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A study on special court to try the domestic violence cases under the Protection of Women from Domestic Violence Act 2005 with special reference to the District of Coimbatore.

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“If we are to fight discrimination and injustice against women we must start from the home for if a woman cannot be safe in her own house then she cannot be expected to feel safe anywhere.”

— Aysha Taryam

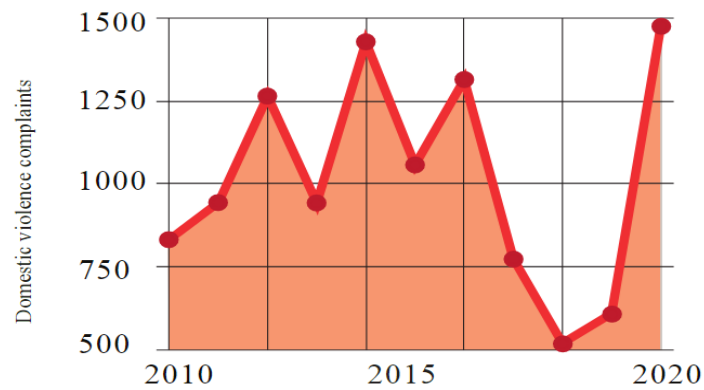
Abstract: Domestic victimization is correlated with a higher rate of depression and suicidal behavior. Women between the ages of 18-24 years is most commonly abused by an intimate partner. 19% of domestic violence involves a weapon. Only 34% of people who are injured by intimate partners receive medical care for their injuries. Despite of stringent laws crime rate against women are increasing at tremendous rate. The situation is really grim and need urgent attention and solution. Women want and deserve a life with dignity, equality and freedom. Without enforcement of rights remain mere paper promises. Courts have an obligation to heed to society's cry for justice in the case of offences against women. As judges in the Courts are called upon to perform a 'twin role' of balancing conflicting rights of the who approach the Courts and simultaneously to restore faith of the public in rule of law victims. This article examines emblematic case examples from conflict zones and incidents of domestic violence against women and to understand how the special court to try domestic violence cases under Domestic Violence Act 2005 responds to the prevalent violence against Women at District level.

Index :Domestic Violence- Domestic Violence Act 2005- Special Court-

I. INTRODUCTION

Domestic violence is an age-old societal violence prevalent in ancient India and women at home have been tormented and tortured by her own family members since time immemorial. Domestic violence is a pattern of force, coercive, controlling behaviour upon the women that can include physical abuse, emotional or psychological abuse, sexual abuse or financial abuse. Domestic violence became life-threatening crime that affects millions of women across the India regardless of age, economic status, race, sexual orientation, gender identity, religion, ability, or education level. High-profile cases of domestic violence will attract headlines in the media, but thousands of people experience domestic abuse every day (24/7) at the closed doors. According to the National Crime Records Bureau's (NCRB) latest data, domestic violence against women topped the list of categories of violence against women in India. Almost 90,000 cases related to crimes against women were registered in 2018.

Domestic violence is deeply entrenched and widely prevalent in India. The National Crime Records Bureau (NCRB) 2019 reports that a majority (30.9%) of all the 4.05 lakh cases under crimes against women are registered under Section 498A of the Indian Penal Code (IPC). The reasons range from embarrassment, financial dependency, fear of retaliation, victim-blaming to following a convoluted bureaucratic procedure. Determining the extent of this underreporting is useful to understand the true state of the prevalence of domestic violence in India. It is an alarming rise in the rate of domestic violence 1,477 complaints being reported in 25th March 2020.



*Graph sourced from National Commission for Women, New Delhi

This is 68 day period recorded more complaints that those received between March and May in the previous 10 years. About 86% of women who experienced violence never help and 77% of the victims did not even mention the incidents to anyone. The table shows that women who were subjected to both physical and sexual violence seek help relatively more than those who suffer from one from of abuse.

Table.1

Type of violence	Never told anyone	Told someone	Sought help from a source
Physical	79.5	9.0	11.6
Sexual	80.6	9.5	9.8
Physical & Sexual	61.3	9.9	28.8
Total	76.6	9.1	14.3

*Table sourced from National Family Health survey 2015-2016

Objective of Study:

1. To study the cases filed domestic violence under before the Special Courts with special reference to District Court of Coimbatore.
2. To study the effect of existing special statutory Act 2005 in protecting and preventing the violence against women in the District Court of Coimbatore.
3. To study the awareness of the special courts among the stakeholders in the District Court of Coimbatore.

