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# **AN ANALYSIS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

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**Abstract-** *“Domestic Violence has existed in our society as a social evil for centuries now. To curb the evil, Section 498A was introduced in The Indian Penal Code, 1860; but it existed as a remedy under the criminal law. To introduce remedy for violence of any kind under the civil law, The Protection of Women from Domestic Violence Act was enacted in 2005. It includes every kind of violence including physical, sexual, economic, emotional and verbal abuse. To analyze all the provisions of this Act is the primary aim of this study. In this article, all the important provisions of the Act have been discussed in details.”*

**Keywords-** Domestic Violence, provisions of DV Act, analysis of Domestic Violence Act etc.,

## **1. INTRODUCTION**

Domestic violence against women is a pervasive societal issue that violates fundamental human rights and dignity. For centuries, this insidious form of abuse was shrouded in silence and stigma, often considered a private matter within families. However, domestic violence has deep-rooted consequences not just for the victims but also for society at large. It perpetuates cycles of violence, undermines gender equality, and impedes the overall development and progress of nations.

In India, the issue of cruelty against women within households gained legal recognition with the introduction of Section 498A in the Indian Penal Code in 1983. However, this criminal legislation proved inadequate in providing effective civil remedies and preventive measures to protect women from domestic abuse. It was in this context that the Protection of Women from Domestic Violence Act was enacted in 2005.

This pioneering legislation marked a paradigm shift in how the Indian legal system addressed violence within the confines of a home or domestic relationship. The Act not only criminalized

physical forms of abuse but also recognized emotional, verbal, economic, and sexual violence as punishable offenses. It provided a comprehensive framework for women to seek immediate relief through protection orders, monetary compensation, shelter, and other provisions.

## 2. GENERAL INFORMATION

The Domestic Violence Act was enacted in the year 2005. Various International Instruments had already acknowledged that domestic violence is a human rights issue; and every State shall work towards curbing the same.<sup>1</sup> Those Instruments included the Vienna Accord (1994), the Beijing Declaration and the Platform for Action (1995), and The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) (1989).<sup>2</sup> In India, criminal law addressed the issue of cruelty against women under Section 498A. However, no remedy was provided under the civil law. As a result, the Domestic Violence Act came into force on 26-10-2006, and is applicable to whole of India.<sup>3</sup> The aim was to provide effective protection to women from violence of any kind, occurring within a family, as prescribed under the Indian Constitution.<sup>4</sup>

## 3. MAIN PROVISIONS OF THE ACT

Under this chapter all the important provisions of the Act have been discussed in an uncomplicated manner.

### 3.1 PARTIES INVOLVED IN THE ACT OF DOMESTIC VIOLENCE

In the act of Domestic Violence, two parties are involved i.e. 'aggrieved person' and 'respondent'. An aggrieved person can only be a woman who is or has been in a domestic relationship with the respondent, who allegedly commits the act of domestic violence.<sup>5</sup> A Respondent earlier could be any 'adult male person' who is or has been in a domestic relationship with the aggrieved person against whom a complaint of domestic violence is filed. In case an aggrieved woman is a wife of her husband, or female partner living in a live-in relationship, she could file a complaint against her husband's or male partner's relatives as well. However, in 2016 a landmark judgment was

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<sup>1</sup> The Protection of Women from Domestic Violence Act, 2005, STATEMENT OF OBJECTS AND REASONS, No. 43, Acts of Parliament, 2005 (India).

<sup>2</sup> *Id.*

<sup>3</sup> The Protection of Women from Domestic Violence Act, 2005, S. 1(2), No. 43, Acts of Parliament, 2005 (India).

<sup>4</sup> The Protection of Women from Domestic Violence Act, 2005, PREAMBLE, No. 43, Acts of Parliament, 2005 (India).

