 no. 2 (May, 2005).
- Bard, M and J Zacker. The Prevention of Family Violence: Dilemmas of Community Intervention, Journal of Marriage and the Family, Vol.33,1971.
- Declaration on Elimination of Violence Against Women, General Assembly Res. 48/104, Adopted on 20<sup>th</sup> Dec. 1993, UN GAOR, UN Doc. 1993.
- Dias,Jurisprudence (4<sup>th</sup> Edi.) p.535.
- Domestic Violence edtd by Mangai Natarajan, article by Lawrence W. Sherman.
- Domestic Violence, edited by Mangai Natarajan of John Jay College of Criminal Justice, New York,USA.
- Finesmith, Barbara K. Police Response to Battered Women: A Critique & Proposals for Reform. Seton Hall Review, Vol.14, 1983.
- Hayward, Ruth F. Breaking the Earthenware Jar: Lessons from South Asia to End Violence against Women. New York: UICEF.
- Heise, L.L, Pitanguy, J. and Germaine, A. (1994). Violence against Women: The Hidden Health Burden. Discussion Paper no. 225 pg. 46 Washington D.C.: World Bank.
- Hoyle,C and A Sanders. Police Response to Domestic Violence: form Victim Choice to Victim Empowerment? , Brit J Criminol, Vol 33, 2001.
- Ian Brownlie, Principles of Public International Law, 4<sup>th</sup> ed. Oxford: Claredon Press, 1990.
- Investigating in Gender Equality: Global Evidence and Asia-Pacific Gender Mainstreaming Programme, UNDP in Regional Centre in Colombo, 2008.
- Jane Francis Connors, Violence Against Women in the Family. New York: United Nations, 1989.
- Kothari, Jayana. Criminal Law on Domestic Violence: Promises and Limits. Economic and Political Weekly, vol. 40 no. 46, Nov. 2005.

- Ministry of Community Development and Society, Report of Public Education Committee on Family (2002). Available on [app.mcys.gov.sg/web/serv\\_reports\\_family.asp](http://app.mcys.gov.sg/web/serv_reports_family.asp).
- Preamble to the Universal Declaration of Human Rights, signed on 10 Dec. 1948
- R.Pound, Outlines of Jurisprudence. in Jurisprudence by Mani and Tripathy, Allahabad Law Agency, 2002.
- R.Pound, Social Control Through Law, Extracted in Lloyad's Introduction to Jurisprudence. pp. 578-579.
- Rao, V. (1997). "Wife Beating in Rural South India: A Qualitative and Econometric Analysis". *Social Science and Medicine*, 44(8).
- Rebecca Cook. International Protection of Women's Reproductive Rights. N.Y.U.J. International Law and Pol. 24(1992).
- Sherman, L W and R A Berk. The Specific Deterrent Effects of Arrest for Domestic Assault, *American Sociological Review*, Vol. 49, 1984.
- Stark, E. Mandatory Arrest of Batterers : A Reply to its Critics , Sage, Beverly Hills CA, 1996.
- Thoma, Dorothy Q. & Beasley, Michele E. Domestic Violence as a Human Right Abuse, *Human Rights Quarterly*, Vol. 15, no. 1, Feb. 1993.
- Vimochana. Unnatural Deaths of Women in Marriage: A campaign Diary, Bangalore,1999.
- Visaria, Leela. (1999). Domestic Violence in India. "A Summary Report of Three Studies". International Center for Research on Women: Washington D. C.
- WHO. 1997. "Violence against Women" WHO Consultation. Geneva: WHO.
- Wilson, Elizabeth. The Existing Research into Battered Women. London: National Women's Aid Federation, 1976.

