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## Why is there a need to include Domestic violence within Families between Parents and Children under the Protection of Women from Domestic Violence Act, 2005?

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*The Protection of Women From Domestic Violence Act, 2005 also known as the Domestic Violence Act 2005 ( the DV Act), was made with a specific purpose, and that was to protect the rights of the 'women' as guaranteed to her under the Constitution, especially when she became a victim of any kind of violence within the family. However, the framework of this Act has a very limited scope and deals with situations faced by married women in their marital relationships. The Act fails to see the other domestic relationships where domestic violence occurs for which she needs protection. The Act also blindly seems to indicate that it is only the husband and his relatives who will be responsible for domestic violence. The overall image created by the Act is such that domestic violence can happen only in the matrimonial home. It ignores the incidents of crimes happening to a married woman in many other instances within her domestic relationships, often for the sole reason of her being married. It also does not protect the married woman when she is a victim of domestic violence in other situations, other than those specified in this Act. There is a need to have an umbrella cover of protection for the legal rights of women in every situation. This article intends to draw the attention of the legislature to the interpretations of the existing definitions of the DV Act,2005, and suggests why it needs to give more scope for wider interpretations and suggests amending them to include more situations that have been ignored, to make it fairer to the very name and intent. This article also seeks amendments and additions to the DV Rules 2006 to include more safeguards and punishments as deterrence.*

**Keywords:** *domestic violence, domestic relationship, domestic abuse, matrimonial laws, women.*

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## INTRODUCTION

Patriarchy has been deeply rooted in Indian society for ages and so has the subjugation of women. Due to the stereotyped roles, bias, culture, and distribution of power, people deviate from the social and legal norms and justify their unlawful acts even when it violates human rights. Until and unless there is control established by well-defined laws in the country such unlawful acts and crimes cannot be curbed. Daily, we hear about the chilling instances of human rights violations, war crimes like in the Ukraine-Russia war, heinous crimes, ethnic cleansing, honour killing, love jihad, terrorism, and manslaughter, etc we are terrified that despite the adoption of the Universal Declaration of Human Rights, 1948 crimes have not diminished. Crimes related to women, children, the elderly, and the disabled continue to rise, unhindered and unabated. Violence affects millions of lives, especially that of women and this is a worldwide phenomenon.

In India, almost 50% of the population are women, and almost all of them have been abused from the time they were born. This journey of a woman, from cradle to grave has been wrought with untold sufferings for centuries. She has rarely been the desired child. The female gender was never welcomed even though women are worshipped as Shakti and Devi in India. So obviously female infanticide was rampant, and in reality, this fact has not changed much. Women continue to be abused in society. They are not safe in public spaces or their 'home sweet home.' Offences ranging from eve-teasing to the most gruesome murders take place daily. E.g.: In the recent Shraddha Walkar's barbarous murder case, domestic violence within her live-in relationship was evident, and reported it too but not registered by the police. There can be no assurance to the woman when there is no law or effective law enforcement agencies to protect her under every circumstance. The very existence of women as independent entity gets threatened on a day-to-day basis if she doesn't fight their daily battles to maintain their dignity and honour.

Throughout the world, we have all undergone the most difficult phase of our lives during the year 2019-2020, when the pandemic caused by COVID-19 locked us all up in our homes. Though this lockdown allowed families to spend time with each other, it also led to incidents of domestic violence. The real problem arose when, unlike earlier instances, such victims could escape by leaving their houses to a safer place, it was not possible now. The question that arises during such times is that “Do women have a home beyond their paternal or matrimonial one?”. The answer will be “No”. in most cases. Indeed, women rarely own a house of their own. The paternal or matrimonial home they live in is supposed to be the only haven but again “Is it safe enough?”. All such situations and events happening around the world prove the need to create effective laws and legislation for women. There is a need to make India safer for women, married or not. Unless available laws are updated and made more effective as per changing times, society will continue to inflict domestic violence upon women for every given reason, right from dictating the way they should behave or dress, etc.

### **THE DOMESTIC VIOLENCE ACT, 2005**

The Protection of Women From Domestic Violence Act, 2005 i.e. (the DV Act)<sup>1</sup> came into force on 26th October 2006, to protect her rights under Articles 14<sup>2</sup>, 15<sup>3</sup>, and 21<sup>4</sup> of the Constitution if she becomes a victim of the offence explained under the said Act. Article 14 imparts equality before the law, Article 15 of the Constitution prohibits discrimination and Article 21 of the Constitution assures that no person shall be deprived of his life or personal liberty but there are exceptions. The intent was to provide relief for married women. The details of the procedures and reliefs available are explained in the Rules, 2006.

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<sup>1</sup> Protection of Women from Domestic Violence Act 2005

<sup>2</sup> Constitution of India 1950, art. 14

<sup>3</sup> Constitution of India 1950, art. 15

<sup>4</sup> Constitution of India 1950, art. 21

## THE CURRENT SCENARIO IN INDIA AND THE WORLD RELATED TO DOMESTIC VIOLENCE ON DAUGHTERS BY PARENTS

Chief Justice of India (CJI) DY Chandrachud<sup>5</sup>, in a Constitution Bench decision, had said that "The Indian Constitution was created for people, as they should be." And, yes, this is the way the Constitution should be to guide the people towards a more aware and developed nation. (CJI) DY Chandrachud also mentioned in his speech on 'Law and Morality', that hundreds of young people are dying in India due to honour killings<sup>6</sup> simply because they love someone or marry outside their caste or against their family's wishes. It is crucial to note, that this crime is also about the married woman and that honour killing is usually done by her family members. But since killing a married woman for marrying outside her caste or religion may not always be the case, she will surely be ostracized or harassed for it, not just by society but by her people too. Honour killing is violence arising out of traditional or cultural practices happening across the world. One evergreen line of Bob Dylan, "How many deaths will it take till we know that too many people have died?", hits us every time we stand witness to gruesome murders of unsuspecting women in a domestic relationship. One type of violence can lead to another, and it could start from a phase of domestic violence. Apart from this, women face domestic violence issues related to property or other matters from their parents, etc even after marriage. Our laws provide for remedy when she is facing abuse in a marriage or in a relationship of that kind, but there is no door she can knock on in such cases where her family members i.e., her parents, siblings, etc are involved.

