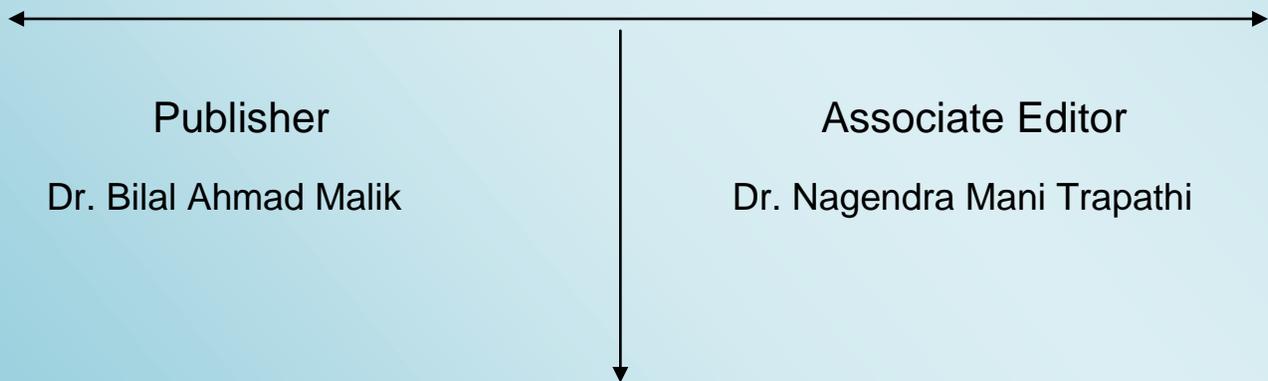


# North Asian International Research Journal Consortium

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## PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

DR. ASHAK HUSSAIN MALIK

### ABSTRACT

*The present paper reports the domestic violence against women in India. A study was carried out in various state of India to know about the various aspects of this system and record its impacts on society It was found that women being and still being victimized of domestic violence government has passed various Act for protection of woman in India. But the aspirations of people were not fully fulfilled. People are wishing for reforms in this system.*

*Keywords: Violence, women, victimization, domestic, women abuse, dowry, Harassment.*

### INTRODUCTION

The Protection of Women from Domestic Violence Act 2005 is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26 October 2006. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalize criminally. The act does not extend to Jammu and Kashmir, which has its own laws, and which enacted in 2010 the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010.

The Protection of Women from Domestic Violence Act 2005 differs from the provision of the Penal Code - section 498A of the Indian Penal Code - in that it provides a broader definition of domestic violence.

Domestic violence is defined by Section 3 of the Act as any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:-

1. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

2. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
3. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b) or
4. Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

## SCOPE

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

### **The salient features of the Protection from Domestic Violence Act, 2005 are as follows:**

- The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with them are entitled to get legal protection under the proposed Act.
- Domestic violence" includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
- One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman.
- The other relief envisaged under the Act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating

any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.

- The draft Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman w.r.t medical examination, legal aid, safe shelter, etc.
- The Act provides for breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine

Which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

While "economic abuse" includes deprivation of all or any economic or financial resources to which the victim is entitled under any law or custom whether payable under an order of a Court or otherwise or which the victim requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by her, payment of rental related to the shared household and maintenance and disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the victim has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or her children or any other property jointly or separately held by the victim and prohibition or restriction to continued access to resources or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household, "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or impair the health or development of the victim and includes assault, criminal intimidation and criminal force.

### **APPLICATION TO MAGISTRATE**

An application regarding domestic violence can be presented to the magistrate seeking one or more reliefs mentioned in sections by:

- The aggrieved person,
- Protection officer on behalf of aggrieved person
- Any other person on behalf of aggrieved person

## JURISDICTION OF COURT

The first class magistrate court or metropolitan court shall be the competent court within the local limits of which

- The aggrieved person permanently or temporary resides or carries on business or is employed
- The respondent permanently or temporally resides or carries on business or is employed or
- The cause of action arises.

