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## Protection of Women Under Domestic Violence Law in India: A Critical Study

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### Abstract :

*"No country built on injustice can endure. From the desert-covered Egypt, the marble wasteland of Athens, and the decaying remains of the once-powerful Rome There's a cry, if you will, that a country built on injustice cannot last forever."<sup>1</sup>*

The well-intentioned Domestic Violence Act of 2005 was proposed as a last option to protect women from domestic terrorism after all other previous statutes had failed to provide the desired effects . This legislation is an example of legislative dynamisms. As a result, this essay aims to discuss the state of women's protection legislation prior to the Domestic Violence Act's passage. Additionally, the article deduces the legislative objective of the Domestic Violence Act by providing a thorough examination of its numerous components. But remember, "All power tends to corrupt, and absolute power corrupts absolutely."<sup>2</sup> For this reason, this study also examines the possibility that the Domestic Violence Act's provisions may be abused. "The notable flaw in this law is that it lends itself to such easy misuse that women will find it hard to resist the temptation to teach a lesson to their male relatives and will file frivolous and false cases," noted District Educational Officer J. Vaidhynathan in the Loha v. District Educational Officer case.<sup>3</sup> Finally, the article offers several recommendations that the author believes should be implemented to create a more reasonable atmosphere and guarantee that none of the provisions are abused.

**Keywords :** Protection , women , domestic violence , law in India

<sup>1</sup> THE WORKS OF ROBERT G. INGERSOLL, BY ROBERT INGERSOLL, PAGE 220.

<sup>2</sup> John Emerich Edward Dalberg-Acton, Available at <https://www.goodreads.com/quotes/814115-absolute-power-corrupts-absolutely> (last accessed on 26/1/2018)

<sup>3</sup> Madras High Court, *Loha Vs District Educational Officer*, W.P.(MD).No.8646 of 2015, Dt: 08.06.2015

## 1.0.Introduction :

"The historical unequal power relations between men and women, which have resulted in men's dominance over and discrimination against women as well as the prevention of women's full advancement, are manifested in violence against women." <sup>4</sup>. The author of this paper has undertaken a sincere endeavor that could be more accurately described as an adventure. She has painstakingly and laboriously highlighted the mistreatment of women under the guise of societal norms and the terrible consequences that result in the breakdown of families. She has also attempted to offer a solution to domestic violence, which is a social problem that may require both social and legal solutions because laws alone may not always be sufficient to address deeply ingrained social issues. Roscoe Pound stated, "What is in the way of preventive justice is achieved not by legal but by social agencies." This is true even if the recently established statute may help to address domestic violence issues and provide both legal and educational support. Social workers handle it instead of legal authorities most of the time.<sup>5</sup>. As a result, the author has tried to critically and compassionately investigate every part in great detail and with a great deal of love. Why is the victim of O'Creulty typically a woman?!

For both men and women, the freedom from violence and the right to safety are essential human rights. For this one and only reason, this paper attempts to address the causes of violence against women as well as laws that prevent such incidents. It also discusses extensively the potential abuse of domestic violence laws pertaining to women and, in the end, tries to concentrate on gender neutral laws. In order to comprehend the current state of affairs, it is crucial to acknowledge that India has historically been a patriarchal country, with a high rate of illiteracy among women serving as one of the main contributing factors to the widespread prevalence of violence against women. In addition, customs like the satipratha, the purdah system, female feticide, female infanticide, and many more have only made things worse for women in Indian society. Women have historically suffered mistreatment and been denied their constitutionally guaranteed rights to life and personal liberty in India, a country where women make up over half of the population.

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<sup>4</sup> The United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution, December 1993.

