

# LEGAL PROTECTION FROM DOMESTIC VIOLENCE: THE DOUBLE-EDGED SWORD

Anmol Sandhu\*

*Final Year Student of LL.M. at Uttarakhand University, Dehradun.*

“Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind”.

Swami Vivekananda

## ABSTRACT

As Humans, we do not change our nature easily; though changing at all is an irony in itself. Otherwise there remains no difference in us and the beasts of the jungle. Like an ouroboros, many wars were fought and many shed blood; as the fate the land was same as the fate of a woman (for instance Helen of Troy). Thus, the position of woman somehow became scornful and they were confined with the shackles of the responsibilities not necessarily their own, for a very long time. However, the view of the people has started to change and they started to realize the gravity of the unfairness that the woman deals with. So, various reforms were made to deal with the problem and to make things work for the better. But such a deep-rooted problem takes time. This incessant occurrence of woman's suffering in all walks of her life is a cry for humanity to wage an ultimate war against these atrocious acts.

In the following, the researcher discusses the abuse of the Domestic Violence Act and the suffering of men because of: abuse of section 498A, role of the judiciary to reign in such issues, and reference of the guidelines mentioned in the Armesh Kumar case.

**KEYWORDS:** Marriage, Abuse, Domestic, Violence,

## 1.1 INTRODUCTION:

Even our planet has denoted the term ‘mother-earth’ by us all. Our nations are awarded with same sentiments by us. Mother – a respect given to a woman who is a bearer; who

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\* Corresponding Author

creates life with her own flesh and blood. How come we always forget such a simple fact and just presume her to be just a breeding machine, a cannon-fodder to vent our anger on, a toy to play with and ultimately breaking it with no remorse..?

Domestic abuse inflicted on a woman whether she is a wife, a daughter or elderly represents the continuation of a formerly accepted norm of manifesting a power over a woman to control them. In Indian patriarchal system, both men and woman are expected to fulfill distinctly different roles from birth. From a young age, women are trained to submit and to acquiesce with the desires of their male counterparts while men are trained to dominate and guide their female counterparts. The status of women has become way to assess the standard of culture of any age of any nation. Her rights, privileges and everything she does or will do, even her status when compared to that of man; displays her position in the society and i.e. inferior to men. Female insubordination runs so deep that it is still viewed natural rather than a constructed reality crafted by the society following the patriarchal ideology.<sup>1</sup>

In the first place, there is no true democracy without the equal participation of both men and women in all spheres of life and decision making. Also To achieve certain goals and work progress, there is a need of full and active partaking of woman in the shaping of those goals<sup>2</sup>.

Domestic violence is an exceptionally intricate and malicious form of abuse which is committed very often within the four walls of the house in the family and that too within a specific deep-rooted power dynamic and socio-economic arrangement which do not allow even the recognition of this abuse.<sup>3</sup>

Gist and detection of domestic violence itself is the most demanding task. The criterion of domestic violence differs in different households according to the situation. The impact of domestic violence depends on its severity; it could result in anything from death to minor scars. It is a formation of control and fear in a relationship through violence and other form of abuse.

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<sup>1</sup> Available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1266&context=uclf> (Visited on 12 March, 2020)

<sup>2</sup> J.P. SINGH, "Indian Democracy and Empowerment of Women", Indian Journal of Public Administration, 2017.

<sup>3</sup> Ibid

Constantly living in fear, this sort of violence doesn't only consists of physical abuse but also causes severe mental disorder, effects of which remains for the whole life of the victim even after the release from such violent atmosphere. Although abuse can happen to both men and women but in most cases the victim is a woman. Research from around the world indicates that the perpetrators of abuse are predominantly males and that the violence is usually done by males on the female partner.

The term domestic violence is known as misconduct; an emotional, physical, psychological or sexual abuse that one person uses in order to control the other, in an intimate relationship. It consists of- Homicides such as dowry death; beatings, rape, verbal humiliation, continuous threat of physical abuse, economical blackmail or confinement at home, etc.

