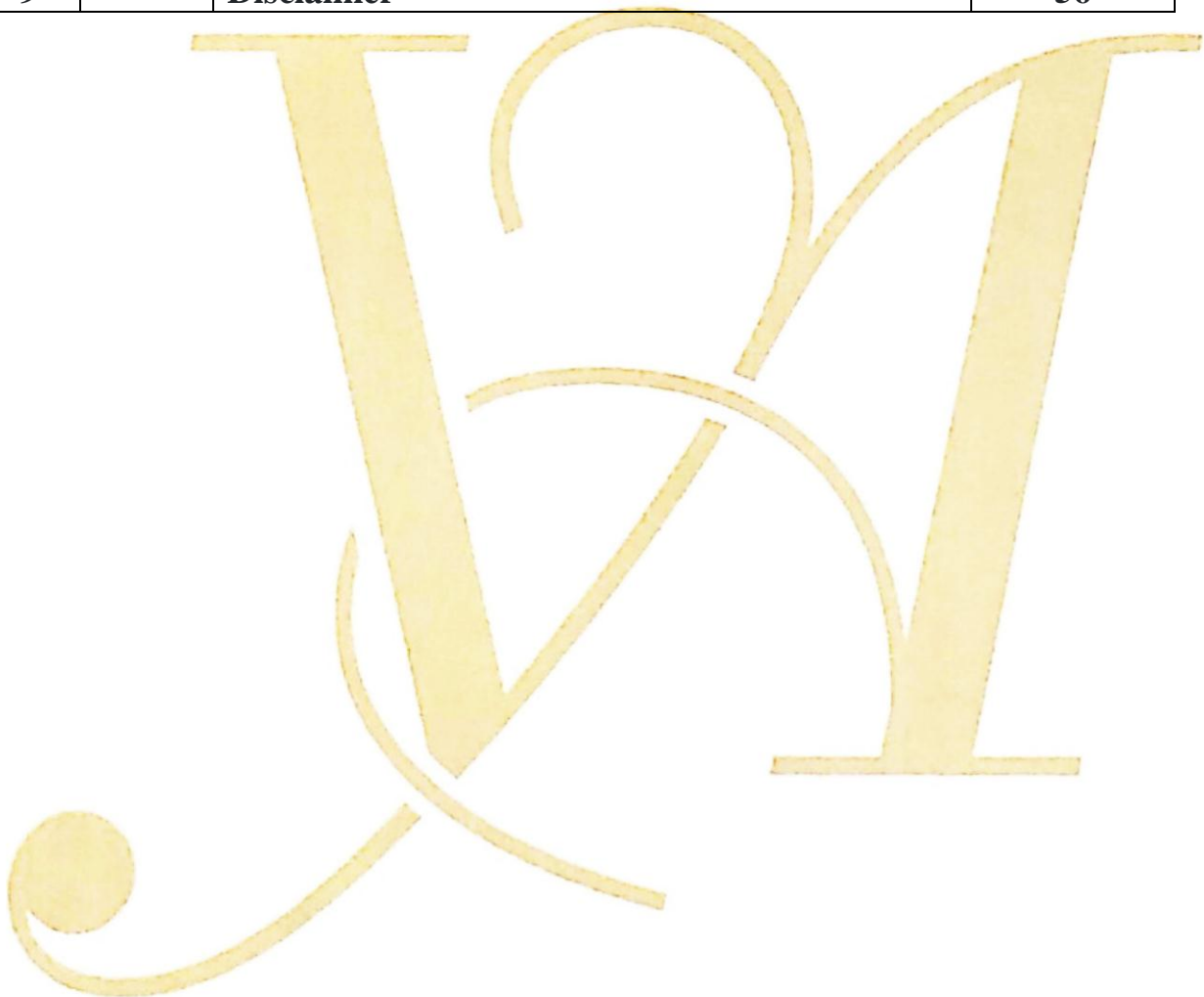


OVERVIEW OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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CHAPTER -1

1.1) HISTORY & NEED OF SOME ACT/LEGISLATURE

Why domestic violence act actually came?

1. In ancient India, women enjoyed equal status with men in all fields of life. Women were known as “ardhangini” which suggest that there was equality between men and women and neither being superior to other. The word “Patni” in Brahamanas indicate her equal share in the social and religious side of husband’s life. She is the sole mistress of the household. The wife was never looked upon as a slave or a chattel but as a partner in religious matters, as a friend, a confident, and guide.
2. From very early period women were subjected to domestic violence. According to studies, women enjoyed equal status and rights during the early Vedic period. However, later (approximately 500 B.C.), the status of women began to decline with the Smritis (esp. Manusmriti) and other religious texts curtailing women's freedom and rights.
3. The Indian woman's position in the society further deteriorated during the medieval period. Sati, child marriages and ban on widow remarriages became part of social life in India. The Muslim conquest in the Indian subcontinent brought the purdah practice in the Indian society. Among the

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Rajputs of Rajasthan, the Jauhar was practised. In some parts of India, the Devadasis or the temple women were sexually exploited. Polygamy was widely practised esp. among Hindu Kshatriya rulers. In many Muslim families, women were secluded to Zenana. The women lost their entity in the 18th century and till the beginning of the 19th century women were totally and forcefully sublimated male superiority, physically and intellectually and never really recovered from that.

