



## DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA: A FAMILY MENACE

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### **Abstract**

This Research Paper consists of the worldwide issue of Domestic Violence in India as well as at the International level.

In this research paper a brief introduction of domestic violence is mentioned along with the information as to why this problem occurs with regards to importance of eradicating and eliminating the issue of domestic violence with a conscious effort to know how it is affecting the Indian society. The research paper consists of Indian laws which are made to protect the citizens from this menace.

It also consists of International conventions to prevent such practice as well as what measures are taken by United Nations as far as this issue is concerned.

**Key words:** *Domestic Violence, Indian Society, International Conventions, Indian Laws, Menace.*

### **Introduction.**

Domestic violence is considered as an abuse in domestic setting such as marriage. Domestic violence is also known as intimate partner violence, which is committed by one spouse in an intimate relationship against the other spouse.

Domestic Violence also includes violence against children, elderly and parents and it

has various forms such as emotional, verbal, sexual abuse and reproductive abuse. Domestic violence also results to murders such as honor killings, bride burnings and dowry deaths.

Generally women tend to experience severe forms of domestic violence, one of the many reasons is the country's level of gender inequality. Such violence is also committed against men but due to social stigma they are under reported. Some people also think that there is justification for domestic violence, and it is mostly due to the reason that small children witness such activities in their homes due to which they think that such violence is normal. Due to this many victims face physical disabilities, chronic health problems, mental illness, poor ability to create healthy relationships, and psychological disorder such as post traumatic stress disorder.

### **History Of Domestic Violence**

During the 1800s, most of the legal systems considered beating of wife valid due to the fact that the husband has an authority over his wife. But during 1641 Massachusetts Body Of Liberty which was the first legal code, established in England declared that women should be free from all kinds of bodily correction and stripes from her husband.

In the past years it has been seen that such a violence was more of a way for husbands to legitimately correct their wives. Due to this reason the male violence initiated problems for male patriarchy, which could easily be defined as powers of fathers and husbands over their wives and children, and it is also a specific form of male domination. Many of



the societies also did not consider domestic violence as wrong in the human history.

In the previous years many interpreters of christian, Islamic and Jewish religion had given the husband the authority to discipline his wife more or less in the similar manner in which he controled his other properties such as slaves and animals and servants.

In some of the faiths there are holy texts which gave manner of beating wives. There has also been cases in history of domestic violence which occurred against the LGBTQ communities and relationships.

Often the wives who are physically and mentally abused are considered to be provoked by the violence of their own husbands to take drastic steps. Historically, many young children had very few protection from their parents as far as domestic violence is concerned, for instance in the ancient period many fathers used to sell their children and human trafficking due to which sacrifices of children was a prevalent practice during this period.

## Forms Of Domestic Violence

### 1.Physical Abuse:<sup>1</sup>

Physical Abuse mainly includes contact which is intended to cause pain or fear to the other person. Physical abuse also refers to have a control over a victim. This type of abuse is also considered to be accumulation of abusive behavior such as manipulation,

limiting the personal freedom of the victim and threats etc.

### KINDS OF PHYSICAL ABUSE:

- a) Homicide: Female homicide are more common than the male homicide as far as the domestic violence is concerned. In Canada, United States, Australia, Israel and South Africa almost 40% to 70% women are murdered or killed by there intimate partners. According to The World Health Organization about 38% globally intimate partners commit female homicide.
- b) Strangulation: Strangulation is considered to be one of the legal or dangerous forms of domestic violence as there is lack of awareness and medical training regarded to strangulation and is often a hidden problem. Due to which various states of USA have specific laws functioning against strangulation.
- c) Dowry Killings: Another form of domestic violence is dowry killing which basicly includes newly married women who are killed by their own husbands at home. Dowry violence and Dowry deaths are very common in South Asia specially in India. According to 2011 report of National Crime Bureau had recorded 8,618 dowry deaths in India

### 2.Sexual Abuse:<sup>2</sup>

Sexual abuse includes marital rapes and sexual violence by intimate partners. Sexual abuse mainly refers to an act in which a child or any person is forced or tricked into sexual activities.

<sup>11</sup> Forms of domestic violence available at <https://healthtalk.org/womens-experiences-domestic-violence-and-abuse/sexual-violence-and-abuse>.



There are various types of sexual abuses.

