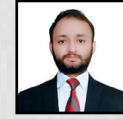


RIGHTS UNDER PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005



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One in three women faces **domestic violence** in India. We have evolved a lot but there are some areas where our society still needs progress. Even in this 21st century, the patriarchal mindset has its impact on people by normalizing domestic violence. But at the same time laws have been formulated to provide protection to the women. To fight against this social evil, we first need to know the rights available under Protection of Women from Domestic Violence Act, 2005. (Referred to DV Act 2005 henceforth)

As per NCRB report, the rate of crime against women has jumped from **56.5 % in 2020 to 64.5 % in 2021.**[1]

Categories of crime:

- **31.8%** fall under the category of “Cruelty by husband or his relatives”,
- followed by **20.8%** under the category of “Assault on women with intent to outrage her modesty”,
- **17.6%** fall under the category of kidnapping and abduction, and
- **7.4%** are under the category of rape.

There seems to be a gross under reporting of cases under DV Act. For instance, in the year 2021 only 507 cases were registered under the said Act which is a mere **0.1%** of the total cases of crime against women. [2]

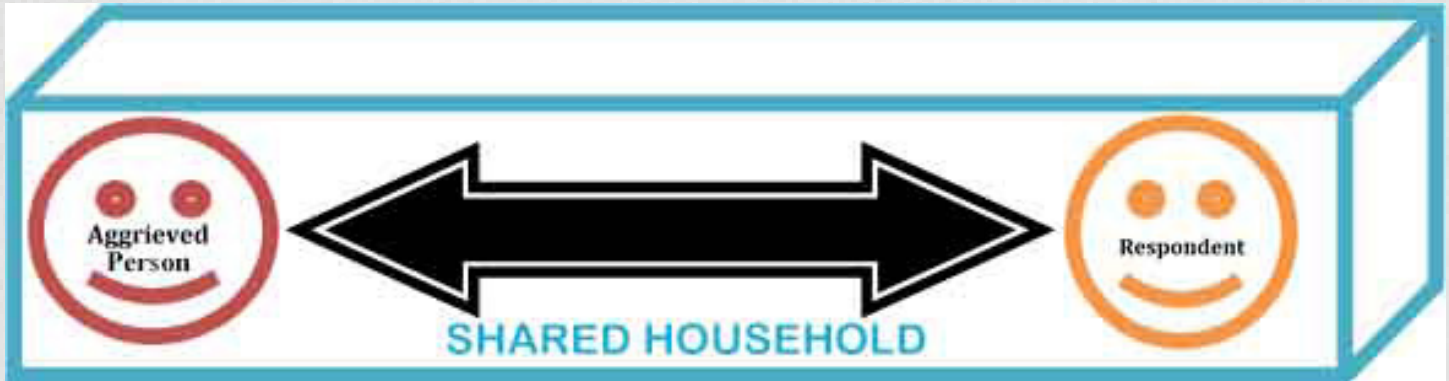
What Constitutes Domestic Violence?

Over the period of time, the meaning of violence has evolved to include not just **physical kinds of violence**, but also **emotional, mental, economic, and other types of cruelty**. Thus, domestic violence includes acts that **harm or endanger the victim's health, safety, life, limb, or wellbeing (mental or physical)**, as well as causing **physical abuse, sexual abuse, verbal abuse, emotional abuse, and economic abuse**, committed by anyone who is or was in a domestic relationship with the victim.

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Prior to the enactment of the DV Act 2005, the victim could approach the court under Section 498-A of the Penal Code, 1860, which provides for 'husband or relative of husband of a woman subjecting her to cruelty, with only a specific set of offenses dealing with cruelty to married women. All other instances of domestic violence inside the home had to be handled under the IPC crimes regardless of the victim's gender.

Let's understand the definition of Domestic Violence through an exhibit –



In the above exhibit an aggrieved person, respondent and shared household are shown. It is pertinent to know how the law defines them and also to know the likely relations between the aggrieved person and the respondent to allow case to be covered under DV Act 2005.

