



## PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AND ITS MISUSE: A CRITICAL STUDY

**Shalini Shivajirao Ghumare**  
Research Scholar,  
S.R.T.M. University Nanded

**Dr. P.D. Joshi**  
Principal / BOS Chairman in Law (Retd.)  
Research Supervisor  
S.R.T.M. University Nanded

### Abstract

*More than one third of the households are violent. Women belonging to all caste/ category are bearing the pain of domestic violence beyond the effect of their age, economic and job status, educational level and child bearing etc. Alcohol consumption and husband's economic superiority have also been found positively related to wife beating. Acceptance of domestic violence by women for the reasons shown by the male perpetrators as grounds of violent behaviour and lack of knowledge about their rights and laws have been traced out as the basic obstacles in taking legal action against offenders of domestic violence. The Act is a uniform civil law, applicable to all beyond their religion and community. Protection of Women from Domestic Violence Act is a social enactment that creates various legal, social, judicial and administrative mechanisms to provide assistance to the victims of domestic violence. The Act creates a socio-moral responsibility on judicial, law enforcement, medical and social institutions to provide assistance to victims and survivors, informing them of their rights and securing immediate relief. The paper analyses whether the Act is really acting as a sword to fight against the injustice or the women are making an attempt to use it as shield and rendered faulty accusations against the men.*



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### Domestic Violence - Meaning

The definition covered all types of relationship between the accuser and the accused. The definitions also cover all that behavior, which forms the violence.

In India many females don't perceive acts as violence. As per our society and social construct "the good ideal woman" means one who she faces the violence but keeps quiet and does not take any action. Therefore the beating to wife is not considered as a big violence if the woman gives the reason for jealousy or she didn't complete her duty of "wifely" properly like preparing good and tasty food on time or taking care and studies of the children, maintaining house clean and completing all her housewife work properly. Also one thinking that violent is part of expressing the love and its help the person to become better on whom violence is cause, this



### **Protection of Women from Domestic Violence Act, 2005**

Domestic Violence Act reminds only women and not men from the domestic violence act for which the term "aggrieved person" is mentioned in this act. Which means only men can be prosecuted and not women can be prosecuted. In this modern era many women are suffering the incidence of insulting, humiliation, beating, verbal abuse, none verbally abuse, emotionally and sexually abuse. The Percentage of men abusing the woman is high then the percentage of women abusing men. But though there are some, they are rare. As per our constitution of India that guarantees to give equality between both men and women. Then the question arises that by the domestic violence act use provision only for women and not to man. Why is it always assumed that only men do the violence to women?

The domestic violence act is surely formed for the benefit of women but the negative effect of that side is that many women are taking undue advantage of this act. Some women are considering Domestic Violence Act as a lethal weapon which they can use against the mail in order to exploit them, extort them. Main community is always judged as what terrorism. The domestic violence act gives the women the right on the husband property and its maintenance. But there several numbers of fake cases against the women, what to Domestic Violence Act doesn't have special any provision for the fake cases laws by the women not get any punishment. As per the survey only 2% cases are real, rest all 98% are deemed to be fake. The women can miss using this law very easily. She can file a complaint against an innocent man if she feels that she is being insulted even though she is not insulted. The interesting thing is that a female insults a male or has use verbally or physically; the male doesn't have any legal provision in this law in any other law to take action against the female. The procedure of this act is governed by the Criminal Procedure Code (CrPC), which means even a little insult by the men can be treated as a criminal if she complains. If the woman makes any false complaint on the men and his family then their reputation is spoiled and no legal provision of protection is available for the male for protection of their reputation. In simple words the law treats men like sitting ducks.

The real fact is that a Domestic Violence Act has failed to attend to the problem which is faced by both women as well as men. It's just only focused on the women. So the law is often misused then to be used. It is needed by society that neutral general knowledge should be enacted that will take both women and men equally in the case of domestic violence. That act will not act as a tool for an extortion from men by the female. So it is very much needed to obtain a base gender biased Domestic Violence Act in order to prevent its misuse and for achieving gender equality and fair justice.

