

**LEGISLATIVE AND JUDICIAL PERSPECTIVES ON DOMESTIC  
VIOLENCE : A SCRUTINY**

*Dr. Money Veena VR\**

**ABSTRACT**

*Women all over the world are subjected to many kinds of abuses and tortures and there are several international documents guaranteeing them basic rights of equality, dignity etc. Though almost all the nations of the world have drafted various state legislations in consonance with these international documents for ensuring the rights of women, the fact is that violences in various forms against women is not getting reduced. Domestic violence means the violence that is happening inside the home, or in a marital relation or cohabitation and this offence has become a global phenomenon. In this paper, the author has analysed the Protection of Women from Domestic Violence Act 2005 in India which deals with various types of abuses, the relief available to the aggrieved, the procedure for availing the relief etc. It is sure that the Act is an effective safeguard for the women. But at the same time, there are many cases of misuse of the Act. The paper is prepared by referring the Act, related articles and cases. The author attempts to point out the lacunae of the legislation and provides some suggestions for the proper implementation of the Act.*

**Keywords:** Domestic Violence, Abuse, Equality, Judicial approach etc

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\* Assistant Professor of Law, Government Law College, Thiruvananthapuram, Kerala

## **INTRODUCTION**

Women are assured rights and protections in one way or other throughout the world. But in almost all countries, and in almost all societies the part played by them is still minimal. Though in theory it is stated that women deserve equality and respect, there is no practical equality as well as liberty to the women throughout the world.<sup>1</sup> Irrespective of religious, social or economic barriers, violence affects millions of women, the only one thing is that the nature of violence may be in different forms in each case.<sup>2</sup>

The development, progress and other conditions in a society is measured through the position of women in that society, i e. how she is treated, how she is guaranteed her rights etc.<sup>3</sup> In our country, due to many reasons, the victims of domestic violence suffer silently and won't come up to claim their rights. There are many reasons for this, because they are educationally backward and do not have familiarity with the legal procedure and also having absence of faith in the legal system.<sup>4</sup> The scenario in India shows that women are ensured various rights in the Constitution itself. Apart from all this, we have several penal provisions and chapters for women in the IPC. We have so many labour legislations for women. Still, they are suppressed and are subject to many discriminations and harassments. The Parliament had enacted Domestic Violence Act in 2005 for protecting women from various types of abuses. This paper is an attempt to analyse the Protection of Women from Domestic Violence Act, the drawbacks if any and also some suggestions for the wellbeing of women fraternity.

## **WOMEN IN INDIA**

Numerically it can be seen that women are more or less equal in population. But we can see gender inequalities everywhere in the world which lowers her status in the society. It is often mentioned that the best method to measure the growth of civilization and it's excellence in the society is by analysing the status of women living there. Her marital obligations and marital responsibilities are some of the obstacles in her way to attain equal opportunity or equality. In fact, the gender bias that is happening throughout the world has been a fundamental issue which

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<sup>1</sup> Manjula Batra, Women & Law 2 (Allahabad Law Agency, 2012)

<sup>2</sup> U.N Briefing Paper, Human Rights Today of United Nations Priority 38 (1998)

<sup>3</sup>Dr.(Ms) Rekha Singh, MDDM College, Status of Women in Society, <https://www.bu.edu/wcp/Papers/Huma/HumaSing.htm> (Last visited 9 April, 2023)

<sup>4</sup> Dr.S.C Tripathi and Vibha Arora, Law Relating to Women & Children 28 (Central Law Publications, Allahabad., 2012 edn)

is violative of the basic human right of women. Our society is following some traditions based on which women are exploited continuously. This may be social, physical or economic, or it can be based on religious beliefs, or even the societal practice.<sup>5</sup> In the patriarchal system, domestic violence is culturally accepted due to religious and traditional reasons.<sup>6</sup> During covid lockdown, the cases of domestic violence in India increased due to travel restrictions, unemployment, accessibility, alcoholism etc.<sup>7</sup>