## *Annexures*

## FORM I

[See rule 5(1) and (2) and 17(3)]

### DOMESTIC INCIDENT REPORT UNDER SECTION 9(B) AND 37(2)(C) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 OF 2005)

1. Details of the complainant/aggrieved person:

- (1) Name of the complainant/aggrieved person:
- (2) Age:
- (3) Address of the shared household:
- (4) Present Address:
- (5) Phone number, if any:

2. Details of Respondents:

S.No.	Name	Relationship with the aggrieved person	Address	Telephone No. if any

3. Details of children, if any, of the aggrieved person:

- (a) Number of Children:
- (b) Details of Children:

Name	Age	Sex	With whom at present residing

4. Incidents of domestic violence:

S.No.	Date, place and time of violence	Person who caused domestic violence	Types of violence	Remarks
			Physical violence	
			Causing hurt of any kid, please specify	

<b>(i) Sexual violence</b>				
Please tick mark [✓] the column applicable				
			<input type="checkbox"/> Forced sexual intercourse <input type="checkbox"/> Forced to watch pornography or other obscene, material <input type="checkbox"/> Forcibly using you to entertain others	
			<input type="checkbox"/> Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below):	
<b>(ii) Verbal and Emotional abuse</b>				
			<input type="checkbox"/> Accusation/aspersion on your character or conduct, etc. <input type="checkbox"/> Insult for not bringing dowry, etc. <input type="checkbox"/> Insult for not having a male child. <input type="checkbox"/> Insult for not having any child. <input type="checkbox"/> Demeaning, humiliating or undermining remarks/ statement <input type="checkbox"/> Ridicule. <input type="checkbox"/> Name calling. <input type="checkbox"/> Forcing, you to not attend school, college or any other educational institution. <input type="checkbox"/> Preventing you from taking up a job. <input type="checkbox"/> Preventing you from leaving the House. <input type="checkbox"/> Preventing you from meeting any particular person. <input type="checkbox"/> Forcing you to get married against your will. <input type="checkbox"/> Preventing you from marrying a person of your choice. <input type="checkbox"/> Forcing you to marry a person of his/their own choice. <input type="checkbox"/> Any other verbal or emotional abuse. (please specify in the space provided below)	
<b>(III) Economic violence</b>				
			<input type="checkbox"/> Not providing money for maintaining you or your children. <input type="checkbox"/> Not providing food, clothes, medicine,	



			<p>etc., for you or your children.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Forcing you out of the house you live in.</li> <li><input type="checkbox"/> Preventing you from accessing or using any part of the house.</li> <li><input type="checkbox"/> Preventing or obstructing you from carrying on your employment.</li> <li><input type="checkbox"/> Not allowing you to take up an employment.</li> <li><input type="checkbox"/> Non-payment of rent in case of a rented accommodation</li> <li><input type="checkbox"/> Not allowing you to use clothes or articles of general household use.</li> <li><input type="checkbox"/> Selling or pawing your stridhan or any other valuables without informing you and without your consent.</li> <li><input type="checkbox"/> Forcibly taking away your salary, income or wages etc.</li> <li><input type="checkbox"/> Disposing your <i>stridhan</i></li> <li><input type="checkbox"/> Non-payment of other bills such as electricity, etc.</li> <li><input type="checkbox"/> Any other economic violence (please specify in the space provided below)</li> </ul>	
<b>(iv) Dowry related harassment</b>				
			<ul style="list-style-type: none"> <li><input type="checkbox"/> Demands for dowry made, please specify</li> <li><input type="checkbox"/> Any other detail with regard to dowry, please specify.</li> </ul> <p>Whether details of dowry items, stridhan, etc. attached with the form</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Yes</li> <li><input type="checkbox"/> No</li> </ul>	
<b>(v) any other information regarding acts of domestic violence against you or your children</b>				

*(Signature or thumb impression of the complainant/aggrieved person)*

5. List of documents attached

Name of document	Date	Any other detail
Medico legal certificate		
Doctor's certificate or any other prescription		
List of <i>Stridhan</i>		
Any other document		

6. Order that you need under the Protection of Women from Domestic Violence Act, 2005.

S.No.	Orders	Yes/No	Any other
(1)	Protection order under section 18		
(2)	Residence order under section 19		
(3)	Maintenance order under section 20		
(4)	Custody order under section 21		
(5)	Compensation order under section 22		
(6)	Any other order (specify)		

7. Assistance that you need

S.No.	Assistance available	Yes/No	Nature of assistance
(1)	(2)	(3)	(4)
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceedings		
(4)	Shelter home		
(5)	Medical facilities		
(6)	Legal aid		

8. Instruction for the Police officer assisting in registration of a Domestic Incident Report:

Wherever the information provided in this Form discloses an offence under the Indian Penal Code or any other law, the police officer shall—

- (a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974). '
- (b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.
- (c) if any physical injury or pain being reported by the aggrieved; person, offer immediate medical assistance and get the aggrieved person medically examined.

