

## Promoting the rights of women against domestic violence: An incomplete scheme

Utkarsh Shara\*, Nilimesh Sen

BA LLB (Hons), School of Law, Manipal University Jaipur, Jaipur, Rajasthan, India.

### Abstract

Domestic violence is not a child of today's era but is a bad evil that had been present since centuries. Government of India has taken numerous measures to protect the rights of women and to maintain the equality before law by passing various Special laws and introducing various Schemes empowering them to live their life with dignity, but even today the government is unable to execute these laws as there're women who are unaware about their rights provided by various special laws and are still being exploited by her husband and family members. Sociological/behavioural, historical, religious and cultural factors play a crucial role in aiding the commission of violence against women, thus acting as a barrier for the legislature to execute these laws causing delay to render justice. In a patriarchal society where male dominance and superiority complex prevail over freedom and liberty of women, then the thought of living life with dignity and integrity has no existence. Hon'ble Supreme Court by its various judgments widened the scope of rights conferred under various special and local laws trying to control the commission of violence against women making society a better place to live.

**Keywords:** domestic violence, sociological, behavioural, freedom and liberty of women

### Introduction

The definition of violence has evolved over the years to an extent that it not only includes physical forms of violence but also emotional, mental, financial, and other forms of cruelty. Domestic means a marital relationship, cohabitation of persons, relating to the Home, Household affairs, or the family and violence means any kind of physical/psychological harm or injury caused by one person on another by using any kind of force. Thus, the term Domestic Violence comprises of the acts that harm or endangers the health, safety, life, limb, or wellbeing (mental or physical) of the victim, or gravitate, which shall include causing: physical abuse, sexual abuse, verbal abuse, emotional abuse, and economic abuse, perpetrated by any person who is or was in a domestic relationship with the victim.<sup>[1]</sup>

Years have been elapsed since the Domestic Violence Act, 2005 has been passed but still there are many women in India who do not have knowledge about the rights that are been conferred under this "Act" resulting in non-reporting of crimes committed. Even there are many women who never report cases against their husband or relatives of husband due to dread of depreciating the esteem in the society even they are sometimes scared of being ostracized by their own.

The intent of the legislatures behind passing of this legislation was "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>[2]</sup> but still after 15 years the objective of the 2005 Act was not attained as there are woman in India who are unaware about the rights conferred by this Act resulting in

delay of justice.

### Statistics

According to the National Crime Records Bureau the Crime against women has been increased by 27.88% between 2011 to 2019. These crime has continuously increased during 2011-2019 with 1,14,372 cases in 2011, which further increased to 1,23,798 cases in 2012 and 1,37,658 cases in 2013, to 1,41,808 cases in 2014 which declined to 1,31,392 cases in 2015, further declined to 1,24,082 cases in 2016, to 1,22,822 cases in 2017 then again we can see an increase in cases to 1,23,843 in 2018 and to 1,46,263 cases in 2019.

**Table 1:** IPC and Special and Local Laws Crime against Women (Crime Head Wise) 2011-2018<sup>[3]</sup>

Sl. No.	Year	Dowry Death	Cruelty by husband or his relative	Dowry Prohibition Act	Protection of Women from Domestic Violence Act	Total
	2011	8,618	99,135	6,619	--	1,14,372
	2012	8,233	1,06,527	9,038	--	1,23,798
	2013	8,083	1,18,866	10,709	--	1,37,658
	2014	8,455	1,22,877	10,050	426	1,41,808
	2015	7,634	1,13,403	9,894	461	1,31,392
	2016	7,621	1,06,341	9,683	437	1,24,082
	2017	7,466	1,04,551	10,189	616	1,22,822
	2018	7,166	1,03,272	12,826	579	1,23,843
	2019	7,115	1,25,298	13,297	553	1,46,263

### Reasons of domestic violence in India

As there is no uniform or single reason, therefore, a sequence of various religious, cultural, historical,

<sup>1</sup> Shubhodip Chakraborty, & Devika. (2020, July 27). Law on Domestic Violence [Protection of Women from Domestic Violence Act, 2005]. Retrieved September 15, 2020, from <https://www.sconline.com/blog/?p=232900>