Given the progressive mindset of the younger generations, the influence of social media as well as that of western society, there is an increase in inter-caste, inter-religion, and other forms of relationships. While laws have become progressive in many areas, and people are modern in their lifestyle yet when rights and freedoms are exercised by the younger generation at home,

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<sup>5</sup> Akhil Kumar, 'Many killed each year ..CJ takes on Dishonour killing' (NDTV, 18 December 2022) <<https://www.ndtv.com/india-news/chief-justice-of-india-dy-chandrachud-hundreds-die-every-year-for-loving-chief-justice-on-law-and-morality-3616881>> accessed 18 December 2022

<sup>6</sup> Meghna Vesvikar, 'HONOUR KILLING IN INDIA' (2022) 31(1) Perspectives in Social Work <[https://www.researchgate.net/publication/359650729\\_HONOUR\\_KILLING\\_IN\\_INDIA](https://www.researchgate.net/publication/359650729_HONOUR_KILLING_IN_INDIA)> accessed 19 December 2022

especially by their daughters, everyone takes a U-turn. The use of those very rights and freedom guaranteed to her by the Constitution leads to her being abused, harassed and even killed. The abuse she faces at the hands of her own is silenced and it remains unreported.

The only option left for the married woman after marrying by her own choice would be to escape the place where the violence and hate take place and to move out, leaving behind all her future inheritances and never coming back to her parent's home nor making a claim of her rights. Her parents will be only too happy to just write it off to someone else of their choice by gift or by Will. No one will question their decision because society treats it as justified. The term legal heir is then just a label for such a woman. It guarantees her nothing. She gets this label just because of her being born and by her single act of such marriage, she is deprived of it.

This can also happen if she converts to another religion even though the law favours her, and the law has given her rights to inheritance despite conversion. Just because of a choice she made to exercise her rights and freedoms as guaranteed by the Constitution itself she is deprived of her life, liberty, or inheritance. It is a sheer mockery when despite being a legal heir, she gets nothing. Not many women knock on the doors of the police station nor go to the court seeking justice, especially because Indian women are not always well off to have the financial means to do so. The worst part is that the emotional abuse and pain she undergoes kills her mental strength leaving her in a state of vulnerability and sometimes leading to suicide. Until and unless there are good laws with adequate safeguards for the victims the Indian woman will never be confident enough to stand up against the injustice that threatens her very identity and existence. Women empowerment is not complete unless it covers every angle of her life.

## **THE LEGAL RIGHTS OF A MARRIED WOMAN IN INDIA**

Since this Act deals with a married woman and the woman who falls under such a definition because of the nature of her relationship, let's see what are the legal rights of a married woman. The legal rights of a married woman are:

- Right to paternal home (which means no matter whether she is married or unmarried, she has rights over both parents' properties);

- Right to reside in the marital home, be it owned by her husband or his parents, ancestral or joint family, rented or officially provided (she can reside even if her husband is not there or is dead);
- Right to live with dignity and self-respect with in-laws in the same lifestyle;
- Right to maintenance by husband and right to child maintenance (in case both partners cannot monetarily support the child, they can take assistance from their parents).
- Right against domestic violence;
- Right to streedhan refers to the gifts a woman received during her marriage or childbirth in any form, over which she has absolute ownership.

Every Act or law related to married women must aim to protect these rights of married women.

#### **WHAT OTHER LAWS INCLUDE PROTECTION FOR WOMEN IN INDIA**

Many laws were made from time to time to protect women like the Sati (Prevention) Act, 1987, etc. Later on, various legal provisions under the Indian Constitutional, criminal and civil law were formulated to address different forms of violence against women. The laws like the Constitutional law, the Indian Penal Code 1860, and the Criminal Procedure Code 1973 have provided for the safety of women in India. For instance, under Criminal Laws, women are protected as given below:

A.) The Criminal Procedure Code, 1973 provides for the order for maintenance of wives, children, and parents under section 125<sup>7</sup>.

B.) Under the Indian Penal Code, 1860: If a woman dies due to unnatural causes within seven years of her marriage and it is found that she has been harassed for dowry before her death, then under Sec. 304B<sup>8</sup>, it will be considered a dowry death. Likewise, Sec. 312 to 318 deal with offences related to miscarriage, etc. They are the offences related to sexual offences that women are very vulnerable to so under the Indian Penal Code, if there is any assault or criminal force

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<sup>7</sup> Code of Criminal Procedure 1973, s 125

<sup>8</sup> Indian Penal Code 1860, s 304B

with intent to outrage her modesty it becomes an offence punishable under section 354<sup>9</sup> of IPC. With the increasing number of cases related to rape, if a woman is a victim, then she can register FIR and seek justice. Section 375 of the IPC deals with rape and after several amendments, the capital punishment for rape leading to death has been amended from 10 years to 20 years. Under section 376A of the IPC, it is treated as an offence if the wife is forced by the man to have intercourse during the period of separation.<sup>10</sup> Many amendments that took place in the criminal laws brought in amendments in the IPC and the Indian Evidence Act. Other than these sections mentioned herein above a few Acts deserve special mention as they were specifically implemented to protect the woman. They are:

