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# **RECKONING 16YRS JOURNEY OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005- WITH SPECIAL EMPHASIS ON THE COVID LOCKDOWN SITUATION**

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## **ABSTRACT**

The Corona virus pandemic has really shaken the world but what in a major sense it has shaken is the confidence of woman. With rising number of cases of people affected with this disease, the number of women suffering from domestic violence is also rising. With such shocking data available, it becomes imperative to analyze the lacunae in the existing legislations and schemes of programs in place. In 2005, India took a progressive step by abiding to the CEDAW guidelines and initiating the formation of the Protection of women from Domestic Violence Act which specifically dealt with this issue. Before this, women could only find some kind of resort under Section 498-A of Indian Penal Code, 1960. Sixteen years of this novel legislation but still the sufferings of women are unending. The main reason for this constant agony is lack of legislative and governmental assistances and above all misinterpretation of these. The need of the hour is to make this law strong and bring continuous amendments to cope up with the dynamic environment. The following paper deals with the lacunae in the existing law and the necessity to revisit the law and make appropriate changes.

**Keywords:** Corona virus, Domestic Violence, IPC, Women, Amendments.

## INTRODUCTION

At the time of creation of the Indian Constitution, it was asserted by Hansa Jivraj Mehta,

*“The Indian woman has been reduced to such a state of helplessness that she has become an easy prey of those who wish to exploit the situation. In degrading women, man has degraded himself. In raising her man will not only raise him but will rise the whole nation.... Women form one half of the population of this country and therefore, men cannot go very far without the cooperation of women. This ancient land cannot attain its rightful place, its honored place in this world without the cooperation of women.”<sup>1</sup>*

And since then our nation by way of its judiciary and legislature has always ensured that women of this country get equal rights in every sphere of life and are not discriminated against.<sup>2</sup> Our Indian Constitution in its Article 14, expressly lays down the Fundamental Right to Equality while the masterpiece produced by legislature is the Protection of Women from Domestic Violence Act, 2005. Both these laws combined together can help a lot of women, but are truly successful in fulfilling their purpose.

The legislative intent was further emphasized by the Supreme Court of India in the case of *Indra Sarma v. V.K.V Sarma*,<sup>3</sup> wherein it was stated that the DV Act is enacted to provide a remedy in civil law for the protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society. Other legislations like CrPC, IPC, etc., where reliefs have been provided to women who are placed in vulnerable situations were also discussed.<sup>4</sup>

The objective of the Act lays down “*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.*”<sup>5</sup> The Madras High Court in *Vandhana v. T. Srikanth*,<sup>6</sup> in one of the early cases since the enactment of the DV Act, observed that the Act was formulated to implement Recommendation No. 12

<sup>1</sup> The Constituent Assembly Debates Vol. 1, Thursday, 19-12-1946.

<sup>2</sup> Vardaan Bajaj, “The Grey Areas of Domestic Violence Laws In India”, SCC online Blog, Published on: July 16, 2016.

<sup>3</sup> (2013) 15 SCC 755.

<sup>4</sup> Shubhodip Chakraborty, Law on Domestic Violence [Protection of Women from Domestic Violence Act, 2005], The SCC Online Blog, Published on July 27, 2020.

<sup>5</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>6</sup> Vandhana v. T. Srikanth, 2007 SCC Online Mad 553.

of United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1989 and which was ratified by India in June, 1993. Interpretation of the DV Act should conform to international conventions and international instruments and norms. The Bombay High Court in the case of *Ishpal Singh Kahai v. Ramanjeet Kahai*<sup>7</sup>, reiterated that the object of the DV Act is to grant statutory protection to victims of violence in the domestic sector who had no proprietary rights. The Act provides for security and protection of a wife irrespective of her proprietary rights in her residence. It aims at protecting the wife against violence and at the prevention of recurrence of acts of violence.<sup>8</sup>

In **SR Batra v. Taruna Batra**,<sup>9</sup> a two judge-bench had held that where it was held that the wife is entitled only to claim a right under Section 17(1) to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

But recently, in **Satish Chander Ahuja v. Sneha Ahuja**,<sup>10</sup> decided on 15.10.2020, the 3-judge bench of Ashok Bhushan, R. Subhash Reddy and MR Shah, JJ, Overruling the law laid down in SR Batra v. Taruna Batra, the Court held that respondent in a proceeding under Domestic Violence Act can be any relative of the husband and in event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household. This decision was considered as a very progressive step and it thus opened the channel for bringing change in this dormant piece of legislation.