Hypothesis:

It is difficult for aggrieved women in India to seek reliefs under the Protection of Women from Domestic Violence Act, 2005 before the Court of law.

Research Methodology:

The researcher has employed both analytical and empirical methods for the present study. Since one of the purposes of this research work is to analyse the prosecution of the domestic violence under special court of competent jurisdiction to try the domestic violence cases in the district of Coimbatore, therefore analytical evaluation is found to suitable for this research. The researcher also employed empirical method as the study required analyzing awareness of special court and women (District of Coimbatore), therefore empirical evaluation will be an important strategy for this research.

Sources of Data:

The present research is based on the both primary and secondary data. The primary data collected through questionnaire (open - ended and closed- ended) from the stakeholders such as victims of domestic violence. The secondary data has been collected from the District Court of Courts such as Mahila Courts, Additional- Mahila Courts and Special courts to try domestic violence cases reported judgments of the High Courts and Supreme Courts, Reports of the National Crime bureau and National Commission for women, books, journal, Articles, periodicals and newspapers.

II. Genesis of Domestic Violence Act 2005 in India:

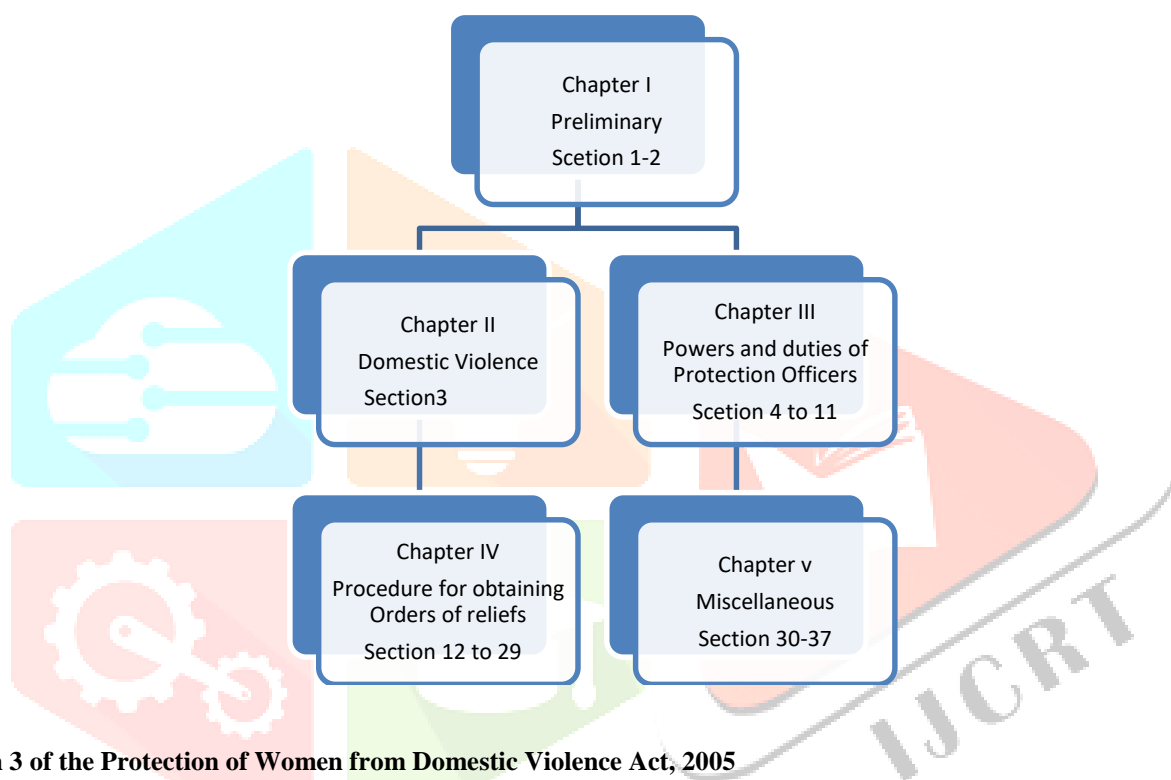
Domestic violence against women is a violation of human rights and social rights issue that has engaged the attention of law and policy makers at global and national levels. The genesis of the D.V Act can be traced from the Article 2, 5, 11, 12 and 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which is based on the General Recommendation XII (1989) passed by the U.N Committee on the Elimination of Discrimination against Women where it was unanimously resolved by the Committee that State parties must put in place appropriate legislations to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life. India ratified and accepted the recommendations of CEDAW in 1993.

