A CRITICAL ANALYSIS OF DOMESTIC VIOLENCE LAW IN INDIA

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“No nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens and crumbling stone of once mighty Rome Comes a wail as it were the cry that nation founded on Injustice can permanently stand.”  

Domestic Violence Act, 2005 is a result of Legislative Dynamism, it is well intended Social Legislation that was introduced when all the other previous Statues failed to desired results as a last resort and to protect the women from Domestic Terrorism. Therefore, this paper attempts to cover situation of Women Protection laws before the enactment of the Domestic Violence Act. Further, the paper gives a detailed analysis of the various provisions of Domestic Violence Act and deriving its legislative intent. However, let us not forget, ‘All power tends to corrupt and absolute power corrupts absolutely’; therefore, this paper also tries to scrutinize the potential of these provisions to be misused of the Domestic Violence Act. In the case of Loha Vs District Educational Officer J. Vaidhynathan observed that “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 cases.” Lastly, the paper delivers certain suggestions that the author feel could be incorporated for a more justifiable environment and to ensure that none of the provisions are misused.

1 THE WORKS OF ROBERT G. INGERSOLL, BY ROBERT INGERSOLL, PAGE 220.
3 Madras High Court, Loha Vs District Educational Officer, W.P.(MD),No.8646 of 2015, Dt: 08.06.2015
INTRODUCTION

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women.” 4 In this paper the author has made a sincere venture which maybe aptly called an adventure the author has taken a painstaking and arduous task of highlighting cruelty on women under the garb of Societal Norms and its horrible consequences leading to disintegration of family life and trying to suggest a solution to Domestic Violence, that is a social problem and mist be solved by both social and legal solution because not always legislation by itself can be a solution to deep rooted social problems. Although the statue passed may give the problem of Domestic Violence a little push and have that educative factor as well as legal sanction behind however as Roscoe Pound, said “What there is in the way of preventive Justice Is achieved not by legal but by social agencies. It is done, for the most part not by the agencies of law but by the social workers.” 5 Therefore author has made an attempt with passion and compassion and tried to critically analyze every aspect very vividly going into depth. O’Creultry, why thy victim is generally a woman! 6

The right to be safe and live free from violence is a fundamental human right, for both men and women. For this sole reason wherein, this paper on one side we attempt to cover violence against women, it’s causes, legislations preventing such incidents, on the other hand the paper has extensively talked about possible misuses of Domestic Violence Laws of Women and at the end have tried to focus on Gender Neutral Laws. Although to understand the current status quo it is very important for us to know that since time immemorial India has particularly been a patriarchal society and pervasiveness of illiteracy among women have been one of the reasons for wide spread of violence against women. Furthermore, traditions such as purdah system, satipratha, Female feticide, Female infanticide and many other have only degraded the condition of women in Indian Society. In India where almost half of the populations are women, they have always been ill-treated and deprived of their right to life and personal liberty as provided under the constitution of India.

5 Rocoe Pound – Criminal Justice In America
6 Law Relating to Dory, Dowry Death, Cruelty to Women and Domestic Violence
The misconception that women are always physically and emotionally weaker than the males, is of another reason behind such incidents of Domestic Violence. Behind closed doors of homes all across our country, people are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolitans as well. It is crossing all social classes, genders, racial lines and age groups. It is becoming a legacy being passed on from one generation to another. But offences against women which reflects the pathetic reality that women are just not safe and secure anywhere. According to a latest report prepared by India’s National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide. Following is a chart showing a comparative analysis between Crimes against Women during 2010-2014:

<table>
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<tbody>
<tr>
<td>1</td>
<td>Rape</td>
<td>22,172</td>
<td>24,236</td>
<td>24,923</td>
<td>33,707</td>
<td>36,735</td>
<td>9.9</td>
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<td>2</td>
<td>Attempt to commit rape</td>
<td></td>
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<td></td>
<td>4,134</td>
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<tr>
<td>3</td>
<td>Kidnapping &amp; abduction of women</td>
<td>28,785</td>
<td>30,505</td>
<td>30,202</td>
<td>51,001</td>
<td>57,311</td>
<td>10.5</td>
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<td>4</td>
<td>Dowry deaths</td>
<td>6,391</td>
<td>8,616</td>
<td>8,233</td>
<td>8,083</td>
<td>8,455</td>
<td>4.8</td>
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<tr>
<td>5</td>
<td>Assault on women with intent to outrage her/his modesty</td>
<td>40,013</td>
<td>42,900</td>
<td>45,351</td>
<td>70,739</td>
<td>92,235</td>
<td>10.3</td>
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<tr>
<td>6</td>
<td>Insult to the modesty of women</td>
<td>9,981</td>
<td>8,570</td>
<td>9,173</td>
<td>12,589</td>
<td>9,735</td>
<td>-22.7</td>
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<tr>
<td>7</td>
<td>Caused by husband or his relatives</td>
<td>94,041</td>
<td>99,135</td>
<td>1,06,27</td>
<td>110,066</td>
<td>1,22,877</td>
<td>3.4</td>
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<tr>
<td>8</td>
<td>Importation of girl from foreign country</td>
<td>36</td>
<td>30</td>
<td>59</td>
<td>31</td>
<td>13</td>
<td>-36.1</td>
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<tr>
<td>9</td>
<td>Attempt of suicide of woman</td>
<td></td>
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<td></td>
<td>3,734</td>
<td>-</td>
</tr>
<tr>
<td>A.</td>
<td>Total IPC crime against women</td>
<td>2,05,009</td>
<td>2,15,142</td>
<td>2,32,626</td>
<td>2,55,839</td>
<td>3,25,329</td>
<td>9.3</td>
</tr>
<tr>
<td>10</td>
<td>Commission of Sati Prevention Act</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
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<tr>
<td>11</td>
<td>Indecent Representation of Women (P) Act</td>
<td>895</td>
<td>453</td>
<td>141</td>
<td>362</td>
<td>47</td>
<td>-37.9</td>
</tr>
<tr>
<td>12</td>
<td>The Dowry Prohibition Act</td>
<td>5,182</td>
<td>6,619</td>
<td>9,036</td>
<td>10,709</td>
<td>10,050</td>
<td>-6.2</td>
</tr>
<tr>
<td>13</td>
<td>Protection of women from domestic violence Act*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>426</td>
<td>-</td>
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<td>14</td>
<td>Immoral Traffic (Prevention) Act#</td>
<td>2,499</td>
<td>2,436</td>
<td>2,583</td>
<td>2,579</td>
<td>2,070#</td>
<td>-</td>
</tr>
<tr>
<td>B.</td>
<td>Total SLL crime against women</td>
<td>8,576</td>
<td>5,508</td>
<td>11,742</td>
<td>13,650</td>
<td>12,593</td>
<td>-7.7</td>
</tr>
<tr>
<td>Total(A+B)</td>
<td></td>
<td>2,13,585</td>
<td>2,26,650</td>
<td>2,44,270</td>
<td>3,09,546</td>
<td>3,27,922</td>
<td>9.2</td>
</tr>
</tbody>
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*Newly included crime head; # Modification in data in 2014, as figures refer to women related crimes only.

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7 Available at http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf (last accessed on 26/1/2018)
8 Available at http://ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf (last accessed on 26/1/2018)
This paper also discusses about Legislative Dynamism and Vigour about introducing laws. Wherein this paper also tries to cover that while the Indian government should be applauded for taking seriously its obligations to protect women from domestic violence, this paper shows that its positive approach has been stymied by:

1. The victimization of male partners and their female relatives as a result of special protections accorded to women.
2. Police harassment and rent-seeking under the guise of enforcement\(^9\). These negative consequences have overshadowed the benefits that these laws were intended to provide to domestic violence victims. This demonstrates that even a legislative framework against domestic violence that meets international human rights standards can be limited or counterproductive due to powerful cultural and institutional barriers.

**DOMESTIC VIOLENCE AGAINST WOMEN ORIGIN AND CAUSES**

It is out rightly sad, that the women we admire and preach in the name of Durga, Saraswati, Parvati and Kali, we also abuse them behind those four walls. The status of women in India has been subject to many great alterations over the past few millennia. From a largely unknown status in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been lively. Violence against women is majorly a result of gender relations that has somehow assumed that men are supposed to be superior to women. This has therefore resulted in the subordinate status of women and furthermore considering much of gender violence as normal and it enjoying surprisingly a social sanction. Although but discussion on violence is not required but some types of violence include physical aggression, psychological violence and many others.