<sup>2</sup> Protection of Women from Domestic Violence Act, 2005

<sup>3</sup> Data has been collected from this website from 2011 to 2019, National Crime Record Bureau (2020), [https://ncrb.gov.in/en/crime-in-india-table-additional-table-and-chapter-contents?field\\_date\\_value\[value\]&year\]=&field\\_select\\_table\\_title\\_of\\_crim\\_value=5&items\\_per\\_page=All](https://ncrb.gov.in/en/crime-in-india-table-additional-table-and-chapter-contents?field_date_value[value]&year]=&field_select_table_title_of_crim_value=5&items_per_page=All) (last visited Oct 24, 2020).

sociological/behavioural factors result in commission of Domestic Violence.

1. **Sociological/Behavioural Factors:** Elements like contentious attitude, gender inequality, financial instability, status inequality, dominating nature, drug addiction, psychological instability, alcohol consumption and gambling are the main reasons for the commission of Domestic Violence. Laxity of conjugal obligations due to adultery or paucity of trust also gear up the violence in domestic relationship.
2. **Historical Factors:** During Rig Vedic period women were positioned to be equal to men but later it was deteriorated in Vedic Civilization where the daughters were started to be considered as a curse. Factors like inherent evil of patriarchy and superiority complex was found among men that had prevailed for centuries and is still in existence.
3. **Religious Factors:** Though not direct and glaring there are many religious practises which are been followed by different religions oppressing the rights of women which somehow causes perpetration of force or violence against women. Still there are many common religious practices which are been followed in India like 'Pardha system' which deteriorates the freedom of Women.
4. **Customs and Usages:** Increase in violence against women include the crave for a male child which is being in practise since Kings rule. India is a country where customs and usages were given more importance, hence various rituals can only be done by son resulting in need of male child. This obsession resulting from the dearth of awareness and inherent male superiority ends up in perpetration of violence against women.

### Other Factors

#### Role of Education

In rural India girls are still less educated than boys and are more vulnerable to Domestic Violence than those who have completed a basic level of education or had attained a college degree. As per 2011 Census of India <sup>[4]</sup> Female literacy rate is 64.64% in comparison with 80.89% that of males. In rural areas, girls are still not allowed to complete the good quality of education by not sending them to private schools which differs from that of boys. Another risk element correlated with domestic violence is the disparity between education, income, or occupational status between partners.

Lack of education is additionally a risk factor associated with perpetrators of domestic violence. Most research that has concentrated on education as a risk factor has determined that males with less levels of education than their spouse are more likely to be Domestic Violence offenders than those with an identical level of education. Education is a very beneficial apparatus in contemporary society.

The level of formal education a person attains will generally determine the standard level of lifestyle he or she will be able to lead and what level of income he or she will be able to earn.

#### Role of Income Level

Another common risk factor related with violence against women is income level, and it is easy to determine how it is related with the educational risk factor. The less formal education an individual has, the less likely he or she is to earn competitive wages. In a cut throat job market, those with higher education and work-related experience will be at an advantage of being employed first. Those with less formal education are expose to lower-paying jobs or, even worse, unemployment. This may lead to a situation of dependency for those with lower level education if they are prone to earn less income and may not be able to support themselves or their children on their own. The lack of education and strained income provides the wrongdoer with an upper hand in feeding upon the victim's vulnerability. Many victims of violence against women never raise their voice due to feelings of necessity. The victim has often been isolated from friends and family by the wrongdoer, and this uneven financial arrangement further fuels her sense of dependency and unwillingness to quit.

#### Male Dominance

According to Supreme law of the land, women are legal citizens of the country and have equal rights as that of men. Due to lack of acceptance from the male dominant society, Indian women endure excessively. Women are accountable for baring children, yet they are emaciated and are having poor health. Women are overburdened within the field and are also required to complete all of the household work. Most Indian women are uneducated. Although the country's Constitution says women have equal status to men, still women are powerless and are mistreated inside and outside the home. The position enjoyed by women in Rig Vedic period deteriorated in later Vedic Civilization. A daughter began to be treated as a curse. All moral and social rules framed by male dominant society not only ignored their identity, individuality and integrity of women but also various evil and inhuman practices were forced upon them in the name of custom. The scholastic counterpart of the Vedic ages was steadily reduced to mere household grind and this drive Indian society into abysmal obscurity.