- Dowry Prohibition Act, 1961
- Indian Divorce Act, 1969
- National Commission for Women's Act, 1990
- Equal Remunerations for Women's Act, 1976
- The Indecent Representation of Women's (Prohibition) Act, 1986
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
- Medical Termination of Pregnancy Act, 1971
- The Married Women's Property Act, 1874
- Maternity Benefit Act, 1961
- The Prohibition of Child Marriage Act, 2006
- Special Marriage Act, 1954
- The Criminal law Amendment Act, 2013
- Immoral Traffic (Prevention) Act, 1986
- Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
- Family Courts Act, 1984

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<sup>9</sup> Indian Penal Code 1860, s 354

<sup>10</sup> Indian Penal Code 1860, s 376A

- Legal Services Authorities Act, 1987
- Hindu Succession Act, 1956
- Minimum Wages Act, 1948
- Hindu Marriage Act, 1955.

Apart from these Acts, other Acts like the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 include the married women as a daughter under Section 2 of the said Act.<sup>11</sup> Under this Act, even when a woman is married, in the capacity of a daughter she has to take care of her parents and not being allowed to do so would amount to domestic violence as defined under the section and she could also be held liable for not fulfilling her obligation. So, we see why it is necessary to mention the other Acts connected to her. It is necessary because when a law is made it should sync with all the Acts in such a way that one Act or law that favours and safeguards her does not get adversely affected by the other. Anything depriving her of the rights guaranteed under one of them, or which creates an obligation on her, if and when taken away also falls within the category of abuse or violence or violence leading to her committing an offence.

## **VIOLENCE AGAINST WOMEN**

There are different ways violence can take place against any woman. We could classify them as:

- Violence against women in the community like rape.
- Violence against women migrant workers etc.
- Violence against women is done or condoned by States. E.g.: Custodial rape cases. The Mathura rape case<sup>12</sup> that took place on 26 March 1972 in India, led to Criminal law amendments and the addition of more sections related to the heinous offence of rape.

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<sup>11</sup> Maintenance and Welfare of Parents and Senior Citizens Act 2007, s 2

<sup>12</sup> *Tuka Ram & Anr v State of Maharashtra* (1979) SCR (1) 810



The World Health Organization<sup>13</sup> and the Journal of Epidemiology and Community Health<sup>14</sup> revealed that “out of every three women, one woman has been a victim of some act of violence at some point in time in her life and only one out of the ten reports it. This situation of the number of unreported cases in comparison to the prevalent data of the cases of actual domestic violence is known as the ‘iceberg’ of domestic violence”<sup>15</sup>. Right from her childhood, the woman faces violence just because of her gender and due to the way society functions. At home, she suffers at the hands of her parents and siblings, and then when she gets married, she lives in fear of being subjected to domestic violence again. At her workplace, there is no escape from being harassed. So, when a woman is vulnerable to such situations there is a need to give her an umbrella of protection by defining the scope of laws as wide as possible to help her. The United Nations stated violence against women was caused by “any conduct resulting in deprivation of the liberty of the woman in her public or private life.”<sup>16</sup> By including the term private life the UN included domestic violence as part of the violence against women.

**Violence against women can be classified into two main categories:**

**Violence due to traditional and cultural practices:** When the customs followed due to the deep-rooted traditions and culture of the social harms the woman physically and psychologically it falls under the violence of this type. E.g.: Child marriage, sati pratha<sup>17</sup> (widow burning) the last case was that of Roop Kanwar in 1987, and honour killing which in India was called Jauhar, was practised in the Rajput community in Rajasthan. In this form of honour killing, women self-

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<sup>13</sup> ‘Violence against women’ (WHO, 9 March 2021) <<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>> accessed 19 December 2022

<sup>14</sup> Enrique Gracia, ‘Unreported cases of domestic violence against women: towards an epidemiology of social silence, tolerance, and inhibition’ (2004) 58(7) Journal of Epidemiology & Community Health <<http://dx.doi.org/10.1136/jech.2003.019604>> accessed 19 December 2022

<sup>15</sup> Sarah Ferguson, ‘High-profile domestic violence murders ‘tip of the iceberg’’ (ABC News, 21 April 2014) <<https://www.abc.net.au/news/2014-04-21/high-profile-domestic-violence-murders-tip-of-the/5402488>> accessed 19 December 2022

<sup>16</sup> ‘Violence against women’ (WHO) <[https://www.who.int/health-topics/violence-against-women#tab=tab\\_1](https://www.who.int/health-topics/violence-against-women#tab=tab_1)> accessed 19 December 2022

<sup>17</sup> Gayatri Mishra, ‘Roop Kanwar: Last Known Case Of Sati In India & Its Relevance Today’ (FII, 7 August 2020) <<https://feminisminindia.com/2020/08/07/roop-kanwar-last-known-case-sati-india-relevance-today/>> accessed 19 December 2022

immolated themselves to avoid getting captured during wars and thus saved themselves from dishonour at the hands of the enemy.

**Domestic violence:** This type of violence has been happening for centuries and will continue to happen, no matter whether the country is developed or developing. The problem arises when this violence stays hidden as a private matter within the families. Only when it becomes a full-blown crime and gets reported do people begin to take notice of its existence. The aggrieved persons themselves, prefer to hide the happenings of domestic violence to avoid outside interference that may aggravate the problem behind doors at a later stage.

### STATISTICS OF DOMESTIC VIOLENCE CASES IN INDIA

In India, a crime against a woman gets reported every 1.7 minutes. Would you believe that as per the 2018 Crime in India Report given by National Crime Research Bureau (NCRB) once every 4.4 minutes, an Indian woman is experiencing domestic violence? As per the NCRB 2021 volume I report, in the states/UTs, a total of 4,28,278 cases of crime against women were registered during 2021, showing an increase of 15.3% over 2020 (3,71,503 cases).