4. Violence against women is in itself a crime against humanity, whether an abuser is stranger, a family member, current or past spouse, or any relative or friend. In fact violence is seen as the most common manifestation of gender inequality in society. Crime against women takes place in a planned, systematic and sustained way, even if it happens in a hit of moment, it reflects deep seated discrimination and utter disrespect for women as a human being. The worst amongst all crimes against women is the domestic violence as it is committed by those who are actually expected to give her warmth of relations and a feeling of security in her own family, upon whom she puts complete trust and belief Domestic Violence is recognized as the significant barriers in the empowerment of women having negative effect on the overall progress of humanity.

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5. In India, a crime is committed against a woman every three minutes. In a 2005 survey, 37% of married women in India reported experiencing domestic violence at some point during their marriage. Despite these alarming statistics, experts agree that actual rates of violence against women are likely higher than what is reported in these studies; underreporting may be caused by embarrassment, denial that violence is a problem, or a failure to recognize that the behaviour is abusive. In fact, as many as 70% of the female victims of domestic violence in India believe their physical abuse was justified for one reason or another.
6. Hence, there was need felt by legislature to make such legislation which protect women from violence inside their house.
7. The fight for new domestic violence legislation began in 1993 when the Lawyers Collective was approached by the National Commission of Women to draft a law to close the legal loophole created by the lack of general domestic violence legislation. After a great deal of parliamentary deliberation to bridge the gap between existing legal provisions and progressive aims enshrined in the Constitution and international human rights conventions, the Protection of Women from Domestic Violence Act finally became law in 2005.

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1.2) PROLOGUE:

- 1. The Protection of Women from Domestic Violence Act 2005** is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26th October, 2006.
- The origin of the Act lies in Article 15 (2) of the Constitution of India, which clearly says that “State can make special provisions for women and children” towards realizing the right to equality. This indicates the use of affirmative action to remedy a wrong. It is often said that India has several laws but they are not implemented. The problem, however, is not the lack of implementation, but the lack of a mechanism by which it can be implemented. Women have insufficient understanding of the law and lack of access to the courts. Hence, it is necessary not only to enact a law but to provide the necessary infrastructural tools with which to access the law. The way of doing this is to put a mechanism in place in the law itself. In the Act, this has been done by creating the office of the Protection Officer and recognizing the role of the Service Providers. Affirmative duties have been imposed on the government to provide legal aid, medical facilities and shelter homes in the hope that women in distress be given all these facilities. The Act is a statement of commitment by the State that domestic violence will not be tolerated.

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3. It is a very comprehensive and promising legislation that combines civil remedies with criminal procedures to ensure effective protection and immediate relief to victims of violence of any kind occurring within the family, The definition of 'domestic violence' is in consonance with the UN Model Legislation on Domestic Violence. The aggrieved can seek protection against any physical, sexual, verbal and emotional abuse or economic abuses. This law for the first time recognizes a women's right to a violence free home. Under the Act, the right to reside in the matrimonial home/shared household was seen as a major breakthrough in women's rights in India. She cannot be evicted from the shared household and if evicted can seek immediate relief, seek a protection order, monetary compensation, residency order, custody order, free legal services, medical aid and counselling with the help of the Protection Officer or Service Provider. The Act envisages appointment of domestic violence Protection Officers by the State Governments in every district and encourages the participation of voluntary associations as Service Providers. The Ministry of Women and Child Development, the National Commission for Women and the non-governmental organizations have also taken initiatives to propagate the remedies available in this Act to the affected women by organizing

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awareness campaigns/seminars/ workshops and sensitizing the enforcement agencies.

4. Prior to the enactment of the DV Act, the law with respect to payment of maintenance was primarily restricted to legitimate and familial relationships, such as wives, children and parents. Section 125 of the Code of Criminal Procedure, 1973, provided a slight departure in the form of entitling even divorced women (who had not remarried) and illegitimate children to maintenance. Women in de facto marriages, or other marriage-resembling relationships, remained excluded from the purview of grant of maintenance. The Supreme Court has repeatedly stressed that the fruits of maintenance under section 125, Cr. PC may in certain circumstances be available to second wives, even in the absence of the requisite religious rites having been performed. For instance, in *Sumitra Devi v. Bhikan Choudhary*, the Supreme Court discounted the significance of religious rites for validity of marriage of a second wife who claimed maintenance for herself and her minor child. The observations in that judgment clearly indicate that the concept of a de facto marriage came to be recognised for the first time. When the DV Act came into force, it brought within its purview relationships in the nature of marriage and protected women who were in such relationships to seek redress against domestic violence, including economic abuse inflicted upon

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them by their partners. The DV Act was intended to be a giant leap forward to realize the goal of completely eliminating any sort of harassment, cruelty or abuse to a woman at her household at the hands of a male relation. A reading of the DV Act would show that the enactment is a woman-welfare legislation, which provides speedy and effective civil law remedy against mental or physical violence by their male relatives. The DV Act is wider in scope than any previous woman-centric provision, such as section 498-A, IPC (cruelty), maintenance provisions under various personal laws and even section 125, Cr. PC. Indeed, the DV Act is a domestic counterpart of the Sexual Harassment Act which deals with harassment of women at workplace. Indeed, together the DV Act and the Sexual Harassment Act are designed to provide statutory redressal mechanisms to women who are victims of abuse, violence or harassment. It is thus important that the Act be interpreted keeping in view the scope and object of the legislation.

5. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not for meant to be enforced criminally.

6. While the objective of criminal laws is to punish the offender, a civil law is directed towards providing reliefs to the aggrieved party; in this case, the woman who faces violence at home.
7. The Protection of Women from Domestic Violence Act, 2005 (D V Act), provides for effective protection of the rights of the women guaranteed under the Constitution of India, who are victims of violence of any kind occurring within the family, and for matters connected therewith or incidental thereto.
8. The D V Act is a legislation aimed at strengthening the economic independence of a woman. Financial deprivation of the women and their economic abuse are dealt in it at length. As per the D V Act, it is the social and legal obligation of the husband to make arrangement for maintenance of the wife. The higher Courts of the Country, including the Hon'ble Supreme Court of India, have upheld this legal proposition in their multiple judicial pronouncements, made from time to time.
9. The higher Courts of the Country, have however clarified it in the number of D V Act Cases in India that the issue of economic abuse and maintenance cannot be generalized. Every Case would need to be examined and adjudicated upon in the backdrop of its own peculiar facts and circumstance.

The same is their view on the quantum of maintenance amount.

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10. The Courts have held from time to time that the amount of maintenance fixed for wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case.

1.3) International Perspective

Article 2 of the Convention on Elimination of Discrimination Against Women, 1979 States that “violence against Women”, shall be understood to encompass:

- a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children with household, down related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b) physical, sexual and psychological violence occurring with the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

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

Domestic violence is part of the wider issue of gender violence, which the majority of the time is violence against women, a phenomenon that affects women of all races and social conditions.

- In Mexico, and in many other countries domestic violence is considered to be a private matter.
- In all Latin American and Carribean Countries, many men consider themselves to be superior to women and believe that women can be subject to the whims of men.
- In United Kingdom, **The Crime Survey for England and Wales (CSEW)** estimates of domestic abuse are based on a relatively broad definition covering male and female victims of partner or family non-physical abuse threats, force, sexual assault or stalking. The Domestic Research by: Adv. Neville Majra, Co- Founder & Senior Partner

Violence, crime and Victims Act 2004 is an Act of the Parliament of the United Kingdom. It is concerned with criminal justice and concentrates upon legal protection and assistance to victims of crime, particularly domestic violence. It also expands the provision for trials without a jury brings in new rules for trials for causing the death of a child or vulnerable adult, and permits bailiffs to use force to enter homes.

- **Domestic Violence in the US** is a form of violence expressed by one partner or partners against another partner or partners in the context of an intimate relationship in the US. It is recognised as an important social problem by governmental and non-governmental agencies and various violence against Women Acts have been passed by the US Congress in an attempt to stem this tide.

CHAPTER -2

2.1) SCOPE AND SALIENT FEATURES OF THE ACT:

The Act meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers.

This definition gives a wider scope to make domestic violence a criminal activity, as it says domestic violence includes any physical, sexual, verbal and emotional abuse, but the problem arises in Sec. 1 of DVA which states :

"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"

Here, rights were given only to women and nothing in this act shall deal with rights of men under domestic violence, though it can easily be seen that men were also victimised of domestic violence and definition under Sec. 6 of PWDVA can very well be applied.

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The scope of this piece of legislation has been expounded in plethora of judgements by the High Courts and the Supreme Court in India. For instance, the High Court of Gujarat in the case of *Bhartiben Bipinbhai Tamboli v. State of Gujrat & Ors.* has extensively discussed the provisions under the Act.

- The salient features of the Protection from Domestic Violence Act, 2005 are as follows:
 - The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with them are entitled to get legal protection under the proposed Act.
 - "Domestic violence" includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

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- One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman.
- The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented visited by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.
- The Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman w.r.t medical examination, legal aid, safe shelter, etc.
- The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

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Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

2.2) KEY CONCEPTS

i. Aggrieved Person [Section 2(a)]

Aggrieved person means 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.

A wider meaning to an “aggrieved person” under Section 2(a) of the Domestic Violence Act was conferred by the Supreme Court in the case of D. Veluswamy v. D. Patchaiammal, (2010) 10 SCC 469 wherein the Court enumerated five ingredients of a live in relationship as follows:

1. Both the parties must behave as husband and wife and are recognized as husband and wife in front of society;
2. They must be of a valid legal age of marriage;
3. They should qualify to enter into marriage eg. None of the partner should have a souse living at the time of entering into relationship;
4. They must have voluntarily cohabited for a significant period of time;

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5. They must have lived together in a shared household.

The Supreme Court also observed that not all live-in-relationships will amount to a relationship in the nature of marriage to get the benefit of Domestic Violence Act. To get such benefit the conditions mentioned above shall be fulfilled and this has to be proved by evidence. The Court in the case further stated that if a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or a servant it would not be a relationship in the nature of marriage.