#### Gender gap

In India, men are always given more importance than that of women for reasons associated with blood relationship, family pedigree, legacy, identity, status, and financial security that leads to caste and class discrimination against girls which sometimes grows to such an extent that it takes the shape of honor killing where daughter and daughter-in-law who fails to comply with gender expectation norms about marriage and sexuality where killed by their own family members. If she does not agree with the gender expected norms then she will be questioned about her ability to marry and continued to get humiliated by the society which indirectly impact her family's esteem. Even in today's scenario the right to succeed family's legacy and ancestral property is an exclusive right of a son as they are viewed as an additional asset for the family as they provide financial stability. Many spiritual practices can only be performed by male after the demise of his parents making son more preferable over daughter. Moreover, the parents anticipate the likelihood of losing their child to her in-law's house when she gets married and to fulfil the stipulation of expensive dowry which further discourage the parents from

<sup>4</sup> Government of India C. (2011). Census of India 2011. Retrieved October 1, 2020, from [https://censusindia.gov.in/2011census/censusin\\_fodash/board/index.html](https://censusindia.gov.in/2011census/censusin_fodash/board/index.html)

having daughters. Gender inequality is a historic worldwide phenomenon, an individual's invention which is backed up by gender assumptions. Therefore, we are of view that the rules of blood relation and gender norms are rooted in various customs and usages that are still practised in India, thus playing a key role in deciding the status of human relations and their social life which stabs the lifestyle of women in social strata.

### **Rights available to women under domestic violence act, 2005**

There is an increase in the growth rates of crimes committed under the Act of 2005 and one of the biggest reasons behind this growth is due to lack of awareness. There are many women in India who are not aware about the rights that are available to them under '2005, Act' and are still being exploited by their husbands and relatives of the husbands, therefore, not able to get justice against those acts. Hence, listed below are some of the basic rights which a woman should be aware of to save themselves from being exploited:

### **Rights conferred under the sections of the act**

#### **Section 12: Right to file a case before the magistrate**

Any aggrieved woman who is in a domestic relationship and is a victim of domestic violence has a right to file a complaint against the perpetrator. This section has a widened scope in relation to the complainant where it confers right to file a complaint by any person on behalf of victimized women.

Any woman comes under the ambit of aggrieved person if she is in a domestic relationship with the perpetrator who causes any kind of harm or injury (physically or mentally). The very motive of this Act is to protect woman who are living in the shared household with persons having relations as follows:

1. Blood relationships: Mother and son, father and daughter, sister and brother, widows.
2. If there is marriage, then between husband and wife, relation between daughters-in-law with father-in-law, mother-in-law along with other family members, relation between sister-in-law with other family members and widow's relation with other family members.
3. In case of Adoption then relationship between adopted daughter and father.
4. Relationships which has similar nature as that of marriage: partners who are in a live-in-relationships and legally invalid marriage i.e. bigamy.

#### **Section 17: Right to reside in a shared household <sup>[5]</sup>**

“(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

In *Satish Chander Ahuja v. Sneha Ahuja*<sup>[6]</sup> Hon'ble Apex Court is of considered opinion that “*shared household*

*referred to in Section 2(s) is the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent*”. Hon'ble Court is of view that “*the definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. The respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household*”.