- Sexually touching of any part of a women's body without their consent.
- When a person is using any body part or object to penetrate or rape a women forcefully.

Mainly sexual abuse is a non-consensual act which is performed by an intimate partner, it also includes deliberately causing physical pain during sex, refusal to use contraceptives etc.

Sexual Abuse also leads to honor killings and such situation occurs due to the reason that rape victims are generally considered to have brought dishonor to the families.

### **3.Emotional Abuse/ Psychological Abuse:**

Psychological Abuse mainly includes a situation of threats, public humiliation, and gaslighting. The common form of emotional abuse is stalking and it is mostly perpetrated by intimate partners.

As per Istanbul Convention emotional and psychological abuse means any intentional conduct to impair a persons psychological integrity through threat and coercion.

### **4.Economic Abuse:**

Economic Abuse is also called financial abuse, when one intimate partner wants to take control over the other partner's economic resources and marital assets are usually considered as a means of control. Victims are put in a position where they are closely monitored as how much has been

spent by them without the perpetrator's consent.

### **Effects Of Domestic Violence<sup>3</sup>**

- The effects of sexual, psychological and physical violence also results in negative and harmful manner on the health and well being of a women and their children.
- Sexual and physical abuse can be a short term and a long term both and some times also leads to permanent conditions such as ailments and injuries.
- Psychological and emotional abuse leads to various problems such as disturbed pattern of sleeping and eating, depression, self harm and suicide, alcohol abuse, low self esteem and anxiety.
- There are economic and social repercussion of domestic violence which include separation of family and friends, loss of job and unemployment.
- **Effects on the victims:** In such cases the victims go through emotional and psychological trauma. Due to the devastating impact on the victims' mental, emotional and physical health is effected which includes shame, anger, suicide and depression. Victims also face certain health injuries and certain problems which may not get medically treated.
- **Effects On The Family:** Violence and threat of violence often creates fear within family members especially children and that can also destroy the environment of the family. Domestic violence also involves frequent moving of the members to avoid the abuser and regular household conflicts and

<sup>3</sup> Effects of domestic violence available at <https://www.facs.nsw.au/domestic-violence/about/now-to-recognise-dv>.



these are the major drawbacks of the Domestic Violence.

- **Effects On The Community:** In such cases children at a growing age lack the knowledge about positive and respecting relationships. There are higher rates of use of drugs and alcohol which leads to mental health problems.
- **Effects On The Children:** Many a times domestic violence victims are children and various studies have shown that children who are victims of domestic violence are physically and emotionally harmed which also leads to the situations such as,
  - Emotional distress.
  - Self harm.
  - Develop phobias.
  - Low self esteem.
  - Aggressive behavior towards friends and school mates.

#### **Causes Of Domestic Violence<sup>4</sup>**

1. **Marital Rape:** As far as marital rape is concerned it has not been considered as an offence. But sexual duty are considered to be an integral part of marriage. Due to which men often consider to legitimately use violence in the form of sexual abuse. In India marital rape is treated as a criminal offence only when a wife is living separately under judicial separation.
2. **Physical Abuse:** This form of abuse is also known as spouse abuse and occurs when one intimate partner tries to control and dominate the other partner. Domestic violence also includes physical violence.

<sup>4</sup> Causes of domestic violence available at <https://www.britannica.com/topic/honorkilling>

3. **Dowry Related Harrassment:** Dowry deaths of women who are either murdered or driven to a situation under which they are not left with any other option but to commit suicide due to the continuous harrassment and torture by her husband and his family in order to extort increased amount of dowry. Most suicides which are committed by the victims are by immolating or by hanging. Many a times the women are killed by setting them on fire and it is also known as bride burning.

4. **Age Related Abuse:** Women who experience domestic violence of any form in their marital homes are usually targets and victims of violence in their netal homes as well. Eg. economic abuse, deprivation of education etc.

5. **Honor Killings:** Many women are murdered by their own families every year in the name of family honor. Honor killings is also associated with forced marriage. Such practices are found mainly in the rural areas where the person performs or commits an act which is against the culture of that particular area. Acts such as pre marital sex, or getting married to person who is not from the same religion or caste etc. Sometimes such brutal activities take place in the public to set an example for the others in that particular area or village by defaming the victim and her/his family.