Place:

Date:

(Counter signature of Protection  
Officer/Service provider)

Name:

Address:

(Seal)

Copy forwarded to:—

1. Local Police Station
2. Service Provider/Protection Officer
3. Aggrieved person
4. Magistrate

**FORM II**  
**[See rule 6(1)]**  
**APPLICATION TO THE MAGISTRATE UNDER SECTION 12**  
**OF THE PROTECTION OF WOMEN FROM DOMESTIC**  
**VIOLENCE ACT, 2005 (43 OF 2005)**

To,

The Court of Magistrate

.....  
.....  
.....  
.....

Application under  
section.....  
of the Protection of  
Women from Domestic  
Violence Act, 2005 (43 of  
2005)

**SHOWETH:**

1. That the application under section.....of Protection of Women from Domestic Violence Act, 2005 is being filed alongwith a copy °of Domestic Incident Report by the:—
  - (a) Aggrieved person
  - (b) Protection Officer
  - (c) Any other person on behalf of the aggrieved person(tick whichever is applicable)
2. It is prayed that the Hon'ble court may take cognizance of the' complaint/Domestic Incident Report and pass all/any of the orders, as deemed necessary in the circumstances of the case,
  - (a) Pass protection orders under section 18 and/or
  - (b) *Pass residence* orders under section 19 and/or
  - (c) Direct the respondent to pay monetary relief under section 20 and/or
  - (d) Pass orders under section 21 of the Act and/or
  - (e) Direct the respondent to grant compensation or damages under section 22 and/or
  - (f) Pass such interim orders as the court deem just and proper;
  - (g) Pass any orders as deems fit in the circumstances of the case.

3. Orders *required*: (i) Protection Order under section 18

- Prohibiting acts of domestic violence by granting an injunction against the Respondents from repeating any of the acts mentioned in terms of column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application
- Prohibiting Respondent(s) from entering the school/college/ workplace
- Prohibiting from stopping you from going to your place of employment
- Prohibiting Respondent(s) from entering the school/college/ any other place of your children
- Prohibiting from stopping you from going to your school
- Prohibiting any form of communication by the Respondent with you
- Prohibiting alienation of assets by the Respondent
- Prohibiting operation of joint bank lockers/accounts by the Respondent and allowing the aggrieved person to operate the same
- Directing the Respondent to stay away from the dependants/relatives/any other person of the aggrieved person to prohibit violence against them
- Any other order, please specify

(ii) Residence Order under section 19

- An order restraining Respondent(s) from
  - Dispossessing or throwing me out from the shared household
  - Entering that portion of the shared household in which I reside
  - Alienating/disposing/encumbering the shared household
- Renouncing his rights in the shared household
- An order entitling me continued access to my personal effects
- An order directing Respondent(s) to
  - Remove himself from the shared household
  - Secure same level of alternate accommodation or pay rent for the same
- Any other order, please specify

(iii) Monetary reliefs under section 20

- Loss of earnings, Amount claimed
- Medical expenses, Amount claimed
- Loss due to destruction/damage or removal of property from the control of the aggrieved person,  
 Amount claimed
- Any other loss or physical or mental Injury as specified in clause 10(d)  
 Amount claimed
- Total amount claimed
- Any other order, please specify

(iv) Monetary reliefs under section. 20

- Directing the Respondent to pay the following expenses as monetary relief:
  - Food, clothes, medications and other basic necessities,  
Amount  per month
  - School fees and related expenses Amount  per month
  - Household expenses Amount  per month
  - Any other expenses Amount  per month
  - Any other order, please specify