### **Salient Features of the Domestic Violence Act, 2005 with special reference to Cases in India**

Any law in a country is a basis of the legal system of the country as the law defines the principle on which country runs. Set up some important stations of government with their principal powers by making rules on which those powers are to be exercised. As of till date, various laws on domestic violence on women focus on criminalization. But it was essential that the legal framework should move ahead from this limited approach to make this more effective use in various areas of the law such as civil, criminal, administrative and constitutional. The law also focuses on the prevention and protection of



domestic violence on women and support of survivors. The constitutional rights of India has also supported the woman and the children which guaranteed it support to them. The statement of object and reasons of the domestic violence act says that this act has been enacted by keeping the view of fundamental constitutional rights under Article 14, 15 and 21. Article 14 forbids class legislation, but gives permission of classification for the legislative purposes. So the law doesn't become unconstitutional just because the law applies only to one set of persons and ignoring the other. Domestic violence isn't one of the biggest hurdles for the development of women and this Domestic Violence Act tries to give protection from this evil conduct. But for this the act has classified between male and female, just by protecting only females from this domestic violence. Article 21 states the right to life and right to liberty by states that these rights cannot be taken away without the procedure of establishing by the law as a result of judicial decisions, to be fair, just and reasonable. The following are some relevant decisions in this context

In "*Francis Coralie Mullin v. Union Territory Delhi, Administrator*", The supreme court of India has observed that any act that damages or enjoys the person temporary or permanent by the way of using is lip or arm within inhibition of Articles 21. By the definition of physical abuse this right has been incorporated in the domestic violence act that considered this as domestic violence which is punishable. As per Act any conduct or any act which can cause pain or harm to the body for danger of life or health by a person on the victim. Along with this the act also includes certain conduct of physical violence as envisaged in the IPC within domestic violence definition.

As a domestic violence victim who is suffering from physical abuse and lives in a fear of violence and her life, Udaipur she is not able to leave a life without a fear or we made her free from the fear of violence. So the according to this definition she is being protected by the right of women against the violence

In "*Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*", the Supreme Court of India has given importance to the fact that the right to life and life focus on human dignity. The right of dignity also include the right women forget protected against humiliation of various sexual acts by men. These 2 facts find its manifestation under the definitions of "sexual abuse" and "emotional abuse", respectively in the Act. One of the best things of this legislation considering emotional abuse as part of domestic violence. Also the Act has considered the sexual abuse on the by the own husband is a part of the domestic violation. This was not covered by the IPC as an offence.

In "*Chameli Singh v. State of U.P*" concluded that the right to shelter will be included into the right to life. As per Section 6 of this Act, Protection Officer's duty for providing accommodation and shelter to the victim in the case the victim does not have proper place for the accommodation, by request by victim/ aggrieved party or otherwise as per Section 17, victim has right to stay in a shared household. These rights to women gave protection to them from the threat of being left without a home and shelter. When the women are removed from matrimonial or their parental house because of the violence the right to shelter of her is not followed.