Who can be an Aggrieved Person– The aggrieved person is the main victim of Domestic violence and can **only be a female**. Male can't claim any rights under DV Act 2005 and shall not be the aggrieved person.

Who can be a Respondent– Here, the people have a misconception that the respondent has to be male only. But as per the DV Act 2005, respondents can be any person irrespective of gender i.e. **either male or female**.

Kinds of Domestic Relations between Aggrieved Person & Respondent – The two persons can be related by **consanguinity, marriage, or through a relationship in the nature of marriage (Live-in-relationship), adoption or are family members living together as a joint family**.

Thus, the respondent can be the brother, sister, son, daughter, father, mother, uncle, aunt etc.

What Shared Household is- Shared household means a household where the person aggrieved lives or at any stage has lived in a domestic relationship **either singly or along with the respondent** and includes such a household whether -

- (i) **owned or tenanted jointly by the aggrieved person and the respondent, or**
- (ii) **owned or tenanted by either of them**
- (iii) **Both parties live in a joint family property of which the respondent is a member, irrespective of whether the respondent or aggrieved person has any right, title or interest in the said property.**

The basic objective of the legislation is to enlarge the scope of the definition of shared household. The Supreme Court of India has asserted that the definition of shared household is exhaustive in nature which means that generally it shall include all property/premises where both aggrieved person and respondent have stayed in a domestic relationship. It is pertinent to mention here that living of women in a household has to refer to a living with some permanency. Mere fleeting or casual living shall not fall under the definition. The intention of both parties and nature of living shall decide the status of shared household.

Objective of the DV Act 2005

The DV Act, 2005, was formulated to provide a civil law remedy for the protection of women from being victims of such relationships, as well as to prevent the occurrence of domestic violence in society.

The objective of the Act states that it is "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 matters connected therewith or incidental thereto." [3]

The purpose of the DV Act 2005 is to provide statutory protection to victims of domestic abuse who lack property rights. The Act provides for a wife's security and protection regardless of her ownership rights in her dwelling. Its goal is to protect the wife from violence and to prevent future acts of violence.[4]

How to File a Domestic Violence complaint?

In order to file a complaint for domestic violence, an aggrieved woman may:

- a) **Go to the police station and file a complaint, or**
- b) **File a complaint with a Protection Officer or Service Provider, or**
- c) **Go directly to the Magistrate.**

Women's Rights under DV Act 2005 – There are five kinds of rights available under DV Act 2005 [5] namely –

1. Protection Order
2. Residence Order
3. Monetary Order
4. Custody Order
5. Compensation Order

Protection Orders

The Magistrate after giving the aggrieved person and the respondent an opportunity of being heard and if satisfied that domestic violence has taken place or is likely to take place may pass a protection order and prohibit the respondent from: [6]

- a) committing any act of domestic violence
- b) aiding or abetting in the commission of acts of domestic violence
- c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person
- d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact
- e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate
- f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence
- g) committing any other act as specified in the protection order.

This order empowers the Magistrate to issue a protection order preventing respondents from committing any act of domestic abuse, assisting or abetting in the commission of acts of domestic violence, entering the injured person's place of employment, and so on.

Penalty for Breach of Protection Order under DV Act 2005

- a) Though the nature of the act is civil in nature and it doesn't hold any person criminally liable but the violation of Protection Order is punishable and the Act punishes only those who violate a protection order.
- b) A breach of protection order, or of an interim protection order, by the respondent shall be an offence (cognizable and non - bailable) under this Act and shall be

punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

- c) The offence shall be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.**
- d) While framing charges, the Magistrates may also frame charges under section 498A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.**

Residence Orders: The Act provides for two sorts of reliefs:[7]

- (a) The right to dwell in a shared home; and**
- (b) The right to obtain residence orders.**

The Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order –

- Restraining the respondent from dispossessing the aggrieved person from the shared household;**
- Directing the respondent (if women, this order will not be passed) to remove himself from the shared household;**
- Restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;**
- Restraining the respondent from alienating or disposing off the shared household;**
- Restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate;**
- Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent;**
- Any other direction to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person;**
- Directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order; and**
- Direct the respondent to return the aggrieved person her 'stridhan' or any other property or valuable security she is entitled to.**

If the Magistrate issues a residence order prohibiting the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides, it may be taken as an indication that a residency order will be meaningless unless the respondent's family including female relatives are also bound by it. [8]

Monetary Relief

The court may issue an order for monetary compensation if a woman has incurred an economic loss as a result of abuse. This may include fees incurred by a woman for medical care, any loss of earnings, property damage, and so on. The abused party may also seek maintenance from her male companion.[9]

The provision further states that the monetary relief offered must be adequate, fair, and reasonable, and must be compatible with the quality of life to which the injured individual is accustomed. If the respondent fails to make payment in accordance with the monetary order, the Magistrate may direct the respondent's employer or a debtor of the respondent to directly pay to the aggrieved person or to deposit with the court a portion of the respondent's wages or salaries or debt due to or accrued to the respondent's credit, which amount may be adjusted towards the monetary relief payable by the respondent.

Custody Orders

The Magistrate may award the aggrieved lady or any person filing on application on her behalf interim custody of the children. This is done to save a mother from being separated from her children, which is an abusive circumstance in itself.

It also states that the Magistrate may grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf at any stage of the hearing of the application for protection order or for any other relief under this Act and specify, if necessary, the arrangements for visitation of such child or children by the respondent. However, if the Magistrate believes that the respondent's visit to the child or children will be detrimental, the Magistrate may reject such contact.

Ex-Parte Orders

The act empowers the Magistrate to issue such interim orders as he deems just and proper, and if the Magistrate is satisfied that an application prima facie discloses that –

- a) the respondent is committing, or
- b) has committed on act of domestic violence, or
- c) that there is a reasonable probability that the respondent will commit an act of domestic violence, may grant an ex parte order on the basis of the aggrieved person's affidavit in such form as may be prescribed.

Compensation Orders

The Magistrate, on an application by the aggrieved person, may issue an order requiring the respondent to pay compensation and damages for the injuries, including mental torment and emotional anguish, caused by the respondent's acts of domestic violence.

Punishment for misuse of DV Act 2005

In a civilized society, the rights of both men and women have to be respected by their respective counterparts. The very purpose of any such legislation is to provide justice to the needy or victim and shouldn't be used as means of revenge. The DV Act 2005 as such does not explicitly mention the punishment for the misuse of the provisions. Though, if any women falsely institutes a case against the respondent then in that situation the court may punish the said women.

"Another disquieting trend has been that women themselves have not been innocent of abusing women. At times women have played an unsavory, catalytic role in perpetrating violence whether against the daughter-in-law, the mother-in-law or female domestic help. Instances exist whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores. Some surveys have concluded that 6 to 10 percent of dowry complaints are false and were registered primarily to settle scores. It is unfortunate if laws meant to protect women get abused as instruments of oppression. The bottom-line, therefore, is the fair invocation of legal provisions and their objective and honest implementation"[10]

Just because domestic violence is invisible, it doesn't mean it isn't widely prevalent all over the country. It is prevalent in all types of societies irrespective of level of economic advancement, financial status, education, age or other socio-economic factors. The National Family Health Survey-5 found that approximately 30% of women aged 18-49 had experienced domestic abuse. That is one-third of India's women population. [11] Domestic violence is also underreported due to a variety of reasons like embarrassment, financial dependency, victim blaming etc and the number of women who choose to remain in abusive marriages is not surprising. Many women are discouraged from leaving abusive marriages because of the impact on their children. At a basic level, we must normalize support from family and friends without being judgmental and insensitive. In terms of grievance redressal, several remedies are available which include help from women commission, NGOs, police and legislation and very significantly through Protection of Women from Domestic Violence Act of 2005.

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