## **CONSTITUTIONAL AND STATUTORY PROTECTION FOR WOMEN**

The Constitution of India is the basic document that guarantees fundamental rights to people and ensures the welfare of all. Like women in other parts of the country, Indian women were also suppressed during the historic times and were facing all kinds of discriminations in silence. Seeing women as inferior to men is continuing even today like a belief or custom and tradition among the Indians. The issue is that women themselves are accepting this as their fate or may be due to their helplessness and the majority of them are not even aware of the legislative protection and government policies or even the Constitutional protection.<sup>8</sup> The makers of the Constitution were well aware of this fact that since immemorial times, women folk had been deprived of equal treatment with their male counter parts, hence they incorporated so many provisions including fundamental rights for the upliftment of status of women.<sup>9</sup> Article 15 which is a fundamental right prohibits discrimination, but article 15(3) is an exception by which state can make laws only for women. Clause (3) of Article 15 is a protectionist strategy and not an equalisation measure. For overcoming the sufferings, they had undergone during the patriarchal regime, the government machineries are vested with the responsibility to ensure what is due to them.<sup>10</sup>

The respective state governments have enacted various legislations only for women based upon this Article 15(3). Some of these include the Immoral Traffic Prevention Act 1956,<sup>11</sup> Dowry

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<sup>5</sup> Krushna Chandra Jena, Violence Against Women : A Human Right Violation, All India Reporter 312 (2003)

<sup>6</sup> Situation of Women in India, <https://www.female-rights.com/india/> (Last visited on 8 April 2023)

<sup>7</sup> Akshaya Krishnakumar & Shankey Varma, Understanding Domestic Violence in India During Covid 19 : A Routine Activity Approach, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7945968/> (Last visited on 8 April 2023)

<sup>8</sup> Dr.S.R.Myneni, Law Relating to Women 9 (Asia Law House, Hyderabad 4th edn 2020)

<sup>9</sup> Dr.S.P.Gupta, Law Relating to Women and Children 20 (Central Law Agency, 1<sup>st</sup> edn, 2014)

<sup>10</sup> *Supra* note 7

<sup>11</sup> This Act penalises anyone who visits brothel for sexual exploitation of trafficked victims.

Prohibition Act 1961,<sup>12</sup> Maternity Benefit Act 1961,<sup>13</sup> Medical Termination of Pregnancy Act 1971,<sup>14</sup> Equal Remuneration Act 1976,<sup>15</sup> Indecent Representation of Women (Protection) Act 1986,<sup>16</sup> Muslim Women Protection of Rights on Divorce Act 1986,<sup>17</sup> The Commission of Sati (Prevention) Act 1987,<sup>18</sup> National Commission for Women Act 1990,<sup>19</sup> Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994,<sup>20</sup> Protection of Women from Domestic Violence Act 2005,<sup>21</sup> the Prohibition of Child Marriage Act 2006,<sup>22</sup> Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act 2013, Muslim Women Protection of Rights on Marriage Act 2019<sup>23</sup> etc. Hon'ble Justice B.N.Bhagawati had observed the people of India are guaranteed fundamental rights, which in fact are the basic values which the people were enjoying during the Vedic ages itself. According to him, these cherished rights ensure the dignity of the people in India.<sup>24</sup>

In the Indian Constitution, Directive Principles of State Policy under Part IV provides for welfare of the people. Some of the principles are intended for the protection of women. Article 39 (a) directs the state to take steps for providing sufficient measures of livelihood to men and women. Article 39 (d) directs the state to ensure that men and women are paid equal remuneration for equal work done by them. Article 39 (e) directs the state to ensure that steps may be taken for protecting the health of workers, both men and women. Article 42 is a directive to the state to take measures for women workers during their maternity period. The attempt of the makers of the Constitution through these directives for ensuring safety measures during work and also the maternity relief to women workers are appreciable.<sup>25</sup> Along with all these, there are provisions for ensuring the representation of women in Panchayats and Municipalities which has been added through 73<sup>rd</sup> and 74<sup>th</sup> amendments to the Constitution.

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<sup>12</sup> The Act intends to prevent the giving and taking of dowry.

<sup>13</sup> Act ensures benefit for women during her maternity times

<sup>14</sup> The Act intends to provide for termination of pregnancies by registered medical practitioners

<sup>15</sup> Objective of the Act is for providing similar wages to women and men for the same work

<sup>16</sup> The Act prohibits representing women indecently through advertisements, publications etc.

<sup>17</sup> Act intends to protect divorced Muslim women.