According to the National Family Health Survey (NFHS-5), nearly one-third of women in India have experienced domestic violence. While domestic violence case has declined from 31.2% to 29.3%, it was also revealed that women themselves felt it is justified for being beaten up by their husbands. Telangana state received the highest of such responses at 83.8% while the lowest at 14.8% was from Himachal Pradesh. When responses about the same were taken from men, Karnataka led in the responses with 81.9% justifying the behaviour while once again Himachal Pradesh reported the lowest with 14.2%. The survey also listed out seven situations where it was felt justified to beat the wife. They were: If she argues with him, neglects the house of the children, goes out without informing him, refuses to have sex with him, does not cook means properly, if the husband suspects her of being unfaithful, and if she disrespects her in-laws. The survey showed that people felt that disrespecting their in-laws was the most justifiable reason to get hit by their husbands apart from neglecting the house and children. . The suspicion of

being unfaithful was surprisingly the least selected reason for justifying beating the wife. Only 21% of women from Mizoram chose to justify if it was the main reason for abuse.

It was also seen in the NFHS-5 Report that 30% of the women, around 18 to 49 years, who experienced domestic violence stated that they have experienced it since they were 15 years old while 6% have experienced it in their lifetime. But only 14% of them have brought up the issue. A study on these reports helps us to clearly understand why the survey, can never get an accurate report. It has been internalised by the people and most don't approach the police nor seek any other help, either due to their feeling of uneasiness or fear of stigmatisation by society. Moreover, there has never been a survey of the number of domestic violence committed against a woman by her parents or siblings, so getting that statistic is impossible. But please note that just because such statistics don't exist, does not mean such incidents never happen.

There was a rare instance of a case reported in the Times of India, on 15 February 2015,<sup>18</sup> where the married daughter who was an advocate had dragged her father and brother to the court under this Act alleging that they were physically assaulting her and asking her to vacate her parents' home as she had taken shelter there to escape domestic violence from her husband. Then we have a recent case reported in the Times of India, on 21 April 2021 wherein the mother had filed a complaint against her daughter for causing her suffering but it was found that it was the daughter who was facing the mother's ire for staying with her father during their marital discord.<sup>19</sup>

But there have been complaints filed under the DV Act 2005, but irrespective of the fact to what happened in each matter, which we leave to the discretion of the court due to the inadequacies under the sections of the said Act, we can safely say that there are instances of such domestic

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<sup>18</sup> Dhananjay Mahapatra, 'Woman drags dad, brother to court for domestic violence' (*The Times of India*, 25 February 2015) <<https://timesofindia.indiatimes.com/city/delhi/woman-drags-dad-brother-to-court-for-domestic-violence/articleshow/46363658.cms>> accessed 19 December 2022

<sup>19</sup> Rosy Sequeira, 'Mumbai: Mom file domestic violence case against own daughter' (*The Times of India*, 21 April 2021) <<https://timesofindia.indiatimes.com/city/mumbai/mumbai-mom-files-domestic-violence-case-against-own-daughter/articleshow/82169651.cms>> accessed 19 December 2022

violence happening on the married daughters too and especially it is more when related to inheritances where the daughter is left out as seen in *Raj Kishore Shukla v Asha Shukla*.

## **ANALYSIS OF THE SCOPE OF THE DV ACT AND WHY AMENDMENTS ARE TO BE MADE**

To analyse the DV Act 2005, and suggest amendments, it is essential to first understand the meaning of domestic violence. As already examined, we have found that the United Nations<sup>20</sup>, defined it as a pattern of behaviour exhibited in any relationship to maintain control and power over an intimate partner. It must be noted that the United Nations, reiterates the fact that there has to be a pattern of behaviour and it also identifies that such offence can take place in 'any relationship'. It stated that the victim of this offence can be of any gender, age, sexual orientation, religion, race, socio-economic background, or education level. It further states that domestic abuse can be done by various acts that aim to terrorize, hurt, humiliate, blame, intimidate, manipulate, frighten, injure, or wound. A thorough study of the definition states that such abuse could be by action or threat which can be identified as physical, economic, psychological, emotional, or sexual violence. By using the term intimate partner, it does away with the gender issue but then it removes the scope of including the parents, etc. It has instead confirmed that it could happen among couples who are dated, living together, or are married, The explanation for this could be that honour killing or violence arising out of inter-caste, inter-religion, or other marriage and other issues that we face in India, may not arise everywhere in the world and are limited to certain countries only.

Compared to the above definition, to come under this Act two things are mandatory.

- Domestic relationship - Sec 2(f) - is where the aggrieved person lives with her husband and with her relatives at any given point in time.
- Shared household - Sec 2(s) - when she has stayed under the same roof continuously for a given point of time or for some time.

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<sup>20</sup> 'What Is Domestic Abuse?' (United Nations) <<https://www.un.org/en/coronavirus/what-is-domestic-abuse>> accessed 19 December 2022

As defined under section 2(a) of the Act, an aggrieved person would be 'any woman' who is in a 'domestic relationship with the respondent' 'and who has undergone suffering of any act of domestic violence'. So, we find that the term 'any woman' gives a wide scope as to who can be the applicant or complainant. Since it has recognised a live-in relationship partner who has been living in such a relationship like a wife for a very long time, it is very easy to include a married daughter as well, who may or not be living in her matrimonial home but who has a right, as a legal heir, by birth or adoption, in the parents' home too. This is important as the right of this married daughter came to her by birth or adoption from the moment of her birth, well before her marriage, though with exceptions in certain cases. Such a right by birth exists along with her rights as that of a wife or intimate partner and cannot be taken away till her lifetime. The simple explanation would be that she does not cease to be a daughter when she becomes a wife. So, this definition must specifically mention in the DV Act.

