



## Protection of Women From Domestic Violence and Judicial Dynamism

### KEYWORDS

Domestic violence, Women, Judiciary

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**ABSTRACT** *Over the last two decades, domestic violence has emerged as one of the most serious problem faced by women in India. They are experiencing physical and psychological violence not only from their in-laws but also often from their intimate partner. After a long struggle the Protection of Women from Domestic Violence Act, 2005 was passed by the parliament which came into force w.e.f. 17th October, 2006. This Act is considered to be the first significant attempt in India to recognise domestic abuse as a punishable offence. This article intends to highlight the important provisions meant for the protection of women from domestic violence and the views of the judiciary in this regard.*

### INTRODUCTION

The Constitution of India recognises equality of sexes and contains various provisions for promoting the dignity of women and prohibits any kind of exploitation and discrimination against women. Besides the Constitution, Indian society also tries to protect women from various kinds of violence and harassment through certain civil and penal remedies. But the domestic violence is a special kind of violence committed against the women within the four walls of the house and is thought to be more than a crime involving serious human rights issues. The term 'domestic violence' generally refers to violence by one partner in an intimate relationship abuses the other. It is an act or conduct which has potential to injure or hurt women – physically, mentally, emotionally, socially and also spiritually within the four walls of the house, and such an act or conduct is done generally not by strangers. It usually involves the infliction of bodily injury, accompanied by verbal threats and harassment, emotional abuse or the destruction of property as means of coercion, control, revenge or punishment, on a person with whom the abuser is involved in an intimate relationship. That's why women feel reluctant very often to complain against those whom they consider to be very near and dear and part of their family.

In this background, various women's organisations demanded to have a special law to deal with domestic violence. The demand was to have a comprehensive law on the subject. After a long struggle the Act was passed by the parliament in August, 2005 and assented to by the President of India on 13<sup>th</sup> September, 2005, but it came into force w.e.f. 17<sup>th</sup> October, 2006.

### PROTECTION OF WOMEN UNDER DOMESTIC VIOLENCE ACT, 2005

The Protection of Women from Domestic Violence Act, 2005 is the first significant attempt in India to recognise domestic abuse as a punishable offence. Prior to the passing of this Act, for the protection of women, there were only provisions relating to violence in matrimonial relationship, particularly dowry related violence, which remained the focus of the women's movements as well as that of legislative institutions. But this law has been primarily enacted to provide protection to the wife or female live-in partners from violence at the hands of husband or male live-in-partners or his relatives, and also extends protection to women who are sisters, widows or mothers. The special features of this Act are:

### SPECIAL FEATURES OF THE ACT

The Act covers those women who are or have been in relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or relationship in the nature of marriage or adoption. In addition relationship with family members living together as a joint family is also included.

Definition of 'Domestic Violence' as defined under section 3 includes physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to, and endanger the health, safety, life, limb, or wellbeing, either mental or physical, of the aggrieved person.

According to section 2(a) 'Aggrieved person' under this Act covers any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

As per section 4, information regarding an act of domestic violence can be lodged by any person, not necessarily by the aggrieved person, who has reason to believe that such an act has been or is being committed.

One of the most important feature of the Act is woman's right to secure housing.

Magistrate has the powers to permit the aggrieved woman to stay in her place of bode and cannot be evicted by the husband even if she has no legal claim or share in the property.

The other important relief under the Act is that it empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent/abusers from aiding or committing an act of domestic violence.

Section 20 allows magistrates to impose monetary relief and monthly payments of maintenance.

The Act also provides for appointment of protection officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter etc.

According to section 31, penalty for breach of protection order or an interim protection order is punishable with imprisonment of a period which may extend to one year or with fine which may extend up to twenty thousand rupees or both.

The Act ensures speedy justice as the court has to start proceedings and have the first hearing within three days of the complaint being filed.

Every case has to be disposed of within a period of sixty days of the first hearing.