### **1.2 LAWS AND ESSENTIALS:**

Change in mindset of judiciary is the necessity of the day. Indira Jaising aptly stated that, "it's time for India's court to gaze inwards and throws out deeply embedded patriarchal notions that stop judgments from being fair to woman. Sexism within the system has to go before it does more harm to the country"<sup>4</sup> Domestic violence cases have to be taken without any delay and completed avoiding unnecessary impositions of stress on them.

In India, domestic violence was known as a specific criminal offense by the introduction of section – 498A in Indian Penal Code only in 1983. Till the year 2005, limited remedies were available to a victim of domestic violence in the civil courts (divorce) and criminal courts (section 498A and 304B of the IPC). Taking this scenario into consideration, an Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matter connected therewith or identical thereto was implemented which came to be known as "The Protection Of Women from Domestic Violence Act 2005" on 13 September, 2005.

The protection of women from domestic violence act (2005) was the first significant attempt in India to recognize domestic abuse as a punishable offence, to extend its

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<sup>4</sup> S. Makvana, "Mental Health: A Journey from Illness to Wellness" 383 (Redshine International Press, Navamuvada, 2016)

provision to those in live-in relationships and to provide for emergency relief for the victims in addition to legal recourse. The PWDVA was passed after a great deal of parliamentary deliberation to bridge the gap between the existing legal provisions and progressive aims enshrined in the constitution and international human rights conventions. This act was important to prevent women who were ostracized by their “own” people in their “own” homes.

According to the Act, any woman who is or has been in a familial relationship, if it is subjected to any act of domestic violence can complain to the concerned protection officer, police officer, service provider or magistrate. She (aggrieved woman) has a right to be informed about the available services and free legal services from the protection officer etc.<sup>5</sup> Shelter home and medical facilities can be provided to aggrieved woman. The protection order by the magistrate can be given in favor of aggrieved woman.<sup>6</sup>

According to the government statistics indicate that, on average, a crime is committed against women every three minutes and that thirty-seven percent of married women experience domestic violence at some point in their marriage. More disturbingly, eighty-seven percent of the men surveyed in a 2001 study admitted to committing some domestic violence act in that year. The Act enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner to file a complaint against wife or the female partner. The effect of domestic violence, on a woman's health or life may be profound and may cause physical and mental unrest even later on. Numerous analyses, studies, and articles also have not only reported the failure of family laws of India currently in force but also their contribution towards the creation of “Justice Crisis” for women stressing the need for the reimagining of current constitution.<sup>7</sup>

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<sup>5</sup> PK Das, “Protection of Women from Domestic Violence” 10(Universal Law Publishing Co, New Delhi, 2009)

<sup>6</sup> Ibid

<sup>7</sup> Available at <http://www.indjsp.org/article.asp?issn=0971-9962;year=2017;volume=33;issue=3;spage=274;epage=279;aulast=Rao> (Visited on 20 March, 2020)

The framework of women's human right has been tremendously useful in efforts to lobby for legislative and police changes at Local, National and International levels. It has been an equally important tool for grass roots organizing. The human rights framework creates a space in which the possibility for a different account woman's lives can be develop. It provides women with principles by which to develop alternative visions of their lives without suggesting the substance of those visions. The fundamental principles of human rights that dignity gives women a vocabulary for describing both violations and impediments to exercise of their human rights.<sup>8</sup>

Women political leverage and a tenable point of reference and finally the idea of women's human rights enables women to define and articulate the specificity of the experiences in their lives as provides a vocabulary for women to shore the experience of other women around the world around the world and work collaboratively for change.<sup>9</sup>

### **1.3 JUDICIAL TRENDS IN THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE:**

Every righteousness has its own evil. Now a modern woman knows her rights and knows very well when to use them in their favour. There's been a slogan going around these days i.e., not every man is in the wrong; not every women is right.