In case of *Navneet Arora vs Surender Kaur & Ors.* <sup>[7]</sup> The Hon'ble Delhi High Court held that “*Navneet never left the joint family house. She was residing in the house when her husband died. She continued to reside there even till today. Under the circumstances her right to residence in the suit property cannot be denied, and as regards issues of title, we have already observed that the right of residence under the Protection of Women from Domestic Violence Act, 2005, the same would have no bearing. She may enforce it in civil proceedings. But her right of residence in the shared household cannot be negated*”

1. **Protection order:** As per Section 18 of the Domestic Violence Act, 2005 the Magistrate if convinced that the crime is committed against the female victim then it can pass an order restricting the perpetrator from continuing any violence against woman even levying the restriction on the abuser from visiting the place of employment or any type of communicate with the aggrieved person or causing any act that harms or injures the dependants, relatives or any other person who provide assist to the aggrieved person.
2. **Residence order:** As per Section 19 of the 2005 Act the magistrate by passing a residence order can restrained the abuser from dispossessing or disturbing the possession of the victim from the share households as well as alienating or disposing or encumbering the shared household and from invading in any part of the share household where the victim resides. The abuser may also be directed by the magistrate to return the possession of the victim's “stridhan” or any of her titled estate or valuable security. The Victim has a right to claim for similar place of accommodation as compared to the shared household or to pay rent for the same. Even an order can be passed by the magistrate directing the officer in charge of the nearest police station to protect and assist the victim or any other person presenting the application for the execution on behalf of aggrieved person
3. **Monetary reliefs:** As per Section 20, the Magistrate on commission of any Act related to the Domestic Violence can pass an order of monetary relief directing the abuser to pay the expenses incurred and losses suffered by the victim or her children which includes, loss of any type of income, pharmaceutical costs or any other damage incurred due to the dispossession of any property of the aggrieved person along with the maintenance for herself and her children, In case of non-payment of such monetary amount the magistrate

<sup>5</sup> Protection of Women from Domestic Violence Act, 2005

<sup>6</sup> 2020 SCC OnLine SC 841

<sup>7</sup> 2014 SCC OnLine Del 7617

may direct the employer or any debtor of the abuser to directly pay to the aggrieved person, which can be adjusted in future.

4. **Custody orders:** As per Section 21 the Magistrate may pass an order giving the custody of the child or the children to the victim till the disposal of the said application and that the abuser can be allowed to visit them unless the court finds that the visits can be harmful for the child or the children.
5. **Compensation orders:** As per Section 22, the Magistrate can pass an order on an application filed by the victim directing the perpetrator to pay compensation for causing any type of harm or injury which includes mental torture and emotional distress along with the other relief conferred under this Act.

### Rights Conferred by Way of Judicial Precedents

**Against whom cases can be filed:** - According to Hon'ble Supreme Court recent judgments the aggrieved person now has a right of filing a case not only against an adult male but also against a female.

In *Hiral P. Harsora and Ors V. Kusum Narottamdas Harsora and Ors.*<sup>[8]</sup> the Hon'ble Apex Court widened the scope of the Act by deleting the words "adult male" from the provisions under section 2(q) considering the "remedies under 2005 Act available even against a female member and also against non-adults, thus restricting perpetrators of violence against women actionable under 2005 Act to only "adults male person" fails the test of reasonable classification".

In *Ajay Kumar v. Lata*<sup>[9]</sup> "Justice Dr. Dhananjaya Y. Chandrachud and Justice Hemant Gupta held in this judgment that an aggrieved wife or a female living in a relationship in the nature of marriage may file a case against not just her husband or male partner, but may also seek protection against a family member or a relative of the husband or the male partner, under the provisions of section 2(Q) of the Protection of Women from Domestic Violence Act, 2005."

Right of Maintenance can be claimed by a woman even if she is well qualified to sustain her life: - Every aggrieved woman under this Act has a right to claim for maintenance from the respondent for the purpose of sustaining herself even if she is a well-qualified person.

In *Binita Dass v. Uttam Kumar*<sup>[10]</sup> "Justice Sachdeva of the Hon'ble Delhi High Court passed an order stating that a wife who is domestically violated by her husband may not be denied interim maintenance by a Magistrate on grounds that she is a self-sufficient qualified person and has the capacity to earn. She must be granted compensation regardless of her abilities to sustain her own self."

Any woman who is in live-in relationship or is an Estranged wife may invoke the provisions of this Act: - Any woman who is an aggrieved person has a right to claim relief even if she is married or not, this "Act" has not only conferred rights to the married women but also to those who are not legally married and in live-in relationship.