(v) Custody Order under section 21

Direct the Respondent to hand over the custody of the child or children to the—

- Aggrieved Person
- Any other person on her behalf, details of such person

(vi) Compensation order under section 22

(vii) Any other order, please specify

4. Details of previous litigation, if any

- (a)  Under the Indian Penal Code, section..... Pending in the court of   
 Disposed off, details of relief
- (b)  Under Cr. P.C., sections.....Pending in the court of   
 Disposed of, details of relief
- (c)  Under the Hindu Marriage Act. 1956. sections.....Pending  
in the court of   
 Disposed off, details of relief
- (d)  Under the Hindu Adoptions and Maintenance Act, 1956.  
sections.....Pending in the court of   
 Disposed off, details of relief |
- (e)  Application for maintenance, under section.....under   
Interim maintenance Rs. p.m.  
Maintenance granted Rs. p.m.
- (f)  Whether Respondent was sent to Judicial Custody.  
 For less than a week  
 For less than a month  
 For more than a month  
Specify period
- (g) Any other order

Prayer:

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to grant the reliefs) claimed therein and pass such order or orders other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the interest of justice.

Place:

Dated:

Complainant/Aggrieved person through

Counsel

**VERIFICATION**

Verified at.....(place) on this day, of.....that the contents of paras 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Deponent

Counter signature of Protection Officer with date.



## Record of Cases with DPO in Agra

घरेलू हिंसा से महिलाओं का संरक्षण प्रगति विवरण

जनपद – आगरा

कार्यालय संस्था का नाम – जिला प्रोबेशन अधिकारी, आगरा।

वर्ष-2007

क्र०सं०	माह का नाम	माह के प्रारम्भ में लम्बित मामले	माह में पंजीकृत मामले	योग	माह में निस्तारित मामले	माह के अन्त में शेष	न्यायालय में पेश किये गये मामले	संरक्षण अधिकारी द्वारा विनिश्चित मामले	माह के अन्त में शेष
01	जनवरी, 2007	00	00	00	00	00	00	00	00
02	फरवरी, 2000	00	00	00	00	00	00	00	00
03	मार्च, 2007	00	00	00	00	00	00	00	00
04	अप्रैल, 2007	00	00	00	00	00	00	00	00
05	मई, 2007	00	00	00	00	00	00	00	00
06	जून, 2007	00	00	00	00	00	00	00	00
07	जुलाई, 2007	00	00	00	00	00	00	00	00
08	अगस्त, 2007	00	00	00	00	00	00	00	00
09	सितम्बर, 2007	00	00	00	00	00	00	00	00
10	अक्टूबर, 2007	00	02	02	02	00	02	02	00
11	नवम्बर, 2007	00	00	00	00	00	00	00	00
12	दिसम्बर, 2007	00	00	00	00	00	00	00	00
योग-		0	2	02	02	0	02	02	0

जिला प्रोबेशन अधिकारी  
आगरा।

वर्ष-2008

क्र०सं०	माह का नाम	माह के प्रारम्भ में लम्बित मामले	माह में पंजीकृत मामले	योग	माह में निस्तारित मामले	माह के अन्त में शेष	न्यायालय में पेश किये गये मामले	संरक्षण अधिकारी द्वारा विनिश्चित मामले	माह के अन्त में शेष
01	जनवरी, 2008	00	02	02	02	00	02	02	00
02	फरवरी, 2008	00	18	18	18	00	18	18	00
03	मार्च, 2008	00	07	07	07	00	07	07	00
04	अप्रैल, 2008	00	06	06	06	00	06	06	00
05	मई, 2008	00	21	21	21	00	21	21	00
06	जून, 2008	00	18	18	18	00	18	18	00
07	जुलाई, 2008	00	31	31	31	00	31	31	00
08	अगस्त, 2008	00	30	30	30	00	30	30	00
09	सितम्बर, 2008	00	36	36	36	00	36	36	00
10	अक्टूबर, 2008	00	26	26	26	00	26	26	00
11	नवम्बर, 2008	00	20	20	20	00	20	20	00
12	दिसम्बर, 2008	00	00	00	00	00	00	00	00
योग-		0	215	215	215	0	215	215	0