<sup>5</sup> The Protection of Women from Domestic Violence Act, 2005, S. 2(a), No. 43, Acts of Parliament, 2005 (India).

passed which deleted the term ‘adult male person’ and the proviso to Section 2(q); after which a Respondent can be any person living in a domestic relationship which includes women and minors.<sup>6</sup>

The definitions of aggrieved person and respondent include an important term ‘domestic relationship’. So, a domestic relationship is a relationship between two parties, who live or have at any point of time lived together in a shared household, where they are related to each other either by blood, marriage, adoption, being family members living in a joint family or through a relationship in the nature of marriage.<sup>7</sup> Here, the term shared-household means a household where an aggrieved and respondent lives or have lived at any point of time lived together in a domestic relationship.<sup>8</sup> The household can be rented or owned either by both the parties or singly, and can be a household belonging to the joint family of which the Respondent is a member.

### 3.2 DEFINITION OF DOMESTIC VIOLENCE

Domestic violence can be an act/ omission/ commission or conduct of the Respondent where the Respondent harms or injures the body parts of an aggrieved, endangers her life, harasses her with an intention to coerce her or any other person related to her to meet their unlawful demands.<sup>9</sup> The act of violence can be in the form of physical, sexual, economic, emotional or verbal abuse. It means that name-calling a woman for not being able to bear a child/ male child, or depriving her from basic needs also amounts to domestic violence.<sup>10</sup>

### 3.3 FILING A COMPLAINT OF DOMESTIC VIOLENCE

Information about the occurrence of domestic violence can be given to a Protection Officer by anyone who has a reason to believe that an act of domestic violence has been/ is being committed, or is likely to be committed.<sup>11</sup> If an information is given in good faith and turns out to be false, still no civil or criminal liability can be incurred against such person.<sup>12</sup>

### 3.4 DUTIES OF VARIOUS STAKEHOLDERS UNDER THE ACT

Different stakeholders have different roles to play under the Act. The stakeholders include

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<sup>6</sup> Hiral P. Harsora & Ors. v. Kusum Narottamdas Harsora & Ors., (2016) 10 SCC 165.

<sup>7</sup> The Protection of Women from Domestic Violence Act, 2005, S. 2(f), No. 43, Acts of Parliament, 2005 (India).

<sup>8</sup> The Protection of Women from Domestic Violence Act, 2005, S. 2(s), No. 43, Acts of Parliament, 2005 (India).

<sup>9</sup> The Protection of Women from Domestic Violence Act, 2005, S. 3, No. 43, Acts of Parliament, 2005 (India).

<sup>10</sup> The Protection of Women from Domestic Violence Act, 2005, S. 3 Exp-I, No. 43, Acts of Parliament, 2005 (India).

<sup>11</sup> The Protection of Women from Domestic Violence Act, 2005, S. 4, No. 43, Acts of Parliament, 2005 (India).

<sup>12</sup> The Protection of Women from Domestic Violence Act, 2005, S. 4(2), No. 43, Acts of Parliament, 2005 (India).

Magistrate, Police Officer, Protection Officer and Service Provider. An incidence of domestic violence can be reported to any one of them and a Complaint can also be filed. They all have a duty to inform the aggrieved person regarding her right to get free legal aid, right to file application seeking relief under the Act, availability of service by shelter homes and medical facilities, right to file a complaint under Section 498A of the Indian Penal Code; when they receive a complaint/ information of such incidence or when they are present where the cause of action arose.<sup>13</sup>

A Protection Officer is appointed by the State Government in each district, as many as they consider necessary, and as far as possible shall be a woman.<sup>14</sup> They have a duty to assist the Magistrate, to present Domestic Incident Report to the Magistrate, to make available all the services provided under the Act to an aggrieved, to protect the aggrieved person, and maintain list of all the service providers giving facilities in a local area.<sup>15</sup>

A Service Provider cannot simply be an individual who wants to do social service for upliftment of women in the society. It can be an association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or under any other law in force, who has an objective to help and assist women; be it financially, medically etc.<sup>16</sup> A Service Provider has a duty to record Domestic Incident Report, provide assistance to an aggrieved and ensure her safety.<sup>17</sup>

The Protection Officers and Service Providers are deemed to be Public Servants as per Section 21 of the Indian Penal Code, and no prosecution lies against them if they work in good faith.<sup>18</sup> However, if a Protection Officer fails or refuses to discharge their duty without reasonable cause, in case of a Protection Order then he/she can be punished for up to one year of imprisonment, or with fine up to Rs. 20,000, or both but only with the previous sanction of the Government.<sup>19</sup>

### 3.5 JURISDICTION OF THE COURT

Under the Act, the jurisdiction of receiving complaints of domestic violence lies with the

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<sup>13</sup> The Protection of Women from Domestic Violence Act, 2005, S. 5, No. 43, Acts of Parliament, 2005 (India).