<sup>5</sup> Roscoe Pound – Criminal Justice In America

<sup>6</sup> Law Relating to Dory, Dowry Death, Cruelty to Women and Domestic Violence

Another factor contributing to these instances of domestic violence is the false belief that women are inherently weaker than men, both physically and emotionally. In private houses across our nation, individuals are being raped, assaulted, and murdered. It is taking place in towns, cities, rural regions, and urban areas. It transcends all age ranges, racial divides, genders, and socioeconomic strata. It is evolving into a heritage that is being transmitted between generations. However, offenses This essay also covers legislative dynamism and the vigor of passing legislation. While the Indian government should be commended for taking seriously its responsibility to protect women from domestic abuse, this article also seeks to address how this constructive approach has been thwarted by:

1. The maltreatment of male spouses and their female relatives due to the extra protections provided to women.
2. Rent-seeking and police harassment disguised as enforcement<sup>9</sup>. The advantages that these laws were meant to give victims of domestic abuse have been eclipsed by their detrimental effects. This illustrates how strong institutional and cultural barriers can make even a legal framework against domestic abuse that complies with international human rights norms ineffective or inadequate.

## 2.0. Domestic violence against women

It is rather regrettable that we mistreat the ladies we worship and revere in the guises of Durga, Saraswati, Parvati, and Kali when we are in those four walls. Over the past few millennia, there have been numerous significant changes to the position of women in India. The history of women in India has been vibrant, ranging from their mostly unknown position in prehistoric times through the low periods of the medieval era to the widespread advocacy of equal rights by reformers. Gender relations, which in some way presuppose that males are meant to be superior to women, are largely responsible for violence against women. Consequently, women are now viewed as inferior and many instances of gender-based violence are accepted as commonplace, with unexpected social acceptance. While it is not necessary to have a conversation about violence, there are many different forms of violence, such as physical aggressiveness and psychological violence.

<sup>7</sup> Available at <http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf> (last accessed on 26/1/2018)

<sup>8</sup> Available at <http://ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf> (last accessed on 26/1/2018)

It is impossible to comprehend the current state of women's status quo without acknowledging and comprehending the earlier circumstances from which it originated. As a result, this article has categorized women's standing into three historical periods.

- a) **Historical Society:** Historical Society In every aspect of life, women and men in ancient India were treated equally. The fact that she was referred to as "ardhangini," which implies that there was equality between men and women and that neither was superior to the other, may be used to summarize the position of women in ancient India from a critical perspective. In Brahmanas, the name "Patni" denotes her equal participation in her husband's social and religious life. She is the only mistress living there. The wife was never viewed as a slave or a salve, but rather as a confidante, a comrade, and a mentor in issues of faith.
- b) **Medieval Society:** the arrival of Mohammedanism in AD 712 along with the Arab invasions. The Hindu society developed a more inflexible view of women. With the Smritis, the Islamic invasion of Babur and the Mughal Empire, and subsequently Christianity restricting women's freedom and rights, the position of women started to deteriorate later in 500 B.C. Women had status, independence, and prestige in society, but these things did not endure long, and eventually, they began to live indoor lives. The medieval era saw a further decline in the status of Indian women as sati, child marriages, and the prohibition on widow remarriage were commonplace in several Indian cultures. The Devadasi or temple ladies were sexually abused in several regions of India. Polygamy was common, particularly among the Hindu Kshatriya kings. In the 18th century, women lost their identity, and from the start of the 19th century, they were completely and violently subjugated to male

dominance, both intellectually and physically.

- c) **Modern Society:** When British administration began, their fundamental theory of government was to keep the country under their control and not meddle with the personal laws of Muslims and Hindus.. Following their country's independence and the establishment of a Sovereign, Socialist, Secular, Democratic, Republic, Indians began to take steps to improve the status of women. Considering that women make up over half of India's population, it is impossible to neglect them. Swami Vivekanand once said, "A bird with one wing cannot fly."

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<sup>9</sup> Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality by RehanAbeyratne& Dipika Jain Vol 21 Issue 2 Page 3

The violence committed against women is not only caused by one or more variables. The author has categorized the many causes of violence against women into five categories for the sake of this. They are political, legal, economic, and cultural.

**Cultural:** The primary cause of violence against women is the acceptance of violence as a method of dispute resolution. Most victims believe that suffering in silence is preferable to being cut off from their loved ones.

**Economic:** Women's financial and economic dependency on males is a significant contributing factor to violence against women. This is typically the case when a man believes his authority in the home is being challenged and he is unemployed. Fear and danger of violence prevents women from looking for work or forces them to choose low-paying, exploitative jobs.