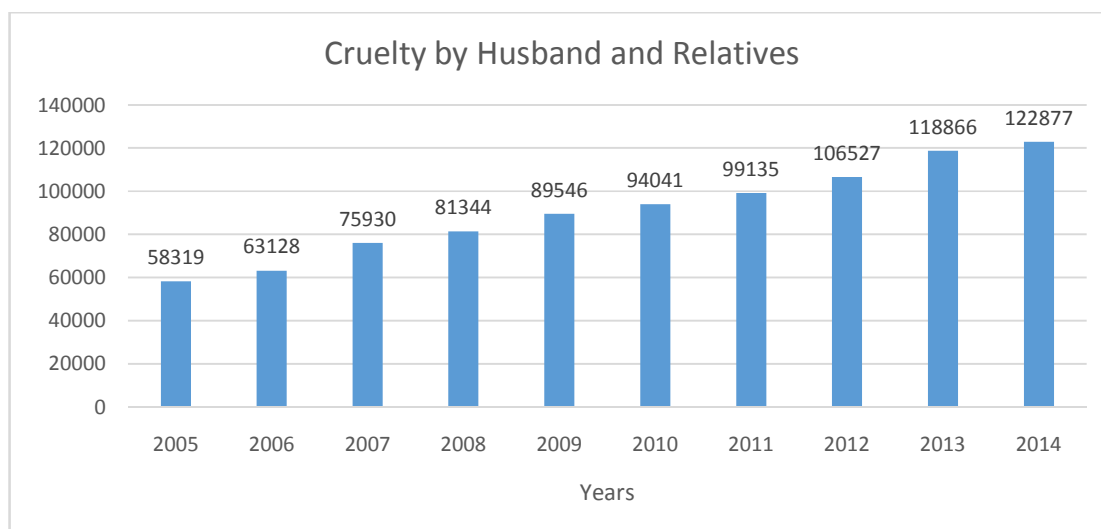
The constitution of India has given the protection for the women for the residence data determining right to equality under article 14 and 15 in which state has given some of the special right for making the provisions for the women's and their children's. The cancellation has again created a stipulation for protecting discrimination for socially or economically backward people for shelter.

*"The Apex Court in U.P. Avas Evam Vikas Parishad and another v. Friends Co-op Housing Society Ltd. 6 and Another"* re-emphasized that, "Right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1) (e) and right to life under Article 21 of the Constitution."

In *"Vikram Deo Singh Tomar v. State of Bihar"*, the Apex Court has explained the doctrine of equality which is stated in the Constitution. The Court thus held: "We live in an age when this court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And so, in the discharge of its responsibilities to the people, the state recognizes the need for maintaining establishments for the care of those unfortunates, both women and children, who are castaways of an imperfect social order and for whom, therefore, of necessary provision must be made for their protection and welfare."

The court has recognized the right of women for her livelihood and freedom in her occupation or profession. In case of domestic violence on women she is mainly affected by employment because due to violence on her she is unable to go to work or perform her work effectively and she has any physical injury or psychological distress such as stress, depression, etc. Sometimes it can also lead to termination or education from the work that will lose her livelihood.

Since the last twenty year more than 2 millions crimes have been recorded against women. As per calculation around 26 crimes against women in every hour or so we may say 2 minute - 1 complaint. As far as all crime records, most were cruelty by husband and relatives that recorded more than 9 lakhs crimes in the last decade.



Source: IPC Report and NCRB



More than 10 lakhs cases of cruelty by husband and dowry cases were reported in India in past 10 years as per NCRB , after passing the PWDVA Act. Cases of “abetment of suicide of women” raised by 34 percent from 2014 to 2015 by 3034 cases to 4060 cases respectively.

In the period 2005 to 2015, around 22 women were dying due to dowry every day taking the total tally to 88,467. 2015 was the peak of that case with total registered deaths due to dowry cases 7,634. Even though the Domestic Violence Act was enacted in 2005, the NCRB started to collect the data of this law from 2014. Cases that are registered in violation of the PWDVA increased by 8%, to the year 2015 from 2014.

But that doesn't include some incidents of the domestic violence that are recorded under section 498 A of IPC for “cruelty by husband and his relatives,” section 304 B for “Dowry deaths” and section 306 for “abetment of suicide”. Also many cases of violence caused by the husband and the relatives are directly taken to the civil court, so they are not recorded by NCRB.

#### Crime numbers might not reflect actual status of domestic violence

From the period 2006 to 2015 the number of cases filed under the head of “cruelty by husband and relatives' ' have risen by 80. The number of cases are increasing for various reasons such as increasing the actual crimes, due to awareness of law the number of cases being registered have increased, women are taking a step ahead by going to police stations.