“It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”

Domestic Violence Act 2005:

The Protection of women from Domestic Violence Act 2005 was eventually passed into law as Act 43 of 2005 and came into force on 26.10.2006. 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 formatters connected therewith or incidental thereto. This Act comprising 5 Chapters bearing 37 Sections.

THE PROTECTION OF DOMESTIC VIOLENCE ACT 2005 ARRANGEMENTS OF SECTIONS



Section 3 of the Protection of Women from Domestic Violence Act, 2005

3. Definition of domestic violence.—for the purposes of this Act, any act, omission or commission or

Conduct of the respondent shall constitute domestic violence in case it—

- (a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—for the purposes of this section,—

- (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) “Sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) “Verbal and emotional abuse” includes—
 - (a) Insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) “Economic abuse” includes—
 - (a) Deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not

limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) Disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—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 circumstance

Section 498 (a) of the Indian Penal Code 1860:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

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

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

Table- 2

Section 498 (a) of the Indian Penal Code 1860:

Section	Offence	Punishment	Cognizable or Non Cognizable	Bailable or Non-Bailable	By which court triable at District level
498A of the IPC	Punishment for subjecting a married woman to cruelty	Fine and imprisonment for 3 years	Cognizable if the information relating to the commission of the offence is given to the officer.	Non bailable	Magistrate of the first class

Domestic violence Act is n a Civil law or Criminal law:

The Protection of women from Domestic Violence Act 2005 is planned to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Indian Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The Hon’ble High Court of Madras Judicature recently opined that proceedings under the Domestic Violence Act (DV Act) are civil in nature, except in cases where Sections 31 and 33 (to do with a breach of a protection order or an interim order) come into play.

The Hon’ble Supreme Court of India held that the conjoint reading of Section 12 (Application of Magistrate), Section 17 (Right to reside in a shared household), Section 19 (Residence Orders), Section 20, (Monetary reliefs), Section 22 (Compensation Orders), Section 23 (Power to grant interim and ex-parte orders), Section 25 (Duration of Orders), Section 26 (Relief in other suits), and Section 28 (Procedure) of the Domestic Violence Act 2005 and proceedings before a Civil Court, Family Court or a Criminal Court as mentioned in Section 26 of the Domestic Violence Act are independent proceedings in (Civil Appeal No.2483/2020 Satis Chander Ahuja Vs Sneha Abuja).

Competent Court of Jurisdiction to try the Domestic Violence cases:

On exercise of the powers conferred under Section 14 (1) of the Criminal Procedure Code 1973 (Central Act 2, 1974), the Judicial Magistrate shall exercise all or any of the powers of the Judicable Magistrate of the First Class to try the cases under domestic violence filed under Section 498 of the Indian Penal Code read with the provisions of the Domestic Violence Act 2005.

The number of domestic violence cases reported in the district of Coimbatore in the State of Tamil Nadu has been increasing steadily in the last few years. More than 60 % of the complaints had sought the intervention of Court to resolve the issue. It is important to note that a Special Court was established at the Combined Court complex in Coimbatore to deal with cases registered under the Protection of Women from the Domestic Violence Act 2005 recently from 2019. The special Court mandates the Magistrate to fix the first hearing which shall not ordinarily be beyond three days from the date of receipt of the application by the Court. It also mandates the Magistrates to endeavor to dispose of every application within a period of 60 days from the date of the first hearing.