**Legal:** Domestic violence is mostly caused by inadequate and incorrect legislation, as well as the legal standing of women. India has rules that consistently favor males over women when it comes to inheritance, child custody, divorce, and maintenance. Violence against women has resulted from this even more. Law enforcement organizations also have a tendency to protect their male counterparts and show less empathy for women and their issues.

**Political:** An further factor contributing to an increase in violence against women is the exclusion of women from society and their low political involvement. Their less encounters with outsiders and strangers lead to their increased vulnerability to violence. They are afraid to speak up in fear of becoming victims of even greater abuse. <sup>10</sup>.It is relevant to mention that a 1996 poll of 6,902 males in the state of Uttar Pradesh revealed that as many as 45% of married men admitted to physically assaulting their spouses.Eleven Because of this alarming number, strong legislation is required..

### 3.0.Defining domestic violence :

A "domestic relationship" is defined by Section 2(f) of the Act as a relationship between two people who currently reside together or have previously resided in a shared household, regardless of whether they are related by consanguinity, marriage, adoption, or another relationship in which they are family members living in a joint family. This clause covers a fairly broad range. In the well-known Nandan Singh Manral v. State

case, the brother-in-law received the notification. However, it was decided that since there was no domestic tie, the married sister's husband, who lived distant from the husband's family, could not be considered to have shared a home with the resentful party. As a result, the brother-in-law's notice was invalidated. On the other hand, the Indian Penal Code's Section 498A was primarily included to punish the bride's in-laws and husband for the cruel deed. The male is the one who abuses the woman in domestic violence cases as well. Currently, it is considered that there was an act of domestic violence for which the husband and his relatives would be held accountable if the husband or his relatives conduct an act of domestic abuse through either his male or female relatives. In this case, the parties shall abide by the magistrate's order, and failure to do so shall be considered a violation of the Protection of Women from Domestic Violence Act, 2005, Section 31. Therefore, although having a very broad reach, the aforementioned definition indicates and highlights the actual spectrum of domestic violence.<sup>12</sup>

#### 4.0. Domestic violence Act – The legislative dynamism

The Protection of Women from Domestic Violence Act is a laudable and glorious enactment that aims to stop the turbulent flow of violence that is deeply eroding family mornings. The Legislature, in good faith, believed that domestic violence is one of the most heinous, detestable, and condemnable evils that has shocked the social conscience and must be eradicated without any waste of time. Failing to do so would eat away the morals and the values on which our society lived and thrived. A noble and magnificent law, the Protection of Women from Domestic Violence Act seeks to halt the violent cycle that is severely undermining family relationships. In good faith, the Legislature held the opinion that domestic abuse is one of the most horrible, abhorrent, and morally repugnant crimes that has horrified society and has to be eliminated right now. If this wasn't done, our society's principles and values would be undermined, making it harder for it to survive. orders, as well as criminal penalties that include jail time and fines, that apply when someone violates a civil order. Thirteen The societal realities that Indian women confront—such as threats of physical and mental abuse—are better addressed by this more comprehensive approach to domestic abuse, for which they frequently need rapid access to legal remedies.<sup>14</sup>

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<sup>10</sup> IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 19, Issue 10, Ver. IV (Oct. 2014), PP 08-14 e-ISSN: 2279-0837, p-ISSN: 2279-0845.

<sup>11</sup> Violence Against Women,” WHO, FRH/WHO/97.8, “Women in Transition,” Regional Monitoring Report, UNICEF 1999

.Notably, protection from domestic abuse was not restricted to married couples under the Domestic Violence Act. Unlike previous domestic violence legislation, the current Act covers "domestic relationships," which happen to include "all relationships based on consanguinity, marriage, adoption, and even relationships which were "in the nature of marriage." This is the most wonderful aspect of the current legislation because it has adapted itself with contemporary laws.

” The new law will now apply to all women who are in abusive relationships, irrespective of whether the abuse is coming from a husband, domestic partner, or cohabitant. Siblings, single women, and other women residing with the accused offender are likewise protected. The term "shared household" was first used in this act, which applied to women in non-marital partnerships. According to Section 2(s) of the legislation, a property owned by a joint family, of which the male respondent is just one member, may be included in the definition of "shared household."