Next, the question arises, against whom a complaint can be filed under this Act? The DV Act states that the woman can file a complaint against the persons who are defined and included under the definition of the respondent. Under Section 2(q) of the DV Act, "**respondent**" or respondents could be any adult male person with whom the woman had once shared a domestic relationship with her and against whom she has sought any relief under this Act. It is provided that a complaint can be filed by her against a relative of the husband or her male partner. Here the scope of the persons against whom she can file a complaint gets restricted because of the definition as it does not specifically mention the term respondent as 'anyone'. In *Sandhya Wankhede v Manoj Bhimrao Wankhede*,<sup>21</sup> the Supreme Court held that the proviso to Section 2(q) did not exclude female relatives of the husband or male partner from the scope of a complaint. Hence complaints can be filed by the aggrieved person even against a female related to that adult male. However, it can be said that the term respondent still means and implies the person related to the husband and does not include any other person in any other relationship

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<sup>21</sup> *Sandhya Manoj Wankhade v Manoj Bhimrao Wankhade & Ors* (2011) 3 SCC 650

with the aggrieved person. There had been judgements questioning this part of the term like the judgement in *Hiral P. Harsora v Kusum Narottamdas Harsora*.<sup>22</sup>

The judgement given is one of the important judgements about the Protection of Women against cases of Domestic violence as now even the perpetrators who are not male or adult, yet guilty can be taken to court and a suit against them would be maintainable. It had earlier focused only on the husband and the adult male relatives. If we are to just keep the definition at this term, for the moment, then it still seems inadequate as it still points towards her matrimonial home. The question is if the married woman is harassed by anyone, including her father or any female adult from her own maternal or paternal family like the father, mother, or sister or her sister-in-law (meaning her own brother's wife) will it be provided for under this Act? The answer is No. It is the simple understanding that a married woman doesn't need to under all circumstances be harassed only by her husband or his family members only. It could be by any other outsider or even her parents and siblings etc. It could even be domestic violence due to the abetment done by a third person. In many cases, we may find that the husband and his family are good-hearted and adjusting, often treating the daughter-in-law with a lot of love and care, but her father, mother, sister, or sister-in-law may be harassing her or even her husband as seen in the case of *Mohd. Zakir v Shabana & Ors*. The married daughter is subjected to domestic violence for multiple reasons including the very reason for her marrying the man of her choice or choosing a religion other than the one in which she was born etc. It could be just anything including property issues wherein the male siblings especially feel that since she is a married sister given away in an arranged marriage, she should not ask for any share in the property. So how does the married woman get protection against the financial abuse or violence shown towards her? Of course, the property issue may be settled by taking recourse to other property laws and remedies available to her by filing appropriate petitions under them, but those laws will not compensate nor safeguard her rights or herself from the physical, emotional, financial, or verbal abuse she faces. Every case is unique, and while making a law, there should be scope to widen it just enough to protect the aggrieved. This is necessary as it is evident that people find cunning

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<sup>22</sup> *Hiral P. Harsora v Kusum Narottamdas Harsora* (2016) 10 SCC 165

ways to avoid being brought within the scope of the laws or its sections, and there is a possibility of making an outsider do such acts of violence against her in some way. Hence the definition needs a bit of tweaking here.

Likewise, we analyse section 2(f), which is one of the most essential elements or requirements that helps to bring the respondent and aggrieved person under the scope of this Act. So the Act defines the term “**domestic relationship**” to mean a relationship between ‘two persons’ ‘who live or have, at any point in time lived together in a shared household’, ‘when they are related by consanguinity, marriage, or through a relationship like marriage, adoption or are family members living together as a joint family’. The case of *Indira Sarma v VKV Sarma*<sup>23</sup> is often used while reading into the scope of this definition. A simple reading of this definition would mean that a relationship between two persons by blood, or marriage or like marriage (though all live-in relationships are marriage-like unless they satisfy the criteria laid down by the Supreme court in its judgement in *Indra Sarma’s* case) or adoption or as family members living together as a joint family and who live or have lived together in a shared household. So far so good as it allows us to add consanguineous relationships. i.e., father, mother, sister, brother, etc too. This is necessary because there are several incidents of violence on the daughter who marries inter-caste or inter-religion or without the parents’ approval and the woman gets harassed and faces a lot of violence at the hands of her parents, siblings, etc, and sometimes even death.

Other criminal laws can indeed be made applicable but that would be okay to bring in, depending on the gravity of the offence. i.e. honour killing of the daughter. But most of the time, there will be demeaning of the married daughter, belittling, ostracization from the caste or society or group, evicting her from home or telling her not to come back, etc. A woman who has lived with these family members, loving them all her life, suddenly faces a lot of domestic violence. Even when she attempts to bond back with the family, the response that she may receive would be negative or harsh making it fall under the scope of domestic violence again. It is ironic that the Constitution that provides her with the freedom to choose and marry after attaining the age of majority suddenly becomes helpless to protect her after she takes that

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<sup>23</sup> *Indra Sarma v VKV Sarma* SLP (Criminal) No. 4895/2012

decision due to the freedom guaranteed to her. Often the choice she makes may not be a good one and if she chooses to return to her maternal or paternal home in case of difficulties, then it's obvious that she has every right to come back to stay and inherit as a legal heir, it still gets deprived, and she faces domestic violence again now with her parents too. However, the married daughter does come under the scope of a domestic relationship with her parent due to the definition that includes consanguinity and adoption too.

