



## **Domestic Violence Act 2005 – A Boon To Protect Women From Violence**

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### **Abstract:**

*Women are vulnerable targets of inhuman wrongs and home is not an exception to suppress the interests of women with different strategies. Every day hundreds of women are physically, mentally, psychologically abused, tortured and also thrown out of the homes. Domestic Violence against women is not merely a domestic issue; but rather a complex socio- economic crisis that threatens the interconnected equilibrium of the entire social structure.*

*Domestic violence is increasingly for grounded in international flora as a human rights violence requiring interventions by state and voluntary agencies. Domestic violence, in simple words is an abusive, violent, and coercive forceful, or threatens act or word inflicted by one member of a family or household on another. It occurs when a family member tries to physically or psychologically dominate or harm the other.*

*Increasing violence at work place and home, foeticide, harmful reproductive technology, gender biased laws an judgments, resistance to political space for women globalization and communal forces gripping feminization of poverty, increasing trafficking, along with gender discrimination, stereotypes and gender bias are all part of the list of issues.*

*Women from her cradle to her grave faces a lot of injustice and almost all times her greatest misfortune seeks to be that she is unaware of her rights. Several National and International conventions focus on Domestic Violence and the Indian Parliament has enacted the protection of women from Domestic Violence Act 2005, with an object to prevent the domestic violence in the society.*

*Present paper focus attention towards the various causes for violence, forms of domestic violence, impact of protection of women from domestic violence act 2005 and future plans and programs to project complete women without any violence. This paper also attempts to analyse the various provisions under the Act which are meant for protection of women from violence and how the law has taken note of issues which it was immune to earlier.*

**Key Words:** *Vulnerable, violence, torture, trafficking, interventions, conventions.*

**Introduction**

Women are vulnerable targets of inhuman wrongs and home is not an exception to suppress the interests of women with different strategies. Every day majority of women are physically, mentally, psychologically abused, tortured and also thrown out of the homes. Domestic Violence against women is not merely a domestic issue; but rather a complex socio- economic crisis that threatens the interconnected equilibrium of the entire social structure.

Domestic violence is increasingly for grounded in international flora as a human rights violence requiring interventions by state and voluntary agencies. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord to 1994 and the Beijing Declaration and the platform for action (1995) have acknowledged this. 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.

The United Nations Declaration on the elimination of violence against women, General Assembly Resolution, December 1993. The term domestic violence includes violence by an intimate partner and by other family, where ever this violence takes place both physical and verbal.

Domestic violence remained as a major focus of modern feminism with regard to violence especially against the girl children. The girl children in the family are subjected to Psychological violence in the socialization process to make them as timid, submissive, to accept the subordinate position in comparison to boys. This type of control over girl is generally common in each and every house hold to make them as socially acceptable women and as house wives.

Ram Ahuja consider violence as “ a behavior in which a more powerful person takes advantage of and abuses a less powerful one”.

American Heritage dictionary defines violence as “physical force exerted for the purpose of violating, damaging or abusing”.

Domestic violence, in simple words is an abusive, violent and coercive forceful, or threatens act or word inflicted by one member of a family or household on another. It occurs when a family member tries to physically or psychologically dominate or harm the other.

“Domestic violence act” defines the domestic violence as the violence perpetrated on women not only by her husband or parents but even their siblings. It prevails not only to physical abuse but also verbal and emotional abuse, sexual abuse and other civil relief cases. With this background the seminar is intended to have a discourse on the newly introduced “Domestic Violence Act and Intervention”.

Any conduct of the respondent shall constitute domestic violence if he,

- (a) Habitually assaults or makes the life of the aggrieved person miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment;
- (b) Forces the aggrieved person to lead an immoral life.
- (c) Otherwise injures or harms the aggrieved person. (2) Nothing contained in clause, (c) of sub-section, (1) shall amount to domestic violence if the pursuit of course of conduct by the respondent was reasonable for his own protection or for the protection of his or another's property.

Increasing violence at work place and home, feticide, harmful reproductive technology, gender biased laws and judgments, resistance to political space for women globalization and communal forces gripping feminization of poverty, increasing trafficking, along with gender discrimination, stereotypes and gender bias are all part of the list of issues.