In this case, the Court also referred to the term "palimony" which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying and is then deserted by him.

ii. Domestic Relationship [Section 2(f)]

Domestic Relationship has been defined as a relationship between two persons who live, or have at any point of time lived together in the shared household. It includes relations of consanguinity, marriage, or relationships in the nature of marriage, adoption, or joint family

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iii. Respondent [Section 2(q)]

Respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

In view of the definition of the term respondent covering adult male person, the judiciary has time and again been confronted with the argument that an aggrieved person can file complain under the Domestic Violence Act against an adult male person only and not against the female relatives of the husband i.e. mother-in-law, sister-in-law.

However, the Supreme Court of India in the case of Sandhya Wankhede vs. Manoj Bhimrao Wankhede (2011) 3 SCC 650 put to rest the issue by holding that the proviso to Section 2(q) does not exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Act. Therefore, complaints are not just

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maintainable against the adult male person but also the female relative of such adult male.

iv. Shared Household [Section 2(s)]

A household where the aggrieved person lives/has lived in a domestic relationship, either singly or along with the respondent is a 'shared household' under Section 2(s) of the Act.

Includes a household:

- Whether owned or tenanted either jointly by the person aggrieved and the respondent, or by either of them.
- Where either the person aggrieved or the respondent or both jointly or singly have any right, title, interest or equity.

Includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or person aggrieved has any right, title or interest in the shared household.

In the case of *S.R. Batra & Another Vs. Smt. Taruna Batra* AIR 2007 SC 169 the Supreme Court with reference to definition of shared household under Section 2(s) of the Domestic Violence Act stated that the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting requires to be interpreted in a sensible manner .In *S.R. Batra v. Research by: Adv. Neville Majra, Co- Founder & Senior Partner*

Taruna Batra (2007) 3 SCC 169 restricted the right of residence only to property of the husband. The court in the judgment excludes the self-acquired property of the in-laws from the purview of “shared household”. The Act expressly states that the ownership of the shared household is irrelevant to the question of the right to reside in the shared household Section 17(1).

Further, as held in in Kavita Dass v. NCT of Delhi & Anr., the Delhi High Court noted (following a Supreme Court decision in Smt. KanwalSood v. Nawal Kishore and Anr.) that the phrase ‘shared household’ includes any household owned or tenanted by either of the parties in respect of which either the woman or the respondent or both, jointly or singly, have any right. Since the woman was the legally wedded wife of the respondent, the High Court held that she had a right to live with the respondent, whether he lives in an ancestral house, his own acquired house or a rented house. While these judgments reaffirm the wife’s right to reside in the shared household by virtue of her marriage, irrespective of whether the property is Rented or Owned by the husband, the repercussions of Batra v. Batra continue to be felt in the lower echelons of judiciary.

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CHAPTER -3

3.1) WHAT IS DOMESTIC VIOLENCE:

Domestic violence is defined by Section 3 of the Act as any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:

1. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
2. harasses, harms, injures or endangers the aggrieved person to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
4. otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

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3.2) TYPES OF ABUSE

The Gujrat High Court in the case of Bhartiben Bipinbhai Tamboli v. State of Gujrat and Ors. have elaborated on the types of abuse or domestic violence under the Act.

- a) 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.
- b) Sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman.
- c) Verbal and emotional abuse includes-
 - i) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - ii) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- d) Economic abuse includes-
 - i) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under 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

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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;

- ii)** 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
- iii)** 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.

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.

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One can simplify the term “domestic violence” is when a person abuses another person to gain control or authority over the other person by means of abusive behavior/manner. Domestic violence takes place between close relationship and within the family. Domestic violence includes any kind of violence suffered by a person from a biological relative. Domestic violence is neither a onetime violence nor does it happens automatically. It is a ongoing process. It does not happen with women only but almost everyone who is suffering from VIOLENCE whether it is a child, elder or husband.

It takes place to infiltrate fear or dominance over other, the abusive partner or individual adopts this behavior because of the following reasons:-

- It happens because of anger issues
- To use their power on a weak person,
- The habit to dominate other,
- The person find it thrilling,
- To prove that they are superior,
- Some find pleasure in it.
- In most of the cases economic circumstances is the reason of violence.
- Extra marital affair
- Alcoholism,

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- Violent childhood is also one of the reasons for domestic violence.

Hence, there is no logical reason to it. **It is all about control and dominance over other person.** The process of domestic violence harms the person in many ways, the victim's confidence decreases, it hampers their self-respect and mentally it also breaks the person.

3.3) CAUSES OF DOMESTIC VIOLENCE:-

Domestic violence is not a new problem in our society, it is the most common problem which takes place in almost every house no matter whether they are educated or not, rich or poor.

Almost everyone is suffering from violence but mostly women are the sufferers, one of the reasons for violence is the orthodox and idiotic mindset of the society that women are physically and emotionally weaker than males. Stress issue, anger issues, dominating power, mental issues, disturbed childhood, Dowry demand etc. are the few instances of the causes of Domestic Violence.

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3.4) EFFECTS OF DOMESTIC VIOLENCE:-

Domestic violence is not good for anyone who is suffering from it whether it is a male, female, children or elders.

It affects them severely and mostly damages the health condition both physically and psychologically. It destroys the happiness of people and they become distant in some of the situations when it becomes unbearable, people often try to kill themselves and commit suicide.