<sup>18</sup> Objective of the Act is to prevent Sati, the voluntary or forced burning of widow

<sup>19</sup> This Act is enacted for the constitution of National Commission for Women

<sup>20</sup> Intention of the Act is preventing female foeticide

<sup>21</sup> Aim of the Act is to protect women from violences inside the house

<sup>22</sup> Objective of the Act is preventing child marriages

<sup>23</sup> The Act criminalised triple talaq

<sup>24</sup> Maneka Gandhi v. Union of India AIR 1997 SC 597

<sup>25</sup> Lalitha Dhar Parihar, Women & Law 21 (Eastern Book Company 1<sup>st</sup> edn 2011)

In the fundamental duty chapter Article 51 –A (e) is related to women. Here every citizen of the country is having a fundamental duty to respect the women and is not supposed to engage in any act which affects the dignity of the women.

## **VIOLENCE AGAINST WOMEN**

Women are being subjected to tortures throughout the world, which may range from staring at her with sexual intent or it can even amount to rape, all these are one or other types of offences under the IPC or in some other statutes. Women in the country are facing grave forms of violence at home rather than outside the home. The most harmful among this is the violence she is facing at her own home that too from the members of her family.<sup>26</sup> That can be from husband, other relatives who may find the four walls as the safe place to torture her as she may silently suffer without any alternative.<sup>27</sup> It is inflicted not by the strangers but by her close family members from whom she naturally expects love, affection, care, warmth and protection.<sup>28</sup>

## **INTERNATIONAL SCENARIO**

Violation of fundamental freedoms of women in any form is a discrimination and negation of her human right. The United Nations has various Conventions and other instruments which tries to ensure the dignity of women. The Commission on Status of Women which was formed in 1946 recognised the need for codifying legal rights of women. After adoption of UDHR in 1948, UN started working on women's rights. The UN Charter is committed to guarantee to both men and women same privileges and rights. One of the purposes of the Charter is to ensure basic rights and all freedoms to all without discrimination of sex.<sup>29</sup> Articles 55 and 56 of the UN Charter binds member states to observe and respect human rights for both, men and women on equal terms.<sup>30</sup> ILO and UNESCO have also emphasised need for recognition of women's rights, women's education and employment appropriately. 1975 was declared as International Women's Year and from that year onwards, the rights of women was seriously

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<sup>26</sup> Dr.Devinder Singh, Human Rights-Women & Law 239 (Allahabad Law Agency, 2<sup>nd</sup> edn, 2010)

<sup>27</sup> R.Revathi, Law Relating to Domestic Violence 4 (2000)

<sup>28</sup> Ashirabani Dutta, Domestic Violence as Human Rights Violation, Criminal Law Journal 25 (2005)

<sup>29</sup> Article 1 (3) of the UN Charter 1945 <https://www.un.org/en/about-us/un-charter/full-text> (Last visited on April 8, 2023)

<sup>30</sup> *Ibid*

addressed by the all nations of the world. 1976-85 was UN Decade for Women and UN declared that women's equality and rights were most important factor for wellbeing of societies. CEDAW 1979<sup>31</sup> was treated like the Bill of Rights for women. The Vienna Accord of 1994 and Beijing Declaration and the Platform for Action (1995) declared that domestic violence is to be treated as an act which violated the human right of the aggrieved. CEDAW recommended states ensure women the dignity they deserve and also to take appropriate measures to safeguard them from all kinds of violences particularly domestic violence.

## **STRUCTURE OF DOMESTIC VIOLENCE ACT**

Protection of Women from Domestic Violence Act 2005 ensures safeguards to women victims who suffer violences inside the family. Act has five chapters and 37 sections. The Act views domestic violence not just as an act against women, but this is something which affects the basic right of the aggrieved and a matter that hampers development of the society itself. The issue of violence inside house even though prevalent in society is invisible in the public domain as it occurs inside the homes. The Constitution of India guarantees to all fundamental rights to equality and life under Articles 14, 15 and 21 which is equally applicable to women as well. The Act does not change any of the personal laws. The remedies provided in the Act are something which is along with already available laws and is intended to support the victim to meet the emergency she is facing.<sup>32</sup> The nature of relief is based on the emergency situation she is in and also it is temporary whereas the permanent solution lies in the respective personal laws based upon the decision of the woman whether to continue the relation or not.<sup>33</sup>

