



## DOMESTIC VIOLENCE: THE SHADOW PANDEMIC

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A house comprises many members belonging to a family and the eldest member of the family is considered as the 'karta' or 'head' of the family who is usually a male member. The women and the girls of the family never get to that point in their lives when they can be made the 'head' or 'caretaker' of the family. Their lives are mostly restricted to doing what the 'head' of the family wishes or desires her to do. And when they do not comply with it, there arises the "need" for violence known as domestic violence. In a more elaborate manner, domestic violence is the violence inflicted upon the wife by her husband. This violence can be both physical as well as mental.

This injustice has been existing in society for a long time and although there have been various provisions against it, it is still being committed in various households. The major provision which was enacted by our Parliament was the Protection of Women from Domestic Violence Act, 2005. This was enacted to curb the rising rate of domestic violence being committed in almost every household in India. Though, it has not been able to completely eradicate the problem but, yes, it has made such offence punishable for those who would try committing it.

### THE NEED FOR A LAW AGAINST DOMESTIC VIOLENCE

The scope of this piece of legislation has been expounded in plethora of judgments by the High Courts and the Supreme Court in India. For instance, in a recent judgment, the High Court of Gujarat in the case of **Bhartiben Bipinbhai Tamboli v. State of Gujarat and Ors.**<sup>1</sup> while extensively discussing the provisions under the Domestic Violence Act remarked that:

"Domestic violence in this country is rampant and several women encounter violence in some form or the other or almost everyday. However, it is the least reported form of cruel behaviour. A woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner, a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male relatives. Till the year 2005, the remedies available to a victim of domestic violence were limited. The women either had to go to the civil court for a decree of divorce or initiate prosecution in the criminal court for the offence punishable under **Section 498-A**.<sup>2</sup> In both the proceedings, no emergency relief is available to the victim. Also, the relationships outside the marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not

<sup>1</sup> *Bhartiben Bipinbhai Tamboli v. State of Gujarat and Ors*, MANU/GJ/0025/2018

<sup>2</sup> Indian Penal Code 1860



out of choice but of compulsion. Having regard to all these facts, the Parliament thought fit to enact Domestic Violence Act. The main Object of the Act is protection of women from violence inflicted by a man or/and a woman. It is a progressive Act, whose sole intention is to protect the women irrespective of the relationship she shares with the accused. The definition of an aggrieved person under the Act is so wide that it is taken within its purview even women who are living with their partners in a live-in relationship.”

#### FILING COMPLAINT UNDER THE DOMESTIC VIOLENCE ACT

**Section 2(a)**<sup>3</sup> defines “aggrieved person” as ‘any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent’.

The Domestic Violence Act not only covers those women who are or have been in a relationship with the abuser/accused but it, also covers those women who have lived together in a shared household<sup>4</sup> and are related by ‘consanguinity, marriage or through a relationship in the nature of marriage or adoption’.

Even those women who are sisters, widows, mothers, single women, or living in any other relationship with the abuser are entitled to legal protection under the **Domestic Violence Act**.

#### SHARED HOUSEHOLD

Shared household has been defined under the Domestic Violence Act itself as:-

“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 owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household<sup>5</sup>”.

In the case of **S.R. Batra & Anr. v. Smt. Taruna Batra**<sup>6</sup> The Supreme Court with reference to definition of shared household under **Section 2(s)** of the Domestic Violence Act stated that the definition of ‘shared household’ in this section of the Act is not very happily worded, and appears to be the result of clumsy drafting required to be interpreted in a sensible manner.

The Court held that under **Section 17(1)**<sup>7</sup> of the Act wife is only entitled to claim a right 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

<sup>3</sup> Protection of Women from Domestic Violence Act 2005

<sup>4</sup> Protection of Women from Domestic Violence Act 2005, s.2(s)

<sup>5</sup> Protection of Women from Domestic Violence Act 2005, s.2(s)

<sup>6</sup> *S.R. Batra and Anr. v. Smt. Taruna Batra*, AIR 2007 SC 1118

<sup>7</sup> Protection of Women from Domestic Violence Act 2005



member. In this case, the property in question neither belonged to the husband nor was it taken on rent by him nor was it a joint family property of which the husband was a member. It was the exclusive property of mother of husband and not a shared household.

### WOMEN WHO ARE IN LIVE-IN RELATIONSHIP

Women who are in a live-in relationship cannot be denied their right to be protected from domestic violence. So, to offer a wider meaning to the term “aggrieved person” under the Domestic Violence Act, the Supreme Court in the case of **D. Veluswamy v. D. Patchaiammal**<sup>8</sup>, wherein the Court enumerated five ingredients of a live-in relationship as follows:

1. “Both the parties must behave as husband and wife and are recognized as husband and wife in front of society.
2. They must be of a valid legal age of marriage.
3. They should be qualified to enter into marriage. eg. None of the partners should have a spouse living at the time of entering into a relationship.
4. They must have voluntarily cohabited for a significant period of time.
5. They must have lived together in a shared household.”