Women from her cradle to her grave faces a lot of injustice and almost all times her greatest misfortune seeks to be that she is unaware of her rights. Several National and International conventions focus on Domestic Violence and the Indian Parliament has enacted the protection of women from Domestic Violence Act 2005, with an object to prevent the domestic violence in the society. That is why I like to state that Domestic Violence Act 2005 is a boon to protect women from violence.

The Domestic Violence Act, 2005 came into force on 26<sup>th</sup> October 2006. The Act has raised hopes that endemic violence against women would get legal address but also



questions over how effectively it would be implemented. This is a historic law and there can be no bigger happiness for women than seeing this law enacted.

“Violence against women is a manifestation of historically unequal power relations between man and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”.

The United Nations Declaration on the elimination of violence against women, General Assembly Resolution December 1993, protects the women from violence and harassment to some extent. Violence against women is a serious problem in India. Overall, one third of women age 15-49 have experienced physical violence and about 1 in 10 have experienced sexual violence, in total 35% have experienced physical or sexual violence, this figures translate into millions of women who suffered, and continue to suffer at the hands of husband family members.

The main reasons behind the domestic violence is social, economic, and cultural reasons. The present paper makes an attempt to study the various domestic problems faced by women irrespective of literate, illiterate working women, housewife rural or urban women. Majority of the women are facing domestic violence though there is. Domestic Violence Act 2005. Where many women are not aware of this act. More over acts alone cannot bring any changes until and unless there is a change in the mind set of men to accept women as human beings and gives an equal status for women.

India is a country known for customs and traditions, with lots of blind beliefs, gender discrimination etc, even in 21 century women suffers due to sexual harassment, abuse and domestic violence along with sexual harassment at work place.

#### **Nature and Extent of Domestic Violence against Women**

1. Criminal Violence – rape, abduction, murder etc.
2. Domestic Violence – dowry deaths, wife battering, sexual abuse, maltreatment of widows and elderly women etc.
3. Social Violence – forcing the wife daughter-in-law to go for female foeticide, eve-teasing, refusing to give a share to women in property, harassing the daughter-in-law to bring more dowry etc.

**Forms of Domestic Violence**

Domestic violence occurs in many forms such as physical, emotional, economical sexual, psychological verbal, and others ;

1. Bride burning and murder for dowry by husband and in laws.
2. Denial of conjugal rights.
3. Sexual harassment.
4. Verbal abuse and wife-battering
5. Financial and social effects on women and children
6. Emotional black mail and disrespect, or neglect
7. Threatening
8. Physical harassment like Biting, pinching, kicking, hair pulling, punching and slapping etc.
9. Child marriage and forced marriage.
10. Female infanticide.

**Rape**

Section 376 of the Indian Penal Code describes rape as “sex with a women against her will, or without her consent, or with her consent when the man knows that he is not her husband but she believes him as her husband, or with or without her consent when she is under 16 of age”.

**Abduction and Kidnapping**

Under section 363 of Indian Penal Code, Kidnapping as “taking away or enticing a minor a female of less than 18 years and male of less than 16 years of age – without the consent of the lawful guardian”. It defines abduction as “forcibly, fraudulently or deceitfully taking away a women with the intent of seducing her to illicit sex or compelling her to marry a person against her will.

**Murder**

Ram Ahuja studied 33 cases of homicide other than dowry related deaths. Murder is a generic term which includes all types of homicide. Murder of a women is inspired by many factors such as illicit relations, petty quarrels, etc.

**Wife Battering**

Domestic violence against women in the context of marriage becomes more significant when a husband who is supposed to love and protect his wife beats her. For a women being battered by a man whom she trusted most becomes a shattering experience. The violence can range from slaps and kicks to breaking bones, torture and attempted murder and even murder itself.

**Female Foeticide**

The devaluation of girls starts even before she is born. Various tests are conducted to determine the sex of the foetus. If it is found to be the female next step is abortion. The desire for male child and traditional feelings continue to be little and exploit women in India. For ex; In Mumbai alone annually 40,000 such tests are conducted and out of every 9000 abortions 7997 were female fetuses.

**Female Infanticide**

Female infanticide, though illegal, continues in certain communities in India. Many of the studies conducted in the field have revealed that the practice is found more in Tamil Nadu, Rajasthan, Bihar and other provinces. They consider female child as liability.