However, the issue still remains that how can one find a way to bring certain amendments which will not only help in reduction of these cases but will also help in reporting of the cases.

## STATEMENT OF PROBLEM

As per Census 2011, the population of India is more than 121 Cr. with 48.5% females, 949 female to 1000 males in rural India against 929 females to 1000 males in urban India.<sup>11</sup> According to the World Bank data 2018, the women comprise of 48% of the total population

<sup>7</sup> *Ishpal Singh Kahai v. Ramanjeet Kahai*, 2011 SCC Online Bom 412.

<sup>8</sup> *Supra* note 5.

<sup>9</sup> (2007) 3 SCC 169.

<sup>10</sup> 2020 SCC OnLine SC 841.

<sup>11</sup> Women and Men in India (A statistical compilation of Gender related Indicators in India) 2018, 20<sup>th</sup> Issue, Social Statistics Division, Central Statistics Office Ministry of Statistics and Programme Implementation, Government of India.

in India. It has been observed that ‘Cruelty by husband and relatives’ continues to be the highest recorded crime against women (33%) followed by ‘assault on women with intent to outrage her modesty’ (25%). Constantly, 7 % of the total cognizable crime falls under the category of crime against women in 2016.<sup>12</sup> Therefore, it becomes even more important to look into the well being of women.

It is considered that a person feels most protected in the four walls of his/her home, but what happens when this place turns into a crime base. Domestic violence is one such act which has completely shaken the confidence of a woman. The most horrendous cruelties are inflicted upon her by her family members especially by her husband who without any reason beats her, tortures her and abuses her.

The issue of domestic violence has been addressed both at international and national level, but still there exists a persistent gap in enforcing and implementing them. And this can be easily proved from the continuous rise in the cases of domestic violence. Several new challenges have gathered and are surrounding these laws and stopping them from being beneficial to those in need. 15yrs to this novel legislation but the channel through which justice is provided to women is still very biased, confused and judgmental.

Looking into the act, there are several stakeholders which are involved in the justice delivery process in cases of domestic violence. Such stakeholders are- Lawyers, Judges, Protection Officers, Service Providers and Police Officers. The act has defined the powers of the following professionals however the issue remains the ambiguity in the legislative provisions. Section 8 & 9 talks about the appointment, duties & functions of the protection officers; Section 5 states the duties of police officers, service providers and the Magistrate; Section 6 is about duties of shelter homes; Section 10 & 11 are about Service providers & duties of the Government. The law is partially in place, but the measures taken to create awareness about such law amongst the victims is very shallow. Under Section 11, it is the duty of the Central Government & State Government to give wide publicity through public media to the provisions of the Act at regular intervals, but hardly any advertisement concerning the same is visible on online platforms. With rising cases of corona virus, the country went through the lockdown amidst which all the work was transferred online, still the government could not bring up campaigns for creating awareness. However, the National Commission for Women in collaboration with certain NGOs

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<sup>12</sup> *Id.*

are continuously working for gender justice and is trying to rescue women who have been a victim of such violence. Lack of shelter homes and service providers is another hurdle in the justice delivery process. There is no one platform where the information about authentic service providers or shelter homes can be located. Infact, during lockdown the few shelter homes which were in place, were flooded with victims to such levels that at a point the victims were even denied entry in those places. Imagine the courage which the victim gathered to leave her home only to end up having no shelter at all. Another issue which the women victim face, is the partiality at the hands of the police officers. Majority of the police force comprises of male officers, who are the part of this society. The practical urge to say *compromise* is in-built in their system. Most of the women who speak up about the incident are sent back and told to settle down as a case of domestic violence is considered as a long-lost battle. With the number of cases pending in the courts it seems evident that fighting a case of domestic violence will not only drain out the victim financially but also mentally, especially in those cases where women are not financially independent.

The infrastructure provided for the victims of domestic violence in India is poor and the law is now 16yrs old. It is the need of the hour to make appropriate amendments in the law so that it can adjust with the dynamic environment.

