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## ENSURING WOMEN'S RIGHTS: KEY PROVISIONS OF THE DOMESTIC VIOLENCE ACT (2005)

~ *Bhumika Arora*

### Introduction

According to the National Family Health Survey-5, 29.3% of married women aged 18–49 have experienced spousal violence at least once, a slight decrease from the 31.2% reported in National Family Health Survey-4. The incidence of physical violence during pregnancy is 3.1% among women aged 18–29, and 1.5% have experienced sexual violence by age 18<sup>1</sup>. Domestic violence also leads to a generational curse among the family i.e. a chain of intergenerational violence. Children from such dysfunctional backgrounds perceive a distorted version of what a family should be really like and tends to be violent and aggressive and believe that its normal to be aggressive leading to cases of domestic violence<sup>2</sup>. Thus, there was need of a legal legislation to break this curse of generational trauma and violence and to protect women from the misunderstood concept of masculinity and this purpose was met by the enactment of The Protection of Women from Domestic Violence Act, 2005 in India.

The Protection of Women from Domestic Violence Act, 2005 came into force in the year 2006. The motive behind the introduction of this act was to ensure the safety of women (wives or female live-in partners) and their rights against the subjected violence by their husbands or male live-in partners or even their relatives. This Act also extends protection to sisters (both adopted and biological) and mothers<sup>3</sup>. The need to introduce The Protection of Women from Domestic Violence Act, 2005 was felt because the subjection of women to domestic violence

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<sup>1</sup> Gopi, Kumbha; Pal, Deb Kumar; Taywade, Manish; Sahoo, Bimal Kumar. Intimate partner violence in India: Need for renewed corollary during COVID-19 pandemic. *Journal of Family Medicine and Primary Care* 12(1):p 1-3, January 2023. | DOI: 10.4103/jfmpc.jfmpc\_1492\_22

<sup>2</sup> <https://breakthesilencedv.org/breaking-the-generational-curse/>

<sup>3</sup> <https://wcd.delhi.gov.in/wcd/protection-women-domestic-violence-act-2005#:~:text=The%20Act%20is%20aimed%20at,inclusing%20adopted%20sisters%20and%20mothers.>

is a very common occurrence and prior to this there was no such legislation designed specifically to protect women from cruelty in a domestic setting. Domestic violence is defined under Section 3 of the act and involves physical abuse, sexual abuse, verbal and emotional abuse, which comprises of insults, humiliation, ridicule, etc and economic abuse inflicted by the male live-in partner, husbands or their relatives upon a woman. In *Indra Sarma v. V.K.V Sarma*<sup>4</sup>, Supreme Court of India held that the DV Act (Domestic Violence) was enacted to offer a civil law remedy for protecting women from becoming victims of abusive relationships and to prevent the occurrence of domestic violence in the Indian Society as a whole. The objective of the act is “protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.”

### **Main Body**

The Protection of Women from Domestic Violence Act, 2005 safeguards women’s rights and shield them from violence within a domestic setting by providing comprehensive measures and provisions for the same. In *Vandhana v. T. Srikanth*<sup>5</sup>, the High Court of Madras held that the DV act was introduced to implement recommendation No. 12 of the United Nations Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1989. The Act provides legal remedies tailored to different situations a woman might face, while fighting against domestic violence, to prevent further abuse from taking place. Some of these legal remedies include residence order, monetary relief and so on as provided in the act. In the case of *Ishpal Singh Kahai v. Ramanjeet Kahai*<sup>6</sup>, it was once again made clear by the court, that the DV Act is for providing legal protection to women who are victims of domestic violence, particularly those who lack proprietary rights in the household. Its primary goal is to shield wives from violence and prevent the repetition of such acts.

Section 17 of the act provides that the aggrieved person cannot be evicted or excluded from the share household or any part of it by the respondent, regardless of the fact whether she has any legal rights, title or beneficial interest in it. But it is important that there should be a domestic relationship to avail the protection under this section. Additionally, if an aggrieved person or a representative on her behalf requests shelter from the person in charge of a shelter home, such shelter will be provided to her, in accordance to section 6 of the Act. Medical

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<sup>4</sup> *Indra Sarma v. V.K.V Sarma*, (2013) 15 SCC 755

<sup>5</sup> *Vandhana v. T. Srikanth*, 2007 SCC Online Mad 553

<sup>6</sup> *Ishpal Singh Kahai v. Ramanjeet Kahai*, 2011 SCC Online Bom 412

facilities will be provided to the aggrieved person upon her request to the relevant authority as per section 7 of the Act. Protection Order is another important legal remedy which is available to the victims under section 18 which provides that the magistrate can pass a protection order in favour of the victim if he is *prima facie* satisfies after hearing both the parties that the violence had indeed taken place and through the order can prohibit the respondent from committing any act of domestic violence, or abetting in the commission of such abuse, entering the workplace of the victim or school (in case of minors) and selling or transferring any assets, accessing bank lockers or accounts jointly owned by both parties or solely by the respondent, including the aggrieved person's *stridhan* or any other property held jointly or separately, without permission from the magistrate. The magistrate can also issue protection orders for the protection of the dependants or relatives from whom the aggrieved person is receiving assistance. Breach of the protection order by the respondent attracts infliction of punishment which can lead to imprisonment of up to one year in prison, or a fine of up to twenty thousand rupees, or both, for the offense (section 31).