Now comes the very crux of the matter in the DV Act i.e., domestic violence. Section 3 of the DV Act states domestic violence is any act, omission, commission, or conduct of the respondent toward the aggrieved person. Such a pattern of behaviour becomes domestic violence if on an examination of the overall facts and circumstances we find that it constitutes the offence as defined under this section. To be taken into the scope of this DV Act, such act, omission, commission, or conduct of the respondent should indicate that it harms, injures, or is dangerous to the life, safety, limb, health, or well-being, whether mental or physical of the aggrieved. Even if the respondent "tends to do so, or even if it appears to be threatening towards the aggrieved person or any person the respondent shall be held liable. It is important to note that if the aggrieved person does not complain against such acts, omission, commission, or conduct of the respondent it will not be an offence even if there is a right guaranteed under the Constitution to the woman. Ironically, this is the case in all the situations and laws of every nation across the globe. So, the term should also include any 'informant' too, and as a precaution, an explanation as to why an informant and not the aggrieved person is informing can be added as a procedure. Information on domestic violence by an informant becomes necessary because as stated it is an act of violence, likely a physical or mental type, the woman may be afraid or retrained from leaving the house or maybe kept confined or isolated or like during the pandemic lockdown when the aggrieved had no place to escape. In such cases, she should be able to convey to others to seek help and get the protection of her legal rights.

This Act has emphasized the threat being a repeated act of threat, not a stray act, which is to cause physical pain to any person in whom the aggrieved person is interested. It must be appreciated that the legislators have included this because often this is a possibility and does



happen in several cases. It also explained that such acts included acts that caused “physical abuse such as causing bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person. It also included acts of assault, criminal intimidation, and criminal force”. Now, why are repeated acts being stressed when stating about physical abuse? Well, according to the Centre for Relationship Abuse Awareness, when people ask if a single act or incident is enough to constitute an act of domestic violence, then by contextualizing the incident in the relationship and looking at other forms of controlling the behaviour of the respondent, as is applicable herein under cases brought under this Act, it will help to determine if this is something that could escalate. However, a one-time incident can be a warning sign that future abuse could occur.

In addition, a one-time incident may have the same effect of causing fear, limiting behaviour, and long-term negative impacts on the aggrieved as continuing physical abuse.<sup>24</sup> Signs of physical abuse are evident and such signs should be taken as red flags and reported. It is only because such abuse gets reported, that we recognise it as an offence with far-reaching consequences for the whole family including children. Children watching repeated acts of physical abuse daily tend to find themselves caught in a dysfunctional family. It affects not only the woman but the children and the relationships they will lead in the future. It is necessary to curb this abuse as the earliest. If you were to check ways in which physical abuse occurs, you cannot point to any one act, omission, commission, or conduct and say okay, this is one type of abuse, that a parent cannot commit on the married daughter. It means that all types of abuse can be done by parents just like anyone else can towards the married woman.

Women, as we know, often face sexual abuse in their daily lives. Be it on the streets, at home e, at work, etc. It’s as if a woman is more of an object that identifies only by her physical attributes and reproductive organ and has no identity of her own. The first thing any person who wants to humiliate or provoke a woman to anger or disgust, would be to call her unsavoury or offensive names that insult her honour and dignity. So, sexual abuse is very well defined and

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<sup>24</sup> ‘Types of Abuse’ (*The Centre for relationship abuse awareness*)

<<https://stoprelationshipabuse.org/educated/types-of-abuse/>> accessed 20 December 2022

included under the DV Act and includes any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of a woman". The cases of cyber-crimes are on the rise and there must be provisions to report such cases because this is also sexual abuse leading to financial or other types of abuse and can be faced by women, married or not, and in such cases, offenders must be punished because it plays havoc with the lives of the married women in their family lives and sets a wrong impression on the minds of the children and society when it gets exposed. The news is full of unbelievable things happening around so when it comes to married daughters, sexual abuse from parents may be rare<sup>25</sup> but not non-existent due to the kind of society we are living in. On this type of abuse, there should be a provision wherein the parents can file a complaint on behalf of the aggrieved, as an informant, if she is facing sexual abuse<sup>26</sup> as she may be able to reveal her sufferings more openly and fearlessly to her parents than her husband or in-laws. On hearing such cybercrime offences issue the married woman if the husband and her in-laws abuse her in any way then again it will lead to domestic violence of other types. So yes, it is also necessary to protect a married daughter.

The abuse can also be verbal<sup>27</sup> and emotional <sup>28</sup>abuse which means if the woman is insulted, ridiculed, humiliated, and is facing name-calling then she can file her complaint under the DV Act. Going forward, the legislators, keeping in mind the Indian society, that mocks a woman for not being able to conceive or for producing only a girl child, included insulting, or ridiculing especially about her being barren or for not producing a male child as one of the verbal and emotional abuses defined under the DV Act. Some parents continue to have controlling behaviour toward their daughters even after their marriage, much to their dislike, especially if

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<sup>25</sup> Sneha Agarwal, 'Sexual harassment: Delhi Court summons mother on daughter's complaint' (India Today, 17 November 2015) <<https://www.indiatoday.in/mail-today/story/delhi-court-summons-molester-mom-273022-2015-11-16>> accessed 20 December 2022

<sup>26</sup> 'Sexual Abuse' (The Centre for relationship abuse awareness) <<https://stoprelationshipabuse.org/educated/types-of-abuse/sexual-abuse/>> accessed 20 December 2022

<sup>27</sup> 'Verbal Abuse' (The Centre for relationship abuse awareness) <<https://stoprelationshipabuse.org/educated/types-of-abuse/verbal-abuse/>> accessed 20 December 2022

<sup>28</sup> 'Emotional Abuse' (The Centre for relationship abuse awareness) <<https://stoprelationshipabuse.org/educated/types-of-abuse/emotional-abuse/>> accessed 20 December 2022

she marries to their withered wishes. When there is objection towards such controlling behaviour of the parents, there is every likelihood of being subjected to verbal abuse by them.