### MAJOR RIGHTS AVAILABLE TO WOMAN UNDER THE ACT

This Act has recognised a woman's right to reside in the shared household with her husband or a partner even when a dispute is on. Even if she is a victim of domestic violence, she retains the right to live in 'shared homes' i.e., a home she shares with the abusive partner. In this regard section 17 says that :

"(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."

However, if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or the partner.

Further, it has also been recognized by the Act that the husband will have to provide the emergency relief as needed by the abused woman. No person can stop a woman from making a complaint/application alleging domestic violence. She has the right to the services and assistance of the Protection Officer and Service Providers, stipulated under the provisions of the law.

Further, a woman will enjoy the right to the services of the police, shelter homes and medical establishments. She has also the right to simultaneously file her own complaint under Section 498-A of the Indian Penal Code.

Sections 18 to 23 of the Act provide various options for legal redressal. Accordingly, a woman can claim through the courts Protection Orders, Residence Orders, Monetary Relief, Custody Order for her children, Compensation Order and Interim/ Ex parte Orders. Violation of any of the above rights of the aggrieved woman by her husband will be deemed a punishable offence. In addition to the charges under this Act, the Magistrate can also frame charges under Section 498-A. The offences under this Act are cognizable and non-bailable.

### JUDICIAL DYNAMISM

Judiciary has been playing a pivotal role in protecting the rights of the women. So far as the domestic violence is concerned, the judiciary has also delivered a plethora of decisions. Some of these cases are cited below.

In *S.R. Batra v. Taruna Batra*<sup>1</sup>, the Supreme Court said, "Section 2(s) of the Act which gives right of residence to a married woman in a shared household is not properly worded and appears to be the result of clumsy drafting,

but we have to give it an interpretation which is sensible and which does not lead to chaos in society" and ruled that "as regards section 17(1) of the Act, in our opinion 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."

The right of a woman in relationship with a man, to reside in shared household, as clearly enumerated under Section 17 of the Act was again recognized by the Supreme Court in *Vimalben Ajitbhai Patel v. Vatslaben Ashokbhai Patel & Others*<sup>2</sup>.

In *D. Velusamy v. D.Patchaiamma*<sup>3</sup>, the Apex Court considered the expression 'domestic relationship' as defined under Section 2(f) of the Act and opined that relationship 'in the nature of marriage' is similar to a common law marriage. However, the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage.

In *Chanmuniya v. Virendra Kumar Singh Kushwaha*<sup>4</sup>, the term 'domestic relationship' was amplified by the Supreme Court and includes live-in relationships in the nature of marriage within the definition of 'domestic relationship' under Section 2(f). As a result, women in live-in relationships are also entitled to all the reliefs given in the said Act.

The Apex Court in *V. D. Bhanot v. Savita Bhanot*<sup>5</sup>, held that, "an estranged wife has a right to stay in her husband's house and is entitled to maintenance from him under the Domestic Violence Act." The Court further said that the husband shall provide a suitable portion of his residence to the wife for his living together with all necessary amenities to make her stay habitable.

### CONCLUSION

Domestic violence has been regarded as an issue involving human rights which has got the serious deterrent effect on the society and development of a country. This issue has acquired a position where it affects the social, economic and demographic strata of the society. It is a complex phenomenon and involves multiple aspects. This problem is not now confined only to the matrimonial family; it also exists in the natal family and in live-in relationship in the nature of marriage. The Protection of Women from Domestic Violence Act extends protection to women in all these relationships. This Act has brought a huge solace to the women of this country and the institutions and organizations working for their cause. Further, the Act has made it difficult to render women shelter-less or throw them out of the home. It provides immediate protection, though temporary, from domestic violence. As per the provision of the Act, a woman can also apply for relief to obtain protection orders. However, such an enactment to protect women from domestic violence cannot eradicate the problem; rather proper understanding and change in our attitude can only change the situation.

### REFERENCES

1. 2007 (3) SCC 169.
2. 2008(2) AWC 1636 (SC).
3. (2010) 10 SCC 469.
4. (2011) 1 SCC 141.
5. AIR 2012 S.C. 265.