In *Lalita Toppo v. State of Jharkhand & Anr.*<sup>[11]</sup> "the Hon'ble Apex Court is of consideration that under the provision of DVC Act, 2005 the victim i.e. estranged wife

or live-in partner would be entitled to more relief than what is contemplated under Section 125 of the Code of Criminal Procedure, 1973, namely to be a shared household also".

In *D. Veluswamy v. D. Patchaiammal*<sup>[12]</sup> Hon'ble Supreme Court is of the view that, "the term "Aggrieved Person" was given a wider meaning under Section 2(a) of the Domestic Violence Act by the Supreme Court, where the Court stated the basic five ingredients which is necessary to prove the live-in relationship:

1. Both the husband and wife should be of legal age to be in a live-in relationship.
2. They should behave like husband and wife and they should be recognised as husband and wife by the society.
3. Both of them are either living together or lived together in a shared household.
4. They should fulfil the requisites of a valid marriage.
5. Both the partners should have cohabited with consent for a reasonable period of time."

### Conclusion

Violence against women is a global and multifaceted phenomenon and is the on-going human right challenge faced by the majority of women in today's world. Speaking against violence is one of the most arduous part encounter by a woman, but in order to eliminate violence from the society and to get a dignified place, they need to fight for it. The regime of protecting a woman should initiate from each and every house because if a woman doesn't feel safe in her own house then she can't be expected to feel safe anywhere in the society. Majority of women have no idea about what acts of husband or his family members that comes under the ambit of violence or crime, thus infringing their very Fundamental Rights. Even after 15 years since the legislation was passed, as per the data recorded by National Crime Records Bureau the crime rate had increased rapidly and if not controlled within reasonable time then it will lead to a greater loss to society. Article 21A of the Indian Constitution was inserted under Article 21 through 1986 amendment where the intent of the legislatures was to provide a minimum level of education for the children aged 6 to 14 years as Right to life and dignity cannot be assured unless it goes along with Right to Education. Therefore, Education acts like a tool to eliminate violence against women from the society as it makes them aware about the rights available to them under different laws.

### References

1. Shubhodip Chakraborty, Devika. Law on Domestic Violence [Protection of Women from Domestic Violence Act, 2005]. Retrieved, 2020. from <https://www.scconline.com/blog/?p=232900>
2. Protection of Women from Domestic Violence Act, 2005
3. Data has been collected from this website from 2011 to 2019, National Crime Record Bureau, 2020. [https://ncrb.gov.in/en/crime-in-india-table-additional-table-and-chapter-contents?field\\_date\\_value\[value\]\[year\]=&field\\_select\\_table\\_title\\_of\\_crim\\_value=5&items\\_per\\_page=All](https://ncrb.gov.in/en/crime-in-india-table-additional-table-and-chapter-contents?field_date_value[value][year]=&field_select_table_title_of_crim_value=5&items_per_page=All) (last visited Oct 24, 2020).
4. Government of India C. Census of India 2011. Retrieved, 2011. October 1, 2020, from <https://census>

<sup>8</sup> (2016) 10 SCC 165

<sup>9</sup> (2019) 15 SCC 352

<sup>10</sup> (2019) 262 DLT 368; (2019) SCC OnLine Del 9666

<sup>11</sup> (2019) 13 SCC 796; (2019) 4 SCC (Cri) 701

<sup>12</sup> (2010) 10 SCC 469; (2011) 1 SCC (Cri) 59

- India. gov.in/2011census/ censusin fodash board/ index.html
5. Protection of Women from Domestic Violence Act, 2005.
  6. SCC On Line SC 841, 2020.
  7. SCC On Line Del 7617, 2014.
  8. 10 SCC 165, 2016.
  9. 15 SCC 352, 2019.
  10. 262 DLT 368: (2019) SCC OnLine Del 9666 , 2019.
  11. 13 SCC 796: (2019) 4 SCC (Cri) 701, 2019.
  12. 10 SCC 469: (2011) 1 SCC (Cri) 59, , 2010.