**Table: Domestic Violence against Women 2011-2019**

Sr. No	Crime Head	Year								
		2011	2012	2013	2014	2015	2016	2017	2018	2019
1	Rape	24206	24923	33707	36735	34651	38947	32559	33356	32033
2	Attempt to Commit Rape	-	-	-	4232	4434	5729	4154	4097	4038
3	Kidnapping & Abduction of Women	35565	38262	51881	57311	59277	64519	66333	72751	73844
4	Dowry Death	8618	8233	8083	8455	7634	7621	7466	3468	7162
5	Assault on women with Intent to Outrage her/their Modesty	42968	45351	70739	82235	82422	84746	860011	89097	89292
6	Insult to the Modesty of Women	8570	9173	12589	9735	8685	7305	7451	6992	6939
7	Cruelty by Husband or his Relatives	99135	106527	118866	122877	113403	110378	104551	103272	126575
8	Importation of Girl from Foreign Country	80	59	31	13	6	0	5	0	0
9	Abetment of Suicide of Women	-	-	-	3734	4060	4466	5282	5037	5088



<b>A</b>	<b>Total IPC Crime against women</b>	<b>219142</b>	<b>232528</b>	<b>295896</b>	<b>325327</b>	<b>314575</b>	<b>323438</b>	<b>315215</b>	<b>323345</b>	<b>343177</b>
10	Commission of Sati Prevention Act	0	0	0	0	0	0	0	0	0
11	Indecent Representation of Women (P) Act	453	141	362	47	40	38	25	22	23
12	The Dowry Prohibition Act	6619	9038	10709	10050	9894	9683	10189	12826	13674
13	Protection of Women from Domestic Violence Act	-	-	-	426	461	437	616	579	554
14	Immoral Traffic (Prevention) Act	2436	2563	579	2070	2424	2214	1536	1459	1185
<b>B</b>	<b>Total SLL Crime Against Women</b>	<b>9508</b>	<b>11742</b>	<b>13650</b>	<b>12593</b>	<b>12819</b>	<b>15516</b>	<b>44634</b>	<b>54932</b>	<b>62684</b>
	<b>Total (A+B)</b>	<b>228650</b>	<b>244270</b>	<b>309546</b>	<b>337922</b>	<b>327394</b>	<b>338954</b>	<b>359849</b>	<b>378277</b>	<b>405861</b>

Source: NCRB and IPC data.

Each state in India has different trends. For example, in the state of Andhra Pradesh, cases under “cruelty by husbands and relatives” fell down to 6,121 from 9,164 from 2006 to 2015, also the cases under “dowry deaths” also fell to 174 from 519 from 2006 to 2015. But in the state of West Bengal the cases under “cruelty by husbands and relatives” have raised to 20163 from 7414 from 2006 to 2015. In the state of Bihar the cases under “Dowry death” decreased to 1154 from 1188 from 2006 to 2015.

### Conclusion

In view of the entire study and apart from rendering some piece of advice in the preceding lines the following strict law based suggestions are proposed so as to enable the effective implementation of the act.

1. The rules are to be amended so as to include a specific form along with the issuance of summons to the respondent seeking the details of the employment and the properties being held in the name of the respondent with a direction not to transfer or alienate any such belongings.
2. The form shall be filled by the respondent by way of filing an affidavit disclosing all such details which binds the respondent for such disclosure and the question of proving the income and other sources are not required to be argued unnecessary.
3. The rules shall be amended for continuation of any interim order for a specific period of time only and only then the object of quick disposal can be achieved.
4. There needs to be a population based appointment of the number of Protection Officers rather than boundary based so as to enable more number of officers in a densely populated area.



5. The facilities provided to Protection Officers and Service Providers shall be increased in all terms. The lack of facilities and staff is counter-productive to the implementation of the act and providing the same is the only course of action possible for effective implementation of the act. The appointment to the post of Protection Officer needs to be done for a woman only.
6. The provision for interim maintenance needs to be modified in such manner that the filing of the complaint itself entitles the victim for maintenance and residence orders and the onus shall be on the husband to be discharged.

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