### **1. Domestic violence**

Domestic violence generally means the violence women face within a home. According to Heise<sup>34</sup>, Domestic Violence can be any act which is intended to abuse the woman physically,

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<sup>31</sup> The United Nations General Assembly adopted the Convention on the Elimination of All Kinds of Discrimination Against Women

<sup>32</sup> Overview of the Protection of Women from Domestic Violence Act, <https://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>, (Last visited April 7, 2023)

<sup>33</sup> Dr.Kaushal J Thaker , Reflection on Domestic Violence Act and Role of Judiciary for Balancing the Rights of Women, <https://www.sconline.com/blog/post/2021/01/29/reflection-on-domestic-violence-act-2005-and-role-of-judiciary-for-balancing-the-rights-of-women/> (Last visited, April 8, 2023)

<sup>34</sup> L.Heise.M.Ellsberg and M.Gottemoeller,Ending Violence Against Women, Population Reports, Series L.No 11.Baltimore,John Hopkins University School of Public Health, Population Information Program, (December 1999)

sexually or even psychologically. These may even include threatening her that too by any person in her family. Usually, those who will be causing such abuses or threats are her own male relatives, mainly her husband or partner.<sup>35</sup> Under Parsi Marriage and Divorce Act 1936, any act which injures the health or well-being of the woman can be included under the term domestic violence.<sup>36</sup>

Protection of Women from Domestic Violence Act 2005 section 2 (g) says that domestic violence will be having the meaning as given under section 3 of the Act. Section 3 explains the acts, commissions or omissions that may constitute domestic violence. This includes any sort of trauma to a woman that can either be mental or physical. Violence at home creates and destroys family environment.<sup>37</sup> The section deals with different types of abuses including abuse through words, abusing her emotions, abusing her sexually or even financial abuse. The sections give explanations to all these types of abuses. Physical abuse, as the word itself shows, can amount to hurting her body, her life or causing pain or danger to limb etc. Sexual abuse means any abuse of sexual nature which lowers the dignity of women. Verbal abuse means insulting, humiliating for reasons like not having children or male child. Economic abuse happens when she is deprived of all financial resources. This includes disposing of the aggrieved person's assets, valuables etc. Domestic violence affects also the mental state of the woman and may lead to depression and other psychological issues as she may start thinking that she doesn't have any other option than to suffer this. Mostly it is done by her close relatives like husband, partner etc. In most of the cases the woman will not be willing to leave the relationship due to fear of society or shame.

## 2. Protection Officers

The Act under section 8 provides for enforcement of the Act and for which protection officers are to be appointed in each district. It is also mentioned under the section that the protection officers shall preferably be women and must be having qualifications laid down by the Government. This officer is vested with the duty of assisting the woman to make use of services under the Act.<sup>38</sup> The conditions of service shall also be laid down by rules. Under section 4,

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<sup>35</sup> Dr. Babita Devi Pathania, Law Relating to Domestic Violence 15 (New Era Law Publications, 1<sup>st</sup> edn 2013)

<sup>36</sup> Section 32 (dd)

<sup>37</sup> The Effects of Domestic and Family Violence, <https://www.facs.nsw.gov.au/domestic-violence/about/effects-of-dv> (Last visited April 8, 2023)

<sup>38</sup> Power and Duties of Protection Officers under Protection of Women from Domestic Violence Act, <https://blog.ipleaders.in/power-and-duties-of-protection-officers-under-protection-of-women-against-domestic-violence-act/> (Last visited April 9, 2023)

if a person comes to know or doubts that domestic violence is committed against any woman, such person should inform the incident to protection officer. The Act also deals with other authorities like police officers, service providers and Magistrate for providing remedy to the aggrieved under section 5 of the Act.

As per the Act,<sup>39</sup> the protection officer, police officer, service provider and Magistrate is supposed to make it clear to the aggrieved person that she can file her grievance through an application under the Act for availing the remedies under the Act. It is also to be told to her that if she requires, she will be entitled to free legal services under the Legal Services Authorities Act 1987. She should also be made known that she can file complaint under section 498 A of IPC if it is relevant. She is to be provided shelter at the shelter home also.