<sup>14</sup> The Protection of Women from Domestic Violence Act, 2005, S. 8, No. 43, Acts of Parliament, 2005 (India).

<sup>15</sup> The Protection of Women from Domestic Violence Act, 2005, S. 9, No. 43, Acts of Parliament, 2005 (India).

<sup>16</sup> The Protection of Women from Domestic Violence Act, 2005, S. 10, No. 43, Acts of Parliament, 2005 (India).

<sup>17</sup> *Id.*

<sup>18</sup> The Protection of Women from Domestic Violence Act, 2005, S. 30, No. 43, Acts of Parliament, 2005 (India).

<sup>19</sup> The Protection of Women from Domestic Violence Act, 2005, S. 33, No. 43, Acts of Parliament, 2005 (India).

Magistrate. The Magistrate can include Judicial Magistrate of the First Class (JMFC), or Metropolitan Magistrate (MM).<sup>20</sup> The JMFC or MM can exercise their jurisdiction in the area where the aggrieved person temporarily/permanently works or resides, the respondent permanently/temporarily works or resides, or where the cause of action occurred.<sup>21</sup> An order passed by the Court is enforceable throughout India<sup>22</sup> and appeal lies before the Court of Session. An appeal can be made within thirty days from the date on which the order passed by the Court is received by the parties (whoever receives it later).<sup>23</sup>

### 3.6 SERVICE PROVIDED UNDER THE ACT

It is the duty of the Service Providers or Protection Officers to inform an aggrieved about her right to free legal aid. Apart from that, it is their duty to make available a shelter home or medical facility on behalf of an aggrieved person. If a request is made to the person in-charge of such medical facility or shelter home, then they are bound to provide such facilities to an aggrieved.<sup>24</sup> Furthermore, if the Magistrate at any stage of the proceedings feel the necessity of Counselling, then he/she may direct both the parties together or individually to undergo counselling with a qualified service provider.<sup>25</sup>

### 3.7 DUTIES/ POWERS OF THE GOVERNMENT

The government plays multiple roles under the Domestic Violence Act. Firstly, it is the duty of both State and Central government to ensure widespread publicity of the provisions of the Act.<sup>26</sup> Secondly, they are responsible to take measures to train their own employees periodically regarding the issues addressed by the Act.<sup>27</sup> Thirdly, both the governments have to ensure effective co-ordination between services provided by different ministries and departments and review the work done by them.<sup>28</sup> Lastly, it is their collective duty to compile all the important documents together and put it in place to secure them.<sup>29</sup> When it comes to the rule making power, it lies with the Central Government. Whenever a new rule is to be made, firstly it is laid before both the houses of the Parliament, while it is in session for a period of thirty days. Only then it is

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<sup>20</sup> The Protection of Women from Domestic Violence Act, 2005, S. 2(i), No. 43, Acts of Parliament, 2005 (India).

<sup>21</sup> The Protection of Women from Domestic Violence Act, 2005, S. 27(1), No. 43, Acts of Parliament, 2005 (India).

<sup>22</sup> The Protection of Women from Domestic Violence Act, 2005, S. 27(2), No. 43, Acts of Parliament, 2005 (India).

<sup>23</sup> The Protection of Women from Domestic Violence Act, 2005, S. 29, No. 43, Acts of Parliament, 2005 (India).

<sup>24</sup> The Protection of Women from Domestic Violence Act, 2005, Ss. 6&7, No. 43, Acts of Parliament, 2005 (India).