3.5) DOMESTIC VIOLENCE AGAINST MEN:

Women are not the only victim of domestic violence males also suffer from it but it becomes difficult to identify that men is a victim and not an abuser. As our mind is set that it is a male dominating society and they are the abuser women are the weaker section of the society and they are the victims only.

There are lots of provisions and acts in India that are made to protect women and now many of the women take advantage of it. Men also go through mental cruelty as well as physical cruelty but either they are ashamed to share about the violence they are facing or feared that nobody will trust them and instead people are going to make fun of them. It is not easy for men to come in front and tell people about the violence they are facing because of their respective partners and if someone

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makes a courageous move and files a complaint against the abuser then the investigating officer either will not believe it or will neglect the situation.

India is a patriarchal society and it is a common belief that men are the abuser and they suppress the women to maintain their control over her but it is not the only truth. If we look at the opposite side of the coin then we can see that men are also the victims of violence and it is really difficult for them to come in front and tell people that they are facing such violence.

Men can be victims why it is difficult for us to accept the fact, we always talk about equality of rights but are we really equal, why we are blind when the matter comes to see that men also need help and legal justice. The Hon'ble Supreme Court of India in the case of *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016 10 SCC 165) has struck down the words "adult male" appearing in Section 2(q) of the Act as discriminatory and further striking down a portion of Section 2(a) of the Act (defining "aggrieved person") on the ground that it is violative of Article 14 of the Constitution of India. **Thus, it meant that any person, whether male or female, aggrieved and alleging violation of the provisions of the Act could invoke the provisions under the Act.**

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Section 4 (1) of the PWDVA states “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 inform the “Protection officer”. It further specifies that there is no civil or criminal liability on the informant in good faith. Section 4 therefore creates a social responsibility on members of the community at large who have knowledge of an already committed act or in case of any likelihood of commission of domestic violence in future, to come forward to file a complaint on behalf of the victim which also implies that all individuals have an obligation to react against violence.

CHAPTER - 4 MECHANISMS UNDER THE ACT

WHO CAN FILE A COMPLAINT

- Any woman who alleges to have subjected to any act of domestic violence by the offender
- Any person may file a complaint on behalf of such women;
- A child is also entitled to relief under the Domestic violence Act. The mother of such a child can make an application on behalf of her minor child (whether male or female).

Information/ complaint can be made to:

- A Police Officer
- Protection Officer
- Service Provider
- Magistrate
- **Protection Officer (Section 8)**

The State Government to appoint Protection Officers in each district as it may consider necessary and also notify the area under each of them. The Protection Officer preferably should be a woman and should be qualified.

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Section 9 of the PWDVA defines the duties and functions of the Protection Officers which include:

- a) Assisting the magistrate;
- b) Making Domestic Incident Reports and forwarding copies to police and service providers;
- c) Making application for protection orders;
- d) Ensuring that legal aid provided to victims of domestic violence;
- e) Maintaining a list of service providers, shelter homes medical facilities and counsellors;
- f) Making shelter home facilities available to the aggrieved and forwarding copies of the related reports to the magistrate and the police;
- g) Providing the aggrieved person with a medical examination and forwarding a copy of the medical report to the magistrate and police;
- h) Ensuring the compliance and execution of monetary relief under section 20 as per the code of Criminal Procedure and
- i) Performing any other prescribed duties.

- **Service Providers (Section 10)**

The Domestic Violence Act, 2005 also has the provision for Service Providers.

A) Service provider does have the power to:

1. 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;
2. 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;
3. 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.

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

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aid, medical, financial or other assistance can register itself with the State Government as a service providers.

- **DOMESTIC INCIDENT REPORT (DIR)**

Upon receipt of the complaint of Domestic Violence, the Protection Officer or the Service Provider has to prepare a DIR Form 1 and submit the same to the Magistrate and the copies of the same to the officer in charge of the concerned Police Station.

If the Woman so desires, the Protection Officer or Service Provider can assist the woman in filing the applications for reliefs and a copy of the DIR is to be annexed with such application.

- **Application to the Magistrate (Section 12)**

An application regarding domestic violence can be presented to the magistrate within the local limits seeking one or more reliefs mentioned in sections by:

- i) The aggrieved person,
- ii) Protection officer on behalf of aggrieved person
- iii) Any other person on behalf of aggrieved person

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Duty of Courts while deciding cases under the Domestic Violence Act:

In the case of *Krishna Bhattacharjee vs. Sarathi Choudhury and Another, 2016 (2) SCC 705*, the Apex Court while elucidating on the duty of courts while deciding complaints under the Domestic Violence Act stated that:

- It is the duty of the Court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct.
- The principle “justice to the cause is equivalent to the salt of ocean” should be kept in mind. The Court of Law is bound to uphold the truth which sparkles when justice is done.
- Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

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4.1) How to file a Case in the Court:

An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act.

The aggrieved person may seek following reliefs:-

1. Orders for the payment of compensation or damages.
2. A residence order, seeking to reside in a shared household.
3. Restraint Orders against the Respondent, restraining him from selling the shared house hold during the pendency of the Case before the Magistrate.
4. Restraint Orders against the Respondent, restraining him 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.
5. Restraint Orders against the Respondent, restraining him from entering the aggrieved person's place of employment, or disturbing the aggrieved person by telephoning or texting, etc.