**Denial Of Conjugal Rights**

Women are not allowed to enjoy their rights after marriage specially in rural families and also traditional oriented families.

**Prostitution**

Most of the women have taken this profession out of economic necessity. Further victims of rape, incest, widowhood, desertion, divorce etc. may also join the ranks of prostitution.

**Dowry Deaths**

Dowry death either by way of suicide by a harassed wife or murder by the greedy husband and in-laws have indeed become almost the daily news. Most of the dowry deaths occur in the privacy of the husband's house and often with the collusion of the family members. Therefore, courts admit their inability to convict any one for lack of proof. Only few killers in bride-burning cases are arrested.



In free India number of legislations have been enacted/amended to ensure equality of status and opportunity for women as the social economic, cultural and political conditions of women are very poor. For ex: Dowry Prohibition Act 1961, Domestic Violence Act 2005, Suppression of immoral traffic women and girls act 1956 was amended in 1986 and so on. Until and unless it changes the mind set of people these legislations cannot bring any changes among men, for ex: Article 3 to 21 of the Indian Constitution declaration contain the civil and political rights which all human beings are entitled to these include right to life, liberty, security, freedom from slavery and servitude, right to equality before law etc. Even today we can see lot of discrimination against women in all spheres of social world.

Every day hundreds of women are physically, mentally, psychologically, abused, tortured and also thrown out of the homes. As per the National Crime Bureau Statistics in 2004, there are 58121, cases of cruelty by husband and his relations which constitutes 37.66% of total incidence of crime in India, about 7026 cases of dowry deaths are reported which constitute 4.55% to total incidence of crime in 2004. In India many cases are not reported/recorded due to various reasons such as lack of awareness, lack of will, corruption, threat to life etc.

Women irrespective of their status are becoming victims of domestic violence. Money is not the main problem in the context of women's empowerment but apathy, fear, ignorance and vulnerability as women within patriarchal patterns of social behavior is apt.

#### **The Salient Features Of 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 the abuser 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.

- \* 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 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 draft 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. 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.

While "economic abuse" includes deprivation of all or any economic or financial resources to which the victim is entitled under any law or custom whether payable under an order of a Court or otherwise or which the victim 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 her, payment of rental related to the shared household and maintenance and 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 victim has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or her children or her stridhan or any other property jointly or separately held by the victim and prohibition or restriction to continued access to resources or facilities which the victim is



entitled to use or enjoy by virtue of the domestic relationship including access to the shared household, “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 victim and includes assault, criminal intimidation and criminal force.

### **Factors Related To Domestic Violence**

The socio, economic and cultural setting of India is very complex and diverse. The social structure, cultural norms and patriarchal system are important of women’s role and their position in the society. Traditions are the major influences in shaping attitudes as well as behaviour patterns of human groups and the emerging trends of society cannot be viewed in isolation from them. It is clear that social customs, modes of worship and norms of chastity and correct behaviours vary widely among different communities in India.

- \* Low income.
- \* Growing up in a violent family
- \* Drug addicts and alcoholism
- \* Unemployment problem.
- \* Sexual difficulties.
- \* Low job satisfaction.
- \* Gender discrimination
- \* Forced marriages.
- \* Male dominated society and so on

### **Provisions Of Domestic Violence Act, 2005**

This law recognizes new concepts like mental assault and torture, sexual violence within marriage and the legitimacy of live in relationships. Under the law, the victim could directly go to the court for protection.

This legislation is expected to give women-wives, mothers, mothers-in-laws, daughters and even adopted daughter –protection against physical, verbal and sexual abuse and the right to shelter and economic freedom.

The Act ensures speedy justice as the court has to start proceeding and have the first hearing within 3 days of the complaint being filed in court and every case must be disposed of within a period of sixty days of the first hearing. It makes provisions for the

state to provide for protection officers and the whole machinery by which to implement the act and to provide assistance to the woman with regard to medical examination, legal aid, safe shelter etc.,

This piece of legislation is long overdue. It is a comprehensive law and addresses all issues related to women. It is for the first time that an act has been made to address women's issues in such detail.