Any order made under this Act shall be enforceable throughout India While disposing application the magistrate shall take in to consideration any domestic incident report received from the protection officer or service provider. The relief sought under this section includes the issuance of order of payment or compensation or damages without prejudice to the right of such person to institute suit for compensation or damages for injuries caused by the act of domestic violence. If the magistrate is satisfied that an application prima facie discloses that the respondent is committing or has committed an act of domestic violence or there is a likelihood of such violence, he may grant following experts interim order against the respondent on the basis of affidavit of the aggrieved person. Magistrate can issue different orders such as Protection order, residence order, monetary relief, custody order or compensatory orders as per the circumstances of the case.

In case of an earlier decree of compensation or damages passed by any other court, in favour of aggrieved person, the amount if any paid shall be set off against the order of amount payable under this act. The application to the magistrate shall be as nearly possible to the formats prescribed under this Act and Rules. After receiving the application the Magistrate shall fix the date of first hearing within 3 days and the magistrate shall endeavor to dispose of every application be within a period of 60 days of the first hearing. The notice of the date of hearing shall be given by the magistrate to the protection officer who shall get it served to the respondent. At any stage of the application, the magistrate may order, counseling of the respondent or aggrieved person either singly or jointly with any member of service provider. The magistrate may secure the service of suitable person preferably a woman including a person engaged in the welfare of women for assisting the court in the discharge of its function. If the circumstance of the case so warrant and if either party so desires the magistrate may conduct the proceedings on camera.

## DIFFERENT KINDS OF ORDER

### 1. Protection orders

After giving an opportunity to the aggrieved person and respondent of being heard and the magistrate is satisfied that a prima facie case of domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person prohibiting the respondent from the following acts such as committing any acts of domestic violence:

- Aiding or abetting in the act of domestic violence
- Entering the place of employment of aggrieved person or if the person is child, its school or any other places
- Attempting to communicate in any form including personal, oral or written, electronic or telephonic contact
- Alienating any assets, operating bank account, bank locker held or enjoyed by both parties jointly or singly by the respondent including her sthridhan
- Causing violence to the dependents, or other relative or any other person who give the assistance to the aggrieved person or
- Committing any other acts specified by the protection officer

### 2. Residence orders

The magistrate being satisfied that a domestic violence has taken place, pass residence order:

- Restraining the respondent from dispossessing or in any manner disturbing the peaceful possession of the shared household
- Directing the respondent to remove himself from the shared household
- Restraining the respondent or his relatives from entering any portion of the shared house hold where the aggrieved person lives
- Restraining the respondent from alienating or disposing of the shared house hold or encumbering it
- Restraining the respondent from renouncing his right in the shared household
- Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her or to pay rent for the same if the circumstances so require.

No order shall be made against women under this section. Magistrate may impose additional condition and pass any other order to protect the safety of the aggrieved person or her child. Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person r to assist in implementing his order. Magistrate may also impose on the respondent to direct sthridhan or any other property or valuable security she is entitled

### **3. Monetary relief**

The magistrate may direct the respondent to pay monetary relief to meet the expenses of the aggrieved person and any child as a result of domestic violence and such relief includes:

- Loss of earnings
- Medical expenses
- Loss caused due to destruction or removal or damage of any property
- Pass order as to maintenance for the aggrieved person as well as her children if any

Including the order under or in addition to an order of maintenance under section 125 criminal procedure code or any other law.

The quantum of relief shall be fair reasonable and consistent with the standard of living to which the aggrieved person is accustomed to. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent.

### **4. Custody orders**

Magistrate can grant temporary custody of any child or children to the aggrieved person or to the person making application on her behalf and specify the arrangements for visit of such child by the respondent. Magistrate can refuse the visit of such respondent in such case if it may harmful to the interest of the child.

## 5. Compensation orders

Magistrate may pass order directing the respondent to pay compensation to the petitioner for injuries including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.

Copies of orders passed by the magistrate shall be supplied free of cost to the parties concerned and police officer and service provider.

Any relief available under this Act may also be sought in any other legal proceedings before a civil court, family court or criminal court and such relief may be sought in addition to and along with relief sought for in suit, or legal proceeding before civil or criminal court.

## CONCLUSION

In this study it has found that still women are Abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives.

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