<sup>25</sup> The Protection of Women from Domestic Violence Act, 2005, S. 14, No. 43, Acts of Parliament, 2005 (India).

<sup>26</sup> The Protection of Women from Domestic Violence Act, 2005, S. 11(a), No. 43, Acts of Parliament, 2005 (India).

<sup>27</sup> The Protection of Women from Domestic Violence Act, 2005, S. 11(b), No. 43, Acts of Parliament, 2005 (India).

<sup>28</sup> The Protection of Women from Domestic Violence Act, 2005, S. 11(c) No. 43, Acts of Parliament, 2005 (India).

<sup>29</sup> The Protection of Women from Domestic Violence Act, 2005, S. 11(d), No. 43, Acts of Parliament, 2005 (India).

passed, and if the Houses suggest some modifications, then they are also taken into consideration before making a new rule.

### 3.8 ORDERS OF RELIEF PASSED UNDER THE ACT

When an incidence of Domestic Violence takes place, an application can be filed by the aggrieved person or any other person, on her behalf before the Magistrate, to seek relief.<sup>30</sup> The Magistrate then shall fix the first date of hearing within three days of receiving the application (ordinarily).<sup>31</sup> The Magistrate shall try his/her best to dispose of the matter within 60 days of the date of first hearing.<sup>32</sup> The notice of such date of hearing shall be served to the parties involved within two days or within the reasonable time prescribed by the Magistrate.<sup>33</sup>

When the matter starts in the Court of law, on the request of either of the parties, or on the consideration of the Magistrate, the proceedings may be held in-camera.<sup>34</sup> Various reliefs can be sought by an aggrieved person, which includes- the right to reside in a shared household, Protection Order, Residence Order, Monetary Relief, Custody Order and Compensation Order. A woman in a domestic relationship, living in a shared household has the right to reside in it, no matter she has any right/ title or beneficial interest in the same or not. An aggrieved woman living there cannot be evicted from such shared household. If the Magistrate is *prima facie* satisfied that an act of domestic violence has taken place then he/she may pass a Protection Order, restraining the respondent from meeting or communicating the aggrieved person by any means. The Protection Order is also passed to restraint the Respondent from committing/ aiding/ abetting the act of domestic violence.<sup>35</sup>

While disposing the application of domestic violence, if the Magistrate is satisfied that violence has taken place, he/she may pass residence order, restraining the Respondent from alienating/ renouncing property or rights in the shared household. The Magistrate may even direct the male respondents to remove themselves from the shared-household or find alternate accommodation for the aggrieved.<sup>36</sup> The Magistrate may also restraint the Respondent or his relatives from entering into the portion of the shared household, where the aggrieved resides.

<sup>30</sup> The Protection of Women from Domestic Violence Act, 2005, S. 12, No. 43, Acts of Parliament, 2005 (India).

<sup>31</sup> The Protection of Women from Domestic Violence Act, 2005, S. 12(4), No. 43, Acts of Parliament, 2005 (India).

<sup>32</sup> The Protection of Women from Domestic Violence Act, 2005, S. 12(5), No. 43, Acts of Parliament, 2005 (India).

<sup>33</sup> The Protection of Women from Domestic Violence Act, 2005, S. 13, No. 43, Acts of Parliament, 2005 (India).

<sup>34</sup> The Protection of Women from Domestic Violence Act, 2005, S. 16, No. 43, Acts of Parliament, 2005 (India).

<sup>35</sup> The Protection of Women from Domestic Violence Act, 2005, S. 18, No. 43, Acts of Parliament, 2005 (India).

<sup>36</sup> The Protection of Women from Domestic Violence Act, 2005, S. 19, No. 43, Acts of Parliament, 2005 (India).

While disposing an application, the Magistrate may even direct the Respondent to pay monetary relief to the aggrieved for the expenses incurred and losses suffered.<sup>37</sup> It includes medical expenses, maintenance of aggrieved or children, but is not limited to it. Apart from this monetary relief, compensation order can also be passed by the Court in addition, for all the emotional, physical and mental injuries caused to her by violence.<sup>38</sup>

### 3.9 PUNISHMENT PROVIDED UNDER THE ACT

The Domestic Violence Act provides for punishment only in two scenarios.