The Supreme Court also observed that “not all live-in-relationships will amount to a relationship in the nature of marriage to get the benefit of Domestic Violence Act”. To get such benefit the conditions mentioned

above shall be fulfilled and this has to be proved by evidence.

*Status of a Keep-* The Court in the case further stated that “if a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or a servant it would not be a relationship in the nature of marriage”.

In this case, the Court also referred to the term “palimony” which means ‘grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying and is then deserted by him’<sup>9</sup>. This term was first used in 1976 by a US Court in the case of *Marvin v. Marvin*.

### AGAINST WHOM COMPLAINT CAN BE FILED UNDER THE ACT

‘Respondent’ can be defined as “any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner”.<sup>10</sup>

Referring to this definition relating to the ‘respondent’ being an adult male, the judiciary has been confronted with the argument that an aggrieved person under the Act can only be an adult male and cannot be filed against the female relatives such as mother-in-law, sister-in-law, etc.

However, the Supreme Court in the case of **Sandhya Wankhede v. Manoj Bhimrao Wankhede**<sup>11</sup> put to rest the issue by holding

<sup>8</sup> *D. Veluswamy v. D. Patchaiammal*, (2010) 10 SCC 469

<sup>9</sup> *Marvin v. Marvin*, (1976) 18 C3d660

<sup>10</sup> Protection of Women from Domestic Violence Act 2005, s.2(q)

<sup>11</sup> *Sandhya Wankhede v. Manoj Bhimrao Wankhede*, (2011) 3 SCC 650



that ‘the proviso to Section 2(q) does not exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act’. Therefore, complaints are not just maintainable against the adult male person but also the female relative of such adult male<sup>12</sup>.

### RISE IN CASES AMID NATIONWIDE LOCKDOWN

With the global pandemic of COVID-19 affecting the whole world at a disastrous rate, there is another virus which has risen without much notice. The rates at which domestic violence has increased is astonishing and hard to digest at the same time. India's **National Commission for Women (NCW)** on Friday said “it registered 587 domestic violence complaints between March 23 and April 16 - a significant surge from 396 complaints received in the previous 25 days between February 27 and March 22”. The NCW relies on women to report domestic violence on its fixed helpline numbers and, through the post, two modes of communication that have been closed since the lockdown.

Feminist economist Ashwini Deshpande analysed NCW data for the months of March and April in 2019 and 2020. She calculated the average complaints per day and found that "there is already a jump in complaints related to domestic violence and the right to live with dignity, and a smaller increase in rape or attempt to rape and sexual assault", all within the home.

One-third of women in India's 2015-2016 **National Family Health Survey (NFHS)**

said “they had experienced domestic violence, but less than 1 percent of them sought help from the police”.

According to the NFHS study, “52 percent of women and 42 percent of men believed that a husband is justified in beating his wife”. Showing disrespect towards the in-laws topped the list of reasons why the respondents deemed it acceptable to subject a wife to a beating.

Most countries globally are seeing a surge in domestic violence, leading to UN Secretary-General Antonio Guterres appealing to the governments worldwide, to pay attention to and prevent a “horrifying global surge in domestic violence” during such times.

Many women facing abuse want to go to their mothers' houses, but during the lockdown, they can only be sent to state-run shelter homes, where the risk of overcrowding and poor hygiene runs high.

“Why should a woman escaping abuse in the middle of a lockdown be sent to a shelter home where she risks catching coronavirus?” Vrinda Grover, a leading feminist lawyer who is associated with several landmark women's rights advances in India, said.<sup>13</sup>

For Grover, “the government's failure to shore up women's protection organisations and to plan for what was an expected surge in domestic violence is of a piece with its failure to protect the poor and daily wage earners, particularly migrants, from the devastating shock of this lockdown”.

### WHAT CAN BE DONE TO CURB THIS PROBLEM?

<sup>12</sup> *Archana Hemant Naik v. Urmilaben I. Naik & Anr.*, 2009 (3) Bom Cr 851

<sup>13</sup> <[www.aljazeera.com](http://www.aljazeera.com)> accessed 08 May 2020



For eliminating such a problem given the current scenario, the initiative has to be taken by the women themselves. They have to stand up against this injustice and fight for the cause which affects them the most. Still, if there are any hurdles on the way, there are various women organisations and NGOs working towards helping women in these circumstances. Even the police are working very proactively nowadays which is a good sign and there is no need to worry for the women. Another alternative can be contacting the National Commission for Women for instant action upon the matter or also the State Commissions which have been set up in almost every state for the redressal of their grievances. Thus, women should feel safe and there is no need to panic as has also been said by one of the characters of the movie series 'Harry Potter', Dumbledore that "Help will always be given at Hogwarts, to those who ask for it".

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