The current status quo of women cannot be properly understood without referring to and understanding the previous conditions from which it evolved. Therefore, delving into the history this paper has divided the status of women into three phases:

a) Ancient Society: In ancient India, the women enjoyed equal status with men in all fields of life. Summing up the status of women in Ancient India, with a notion of critical appreciation, it can with a notion of critical appreciation, it can be gauged from the fact that she was known as “ardhangini” which suggest that there was equality between men and women and neither being superior to other. The word “Patni” in Brahamanas indicate her equal share in the social and religious side of husband’s life. She is the sole mistress of the household. The wife was never looked upon as a salve or a chattel but as a partner in religious matters, as a friend, a confident, and guide.

b) Medieval Society: The advent of Mohammadanism with Arab invasions in AD 712. Hindu Society’s attitude towards women became more rigid. Later 500 B.C, the status of women began to decline with the Smritis and with the Islamic invasion of Babur and the Mughal Empire and later Christianity curtailing women’s freedom and rights. The women enjoyed freedom, Status and prestige in the society but did not last long and women finally settled down to an indoor life. The Indian woman’s position in the society further deteriorated during the medieval period when sati among some communities, child marriages and a ban on widow remarriages became part of social life among some communities in India. In some parts of India, the Devadasi or the temple women were sexually exploited. Polygamy was widely practiced especially among Hindu Kshatriya rulers. The women lost their entity in the 18th century and till the beginning of the 19th century women were totally and forcefully sublimated male superiority, physically and intellectually.

c) Modern Society: With the advent of British rule, it was their basic rule concept to rule the country that the Britishers they did not intervene into the personal laws of Personal Laws of Hindus and Muslims. Although, The Mayne – Macaulay doctrine of colouring Indians with western colour did show some improvements and manifestations. After independence and formation of a Sovereign, Socialist, Secular, Democratic, Republic Indian citizens started moving towards upliftment of women. Woman constitute about half of the population of India and as such they cannot be ignored and keeping in mind famous words of Swami Vivekanand “A Bird with one wing cannot fly”
There are no single causes/factors that contribute to the violence perpetrated against women. For the purpose of this, the author has divided the types of causes of violence against women into five headings. They are cultural, economic, legal and political.

1. **Cultural**: Acceptability of violence as a means to resolve conflict is the major reason of violence against women. Victims generally feel that it is better to suffer in silence than to be separated from their loved ones.

2. **Economic**: Another important factor that contributes to the violence against women is the economic and financial dependence of women on men. This is generally true when the male person is unemployed and feels his power undermined in the household. The threat and fear of violence keeps women from seeking employment or compels them to accept low-paid exploitative labour.

3. **Legal**: Improper and inadequate laws and legal status of women is the primary cause for domestic violence. In India, laws relating to divorce, child custody, maintenance and inheritance are always in favour of men, ignoring women’s rights. This has further led to violence on the women. The law enforcement agencies are also less sensitive towards women and their problems and always tend to guard the male counter-part.

4. **Political**: The isolation of women from communities and less participation in the field of politics also contribute to more of violence on women. As their interactions with strangers or outer people are less, so they become victims of violence. They fear to raise their timid voices, least they fall prey to more violence than before. \(^\text{10}\)

It is pertinent to note that up to 45% of married men acknowledged physically abusing their wives, according to a 1996 survey of 6,902 men in the state of Uttar Pradesh. \(^\text{11}\) This number is thus very disturbing thus need of a Strong Legislation.

**DEFINING DOMESTIC VOILENCE**

Under Section 2(f) of the Act, “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in nature of marriage, adoption or are family

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\(^{10}\) IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 19, Issue 10, Ver. IV (Oct. 2014), PP 08-14 e-ISSN: 2279-0837, p-ISSN: 2279-0845.

members living in a joint family. The scope of this provision is very wide. In a famous case of Nandan Singh Manral vs. State, the notice was served on the brother-in-law. But it was held that the husband of the married sister, who lived far away from the family of the husband, cannot be said to have lived in shared household with the aggrieved person as no domestic relationship existed. Hence, the notice served on the brother-in-law was quashed.

In contrast, the scope of Section 498A of the Indian Penal Code was essentially included to punish the husband and the in-laws of the bride for the act of cruelty. In the case of domestic violence also, the perpetrator is the male against a woman. Now, if the husband or the relatives of the husband commits an act of domestic violence through his male relatives or through his female relatives, it is deemed that there was an act of domestic violence for which the relatives and the husband will be held responsible. Here the order of the Magistrate will be binding on the parties, and non-compliance with the orders of the Magistrate amounts to an offence which is punishable under Section 31 of Protection of Women from Domestic Violence Act, 2005. Thus, the above definition though, its scope is very large, mentions and points out the true ambit of domestic violence.  