Not to be overlooked is the Domestic Violence Act's Section 20(1), which gives magistrates the authority to award monetary assistance to the victimized lady. This clause makes guarantee that women who report violations under the new statute won't be forced from their houses. Since it was seen that prior to the new law's application, women were expelled from their married homes after filing lawsuits against their husbands, families, or both. The new law also gives the magistrate the authority to issue an order granting any woman who leaves the residence after filing a complaint access to it. To be clear, the Domestic Violence Act does not create any new criminal offenses. However, magistrates may file appropriate charges against the respondent and try cases themselves or commit them to the Indian Penal Code or Dowry Prohibition Act if the domestic violence case reveals any offenses punishable under those laws Sessions Court as needed.<sup>15</sup>. Unfortunately, the Domestic Violence Act does not define "respondent" precisely. All that Section 2(q) does is define "respondent" as "adult male person," which suggests that women are not included in that definition.<sup>sixteen</sup>.

<sup>12</sup> IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 19, Issue 10, Ver. IV (Oct. 2014), PP 08-14 e-ISSN: 2279-0837, p-ISSN: 2279-0845.

This phrase has been interpreted by many High Court judgments to include female respondents, recognizing that in India, female in-laws are often the ones who commit domestic abuse. Eventually, the Indian Parliament added a proviso to this clause to clarify what "respondent" meant. When the victim is a wife or woman in a relationship that resembles marriage, the proviso includes the accused man's female relatives in the term.<sup>17</sup>. This implies that victims of domestic abuse have the legal ability to bring charges against both male and female offenders. The act's validity has been called into question several times, but the judiciary has already established a number of court precedents that provide comprehensive responses to all of the concerns. For example, in the case of *Krishan Lal v. Union of India* 18, the court determined that Article 14 of the Indian Constitution guarantees equitable treatment to all individuals in comparable circumstances. Furthermore, it was decided that discrimination based on invidiousness is offensive to equality.

### 5.0. Possible misuses of domestic violence act:

The Domestic Violence Act of 2005 was enacted by the legislature to protect women from harassment of any kind. Although much emphasis was placed on this topic, it was regrettably overlooked that men could also become victims of harassment of this type. As a result, it is now necessary to reconsider how men should be protected from harassment by women. The Honorable Supreme Court ruled in the case of *Dr. N. G. Dastane v. Mrs. S. Dastane*<sup>19</sup> that there are two types of cruelty: mental and physical. While it may be true that a powerful spouse tends to continue physical abuse, this cannot be claimed for all husbands. In the instance of mental cruelty, it is also the other way around. However, in the vast majority of instances, the woman nearly always abuses her husband mentally. Furthermore, the Hon'ble Apex Court noted that a New Legal Terrorism may be unleashed by misusing the clause in the *Shushil Kumar Sharma v. Union of India*<sup>20</sup> case.

<sup>13</sup> See LAWYER'S COLLECTIVE REPORT, supra note 28, at xiii (recognizing domestic violence as both a criminal and civil issue); see also HANDBOOK OF DOMESTIC VIOLENCE, supra note 34, at xviii (elaborating on the protections of the PWDVA).

<sup>14</sup> LAWYER'S COLLECTIVE REPORT, supra note 28, at xiii (broadening protections and understanding that domestic violence did not only occur to married women, but encompassed a much larger issue).

The question now is: Can laws intended to safeguard women be abused? "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," the Honorable Supreme Court said in a case in response to this question.<sup>21</sup> The Supreme Court made this statement in relation to the Domestic Violence Act. For this reason, it's crucial to understand that cruelty does not simply apply to women. Men may also experience this, and in certain situations, cruelty or harassment can also be psychological in nature. In these situations, victimization of male partners and police harassment are also significant problems.