Section 9 states about the responsibilities of the Protection Officers under the Act.<sup>40</sup> First of all, he is supposed to assist the Magistrate when the Magistrate performs duties under this Act.<sup>41</sup> His duties include making domestic incident report<sup>42</sup> to the Magistrate. If the woman wants to avail protection order, then the Police Officer has to make an application to the Magistrate for the issuance of protection officer.

### 3. Protection Order

The details regarding protection orders are given under DV Act section 18. When protection order is sought by aggrieved person, Magistrate is bound to give to both the parties a hearing. If the Magistrate concludes that there is domestic violence, he may pass the order which may favour the aggrieved person.<sup>43</sup> The order can be one which restricts the other party not to do any such act against the victim. The other party can be prohibited from entering the workplace of the aggrieved person or even talking or contacting the woman without permission of Magistrate.<sup>44</sup> The order can be for prohibiting the other party from disposing of the properties, using bank lockers or bank accounts of aggrieved person or prevent the respondent from causing violence to any relative of the aggrieved person who is assisting her. The protection officer can provide shelter homes to the woman and can make arrangement for medical examination if he has sustained bodily injuries.

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<sup>39</sup> Section 5 of the Protection of Women from Domestic Violence Act, 2005

<sup>40</sup> <http://www.wcdde1.in/pwdv.html>(Last visited April 8,2023)

<sup>41</sup> *Supra* note 32

<sup>42</sup> DIR is defined under section 2 (e) as a report which is to be prepared in the prescribed form whenever the affected woman files a complaint of domestic violence.

<sup>43</sup> <https://www.latestlaws.com/bare-acts/central-acts-rules/section-18-dv-act-protection-orders> (Last visited April 9,2023)

<sup>44</sup> <https://www.helpline1aw.com/family-law/DVLI/domestic-violence-in-india.html> (Last visited April 7, 2023)



#### **4. Reliefs under the DV Act**

Chapter IV section 12 deals with how the application can be submitted before the Magistrate for seeking reliefs. The application before the Magistrate can be presented by the woman, anyone for the woman or even the protection officer. The Magistrate under the Act directed to provide hearing to the parties within 3 days of getting the complaint and shall try to provide the remedy within 2 months of hearing. The Magistrate can also arrange for counselling for the aggrieved party under section 14 and also seek assistance of any women for helping the aggrieved person. He can conduct the proceedings in camera also.

#### **5. Shared household**

As per the Act,<sup>45</sup> any woman can reside in the shared household if she is in a domestic relationship. Aggrieved woman cannot be evicted from shared household without following the legal requirements. Domestic relationship under section 2 (f) means relationship between two persons living together in the same house. The relation between the parties can be through blood relations, marriage or even living together without marriage. Law also recognises relationship through adoption also.

#### **6. Protection Order**

The Court passes Protection Order for preventing or aiding the accused from any act of domestic violence. This may include visiting the place of work, or other places where the woman is supposed to be available.<sup>46</sup>

#### **7. Residence Order**

Magistrate can pass residence order under section 19 of the DV Act when the Magistrate feels that there is domestic violence. The order can prevent the respondent from disturbing the possession of the house by the affected woman or even the order may direct the respondent to move away from the house without affecting the aggrieved.<sup>47</sup> The order can be like prohibiting even the relatives of the respondent from entering the house. This order can direct the respondent to arrange another house for the woman which must of the same amenities which she was enjoying and the respondent has to pay rent for the same. But if the respondent is a woman, she shall not be directed to remove herself. Magistrate may also direct the respondent

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<sup>45</sup> Section 17, *supra* note 39.

<sup>46</sup> *Id* Section 18

<sup>47</sup> Shubhodip Chakraborty, Law on Domestic Violence, <https://www.scconline.com/blog/post/2020/07/27/law-on-domestic-violence-protection-of-women-from-domestic-violence-act-2005/> (Last visited April 7, 2023)

to enter in to a bond for prohibiting such acts. The police officers may be asked by the Magistrate for ensuring protection to aggrieved person. Magistrate can also issue order for payment of money to the woman by the respondent. Magistrate can also allow the temporary custody of the child to the woman under section 21.<sup>48</sup> If the woman requests for compensation for mental torture, such an order may also be issued by the Magistrate.<sup>49</sup>

### **8. Penalties under the Act**

The DV Act prescribes punishment and monetary compensation by the respondent to the woman if her rights under the law are violated. Under section 31, if the respondent commits breach of protection order, he can imprisoned up to one year or he can be imposed fine up to twenty thousand rupees or both. The Act makes the protection officer also punishable if he is not discharging his duties. The punishment can be imprisonment up to one year or fine up to 20,000/- or with both.