DOMESTIC VIOLENCE ACT – THE LEGISLATIVE DYNAMISM

Legislature, in right earnest, thought Domestic Violence is one of the most despicable, detestable and condemnable evils that has shocked the social conscience and must be eradicated without any waste of time, failing it would eat away the morals and the valued on which our society lived and thrived and thus The Protection of Women from Domestic Violence Act, it is a laudable and glorious enactment aimed to stop the turbulent flow of Violence which is causing deep erosion of the family mornings.

The Protection of Women from Domestic Violence Act (PWDVA) finally became law in 2005. It was only passed after a great deal of parliamentary deliberation to bridge the gap between existing legal provisions and progressive aims enshrined in the Constitution and international human rights conventions. The Domestic Violence Act provides female victims of domestic violence legal recourse, both civil and criminal. Specifically, it allows women to seek injunctions and protective

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orders, along with criminal provisions for imprisonment and fines, which come into play when a perpetrator breaches a civil order.\textsuperscript{13} This broader response to domestic violence more effectively addresses the social realities that Indian women face, including threats of violence and mental abuse for which they often require immediate civil remedies.\textsuperscript{14} Significantly, the Domestic Violence Act did not limit protection against domestic violence to marital relationships. The most splendid part about the current legislation is that it has adapted itself with contemporary laws and therefore in contrast to previous domestic violence legislation, the current Act covers “domestic relationships” which happen to include “all relationships based on consanguinity, marriage, adoption and even relationships which were “in the nature of marriage”.

Henceforth the new legislation covers all women in abusive relationships, regardless of whether the person responsible for is a spouse, domestic partner, or someone in a live-in relationship. It also protects unmarried women, siblings, and other women living with the alleged perpetrator. This legislation for the first time introduced the concept of “shared household” that covered women in Non-Matrimonial relationships. The term “shared household,” has been defined under Section 2(s) of the act, may include a property of the joint family of which the male respondent is merely one of several members. Also, let’s not forget about Section 20(1) of the Domestic Violence Act which empowers magistrates to grant monetary relief in favour of the aggrieved woman. This provision ensures that women who file complaints under new statute are not chucked out of their homes. Since it was seen that previously implementation of this new legislation, women were chucked out of their marital houses after filling cases against their husbands or family or both. The new legislation further empowers the magistrate to pass an order giving access of the house to any woman who chucked out after filling a case. To be clear, the Domestic Violence Act does not create any new criminal offenses; however, if the domestic violence case reveals any offenses punishable under the Indian Penal Code or Dowry Prohibition Act, magistrates may frame appropriate charges against the respondent and try cases themselves or commit them to the

\textsuperscript{13} See LAWYER’S COLLECTIVE REPORT, supra note 28, at xiii (recognizing domestic violence as both a criminal and civil issue); see also HANDBOOK OF DOMESTIC VIOLENCE, supra note 34, at xviii (elaborating on the protections of the PWDVA).

\textsuperscript{14} LAWYER’S COLLECTIVE REPORT, supra note 28, at xiii (broadening protections and understanding that domestic violence did not only occur to married women, but encompassed a much larger issue).
Sessions Court as required.\(^{15}\) Unfortunately, the Domestic Violence Act did not provide a useful definition of "respondent." Section 2(q) merely states that "respondent" means "adult male person," suggesting that women do not fall within its ambit.\(^{16}\) Several High Court decisions have interpreted this provision to include women as respondents, recognizing that, in India, domestic violence is often perpetrated by female in-laws. The Indian Parliament eventually clarified the definition of "respondent" by adding a proviso to this section. The proviso includes an accused man's female relatives in the definition, where the victim is a wife or woman living in a relationship in the nature of marriage.\(^{17}\) This means that victims of domestic violence can file cases against not only male but also female perpetrators. More often than once, the constitutionality of this act has been questioned however even in the past the Judiciary has laid down several judicial precedents that have answers all the queries. For instance, in the case of *Krishan Lal Vs Union of India* \(^{18}\) the honorable court held that under Article 14 the Indian Constitution accords equality of treatment to all persons similarly situated. It was further held that any invidious discrimination is obnoxious to equality.