4.2) PRACTICE & PROCEDURE

In case of an earlier decree of compensation or damages passed by any other court, in favour of aggrieved person, the amount if any paid shall be set off against the

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order of amount payable under this act. The application to the magistrate shall be as nearly possible to the formats prescribed under this Act and Rules. After receiving the application the Magistrate shall fix the date of first hearing within 3 days and the magistrate shall endeavor to dispose of every application be within a period of 60 days of the first hearing. The notice of the date of hearing shall be given by the magistrate to the protection officer who shall get it served to the respondent. At any stage of the application, the magistrate may order, counselling of the respondent or aggrieved person either singly or jointly with any member of service provider. The magistrate may secure the service of suitable person preferably a woman including a person engaged in the welfare of women for assisting the court in the discharge of its function. If the circumstance of the case so warrant and if either party so desires the magistrate may conduct the proceedings on camera.

4.3) ENFORCEABILITY:

Any order made under this Act shall be enforceable throughout India. While disposing application the magistrate shall take in to consideration any domestic incident report received from the protection officer or service provider. The relief sought under this section includes the issuance of order of payment or compensation or damages without prejudice to the right of such person to institute

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suit for compensation or damages for injuries caused by the act of domestic violence. If the magistrate is satisfied that an application prima facie discloses that the respondent is committing or has committed an act of domestic violence or there is a likelihood of such violence, he may grant following ex parte interim order against the respondent on the basis of affidavit of the aggrieved person. Magistrate can issue different orders such as Protection order, residence order, monetary relief, custody order or compensatory orders as per the circumstances of the case as explained herein below in great detail.

4.4) Counselling (Section 14)

The Magistrate may, at any stage of the proceedings, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

The Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

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CHAPTER -5 ORDERS & RELIEFS

A. 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:-

1. committing any act of domestic violence;
2. aiding or abetting in the commission of acts of domestic violence;
3. entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
4. attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact; 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;

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5. causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
6. committing any other act as specified in the protection order.

B. Residence orders (Section 19)

The Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order, restrain 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:-

1. restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
2. restraining the respondent from alienating or disposing off the shared household or encumbering the same;
3. 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 such orders shall be passed against any person who is a woman.

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ADDITIONAL CONDITIONS & ORDERS

In addition to the above, a Magistrate may impose additional condition and pass any other order to protect the safety of the aggrieved person or her child. Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person to assist in implementing his order. Magistrate may also impose on the respondent to direct stridhan or any other property or valuable security she is entitled.

C. Monetary reliefs (Section 20)

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-

1. the loss of earnings;
2. the medical expenses;
3. the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
4. the maintenance for the aggrieved person as well as her children.

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The quantum of relief shall be fair reasonable and consistent with the standard of living to which the aggrieved person is accustomed to. Magistrate can order a lump sum amount also . On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent.

The order passed by the Magistrate as stated herein above may also include in addition to an order of maintenance under section 125 criminal procedure code or any other law. The Delhi High Court in the case of **Shome Nikhil Danani vs Tanya Banon (2019) 258 DLT 742**, had observed that Proceedings Under DV Act and U/s. 125 Cr. P.C are Independent of each other. The monetary relief granted under the DV Act in addition to an order of maintenance under Section 125 of Cr. P.C. The matter was thereafter proceeded before the Hon'ble Supreme Court wherein vide order dated 22.7.2019 the Hon'ble Supreme Court had upheld the decision of the Delhi High Court.

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D. Custody orders (Section 21)

The Magistrate may, at any stage of hearing, 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 interests of the child or children, the Magistrate shall refuse to allow such visit.

E. Compensation orders (Section 22)

In addition to other reliefs as may be granted under the Domestic Violence Act, 2005, 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.

CHAPTER -6

6.1 Penalty for breach of protection order by respondent (Section 31)

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. Such offence shall be cognizable and non-bailable.

6.2 Appeal (Section 29)

There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the Respondent, as the case may be, whichever is later.

CHAPTER -7

CONCLUSION:-

- Domestic violence is not a small problem it is a big issue to think. Monetary problems, alcoholism, illiteracy, extramarital affairs, bad childhood and dowry are the major reasons of domestic violence.
- The victims most commonly face physical violence by their partners; there is an urgent need of more and more domestic violence counselling centres throughout the country.
- History is evidence that no legislation has succeeded in totally eliminating crime from the globe. Though not all people are victims to domestic violence but there are people who are suffering from violence. There are many laws to help people but it is only possible when people are aware of their rights and duties.
- The legal system is lacking where it comes to protect men from domestic violence, they are the victims too, and we should look into the broader perspective and start accepting that women are no weaker and only sufferers in some cases men also face violence and they also need legal help as well as psychological help.

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CHAPTER -8

MISCELLANEOUS

The Domestic Violence (DV) Act claims to protect women from physical, verbal, emotional, sexual and economical abuse. While this law is heavily biased against men, there are many gross inconsistencies in the law, which prove that the DV Act is not good for women either. The DV Act allows legally wedded women, divorced women and girlfriends (former or present) to subject a man and his realities to domestic violence and legal harassment. The law also allows a daughter-in-law to evict the husband along with his dependent mother, father, brothers and sisters from their own property.