If a Respondent breach a Protection Order or Interim Protection Order then he/she can be punished for up to one year of imprisonment, or with fine up to Rs. 20,000, or both. The Court may conclude that a Respondent has breached a Protection Order merely depending on the sole testimony of an aggrieved person.<sup>39</sup>

Similarly, if a Protection Officer fails or refuses to discharge his/her duty without any sufficient cause, then he/she can also be punished for up to one year of imprisonment, or with fine up to Rs. 20,000, or both.

### 3.10 MISCELLANEOUS

A copy of all the orders passed by the Magistrate under the Domestic Violence Act is to be provided to the parties and all the stakeholders, free of cost.<sup>40</sup> When a Protection Order is passed by the Magistrate, it remains in force until the aggrieved women files an application for discharge.<sup>41</sup> The aggrieved person or the Respondent can file an application for any kind of alteration, modification or revocation of an order.<sup>42</sup> If a Magistrate is satisfied that there has been some change in the circumstances, he/she may provide reasons in writing and allow for such amendment in the Order.

Furthermore, Protection Order, Residence Order and all the other kinds of relief provided under the Act can be sought in legal proceedings before a civil court, family court or a criminal court.<sup>43</sup> Such relief can be sought in addition to what has been requested under the Domestic Violence

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<sup>37</sup> The Protection of Women from Domestic Violence Act, 2005, S. 20, No. 43, Acts of Parliament, 2005 (India).

<sup>38</sup> The Protection of Women from Domestic Violence Act, 2005, S. 22, No. 43, Acts of Parliament, 2005 (India).

<sup>39</sup> The Protection of Women from Domestic Violence Act, 2005, S. 31, No. 43, Acts of Parliament, 2005 (India).

<sup>40</sup> The Protection of Women from Domestic Violence Act, 2005, S. 24, No. 43, Acts of Parliament, 2005 (India).

<sup>41</sup> The Protection of Women from Domestic Violence Act, 2005, S. 25(1), No. 43, Acts of Parliament, 2005 (India).

<sup>42</sup> The Protection of Women from Domestic Violence Act, 2005, S. 25(2), No. 43, Acts of Parliament, 2005 (India).

<sup>43</sup> The Protection of Women from Domestic Violence Act, 2005, S. 26(1), No. 43, Acts of Parliament, 2005 (India).

Act; however, the aggrieved person is bound to inform about the same to the Magistrate.<sup>44</sup> All the proceedings done by the Court are governed as per the provisions of the Code of Criminal Procedure, 1973; however, if the Court seems fit, they can make their own procedure for disposal of applications.<sup>45</sup> Moreover, the Act goes hand-in-hand with other laws in force, which means it is not in derogation with any other law.<sup>46</sup>

#### 4. CONCLUSION

Concluding, the Domestic Violence Act of 2005 played a pivotal role in addressing the issues related to domestic violence by including 'any kind of violence' happening within a family, which includes physical, sexual, economic, verbal and emotional abuse. The comprehensive framework provides the victim with various kinds of protection to ensure her safety and well-being.

Through the establishment of support systems, remedies, and rights, the Act seeks to provide safer surroundings for those living in a domestic relationship. It in fact provides remedy to woman living in live-in relationships, thereby breaking all the stereotypes.

However, strong execution, community education, and ongoing challenges to cultural norms that encourage violence are necessary for it to be effective. To fully achieve the Act's objective in defending the rights and welfare of every person, continued activism, improved support networks, and an unwavering dedication to ending domestic abuse are necessary.

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<sup>44</sup> The Protection of Women from Domestic Violence Act, 2005, S. 26(3), No. 43, Acts of Parliament, 2005 (India).

<sup>45</sup> The Protection of Women from Domestic Violence Act, 2005, S. 28, No. 43, Acts of Parliament, 2005 (India).

<sup>46</sup> The Protection of Women from Domestic Violence Act, 2005, S. 36, No. 43, Acts of Parliament, 2005 (India).