We have come across cases in high conflict divorce and child custody cases where women are alienated from their children by their husbands or his family members but there are instances where even the parents of the married daughter alienate her children from her, if they have the power and control over them, especially when they are living in their house. As there are no specific laws in the country, the married woman has to face emotional abuse that is bound to have far-reaching consequences.

While amending any law or Act related to married women, other Acts must be kept in mind. For instance, it must not be forgotten that married women fall under the category of 'children' as defined under section 2(a) of the Maintenance And Welfare Of Parents And Senior Citizens Act 2007. The married woman as a daughter has the responsibility to take care of the parents who are senior citizens. If she is not allowed to visit them or not allowed to take care of them, it also amounts to emotional abuse. It is even more heart-breaking if she is the only child of her parents who depend on her or the only child residing in the country while other siblings are living overseas. So, if she doesn't take care of it, she may be facing consequences if her parents file a complaint against her. Not taking care of her parents may also be taken as a reason to disinherit her from the property which she could have received. Everything is possible in today's scenario and so, there is the possibility of not allowing her to take care of them so that such a reason is established to deprive her rights. In such a case there will be emotional, financial, economic, and psychological abuse toward her, and she has to be protected against it. So, abuse of a kind need not be of an isolated type. It can include other forms existing side by side.

The other type of abuse faced by the aggrieved defined under the DV Act is economic abuse<sup>29</sup> which would mean deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, such entitlement could be payable under an order of a court or otherwise. It could also be the requirement of the aggrieved person which

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<sup>29</sup> 'Economic Abuse' (*The Centre for relationship abuse awareness*)

<<https://stoprelationshipabuse.org/educated/types-of-abuse/economic-abuse/>> accessed 20 December 2022

arises out of daily necessities other than household necessities for her and her children. The DV Act also brings under its scope of economic abuse, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household, and maintenance too. This is as far as she faces economic abuse at the hands of her husband but there are instances when her parents deprive her of the Stridhan or property she can inherit, or by taking away by force or undue influence, etc the entitlement that she receives. Then again it is domestic violence wherein she is being abused economically.

As per observations of cases, it has been found that in India, that domestic violence or cruelty towards women is linked to dowry in around 80% of the reported cases. Hence, the DV Act also covers any act, coercion, threat, etc in case of unlawful demands by the respondents as defined under the Act, so that the respondent is held liable for making any unlawful demand for any dowry or other property or valuable security. This is one clause that must be highly appreciated as this clause is a clause that is in perfect sync with the safeguards a married woman gets under the Dowry Prohibition Act, 1961 as well as under section 498A of the Indian Penal Code 1860, which was introduced in 1983(referred to as the Dowry Law) to safeguard married ladies from harassment by the spouse or his relatives. The way this clause is framed is the way, all other provisions, sections, clauses, laws, etc too should aim otherwise it serves no purpose. Now, this may not apply to the parents seeking anything from the married daughters' in-laws in the form of dowry so let's leave this as it is for now.

Another very good clause under this section of the Act is related to preventing any disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds, etc, or other property in which the aggrieved has an interest or any entitlement to use by her domestic relationship. This is what usually people do in such cases when the complaint is filed. The respondent begins to realize the consequences he may face shortly, so the respondents begin to relinquish all the rights, title, and interest by transferring all the properties in their name to some other person's name to avoid providing for her or their children. This is gross injustice because such assets or properties may be rightfully or may be reasonably required by the aggrieved person or her children. Likewise holding back her stridhan or any other

property jointly or separately held by the aggrieved person amounts to domestic violence. There are innumerable cases of sufferings faced due to such acts of the respondent and when it was finally brought to light it came as a protection against such tactics under this Act. This is another clause that is to be highly appreciated because it is included as an added protection to the legal rights of the married woman in her marital home. Now how is this applicable to the married daughter? Well. In the same way, with the same intent, even parents can do this to deprive her of anything in which she has an interest. Parents in India think that if she inherits properties or assets it will go to another family i.e. the matrimonial home, so they prefer to give it all to their sons or people of their choice who may have unduly influenced them, especially during their old age as many elderly face geriatric disorders. Parents are capable of holding back or taking away streedhan too. So here too there is every chance of abuse.

This DV Act has also explained that any prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by the domestic relationship including access to the shared household would also fall within the scope of this section under the DV Act but the same should likewise be made applicable when it is done by the parent on the daughter. To examine if such act, omission, commission, or conduct of the respondent constituted domestic violence under this Act, the overall facts and circumstances of the case are taken into consideration. Moreover, innumerable judgements of the Hon'ble Supreme Court have given more meaning and scope of interpretation to this Act though well within the terms of domestic violence in a matrimonial home.

Finally, we examine and analyse the other essential requirement of this Act. i.e. the term “**shared household**” as defined under section 2(s) of the DV Act. As per the DV Act, it means a household where the aggrieved woman lives at present or had once lived in a domestic relationship either apart from the respondent or resided along with the respondent and could be with him alone or his family members as defined under the DV Ac. This section further states that it includes a household that was owned or tenanted, and held jointly by them, or owned or tenanted by any one of them in their capacity, where they may have right, title, interest, or equity in that household in any manner. It further states that it does not matter even if the household belongs

to the joint family of the respondent even if the respondent or the aggrieved person has no right, title, or interest in it. So, we see that the scope of this definition can include even the married daughter in her own paternal or maternal home in the same manner that her right exists in her matrimonial home as per the section in this Act as she either lives or would have lived at some point of time with them.