There can be circumstances where the victim might be evicted or forced to move out of the shared household, so keeping this in mind, legal remedy for this issue was also considered and provided in the DV act under section 19. Residence orders issued under this section allows for the court to issue orders to restrain the husband from evicting the victim regardless of his legal or equitable interest in it, to direct the husband to vacate the shared household if needed, to restrain the husband or his relatives from entering the portion of the shared household where the aggrieved person resides and prohibit the husband from selling or disposing the shared household. The court also possess the authority to direct the husband to provide and pay the rent (in case of a rented accommodation) of the accommodation of a similar standard as enjoyed by the victim in the shared household.

In *Samir Vidyasagar Bhardwaj Vs. Nandita Samir Bhardwaj*<sup>7</sup>, it was held that "Where working wife is living along with two grown-up daughters, and they all say on affidavit about the inimical conduct of the husband, the court would be justified in passing appropriate orders thereby removing the husband from the household while invoking the provision of Section 19 (1)(b) of the Act to meet the ends of Justice." This underscores the importance of considering specific circumstances in each case when granting Residence orders as per the provision provided in law.

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<sup>7</sup> *Samir Vidyasagar Bhardwaj Vs. Nandita Samir Bhardwaj*, 2017 SCC OnLine SC 657

Monetary relief can also be sought by the victim from the DV Act under section 20. Monetary relief and maintenance are not the same. The same was held in the case of *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and Anr*<sup>8</sup>. In the judgment, the Honorable Supreme Court clarified certain aspects regarding the provisions of the Domestic Violence Act, 2005. Firstly, it distinguished monetary relief under Section 20 of the Act from maintenance, specifying that the former can be granted independently of any maintenance ordered under Section 125 of the Criminal Procedure Code (CrPC) or other laws. Secondly, the monetary relief provided under Section 20 is intended to address the expenses incurred and losses suffered by the aggrieved person and their child due to domestic violence.

Monetary relief can be granted by the magistrate and aims to address the expenses and losses which are incurred and suffered by the aggrieved, consequential to the domestic violence. Such relief can provide redressal for loss of earning, medical expenses, loss suffered due to damage or removal of property and in addition to this maintenance can also be claimed by the victim in accordance with section 125 of CrPC or any other law in force at the time. The victim can also claim compensation from the respondent for the injuries suffered, mental anguish and emotional suffering which occurred because of the domestic violence perpetrated by the respondent under section 22 of the Act. In *Ramesh B S vs Navaneetha*<sup>9</sup>, it was ruled that compensation under Section 22 of the Protection of Women from Domestic Violence Act, 2005, can be granted only after establishing the occurrence of domestic violence.

For the purpose of the protection of the aggrieved and children, the magistrate is given the authority under section 21 of the Act to grant temporary custody of a child or children to the victim. Arrangements for visitations can be made for the respondent only if deemed necessary. If the magistrate feels that such visitations could pose a threat to the safety of the aggrieved or the child, he has the authority to deny or revoke such visits<sup>10</sup>. This provision seeks to protect and ensure the safety of the aggrieved and the children in situations involving domestic violence, safeguarding them from any potential harm or further abuse.

A magistrate can also pass ex-parte judgement if he/she is convinced on the basis of the affidavit submitted that there is sufficient evidence to reach the conclusion that domestic violence has occurred in reality against the applicant victim as per section 23 of the Act.

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<sup>8</sup> *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and anr*, (2014) 10 SCC 736

<sup>9</sup> <https://indiankanoon.org/doc/184934011/>

<sup>10</sup> *Payal Sudeep Laad v. Sudeep Govind Laad & Anr*, (2019) 1 AIR Bom R (Cri) 215

## **CONCLUSION**

Domestic violence is an issue which has arisen due to the patriarchal nature of the Indian society and the feeling of superiority among the males and inferiority of the females in the society thus normalizing the subjection of domination and infliction of domestic violence upon them. The Protection of Women from Domestic Violence Act, 2005, sought to curtail this issue by providing for legal remedies which can be availed by the aggrieved persons through the provisions of this Act. The judicial interpretations from time to time further helps to reinforce the purpose, objective and intent of the Act to offer remedies of civil nature to victims of abusive relationships and prevent domestic violence in society. By aligning with international conventions and addressing gaps in previous legal frameworks, the Act demonstrates a commitment to upholding women's rights and promoting gender equality. Overall, the Protection of Women from Domestic Violence Act, 2005, stands as a vital tool in the ongoing fight against domestic violence, providing a legal foundation upon which victims can seek justice, support, and protection. Its significance cannot be overstated in its role in safeguarding the well-being and dignity of women across India.