The Act's uncertainties and lack of clarity have also drawn criticism. For example, the Act defines "verbal and emotional abuse" in Explanation I (iii) of Section 3 of the Act, although it does not define "insults" or "jibes."<sup>22</sup>

Thus, it is possible for the term "mental and verbal abuse" to be misunderstood. In certain situations, it may be used to simple domestic disputes that weren't meant to qualify as verbal and mental abuse.<sup>22</sup> It is important to remember that, regrettably, "any woman" is always the victim under the Domestic Violence Act of 2005. 'A definition such as this does not include man. As a result, the Act's Aggrieved solely applies to women. In fact, the preamble mentions the "rights of woman." According to the definition, any "adult male person" is a "respondent," hence a complaint cannot be made against a female. When we consider that a female partner in a live-in relationship that may have lasted for barely a month might claim maintenance payment under this provision, with no limits attached, we can see how provisions like section 20(1)(d) can be abused .

<sup>15</sup> Mathivanan, supra note 61 (explaining that the Act was designed to protect women from incidences of domestic violence both explicit and dormant).

<sup>16</sup> Amita Punj & Arvendra Singh, *The Protection of Women from Domestic Violence Act, 2005: Can Women Be "Respondents"* -

An Appraisal of Section 2 (q), 2010 (1) S.C.C. (Jour.) 23 (defining the respondent as an adult maleperson).

<sup>17</sup> See Mathivanan, supra note 61 (adding also that a male child may complain along with his mother).

<sup>18</sup> 1994 Cr LJ 3472: ILR 1994 2 P&H 422

<sup>19</sup> AIR 1975 SC 1534

## 6.0. Conclusion:

There are no laws in India or anywhere else in the world that are specific to men. The Dowry Prohibition Act, Section 498A of the Indian Penal Code (which refers to cruelty by a husband or his family), Section 125 of the Code of Criminal Procedure (which deals with support for a wife), and the protection of women from domestic abuse are all examples of statute books that contain laws. However, the Domestic Violence Act of 2005 does not provide protection for males, nor does it have provisions similar to Section 498B of the Indian Penal Code or Section 125A of the Code of Criminal Procedure, which deals with support to spouses under the Act. Rather, misbehaving women and police personnel abuse the laws designed specifically for women. The legal system does not hear the cries of abused spouses and their families. According to the practice, "wives suffer for no fault because the real purpose of the women-related specifies laws are misused."<sup>24</sup> - The case of *Vijaylakshmi V. Punjab University*<sup>25</sup> established that the State is permitted to discriminate against males in favor of women, but not against women in favor of men, due to the combined application of Article 15(1) and (3). It is a civil right to be protected against domestic abuse, but it is equally important to remember that this right should not be abused. On the other hand, the opposing viewpoint contends that forcing solutions to social issues might make respondents react more strongly, which could ultimately be harmful to society as a whole.<sup>26</sup> The highest court has demanded that this clause be made more flexible in a number of situations.<sup>27</sup> As noted in the cases of *Padma Sundra Rao and others v. State of Tamil Nadu* and *Malavi Hussain Haji Abraham Umarji v. State of Gujarat*, the Court merely interprets the law; it cannot enact it. The legislature has the authority to change, modify, or abolish a law if it is abused and exposed to the abuse of the legal system<sup>28</sup>.

<sup>20</sup> AIR 2005 SC 3100

<sup>21</sup> *Preeti Gupta Vs. State of Jharkand*, AIR 2010 SC 3363

See N.K. Singhal, *Crimes Against Women-Role of Section 498-A, IPC in States of Delhi and Haryana* (2002), in *RESEARCH STUDIES ON POLICE AND PRISON ISSUES (1970-2009)* 257-58, available at

<http://bprd.nic.in/index2.asp?slid=378&sublinkid=160&lang=1><sup>22</sup>

<sup>23</sup> Ghosh & Choudhuri, pg. 323.

<sup>24</sup> P.K. Das, *Law relating to cruelty to husband*, (2008), p.1

<sup>25</sup> AIR 2003 SC 3331

<sup>26</sup> *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Volume 10, Issue 2 (Mar. - Apr. 2013), PP 41-44e-ISSN: 2279-0837, p-ISSN: 2279-0845.

<sup>27</sup> Dr Partha Partim Mitra, "A new look on matrimonial cruelty with criminal law", *Indian Bar Review*, Vol XL