



## Protection of Women from Domestic Violence in India: Issues & Challenges: A Critical Study

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**Abstract:** A large number of cases relating to women undergoing physical and mental torture for the demands of the dowry such women suffer domestic violence due to non-fulfillment of demand of dowry. Due to persistent demand of dowry creates a tension in the minds of women, they are not only exploited tortured but also killed. Modern attention to domestic violence against women began in the 1970s, particularly within feminism and women's rights, as concern about wives being beaten by their husbands gained attention. Since the late 1970s, estimates show that 248 of every 1,000 females are victims of physical assault and rape committed by their spouses. A 1997 report says significantly more women do not disclose the identity of their attacker. A 2009 study showed that there was greater acceptance for abuse perpetrated by males against women. Several studies have confirmed that women's physical violence towards intimate male partners is often self defense

**Key words:** Protection, Women, Domestic Violence

### Introduction

Family is the foundation of civilized society. In fact man & woman are two halves of humanity; none of the two can reach its highest creative excellence without the co-operation of the other. Through ages, woman is the mother of mankind. In ancient India women held a high place of respect in the society as mentioned in Rig- Veda & other scriptures. With passage of time, because of social, political & economic changes, women lost their status and well relegated to the background. Many evil customs and traditions stepped in which enslaved the women & tied them to the boundaries of the house<sup>1</sup>. Due to traditional attitude a low mentality of the male dominated society, women are suffering from discrimination and domestic violence which is known as domestic abuse. Women's issues have been a matter of great concern for a long time but these are taken seriously only in the past few decades. The official

statistics shows a declining sex ratio, health status, literacy rate, work participation rate, & political participation among women. On the other hand the spread of social evils like dowry deaths, child marriage, domestic violence, rape, sexual harassment, exploitation of women workers, are rampant in different parts of India. Incidents of humiliation, rape, kidnapping, molestation, dowry death, torture, wife-beating etc. have grown over the years.

The General Assembly of the United Nations (UN) adopted a declaration on the Elimination of Discrimination against Women on November 7, 1967. On July 17, 1980, a special ceremony at the Copenhagen conference, 64 Nations signed the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Our Constitution provides better protection from domestic violence against women under Article 14, 15 (3), 21, 39



(A), 51 A(e), 32, 226 & the preamble of the constitution<sup>2</sup>. The earliest legislations in India have protected the women from the torture, cruelty & harassment under the provision of Sections 498A, 304,305 of Indian Penal Code & Dowry Prohibition Act, 1961. The Govt. of India also has enacted the protection of women from Domestic Violence Act, 2005 for prohibiting harassment or any violence against women at all levels in the Country.

#### **Efforts Made:**

The Govt. of India has made some efforts for the protection of women against violence.

#### **The national commission for women ACT, 1990:**

The National Commission for women under Section 3 of the Act has been constituted. The main objective of the Commission is to study & monitor all the matters relating to provisions of constitutional safeguards for women and review existing legislations as well as suggest amendments wherever necessary<sup>3</sup>.

The Commission consists of a chairperson nominated by the Union Govt. and five other members who have experience of Law, administration, health, education, social welfare & management. A member secretary is also nominated by the Central Govt. who is a member of civil Services of Union or All India Service.

#### **Protection of women from domestic violence, ACT 2005:**

The main objective of the Act is to provide more effective protection to the women's rights. These have been guaranteed by the occurring within the

family and for matter connected there with. The acts extend to the whole of India except the State of Jammu & Kashmir. It came into force on October 26, 2006.

#### **Meaning of domestic violence:**

The term Domestic Violence is often used synonymously with domestic abuse. It may include physical abuse, sexual abuse, emotional abuse, spousal abuse & psychological abuse. Any sort of physical aggression or misbehavior, when the violence is committed at home it becomes domestic violence and involves family members such as children, spouse, parents or servants or any relative of both partners. Domestic violence may involve different means such as hitting, kicking, biting, shoving, restraining, throwing objects or threats, neglecting, controlling, domineering, intimidation, stalling. It also includes maltreatment of a widow and elderly women and eve teasing forcing wife/ daughter in law to go for foeticids, forcing a young widow to commit sati etc are issues which affect a large section of society. The children & Family courts, U.K. defines domestic violence as a range of violent and abusive behaviours. The U.S. Office on violence against women defines domestic violence as a pattern of abusive behavior in any relationship that is used by one partner to gain or control another intimate partner.

It is pertinent to note that all forms of domestic violence have a common purpose to gain and maintain the total control over the women victim. Abusers use many tactics to exert power over their spouses like dominance, isolation, threats, intimidations, denial and blame.



In a review research, Michael Kimmel found that violence is instrumental in maintaining control and that more than 90% of systematic, Persistent and injuries is perpetrated by men against women. In USA, in 2005, 1181 females and 329 males were killed by their intimate partners. From a study, Amatyasen calculated that more than 107 Million females were missing worldwide<sup>4</sup>.

Hence the term 'domestic' denotes 'within the realm or territory of home'. Violence that is committed on a woman by her partner or his relatives is "domestic violence". The notion carries with it, the demolition of assumption that home is secured place for the protection of an individual. The women are made hostages at home in a way and their life becomes a prey to the whims and fancies of the people exercising violence.

Modern attention to domestic violence against women began in the 1970s, particularly within feminism and women's rights, as concern about wives being beaten by their husbands gained attention. Since the late 1970s, estimates show that 248 of every 1, 000 females are victims of physical assault and rape committed by their spouses. A, 1997 report says significantly more women do not disclose the identity of their attacker. A 2009 study showed that there was greater acceptance for abuse perpetrated by males against women. Several studies have confirmed that women's physical violence towards intimate male partners is often self defence<sup>5</sup>.