There have been cases of women playing a victim role and extorting maintenance from her spouse and her in-laws, or sending them to jail, etc. Section 20 of the DV Act states that while disposing of an application u/s-12(1) of the Domestic violence Act, the magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence.

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<sup>8</sup> Available at <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf> (Visited on 25 March, 2020)

<sup>9</sup> Ibid

In June 22, 2015: Madras High Court observed<sup>10</sup> - ‘inherent flaws in law tempt women to misuse the legal provisions and men to dread being prosecuted’. A Court in Delhi has dismissed a woman’s complaint of domestic violence against her husband and in-laws, noting that she misused legal provisions as a tool to extort unjustified money from him for unjustified personal gain, and imposed a cost of Rupees one lakh on her. The court said that generally women are at the receiving end of the domestic violence and the protection of woman from domestic violence (PWDVA) Act is created solely with a view to provide relief to the victims of domestic violence and not the perpetrators.

Justice S. Vaidyanathan said: “The notable flaw in this law is that it lends itself to such easy misuse that women will find it hard to resist the temptation to teach a lesson to their male relatives and will file frivolous and false case”<sup>11</sup>. Nowadays, filing cases under the Domestic Violence Act by women has become a common one. Therefore, a neutral and an unprejudiced law are needed to protect the genuine victims of domestic violence.

A similar trend of misuse was observed in the cases of section 498A (a women being subjected to cruelty by her husband or his relatives) of the Indian Penal code. It forced the Supreme Court to term such misuse of law as ‘legal terrorism’. When a person who has not committed any crime begins to fear punishment under the provisions of a law, it will certainly create panic amidst men. Section 498A of the IPC has “terrorized menfolk” for a while now since its birth in the statute book in 1983.

Shaken by the all-round criticism of its retrograde acquittal in 1978 of the constables who allegedly raped a tribal girl in Mathura, India’s top court has had a catharsis with a series of pro-women judicial decisions. Be it the Mary Roy case<sup>12</sup> (1986, when the Supreme Court upheld Christian women’s inheritance rights), the Shah Bano case<sup>13</sup> (1986, upholding Muslim women’s right to maintenance on divorce), the Rupan Deol Bajaj case (1988, in favour of women co- employees’ right against sexual harassment), the Vishaka judgment (1996, listing guidelines on workplace sexual harassment), the Gurmit Singh

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<sup>10</sup> Available at <https://www.thehindu.com/news/cities/Madurai/domestic-violence-act-prone-to-misuse-says-high-court/article7331523.ece#:~:text=The%20Madras%20High%20Court%20Bench,a%20writ%20petition%2C%20Justice%20S.> (Visited on 20 April, 2020)

<sup>11</sup> Domestic Violence Act prone to misuse, says High Court by Mohd. Imranullah, The Hindu (June 19, 2015)

<sup>12</sup> Mary Roy vs State of Kerala AIR 1986 1011

<sup>13</sup> Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945

case<sup>14</sup> (1996, ruling that the sole testimony of a woman is sufficient to convict a rapist), the Githa Hariharan case<sup>15</sup> (granting a mother's right to be a guardian) the top court has been emphatic about its gender sensitivity. But Rajesh Sharma and Ors vs. State of UP<sup>16</sup> close that chapter and institutionalize the prejudices and rehabilitated the myth that section 498A is a nuclear bomb in the hands of the wife, which was to be deployed to settle petty matrimonial scores. This case has done nothing dramatically new. In fact, the top court itself stepped forward to protect the innocent husbands and in-laws from harassment in the Arnesh Kumar case<sup>17</sup> when it had restrained police officers from automatically arresting the accused in a complaint u/s- 498A<sup>18</sup>. Men playing the role of a victim kind of changes the whole pattern of a lot of things. The pathways of women empowerment now carry its stains. Where the fight for their values and beliefs is being questioned. It is absolutely wrong to make fraudulent use of the laws made to protect others. But shouting it out will also do no good.