Misuse of Section 498A & provision of PWDVA/ Domestic Violence Against Men

Violence against men by women is not a new phenomenon. Human beings are violent and aggressive. Women are not an exception to it. Research in the field of domestic violence has shown that men and women act violently in relationships at about the same rate. Furthermore, men and women are equally likely to instigate violence against one another. The truth is surprisingly egalitarian: About half of all domestic violence occurs with both partners abusing each other. The bibliographic

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study by Fiebert (2007) has examined 209 studies that show that women are physically aggressive, in fact, more violent than men in their relationships with their spouses or male partners.

One needs to understand that dynamics of domestic violence and abuse among men and women are different, and reasons, purposes, and motives are often very different. There are various studies on dynamics of violence against women, but there are limited studies on the issue of domestic violence and abuse against men. The study by Save Family which interviewed 1,650 husbands between the ages of 15 and 49 years, selected through random sampling using a schedule adapted from the WHO multi-country study on husband's health and domestic violence, reports that economical violence (32.8%) is common, followed by emotional violence (22.2%), physical violence (25.2%), and sexual violence (17.7%). The study shows that the probability of violence increased significantly with the duration of marriage, particularly if it was more than 7 years old. It also shows that husbands who experienced some form of violence during their first year of marriage continued to experience the same for the rest of their lives. It is not something that just goes away. The study shows that domestic violence is a public health issue with far-reaching health consequences, such as mental illness and stress disorders, that need to be addressed. The study also shows that domestic

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violence is perpetrated across all socioeconomic classes. The study reports that a high proportion of husbands who experienced domestic violence were well educated and earning good money. Men tolerate and stay in abusive and violent relationship for many reasons. Some of the reasons why men tolerate domestic violence and abuse are the belief and hope that things would get better, fear of losing social respect and position, protection, and love toward their children and family. Many abused men feel that they have to make their marriages work. They are afraid that if things fall apart, they will be blamed. Many abused men also believe that it is their fault and feel that they deserve the treatment they receive. Another reason is increasing economic and other dependency on women.

In cases where an abused man is mentally, emotionally, or financially dependent on the woman, the idea of leaving the relationship generates feeling of depression and anxiety. Violence against men is not considered serious because of its different manifestation. In most cases of violence against men, women use more mental, verbal, and emotional violence and abuse and are involved less in physical violence. The impact of violence against men is less apparent and is less likely to come to the attention of others. A significant number of men are over sensitive to emotional and psychological abuse. In some cases, humiliating a man emotionally in front of others can be more devastating than physical abuse. Mental and

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emotional abuse can be an area where women are often more brutal than men. However, what hurts a man mentally and emotionally can in some cases be very different from what hurts a woman. For some men, being called a coward, impotent, or a failure can have a very different psychological impact than it would have on a woman. Unkind and cruel words hurt in different ways and linger in different ways. In most cases, men are more deeply affected by emotional abuse than physical abuse.

Women go to the police with a complaint (may be false), but the system provides to record that as a criminal complaint and that data adds in to the National Statistics of Crime Against Women. When male goes with a genuine complaint the police at max can record a Non Cognizable offence against the women. That will never reflect in the statistics. Then how will one gauge crime against men? Every 100 Suicides in India have 63 Males and 37 Females. Every 100 male suicides have 45 married males, and every 100 women suicides have 25 married Women. Married women suicides have default arrests of the inlaws under presumed dowry death. Married men suicides entitle wife for a 50% share in property. Is this equality!!!!

In the last few years, marriage has become a crime for Indian men. Multiple cases, containing false and baseless allegations, under Section 498A and the Domestic

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Violence Act are being filed against Husbands and their parents and relatives. These false cases are filed with a pervert motive of, either treating the Husband as FREE ATM MACHINE, separate him from his immediate family, to grab his property, to hide the wife's illicit relationships and extra marital affairs, to deny access of his children to the father, or for any reasons other than actual Dowry Harassment and Domestic Violence.

There is no investigation done on the complaints received, nor any evidences are verified before registering a case and arbitrarily arresting people. Because of such malpractices, more and more number of married men are losing their jobs and committing suicides as well.

The main challenging factor to the laws relating to domestic violence is that in the recent year it has witnessed ample cases that women are taking undue advantage of the provisions created for their benefit to prosecute their husband in-laws in false cases.

According to Section 498-A of the Indian Penal Code, 1860 –

Whoever being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine.

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The Section 498A of IPC and 113A of Indian Evidence Act has been inserted by the Criminal Law (Amendment) Act, 1983. The purpose of this section is to ventilate the atrocities of newly married brides due to dowry or other such similar demands from their husband or in-laws. The aforesaid provision was intended to cure the existing evil in the society. Naturally, the victims of such domestic violence being women could not take recourse to public authorities to ventilate their grievances. After all the social conditions family traditions etc. prevented the brides to take any recourse to public authorities.