**POSSIBLE MISUSES OF DOMESTIC VOILENCE ACT**

The Domestic Violence Act 2005 was enforced by the legislature to protect the women from harassment be it of any kind and vast stress was made on the same but unfortunately no consideration was given that even men could be victims of such cases of harassment and time has now come for rethinking of the matter of protection of males from the hands of women as well. In the case of *Dr. N. G. Dastane V. Mrs. S. Dastane* \(^{19}\) the Hon’ble Supreme Court had held that the cruelty is of two type one is mental and other is physical. It might be true that physical is generally being perpetuated by the husband being a strong one but at the same time this can’t be said to be universally true. It is also vice versa in the case of mental cruelty. But in the majority of cases of mental cruelty it is almost the wife who causes mental cruelty to the husband. Further the Hon’ble

\(^{15}\) Mathivanan, supra note 61 (explaining that the Act was designed to protect women from incidences of domestic violence both explicit and dormant).

\(^{16}\) Amita Punj & Arvendra Singh, The Protection of Women from Domestic Violence Act, 2005: Can Women Be "Respondents "-An Appraisal of Section 2 (q), 2010 (1) S.C.C. (Jour.) 23 (defining the respondent as an adult male person).

\(^{17}\) See Mathivanan, supra note 61 (adding also that a male child may complain along with his mother).

\(^{18}\) 1994 Cr LJ 3472: ILR 1994 2 P&H 422

\(^{19}\) AIR 1975 SC 1534
Apex Court in the case of *Shushil Kumar Sharma vs. Union of India*\(^{20}\) has observed that by misuse of the provision a New Legal Terrorism can be unleashed. Now comes the question can laws made in context to protection of women be misused? To answer this question the Honorable Supreme Court in a case made an observation that “Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society”\(^{21}\) This observation was made by the Supreme Court in context to the Domestic Violence Act. It is therefore important to note that the concept of cruelty cannot specify for females only. Men can also be a subject to this and cruelty or harassment need not be physical but also mental in certain cases. Also, Victimization of Male Partners and Police Harassment is a major issue in such cases.

The Act has also been criticized for its lack of clarity and ambiguities. For instance, the Act includes "insults" and "jibes" under the definition of "verbal and emotional abuse" in Explanation I (iii) of Section 3 of the Act, without defining these terms.\(^{22}\) The phrase "mental and verbal abuse" therefore has the potential to be misinterpreted. It might, in some cases, be extended to mere domestic quarrels that were not intended to fall under the definition of mental and verbal abuse.\(^{23}\)

It is pertinent to note that unfortunately according to the Domestic Violence Act, 2005 the aggrieved party is always “any woman”. ‘Man’ does not come within the purview of such definition. Thus, the Aggrieved under the Act is only for women. Even the preamble speaks for “rights of woman.” The “respondent” under the definition means any “adult male person”, which means a complaint cannot be directed against the female. Provisions like section 20(1)(d) can be misused when we consider that a female partner in a live-in relationship that may have only lasted for a month can claim maintenance allowance under this provision, with no restrictions attached.

\(^{20}\) AIR 2005 SC 3100  
\(^{21}\) Preeti Gupta Vs. State of Jharkand, AIR 2010 SC 3363  
\(^{22}\) Ghosh & Choudhuri, pg. 323.
CONCLUSION

In India and elsewhere in the world, there are no special laws for male. There is Dowry Prohibition Act, Section 498A in Indian Penal Code i.e. offence of cruelty by husband and relatives of husband; section 125 in Code of Criminal Procedure i.e. maintenance for wife; protection of women from domestic violence, in Statute books. But there is no protection of men in Domestic Violence Act, 2005, there is no provision like Section 498B in Indian Penal Code, there is no provision like Section 125A in Code of Criminal Procedure i.e. maintenance to husbands under the Act. Rather the specific laws for women are misused by errant women and police officers. The cry of victimized husbands and their relatives is not heard either in courts or in society. The practice says ‘that real purpose of the women related specifies laws are misused and thereby husbands suffer for no fault.’ In Vijaylakshmi V. Panjab University it was held that as a result of joint operation of Article 15(1) and (3), the State may discriminate in favour of women against men but it may not discriminate in favour of men against women. Wherein is known that protection against domestic violence is a civil right it cannot be forgotten that its misuse cannot be taken lightly. The other view on the other hand argues that social problems, if remedied by force may lead to stronger reactions from the respondents, which in the end may be detrimental to existence of society itself. There was a constant demand for flexibility of this provision from apex court in numerous cases.

As observed in Malavi Hussain Haji Abraham Umarji Vs. State of Gujarat, Padma Sundra Rao and others Vs. State of Tamil Naidu and others while interpreting a provision the Court only interprets the Law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

25 AIR 2003 SC 3331
28 AIR 2004 SC 3946