#### **1.4 CONCLUSION:**

Every law made will always have its own loopholes for criminals to play with and make a use of it for their own benefits. After all, the road to hell is paved with good intentions. The only solution for such an infestation will be to mend the law in a way that nobody could make fraudulent use of it. India is a country which believes in 'Vasudev-Kutumbakum'; many families make a nation, nation becomes a family. So, if the families come to any harm that significantly affects the nation too. Domestic violence is such a rotten crime which harms the nation to its very core. And it's frustrating that even the laws made to relieve from domestic violence and its trauma sometimes become the very source that brutally tears apart the familial relationships to never be the same. The home is often equated with a sanctuary, a place where individuals seek love, safety, security and shelter. For some women, home is a place that imperils lives and breeds some of the most drastic forms of violence perpetrated against girls and women. Stereotypes of gender roles have continued over the ages. The primary roles for woman

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<sup>14</sup> The State Of Punjab vs Gurmit Singh & Ors, 1996 SCC (2) 384

<sup>15</sup> Ms Githa Hariharan and another v. Reserve Bank of India and another (AIR 1999, 2. SCC 228)

<sup>16</sup> Appeal (Crl.), 1265 of 2017, Judgment Date: Jul 27, 2017

<sup>17</sup> Arnesh Kumar vs State Of Bihar & Anr (2014) 8 SCC 273

have been marriage and motherhood. Women must marry because an unmarried, separated or divorced status is a stigma. Legislation by itself would not suffice because violence against women is a deep-rooted social problem.

Basically, the requirements are simple, what more does a woman want other than a safe nest of her own. It is devastating to be abused by someone whom you cherish and think the same for you in return. All the victims of Domestic Violence need assistance and deserve justice irrespective of any discrimination because domestic violence causes far more pain than the visible marks of bruises and scars.

There is no question that domestic violence directed against women is a serious and bigger problem and for that reason only Protection of Women from Domestic Violence Act (PWDVA) and such laws have come into action. However, there are some flaws in this law (PWDVA) i.e., the high potential for its misuse is rather disturbing. The law lends itself to such easy misuse that women can hardly resist the temptation to teach a lesson to their partners or the in-laws and then will file false cases.

The law appears to be a blessing for Indian women – a shield of sort, but the flipside of this scenario also exists where protective legal provisions for the benefit of women have been subjected to misuse. Thus, on July 27, the Supreme Court laid down the direction in Rajesh Sharma case to prevent the misuse of section 498A of IPC as acknowledged in certain studies and decisions. In fact the case notices how several High Court, like the Chander Bhan case<sup>19</sup> (2008) as well as the Madras HC, have jumped in to control the same issue of the misuse of the laws for protection of women. Hence, in the Arnesh Kumar case<sup>20</sup> (2014) the court issued some directions to deal with the issue emphatically; such as-

1. All the state governments to instruct its police officers not to automatically arrest when a case under section 498 A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from section 41, Cr.P.C;

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<sup>19</sup> Chander Bhan v. Union of India civil writ petition no. 3748/95

<sup>20</sup> Arnesh Kumar vs State Of Bihar & Anr (2014) 8 SCC 273

2. All police officers be provided with a check list containing specified sub clauses under section 41(1)(b)(ii);
3. The police officer shall forward the checklist duly filed and furnish the reasons and materials which necessitated the arrest while forwarding/ producing the accused before the magistrate for further detention;
4. The magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the magistrate will authorize detention;
5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
6. Notice of appearance in terms of section 41A of CR.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before high court having territorial jurisdiction.
8. Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

The court also added that the directions aforesaid shall not apply to the cases under section 498 A of IPC or section 4 of the Dowry Prohibition Act, the case in hand, but also such case where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

Thus, we conclude that there are notions of the women to misuse the law in their personal interest. And In order to keep that in control or furthermore put a stop to the misuse of the law- the Court has provided the measures respectively. So, the awareness of such issue should be there.