Some women tend to misuse 498A to harass and get the husband and in-laws convicted a violation of this section, its goals and aims are rising with the frivolous false allegations against husbands with the purpose of getting rid of them or simply hurting the family. The abuse of this Section is rapidly increasing and the women often well educated know that this Section is both cognizable and non-bailable and impromptu works on the complaint of the woman placing the man behind bars. Like in the case of **Savitri Devi v. Ramesh Chandra & Ors (2003)**, the court held clearly that there were a misuse and exploitation of the provisions to such an extent that it was hitting at the foundation of marriage itself and proof to be not so good for the health of society at large. The court believed that authority and lawmakers had to review the situation and legal provisions to prevent such from taking place.

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A man can also be subjected to domestic violence. Old and infirm father- in -law can also be a victim of domestic violence in hands of his daughter- in- law.

Legal safeguards for men:

In India, there are no special laws for male. There is Dowry Prohibition Act, Section 498A in Indian Penal Code i.e. offence of cruelty by husband and relatives of husband; section 125 in Code of Criminal Procedure i.e. maintenance for wife; the DV Act etc. for the protection of women. But there is no protection of men in Domestic Violence Act, 2005. There is no provision like Section 498B in Indian Penal Code, there is no provision like Section 125A in Code of Criminal Procedure i.e. maintenance to husbands under the Act. Rather the specific laws for women are misused by errant women and police officers. The cry of victimized husbands and their relatives is not heard either in courts or in society.

The Domestic Violence Act 2005 was enforced by the legislature to protect the women from harassment be it of any kind and vast stress was made on the same but unfortunately no consideration was given that even men could be victims of such cases of harassment and time has now come for rethinking of the matter of protection of males from the hands of women as well. Section 1 of Act categorically states :

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"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"

In the case of *Dr. N. G. Dastane V. Mrs. S. Dastane*, the Hon'ble Supreme Court had held that the cruelty is of two types, one is mental and other is physical. It might be true that physical is generally being perpetuated by the husband being a strong one but at the same time this can't be said to be universally true. It is also vice versa in the case of mental cruelty. But in the majority of cases of mental cruelty, it is almost the wife who causes mental cruelty to the husband. Further the Hon'ble Apex Court in the case of *Shushil Kumar Sharma vs. Union of India* has observed that by misuse of the provision, a New Legal Terrorism can be unleashed. Now comes the question can laws made in context to protection of women be misused? To answer this question the Hon'ble Supreme Court in a case made an observation that *"Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society"* This observation was made by the Supreme Court in context to the Domestic Violence Act. It is therefore important to note that the concept of cruelty cannot specify for females only. Men can also be a subject to

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this and cruelty or harassment need not be physical but also mental in certain cases. Also, Victimization of Male Partners and Police Harassment is a major issue in such cases.

The DV Act has also been criticized for its lack of clarity and ambiguities. For instance, the Act includes "insults" and "jibes" under the definition of "verbal and emotional abuse" in Explanation I (iii) of Section 3 of the Act, without defining these terms. The phrase "mental and verbal abuse" therefore has the potential to be misinterpreted. It might, in some cases, be extended to mere domestic quarrels that were not intended to fall under the definition of mental and verbal abuse. It is pertinent to note that unfortunately according to the Domestic Violence Act, 2005 the aggrieved party is always "any woman". 'Man' does not come within the purview of such definition. Thus, the Aggrieved under the Act is only for women. Even the preamble speaks for "rights of woman." The "respondent" under the definition means any "adult male person", which means a complaint cannot be directed against the female. Provisions like section 20(1)(d) can be misused when we consider that a female partner in a live-in relationship that may have only lasted for a month can claim maintenance allowance under this provision, with no restrictions attached.

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It is a fact that women experience such torment more than men do. But barring men from the ambit of such laws inside and out is not good. Favouring one sex makes this law extremely contract in its extension and approach. It is the need of hour that laws should be gender neutral, to bring equality and to protect the rights of the males, third sex gender and homosexuals. These days a regular conflict can be seen in the mode of the men's rights movement in India. It is the result of high rate of exploitation of female oriented laws. Some incidents are clearly evident from the conflict theory of sociology and of Karl Marx. It is an established fact that the Indian criminal justice system is suffering from the misuse of pro feminist laws.

With this in mind, the Hon'ble Supreme Court of India in the case of **Hiral P. Harsora v. Kusum Narottamdas Harsora**, (2016 10 SCC 165) has struck down the words "adult male" appearing in Section 2(q) of the Act as discriminatory and further striking down a portion of Section 2(a) of the Act (defining "aggrieved person") on the ground that it is violative of Article 14 of the Constitution of India. *Thus, it meant that any person, whether male or female, aggrieved and alleging violation of the provisions of the Act could invoke the provisions under the Act.*

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Section 4 (1) of the DV Act states “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 inform the “Protection officer”. It further specifies that there is no civil or criminal liability on the informant in good faith. Section 4 therefore creates a social responsibility on members of the community at large who have knowledge of an already committed act or in case of any likelihood of commission of domestic violence in future, to come forward to file a complaint on behalf of the victim which also implies that all individuals have an obligation to react against violence.

One can be certain that there is something sinister about a law when it intimidates and instils fear in innocent people when a person who had not committed any crime begins to fear punishment under the provisions of a law it will certainly create panic amidst men.

CHAPTER 9:DISCLAIMER

The above information has been sourced from:

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