## **DOMESTIC VIOLENCE- A SHADOW PANDEMIC**

It has been 16yrs since, the PWDV Act, 2005 was passed and still the conviction rate recorded in 2018 was 13% according to the National Crime Records Bureau (NCRB). The continuous decline in the conviction rate states two stories. First, either all husbands and his relatives have started respecting the women and treating her in a fair and dignified manner. Second, the legal mechanisms have failed poorly in assisting the victims thus leading to decline in even filing of the cases. Thus, it can be assumed that India is still far away from reaching to the first situation. And this can be proved by the fact that Domestic Violence cases have risen during lockdown. Many are suffering the violence and torture silently at homes but prefer not to register complaints because of the abuser's presence at home. Women are not able to reach out to police because they are not even sure that amidst this situation will their case be considered or not. 24\*7 helplines are in place to file a complaint of violence so that the rescue of the victims is carried out.

Centre for social research, a New Delhi based non-profit organization working for gender

equality, reported a surge in these calls since March 25, in the 21 day lockdown. A new trend arose where married women were asking to be rescued from their parental homes. Mothers, fathers, step mothers and siblings are also being accused of domestic violence. Not just in India since mid March, US National Domestic Violence Helpline received over 2000 calls from individuals citing corona virus lockdown as a factor in their abuse.<sup>13</sup> In Lebanon & Malaysia, the number of calls has doubled. And in China, it has tripled.

Over 5000 women had complained to the National Commission for Women (NCW) of facing domestic violence in 2020, as compared to 3369 domestic violence complaints during 2019-2020.

An NCW report adds that during 2020-2021, the number of such complaints had risen to 6049. The reason was obvious- more women faced abuse and violence as they were confined to their homes with their abusers. Globally, fewer than 40% of women who experience violence seek help of any sort. And among women who do seek help, most look to family and friends. Only a very few look to formal institutions, such as police and health services. It is clear that during the lockdowns, institutional response to domestic violence had become a serious issue as women were trapped with their abusers in their homes with no place to move or even get in touch with their families and friends. Civil societies and NGOs also noted that they received fewer calls as many women were not able to access mobile phones.<sup>14</sup>

After a research carried down by the UN Women, they reported that globally 243 million women and girls aged 15-49 have been subjected to sexual/and or physical violence perpetrated by an intimate partner from 2019-2020. In the USA, the National Domestic Violence Hotline reported a rising number of victims who reached out via text or phone. Evidence shows that, even before the pandemic, 1 in 3 women has experienced physical and/or sexual violence from an intimate partner in their lifetime.<sup>15</sup>

The following table denotes the increase in reporting of domestic violence cases with women since the lockdown in certain countries:

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<sup>13</sup> Rachel Sandler, Domestic Violence Hotline Reports Surge In Coronavirus-Related Calls As Shelter-In-Place Leads To Isolation, Abuse, Forbes, Published on: Apr 6, 2020, 10:14pm.

<sup>14</sup> Malavika Rajkumar, Explainer: Steep rise in domestic violence complaints, but where are the protectors?, **Citizen Matters, Published on: December 17, 2021.**

<sup>15</sup> *Supra* note 14.

<b>Country</b>	<b>Rise in Report of Domestic Violence Cases</b>
Australia	Increased by 40%
India <sup>16</sup>	Increased by 63%
France	Increased by 30% since the lockdown in March 17, 2019.
Cyprus	Increased by 30%
Singapore	Increased by 33%
Argentina	Increased by 25% since the lockdown in March 20, 2019.

With India now going to enter into the third phase of lockdown, it is becoming an issue of concern for the women who have been silently suffering till now. It has become essential that proper measures for victims of domestic violence be taken before the country goes into a full lockdown mode. The hospitals have started preparing beds for the patients, it is time that our country starts bringing changes to the infrastructural approach in the domestic violence cases. Shelter homes should be into places to provide proper assistance to women who now seek refuge in the institutions.