While analysing the term shared household it is very important to appreciate the 79-page judgement delivered by a bench of Justices M R Shah and B V Nagarathna in *Prabha Tyagi v Kamlesh Devi*<sup>30</sup>. In this judgment, it was held that "a woman in a domestic relationship even if she is not aggrieved in the sense, not been subjected to domestic violence, she still has a right to reside in a shared household. In other words, a daughter, sister, mother, wife, mother-in-law, daughter-in-law or such other categories of women in a domestic relationship will have the right to reside in a shared household de hors a right, title or beneficial interest in the same." So when the judgement has brought this wide scope the amendment to the term should not be difficult to do.

As per the Supreme Court judgement in even if there is a mutually agreed decision made to live apart in different locations, due to some commitment of work or any other reason like that of medical treatment, better educational facility of the children, etc even then she will have the right to reside in the shared household. Likewise, a married daughter, just because she chooses to stay away from her parents in some cases, where they expect her to live with them also if someone else stays instead of her, should not be deprived of the right to live in the shared household or any other property of her parents. Believe it or not, such cases are happening around but are never taken seriously because she does not have any remedy or system to air her grievances.

## **AN OVERALL REVIEW OF THE ACT**

The DV Act has attained a secular character due to the judgement in *Prabha Tyagi's* case, as it has now made the DV Act applicable to women irrespective of their religion. The DV Act is also

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<sup>30</sup> *Nagarathna in Prabha Tyagi v Kamlesh Devi* (2022) SCC OnLine SC 607

called a Quasi civil or quasi-criminal Act. It is called quasi-civil because the aggrieved person is the Applicant, and the other side is not the accused but the respondent. Secondly, it is not a penal provision, there is no punishment or imprisonment under the Act for a violation if found guilty under the DV Act. It is called quasi-criminal because, under section 28 of the DV Act, the provisions of the Criminal Procedure Code apply to it Secondly, there exists the concept of compensation when found guilty under the DV Act, and the aggrieved person is awarded monetary compensation. Though the Act seems to lack the effect on the respondent that other Acts create when the respondent is treated as an accused and punished it is not so. We may assume that unless there is punishment there will be no fear and this is a dent in the armour of protection. But the respondents cannot rest easy as they will have to face trial in court, no matter whether the allegations are true or not. The reliefs provided in the said Act include the restraining order, the residence order, monetary reliefs, compensations, custody orders, etc. These reliefs could be granted as *ex parte* or interim or as per the discretion of the court.

'The Protection of Women from Domestic Violence Act' appears to be wrongly named, as it loses focus on the domestic violence part and though it states only 'women' it focuses on the husband and his relatives when it states about the domestic relationship it means her marital relationship, and when the term of the shared household is used, it is mainly to referring to her marital household. Thus, it would have been better to call it as per its limited scope to mean 'Protection of married women against Matrimonial Violence Act'. No matter how it is named the contents would be related to the married woman so there is a need for protecting the aggrieved against the domestic violence faced by her in a domestic relationship not just with her husband and his relatives but also her family members(consanguineous relationships) too because there is scope in the term itself. The problem in this DV Act 2005, is that while defining certain terms, a standalone term seems to provide a lot of scope for wider interpretation but when combined into a sentence to define it, it completely reduces the scope of the meaning thus hampering the legal rights guaranteed to the married woman under the Constitution. So, what needs to be amended is, that the Act should be made applicable to the married woman in two capacities:

- 1.) as a wife or to the woman in that nature of the domestic relationship as the wife of the respondent (husband) and
- 2.) as the daughter of the respondent who is or are her parents, siblings, or any other.

Some more reliefs could be added to the existing ones, as mentioned under the various sections of the DV Act and the Rules under 2006.<sup>31</sup> More effective reliefs like short-term simple imprisonment may be added depending on the severity of violations or as required keeping in mind the future scenarios to create deterrence.

## CONCLUSION

Around the world, there have been amendments to the domestic violence Act to meet the demands of changing times. India too has widened the scope with a series of judgements to give clarity and scope to the terms keeping in mind the legislative intent. Though the DV Act is very small, it has certainly brought about the necessary change in the system. But due to the definitions provided in the Act, its cope gets limited. Limiting the definition of respondents to include only the husband and his relatives would mean that in the eyes of the law, the husband and his relatives are the only ones responsible for such offences. The impression given by this limited definition is that marriage is dangerous. The whole attention is diverted from being an Act that protects married women to being an Act that holds a marriage and the husband and his relatives in a bad light. With a few well-defined amendments and modifications, this DV Act can be made into a very protective law to help when married women face other real-life situations too as already explained.

On a general note, in many countries, women are considered inferiors and are given very low status and as already seen, many justify the violence they suffer at the hands of their husbands and others. This is because for ages, in such societies, men have been considered superior, and women are considered as property that their husband owns. Women are being treated as protectors of culture or being reduced to reproductive machines. Such mentality must change.

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<sup>31</sup> Protection of Women from Domestic Violence Rules 2006



Women must be encouraged to speak up and seek help. People have to change their corrupted conscience and educate themselves about equal rights for all genders. Unless there is awareness about the root cause, domestic violence cannot be prevented. If domestic violence is not prevented, then we will end up having more aggrieved criminals carrying packets of human remains in the silence of starlit nights. Nevertheless, raising awareness and creating protection against violence is a continuous effort that the government must undertake. Any law implemented, especially if it's a special provision, should eliminate the need to have multiple laws and instead have scope for wider interpretation in the single available Act.