## **JUDICIAL APPROACH TO DOMESTIC VIOLENCE CASES**

The judiciary had shown supporting attitude towards the aggrieved person in most of the domestic violence cases. In *M. Palani v. Meenakshi*<sup>50</sup>, regarding domestic relationship under the Act, the Hon'ble Supreme Court had held in many cases that where both the parties are living in one house though temporarily and had consensual sex, then domestic relationship can be inferred. In *Indra Sarma v. V.K.V.Sarma*<sup>51</sup> the Supreme Court had discussed about what amounts to relations which are similar to marriage. Here the Court held that when the woman is vested with all the responsibilities of the house including cleaning, cooking etc. this can be inferred as relationship in the nature of marriage. In *Vijay Verma v. State*,<sup>52</sup> the Court had held when the couple live in the same house it is an inference of domestic relationship. In *Om Prakash v. State of Rajasthan*,<sup>53</sup> the husband did not give maintenance to the wife on the ground of poverty. The Court had held that husband cannot escape from liability even if the parties are separated. Here the husband was asked to provide maintenance though he pleaded poverty.

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<sup>48</sup> Domestic Violence Act 2005, <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/meera-didi-se-poocho/domestic-violence-act-2005> (Last visited April 8, 2023)

<sup>49</sup>Section 20, *Supra* note 39

<sup>50</sup> AIR 2008 Mad 162

<sup>51</sup> AIR 2014 SC 309

<sup>52</sup> AIR 2011 Del 1717

<sup>53</sup> AIR 2011 Raj 368

In *Milan Kumar Singh v. State of UP*<sup>54</sup>, the decision was that complaint can be filed directly to the Magistrate. If that is not possible, she can approach the service provider or the protection officer for filing application before the Magistrate. *Sandhya Wankhede v. Manoj Bhimrao Wankhede*<sup>55</sup> the Hon'ble Supreme Court had held that not only men, but also females who are relatives of the husband or the male partner can be the respondent in domestic violence cases. *V.D Bhanot v. Savitha Bhanot*<sup>56</sup>, the Hon'ble Supreme Court had held that a wife who had shared house hold even before the coming into existence of the Act would be entitled to remedy under the Act. *Lalitha Toppo v. State of Jharkhand and Another*<sup>57</sup> the Supreme Court had held that for claiming maintenance under section 125 CrPC, it is not essential that the woman should have married the respondent. *Binita Dass v. Uttam Kumar*<sup>58</sup>, the High Court of Delhi had held that the Magistrate cannot deny interim maintenance to a wife only because she is an earning person or is qualified. In *Santosh Bakshi v. State of Punjab*<sup>59</sup> the Hon'ble Supreme Court had held that the police had a responsibility to take up the complaint seriously. The Court added the court cannot submit a report without proper investigation or enquiry from the members of family and neighbours.

## **DRAWBACKS OF THE ACT**

One of the drawbacks which can be identified specifically with regard to this Act is about the definition of the term 'domestic violence'. The definition under section 3 is already mentioned in the paper and it can be seen that it is drafted in such a manner that it can be interpreted according to the circumstances. Verbal abuse or emotional abuse can be anything depending upon the mental state or perspective of the victim. Even silly conversations, harmless jokes and domestic quarrels can be alleged as verbal or emotional abuse by the victims who will be women always. Already women have plenty of laws for their protection and this broad definition when not properly interpreted by the investigating machinery adds confusion, causing much inconvenience to the opposite party.

Another drawback that can be identified is regarding the multiplicity of remedies or reliefs that is available to the victims for the one and same problem. As mentioned earlier, the reliefs that

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<sup>54</sup> AIR 2008 All 152

<sup>55</sup> CrI Appeal No 271/2011,

<sup>56</sup> SLP (CrI) No 3916/2010

<sup>57</sup> Criminal Appeal No 2656/2013

<sup>58</sup> CrI Rev Petition 659/2017

<sup>59</sup> (2014) 13 SCC 25

can be provided to the victims under sections 18 to 23 include residence order, protection order, monetary reliefs, custody orders etc. These many reliefs are for ensuring the safety and protection of the victims. But this is criticised as being a one-sided law or anti men or a biased law totally ignoring the rights of the other party when the victims can avail all these reliefs for the single issue between partners in a domestic relationship.