## **MEASURES TAKEN BY GOVERNMENT & ORGANISATIONS- INDIA VIS-A-VIS INTERNATIONAL**

In India, efforts have been made to ensure that existing government schemes such as One Stop Centres, Ujjawala Homes, and Emergency Response Support System remain operational. Notably, 33% of violence complaints were made via the NCW's WhatsApp based helpline launched in April 2020, suggesting that a discreet method of reporting was much needed during the pandemic. State government initiatives, such as Uttar Pradesh Police's "Suppress corona, not your voice" campaign, Odisha Police's Phone-Up programme, Kerala State Commission

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<sup>16</sup> Times of India, Published on: December 30, 2021 Visit at: <https://timesofindia.indiatimes.com/city/nagpur/unsafe-year-that-was-63-rise-in-domestic-violence-36-more-rapes-in-nagpur-police-data-shows/articleshow/88586904.cms>.

for Women's tele-counseling facility, Maharashtra Government's Akshara Centres, Special Cell for Women and Children, and the #LockdownOnDomesticViolence campaigns were important steps, signalling intolerance for domestic violence across governments.<sup>17</sup>

On 27 May, 2020- UN Women, the United Nations entity dedicated to gender equality and the empowerment of women, launched the *Shadow Pandemic* public awareness campaign, focusing on the global increase in domestic violence amid the COVID-19 health crisis. The Shadow Pandemic public service announcement is a sixty-second film narrated by Academy Award-winning actor Kate Winslet, who has championed many humanitarian causes. The video highlights the alarming upsurge in domestic violence during COVID-19 and delivers a vital message urging people to act to support women if they know or suspect someone is experiencing violence.<sup>18</sup>

*Phumzile Mlambo-Ngcuka, Executive Director of UN Women* said: "Even before the pandemic, violence against women was one of the most widespread violations of human rights. Since lockdown restrictions, domestic violence has multiplied, spreading across the world in a shadow pandemic. This is a critical time for action, from prioritizing essential services like shelter and support for women survivors, to providing the economic support and stimulus packages needed for broader recovery. Through this campaign UN Women's activists, and advocates like Kate Winslet, will help spread the word so this issue comes fully to light."<sup>19</sup>

Pandemics like COVID-19 can aggravate not only violence within the residence, but other forms of violence against women & girls. Violence against female healthcare workers as well as migrant or domestic workers have also increased. Some groups of women, including human rights defenders, women in politics, journalists, bloggers, women belonging to ethnic minorities, indigenous women, lesbian, bisexual and transgender women, and women with disabilities are particularly targeted by ICT-facilitated violence. In New South Wales, Australia, 40 per cent of front-line workers in a survey reported increased requests for help

<sup>17</sup> Mitali Nikore, With Covid-19, comes the "Shadow Pandemic": How the surge of domestic violence gripped India's women in 2020, The Times of India, Published on: November 24, 2020, 1:27 PM IST. Visit at: <https://timesofindia.indiatimes.com/blogs/irrational-economics/with-covid-19-comes-the-shadow-pandemic-how-the-surge-of-domestic-violence-gripped-indias-women-in-2020/>.

<sup>18</sup> UN Women, Press release: UN Women raises awareness of the shadow pandemic of violence against women during COVID-19, Published on May 27, 2020. Visit at: <https://www.unwomen.org/en/news/stories/2020/5/press-release-the-shadow-pandemic-of-violence-against-women-during-covid-19>.

<sup>19</sup> *Id.*

with violence that was escalating in intensity and complexity.<sup>20</sup>

Many online and mobile technology service providers are taking steps to deliver support to survivors during this period of limited mobility and increased demand, such as free calls to helplines in *Antigua and Barbuda* agreed by two telecommunications firms. In *Madrid, Spain*, an instant messaging service with a geolocation function offers an online chat room that provides immediate psychological support to survivors of violence. In the *Canary Islands, Spain*, women can alert pharmacies about a domestic violence situation with a code message “Mask-19” that brings the police in to support. In *Cumbria, UK*, police have enlisted postal workers and delivery drivers in looking out for signs of abuse. A popular app called ‘Bright Sky’ provides support and information to survivors, but can be disguised for people worried about partners checking their phones.<sup>21</sup>

## CONCLUSION & SUGGESTIONS

Although the significant goal of this law, which is to ensure the protection of women against domestic violence has been secured, few portions of the law still remains to be evolved. There are certain terms which need an unambiguous explanation and interpretation. This law provides civil remedies to the sufferers of domestic violence. Before enactment of this law, in order to seek any civil remedies such as divorce, injunctions in any form or maintenance, custody of children, a woman only had the option of taking recourse to the civil courts. Therefore, the DV Act has certainly brought about the necessary change in the system.