Coimbatore is the third largest city of the state, one of the most industrialized cities in Tamil Nadu, known as the textile capital of South

India or the Manchester of the South India, the city is situated on the banks of the river Noyyal, Coimbatore existed even prior to the 2nd or

3rd century AD by Karikalan, the first of the early Cholas. At present the District Court of Coimbatore comprising of special Courts such as

Bomb blast Court, Motor Vehicles Accidental claim under MCOP Court, Mahila and Additional Mahila Court to entertain the offences

against Women under Indian Penal code, family courts to try the matrimonial disputes such as divorce, restitution of conjugal rights and

maintenance and special court also established to try the domestic violence cases against women. The study also to know the awareness of

among the stakeholders about the special courts in the District Court of Coimbatore

Table-3

Reliefs sought under Chapter IV of DV Act 2005 before the Special Court at Coimbatore from the year 2019-2021

Section	Definitions	Pending	Disposed
12	Application of Magistrate	195	87
17	Right to reside in a shared household	9	2
18	Protection Orders	51	13
19	Residence Orders	31	10
20	Monetary reliefs	45	16
22	Compensation Orders	58	13
23	Power to grant interim and ex-parte orders	27	8
25	Duration of the Orders	3	0
26	Relief in other suits and legal proceedings	0	0
28	Procedure	16	9
Total		435	158

**Sourced from e-courts official website of District Court of Coimbatore.*

From the above table it is arrived on the conclusion that the existing special Act 2005 in protecting and preventing the violence against women in the District Court of Coimbatore is found to be effective. The aggrieved person invoked Section 12 of the DV Act 2005 presenting an application to the Magistrate seeking one or more reliefs under this Act which includes a relief for issuance of an order for payments of compensation or damages without prejudice to the right of such person to initiate a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent. Further, application can be filed by either an aggrieved person or a Protection Officer or any other person on behalf of aggrieved person. The aggrieved person invoked Section 22 and 18 for compensation orders and Protection Orders respectively. Only 9 aggrieved person seek to reside in a shared household with respondents. The special court has disposed the 158 cases from 2019 to 2021.

Table 4

Knowledge of the existence of Special Court at the District of Coimbatore.

Knowledge of the respondents	Yes	No	Percentage analysis	
Do you have any experience of domestic violence in martial house?	43	9	83%	17%
Do you know to report can be filed against the offenders ?	46	2	96%	4%
Do you know the complaint can be filed before the Protection Officer?	12	47	20%	80%
Do you know the aggrieved person directly file a report before the Magistrate?	3	48	6%	94%
Do you know the establishment of the special Court to try the cases under PWDV Act at Coimbatore	28	9	76%	24%
Do you find it is effective?	45	7	87%	13%

From the above analysis shows that 83% of the respondents have experienced domestic violence in their closed doors of the martial house. Nearly 96% of women has established that they know to report against the domestic violence .Many cases left unreported or uncontested before the competent jurisdiction. The stakeholders are unaware of the existence of the Protection officers under Domestic Violence Act 2005. The table shows that 80% of women do not know the complaint can be filed before the Protection Officers. 94 % of the stakeholders also don't know that the aggrieved person directly file a report before the Magistrate under Section 12 of the Domestic Violence Act 2005.In respect of establishment of the special Court only 76% of stakeholders knows the functioning of the a new court to try exclusively the domestic violence cases under Domestic violence Act 2005

Conclusion:

The special Court to try the domestic violence cases under DV Act 2005 functioning under the Chief Judicial Magistrate of District Court of Coimbatore which provide a comprehensive judicial monitoring against domestic violence offenders and frontloads services to aggrieved women which may be particularly helpful in communities where there has traditionally been a lack of involvement by the court in the coordinated community response for victims. All domestic violence court systems regardless of form or origin should have the same core goals of "victim safety" and respondent accountability; informed judicial decision-making and efficient case processing; and a concentration of social services. The specialized court designed to dispense justice to women against the domestic violence. They speedily deal with and dispose of cases pertaining to women fighting legal battles following violence against women and seek quick relief in disputes for shelter and for financial assistance.

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3. The pending and disposed domestic violence sourced from <https://districts.ecourts.gov.in/coimbatore> and <https://www.kaanoon.com>.
4. Article 14 of the Constitution of India provides for equality before the law or equal protection of the laws within the territory of India.
It states: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
5. Article 15 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them.
6. Article 21 No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India.
7. Section 14 (1) of the Criminal Procedure Code 1973 Local jurisdiction of Judicial Magistrates.
Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code.
8. Section 498 of the Indian Penal Code Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
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