The Act is an extremely progressive one not only because it recognizes women who are in a live-in relationship but also extends protection to other women who in the household, including sisters and mothers, thus the act includes relations of consanguinity, marriage or through relationships in the nature of marriage, adoption or joint family, thus 'domestic relationships' are not restricted to the marital context alone. In fact, the Act has given a new dimension to the word abuse because unlike the primitive notion abuse includes actual abuse or threat of abuse, whether physical, sexual, verbal, economic, and harassment by way of dowry demands and thus, under the law.

Harassment by way of unlawful dowry demands on the woman or her relatives also comes under the definition of domestic violence. The law will cover those women who are or have been in a relationship where both parties have lived together in a shared household, and are related by marriage or adoption.

Preventing one's wife from taking up a job or forcing her to leave job are also under the purview of the act. One of the most important features of the act is that the Act also provides a woman a right to reside in the matrimonial and shared household, whether or not she has any title in the household.

Husband or live-in-partners who would be guilty of domestic violence can be put behind bars for a year and fined Rs. 20000.

All crimes in the domestic violence act are non-bailable. In addition to physical violence of beating, slapping, hitting, kicking and pushing, the act also covers sexual violence like forced intercourse, forcing his wife or mate to look at pornography or any other obscene picture or material and child sexual abuse. The new law also addresses sexual abuse of

children and forcing girls to marry against their wishes. This certainly proves that the new act has been formed keeping the current relationship culture in India and the irregularities in the previous domestic violence laws in mind.

Section 18-23 of the act provide a large number of avenues for an abused women to get relief. She can get through the courts, protection orders, Residence orders, Monetary Relief. Custody order for her children compensation order and interim Ex-parte orders.

#### **Strategies For Awareness On Domestic Violence Act 2005**

1. Awareness on domestic violence should be created not only among girls but also boys.
2. Right from the young age, boys need to be told that also have a mind and personality of their own and are as entitled to dignity and freedom of choice as they are this kind of sensitizing the body child to the other sex the best way to ensure a safe worked for women.
3. The effectiveness of an alternative strategy of development and empowerment of women that begins with awareness generation (i.e., empowering women psychologically first with confidence, information and optimism) and motivation rather than economic interventions.
4. Display of the information of the Act in the Educational Institutions, Offices, Hostels, etc., should made mandatory as in case of RIA.
5. The women groups both in rural as well urban areas should be made aware of the act.
6. NGO's should be extended with financial assistance for their services in the related field.
7. The victim must be provided with free legal aid irrespective of their status.
8. The Social perceptions, of women as second class citizens, have to be changed through the awareness programmes from the school age that are not 'lesser beings'.
9. The girls must be empowered socially, economically, politically, and psychologically to come for justice as and when they need it.
10. Socially redefining patriarchal norms and removing gender bias.
11. Changing victims and parents attitudes.



12. Strengthening women's organizations.
13. Changing Sex roles.
14. Social remedies like social welfare services, encouraging the establishment of voluntary organizations, and legal literacy of women through mass media is essential.

### **Conclusion**

Domestic violence act 2005 is a boon to protect women from violence, because this act provides more 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 there to. All crimes in the domestic violence act are non-bailable.

Though Indian Constitution ensures equality of status and opportunity for women and to assume justice for women, the Government of India passed many legislations namely, Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu adaption and Maintenance Act, 1956, Immoral Traffic (Prevention) Act, 1986, Dowry prohibition Act 1961, and 1929 child marriage restraint Act, 1856 widow re-marriage made legal, 1872 special marriage act made inter caste and inter community marriages legal etc., but these legislative sanctions by themselves, as all of us know cannot raise the status of women. It demands a change of heart, a change in the value system among human beings. Due to illiteracy, strong hold of religion, patriarchal family system, etc., domestic violence is occurring in many forms.

Though the Government of India has passed many legislations to protect the women from womb to tomb still they are oppressed from time to time and it has become a complex problem. As such, the efforts of educators, personnel from religious organizations. social workers, health workers, and members of women groups, Government Authorities, Non-Governmental organizations, police, people from different professional backgrounds and the community in general are required to combat the domestic violence to a greater extent. Further, there is an urgent need to provide family consolation services and separate shelter homes for women and children in all district.

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