Another issue which also remains is that the Act falls short in providing any relief to the male members in the community who are subjected to domestic violence. Our Indian Constitution expressly talks about equality in Art.14. It’s high time that we incorporate provisions in the law dealing with the issue of domestic violence with men.

The efficacy of legislations depends on the level of access to justice by the victims. The judiciary tries hard to deliver justice without being prejudiced to any gender to establish equality, but as far as PWDV Act, 2005 is concerned, there is a dire necessity for analyzing the institutional mechanisms in the process of accessing justice to women affected by violence in

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<sup>20</sup> *Supra* note 14.

<sup>21</sup> Covid-19 and Ending Violence Against Women and Girls, UN Women. Visit at: <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Issue-brief-COVID-19-and-ending-violence-against-women-and-girls-en.pdf>.

India.

With the growing number of cases it becomes important that a structure should be laid down where a more open approach can be carried forward to resolve the issue of domestic violence. Certain areas will be in need of special assistance. The first step will be *improving women's financial independence*. Evidence shows that survivors who undertake financial training show remarkably improved results around economic-self-sufficiency, and a much improved financial management in the prolonged run. Skills development, investing in and purchasing from survivor-led enterprises, financial literacy programs, and corporate social responsibility campaigns for employing survivors of the domestic violence are essential in building financial independence of women.<sup>22</sup>

Providing *community support networks*, be it establishing formal complaint systems at workplaces or at educational institutions, or informal peer support systems is the second, equally important pillar for rehabilitation of the survivors. Family and community support are the first defense in preventing and managing violence against women. It is crucial to strengthen mechanisms that facilitate ease of reporting, and access to services ranging from legal aid to counselling to shelter homes. The pandemic has brought about a compulsory shift in emergency services for reporting, but this must be followed up by equally vigorous improvements in longer-term aid facilities for survivors.<sup>23</sup>

The third pillar is *advocacy and awareness*. Although domestic violence is so prevalent in our society still it is often shrouded in silence, owing to pervasive shame and fear. Domestic violence is a concept which is not limited to one generation, but infact, it is intergenerational. The woman whose mothers have faced domestic violence, are twice as likely to have themselves experienced spousal violence. Youth engagement is an equally pivotal step apart from the ongoing awareness campaigns and calls for bystander intervention in breaking this cycle of domestic violence. The impact of intergenerational trauma is felt by young people across the world, therefore, their voices must be at the core of solution-making process. For instance, the Global Shapers New Delhi Hub<sup>24</sup>, an initiative of the World Economic Forum, is taking sessions with young people to encourage them to speak up, share their stories and

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<sup>22</sup> *Supra* Note 17.

<sup>23</sup> *Id.*

<sup>24</sup> A network of young people driving dialogue, action and change globally through their local hub projects and initiatives. Shapers are selected on the basis of their achievements, leadership potential, and commitment to make a difference.

condemn domestic violence.<sup>25</sup>

Implementing these strategies at both district and block level will require not only large budgetary allocations from Central and State governments, but an extraordinary level of cooperation between community support organizations, and government agencies, as this is one pandemic that cannot be curbed by an individual or agency alone, which is why it is called as a shadow pandemic.

COVID-19 is already testing us in ways most of us have never previously experienced, providing emotional and economic shocks that we are struggling to rise above. The violence that is emerging now as a dark feature of this pandemic is a mirror and a challenge to our values, our resilience and shared humanity. We must not only survive the coronavirus, but emerge renewed, with women as a powerful force at the centre of recovery.<sup>26</sup>

It also needs to be considered that no crime can be abolished from the society entirely; it is only with stringent mechanisms and reforms that it can be curbed. Therefore, the need of the hour is to bring proper amendments in the existing law so that it can cope up with the changing environment. With technology changing its version every second, it has become imperative that the need of victims of domestic violence should also be catered to by providing them with a stable and approachable infrastructure.

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<sup>25</sup> *Supra* Note 22.

<sup>26</sup> Statement by Phumzile Mlambo-Ngcuka, Executive Director of UN Women, Violence against women and girls: the shadow pandemic, UN Women, Published on: April 6, 2020.