There are so many cases relating to domestic violence reported in the newspapers everyday like Kundara Bala Subhramanyam V. State of A.P. dealing with a case of bride burning, Gurmeet

Singh v. State of Punjab and case of Krishenappa v. State of Karnataka.<sup>6</sup>

It is a fact that a large number of cases relating to women undergoing physical and mental torture for the demands of the dowry such women suffer domestic violence due to non fulfillment of demand of dowry. Due to persistent demand of dowry creates a tension in the minds of women, they are not only exploited tortured but also killed. The sensation case of Dowry Death of **Sharbani Biswas murder case** is to be noted. Shrabani Biswas was married to Tapan Biswas an employee of Punjab National Bank in West Bengal. The wife wrote her mother in November 1982, my husband and mother in Law have told me that if I did not give then at Rs. 30, 000/- they will kill me. After about 3 or 4 Years the wife died of poisoning.<sup>7</sup>

#### **Main features of the domestic violence ACT, 2005:**

This Act recognize 3 important rights of women. Those are;

- 1) Right to live in a violence free environment.
- 2) Right to reside in a shared house hold.
- 3) Protection is given under this Domestic Violence Act, 2005.

Section 3 of the Act deals with Domestic violence which speaks "any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it"

- (a) Harms or injures or endue the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal or emotional abuse and economic abuse.



- (b) Harasses, harms, injures endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property as valuable security or
- (c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or Clause (b) or
- (d) otherwise injures or causes harm whether physical or mental to the aggrieved person.

**Appointment of Protection officers, Service Providers:**

The State Govt. shall by notification, appoint such number of protection officers in each District as it may consider necessary and shall also notify the area or areas within which a protection offer shall exercise the powers and perform the duties conferred on him by or under this Act. The protection officer must be a woman and possess such qualifications and experience as may be prescribed.

**Service providers:**

Any voluntary association registered under the Society Registration Act, 1860 or a company registered under the company Act, 1956 or any other law for the time being in force with objective of protecting the rights and interests of women by any lawful means including providing a legal aid, medical, financial or other existence shall register itself with the state Govt. as a service provider for the purpose of this Act.

Duties and functions of protection officer is mentioned in Sec 9 of the Domestic Violence Act 2005 which enumerates that she is to assist the magistrate in the discharge of his

function under this Act. The Protection Officer is to make a domestic incident report to magistrate upon the receipt of the complaint of domestic violence and forward copies thereof to the police officer incharge of police station where domestic violence is alleged to have been committed and to the service provider in the area.

Under Section 12 of the Act an aggrieved person on protection officer or any other person on behalf of the aggrieved person may present an application to the magistrate seeking one or more reliefs under this Act. The magistrate shall fix first date of hearing, which shall not be beyond three days from the date of receipt of the application by the court. The magistrate shall endeavour to dispose of every application within a period of sixty days from the date of first hearing.

A notice of date of hearing fixed under section 12 shall be given by the Magistrate to the protection officer who shall get it served by such means as may be prescribed on the respondents as directed by magistrate within a maximum period of two days.

The Magistrate after giving aggrieved person and respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from:-

- (a) Committing any act of domestic violence;
- (b) Aiding or abetting in the commission of acts of domestic violence;
- (c) Entering the place of employment of aggrieved person;
- (d) Attempting to communicate in any form with the aggrieved person



- including personal, oral or written or electronic or telephonic contract.
- (e) Alienating any assets, operating bank lockers, back accounts used or held by both the parties.
  - (f) Causing violence to dependants, other relatives or any person who give the aggrieved person assistance from domestic violence.

The magistrate may pass residence order, monetary relief, custody orders, compensation orders u/s 19, 20, 21, 22 of the Domestic Violence Act 2005 to the aggrieved women.

#### **Issues & challenges:**

The National Women Commission, the State Women Commission, the State Women Commissions, National Human Rights Commission (NHRS) & State Human Rights Commissions are defender for the Protection of Women and girls from any domestic Violence under the Act 2005. There are certain issues and challenges of domestic violence against women. These are

- (i) Female Foeticide;
- (ii) Illiteracy and poverty;
- (iii) Traditions and beliefs;
- (iv) Attitude and mentality;
- (v) Lack of courage to disclose;
- (vi) Corrupt practices &
- (vii) Lack of awareness

#### **Suggestions:**

To curb domestic violence, following suggestions are made:-

- Conscious effort to make media professionals aware of the issues can play an important role in addressing violence against women. Alternative media channels such as theater groups, puppeteers, community radio stations, musicians and performers of

all sorts have a role to play in raising public awareness of the issues and creating role models for men and young people in the community. They are to generate awareness among illiterate and poor women about their rights.

- Academic and Research Organisations should organize by inviting women protection offers in the girls schools and women college create awareness about domestic violence.
- Women should be organized to fight against unnecessary old traditions, belief, customs and conventions.
- There should be special campaign to make the women self reliant the Govt. should ear mark special funds for the civil society engaged in this noble work.
- The govt. should strengthen the role of Panchayats and self help groups (SHG) members for mobility and monitoring maternal, health care services to the poor women.
- In female education special/ separate chapters should be added in the syllabus of female education, RTI, Right to Education, Dowry, Sexual Harassment and Domestic Violence.
- Special Training should be given to the women sarpanchas for discharging their duties and responsibilities at grass root level to enable them to motivate those who are directly affected by domestic violence.
- The police is to provide assistance to victim survivors. Training and sensitization to police at all levels must be instituted and guidelines must be developed to monitor police response.
- NGOs efforts should focus to help women, rebuild their lives self esteem.



The above noted suggestions need whole hearted political and administrative support to achieve desired objectives. It is a mandatory obligations bestowed upon all of us to bring a social change by protecting women from domestic violence.

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