There are lots of criticisms against the DV Act and the often alleged one is regarding the misuse of the law for private vengeance and innocent men and relatives are being crucified. Even though he is innocent, the man has to face legal proceedings and another criticism against the Act is that it offers remedy only to women and not to men even if they are the affected party. Those who criticise allege that there are problems in every home, but now women consider the legislation as a weapon and even for a minor quarrel, the wife may lodge complaint against the husband. It was held by the Supreme Court of India in *Sushil Kumar Sharma v. Union of India*<sup>60</sup> had held that the Domestic Violence Act is a legal terrorism which many unscrupulous women used to threaten to mend the husband and his family, using the draconian provisions. Under Section 18 of the Act, women get an upper hand as the Magistrate can take measures for the protection of women in future also. It is also criticised that this Act may lead to more divorces as women can easily approach the concerned authorities even for silly reasons.

## **CONCLUSION AND SUGGESTIONS**

The situation in our country is that most educated and professionally competent males commit the offence of domestic violence. The victim of these violence is also educated and have their own earnings. The Act has brought in significant changes which cannot be denied, but at the same time the domestic violence suffered by crores of women in the form of physical, psychological of sexual abuse remain unreported. This is due to lack of awareness or the fear of society for filing a complaint against husband or relatives of husband. This can be changed only by the change in attitude of the women as well as the society members. Creating awareness and providing education is the main solution for tackling this. Also, the women should be made economically independent for leading a life of dignity and developing a mind-set to fight against these abuses.

It is true that due to the enactment of lot of legislations as well as the protectionist approach of the judiciary, the freedoms and privileges enjoyed by the women have helped them to attain

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<sup>60</sup> AIR 2005 SC 3100

freedom and independence. They have proved themselves to be successful in all spheres of life including medical, legal, technical, central as well as state governments, administrators, foreign diplomats, politicians, scientists etc. Though there is hardly any field where women have not reached, still far needs to be done for the realisation of Constitutional and other legislative goals for ensuring their protection and freedom. For this, girls should be provided proper training on skill development and ending violence in the school level itself for making them self-reliant. At educational institutions, girls should be provided platforms for discussing the challenges and difficulties if any on a regular basis, and they should be provided support for solving or finding solution so that they can face boldly the life in future.

One suggestion for preventing the misuse of the Act is to redraft the definition of domestic violence. As pointed out earlier, the definition is too broad to be interpreted in any way as per the version of the victim and according to the attitude of the authorities. Of course, the legal machineries will always be in a hurry offering their support and rendering assistance to the victim. But as the definition is ambiguous, it may sometimes cause injustice to the respondent. Another drawback pointed out in the paper is regarding the multitude of remedies that can be given to the victims for the one and same issue of domestic violence. These different types of remedies can be redrafted in such a way that the rights of the victims are addressed, but balancing the rights of the respondents also. All these remedies can be combined taking into consideration the rights of both parties.

The law came into force on 2005 and now it's two decades and it has to be understood that the society has changed a lot during these two decades especially the position of women, the education, job opportunities, societal attitude everything has undergone unimaginable changes compared to that in 2005. Even the institution of marriage, rights of partners, parenting responsibilities, sharing of responsibilities among partners in all aspects have changed drastically. In such a situation, the law that was drafted in 2005 for ensuring the under privileged, or domestically abused women needs thorough revision in 2023. Of course, there are instances of domestic violence among all sections of the society including the affluent, educated, well settled families. But when women are getting participation and recognition in all arena of life, it is time to rethink whether these many confusing definitions, and multiple orders are needed in the Act. Society changes with time and the last twenty years has brought major changes among the family relations among partners, spouses and among all especially with the using of electronic gadgets and information technology. So, it is suggested to have a total revision of the law especially the definitions and protection orders so that the law can be

made more realistic and adaptive to the present society. Last suggestion is to insert provisions in the Act for punishing those who misuse the Act for personal vengeance. Then only balance in the society and family relationships can be ensured.