जिला प्रोबेशन अधिकारी  
आगरा।

वर्ष-2009									
क्र०स०	माह का नाम	माह के प्रारम्भ में लम्बित मामले	माह में पंजीकृत मामले	योग	माह में निस्तारित मामले	माह के अन्त में शेष	न्यायालय में पेश किये गये मामले	संरक्षण अधिकारी द्वारा विनिश्चित मामले	माह के अन्त में शेष
01	जनवरी, 2009	00	08	08	08	00	08	08	00
02	फरवरी, 2009	00	25	25	25	00	25	25	00
03	मार्च, 2009	00	08	08	08	00	08	08	00
04	अप्रैल, 2009	00	16	16	16	00	16	16	00
05	मई, 2009	00	19	19	19	00	19	19	00
06	जून, 2009	00	15	15	15	00	15	15	00
07	जुलाई, 2009	00	15	15	15	00	15	15	00
08	अगस्त, 2009	00	21	21	21	00	21	21	00
09	सितम्बर, 2009	00	03	03	03	00	03	03	00
10	अक्टूबर, 2009	00	23	23	23	00	23	23	00
11	नवम्बर, 2009	00	19	19	19	00	19	19	00
12	दिसम्बर, 2009	00	11	11	11	00	11	11	00
योग-		0	184	184	184	0	184	184	0

जिला प्रोबेशन अधिकारी  
आगरा।

वर्ष-2010

क्र०सं०	माह का नाम	माह के प्रारम्भ में लम्बित मामले	माह में पंजीकृत मामले	योग	माह में निस्तारित मामले	माह के अन्त में शेष	न्यायालय में पेश किये गये मामले	संरक्षण अधिकारी द्वारा विनिश्चित मामले	माह के अन्त में शेष
01	जनवरी,2010	00	24	24	24	00	24	24	00
02	फरवरी,2010	00	20	20	20	00	20	20	00
03	मार्च,2010	00	25	25	25	00	25	25	00
04	अप्रैल,2010	00	39	39	39	00	39	39	00
05	मई,2010	00	23	23	23	00	23	23	00
06	जून,2010	00	24	24	24	00	24	24	00
07	जुलाई,2010	00	43	43	43	00	43	43	00
08	अगस्त,2010	00	27	27	27	00	27	27	00
09	सितम्बर,2010	00	25	25	25	00	25	25	00
10	अक्टूबर,2010	00	21	21	21	00	21	21	00
11	नवम्बर,2010	00	33	33	33	00	33	33	00
12	दिसम्बर,2010	00	32	32	32	00	32	32	00
योग-		0	336	336	336	0	336	336	0

जिला प्रोवेशन अधिकारी  
आगरा।



वर्ष-2011

क्र०सं०	माह का नाम	माह के प्रारम्भ में लम्बित मामले	माह में पंजीकृत मामले	योग	माह में निस्तारित मामले	माह के अन्त में शेष	न्यायालय में पेश किये गये मामले	संरक्षण अधिकारी द्वारा विनिश्चित मामले	माह के अन्त में शेष
01	जनवरी,2011	00	25	25	25	00	25	25	00
02	फरवरी,2011	00	31	31	31	00	31	31	00
03	मार्च,2011	00	31	31	31	00	31	31	00
04	अप्रैल,2011	00	27	27	27	00	27	27	00
05	मई,2011	00	25	25	25	00	25	25	00
06	जून,2011	00	36	36	36	00	36	36	00
07	जुलाई,2011	00	40	40	40	00	40	40	00
08	अगस्त,2011	00	23	23	23	00	23	23	00
09	सितम्बर,2011	00	39	39	39	00	39	39	00
10	अक्टूबर,2011	00	37	37	37	00	37	37	00
11	नवम्बर,2011	00	44	44	44	00	44	44	00
12	दिसम्बर,2011	00	25	25	25	00	25	25	00
योग-		0	383	383	383	0	383	383	0

  
 जिला प्रोवेशन अधिकारी  
 आगरा।