#### **Domestic Violence In India<sup>5</sup>**

Domestic violence in India mainly includes any type of violence which is suffered by a

<sup>5</sup> Domestic violence in India available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483507>



person his/her biological or intimate relative. This type of violence is mostly suffered by the females and is mostly performed by the male members of her own family or relatives. In 2005 according to the National Family and Health Survey, the lifetime prevalence of Domestic Violence in total was 33.5% and 8.5% for sexual violence amongst the female who are of a age between 15 to 49 years.

The National Crime Records Bureau also reports that many cases which fall under the category of crimes against women are also recognized by the Indian Penal Code under Cruelty By Husbands or His Relatives. According to various researches conducted, it is very much evident that in India alcohol consumption by men also increases the rate of violence against women.

Amongst various factors of the domestic violence in India is unemployment which is also seen in the present times during the pandemic. There are also myths in our country that domestic violence only occurs in greater rate amongst the poor section. But the reality is that women belonging to the rich families or middle class families are also the victims of domestic violence in India.

### **Steps Taken By India To Deal With Domestic Violence<sup>6</sup>**

#### ➤ **The Protection Of Women From Domestic Violence Act,2005.**

This act provides more effective protection of rights of women guaranteed under the constitution who are victims of violence of any kind. The domestic violence is

undoubtedly a human rights issue and a serious deterrent to development.

Presently where a women is subjected to cruelty by her husband or his relatives it is considered to be a criminal offence under Section-498A Of Indian Penal Code.

This act mainly applies to women who are in the family suffering domestic violence, mother, wife, sister, daughter or daughter in law, irrespective that she is living in her own house or house of her parents or house of her parents in law.

This act applies to all the women irrespective to their religion. The Protection Of Women From Domestic Violence Act,2005 fulfils a long felt demand intended to discipline domestic life in conformity with the idea of equality of women in the field.

In addition relationships with family members who are living together as a joint family are also included. Even those women who are sisters, or widows, or are living with the abuser are entitled to the legal protection under the proposed legislation.

Under the act of Domestic Violence actual abuse or threat or abuse that is physical, sexual, verbal, emotional, or economic are included. Harrassment by the way of unlawful dowry demands to the women or her family or relatives would also be considered under definition. The act assists and provides for the rights of the women to secure housing. *It also provides* protection for the right of women to reside in her matrimonial home or shared household,

<sup>6</sup> Bare Act, The Protection Of Women From Domestic Violence Act, 2005. By Universal Law Publishing Lexis Nexus, Edition-2020



whether or not she has any title or rights in such household or home.

### **Legislative And Constitutional Provisions Related To Domestic Violence<sup>7</sup>**

#### **Provisions provided under the protection of Women From Domestic Violence Act,2005**

- **Section-2:** This section of the act provides definitions.
- a) Aggrieved person: means any women 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.
  - b) Child: means any person who is below the age of eighteen years and includes any adopted, step or foster child.
  - c) Domestic Relationship: means a relationship between two persons who live or have been living at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or family member living together as a joint family.
  - d) Domestic Violence: it has the same meaning assigned to it in the section-3 of the act.
- **Section-3:** This section of the act speaks about the definition of the domestic violence which says that the respondent shall be responsible to constitute domestic violence in case.
- a) Harms or injuries or endangers the life, health, safety, well being whether physical or mental of the aggrieved persons or tends to do so which includes causing of physical abuse, sexual abuse, verbal and emotional abuse, and even economic abuse.
  - b) If the respondent harms, harrasses, 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 valuable security or other property.
  - c) If the respondent insults ridicule, humiliate, name calling and insults or ridicule specially with regard to not having a child or male child.
  - d) If a women who is a aggrieved person is a victim of physical abuse which is of such a nature to cause bodily pain, harm, or danger to life, to limb or impair the health or development of a person. Similarly if a person is a victim of sexual abuse such as sexual abuse which includes any conduct of sexual nature that abuse, humiliates, degrades or otherwise violates the dignity of women. Section-3 also includes economic and emotional abuse.
- **Section-8:** This section deals with the Appointment Of Protection Officers. It states that the state government shall by notification provide and appoint such a number of protection officers in each district as it may consider necessary. The state government shall notify the area within which the protection officer shall perform and exercise the powers and duties under this act. The protection officer as far as possible would be a women and she or he shall also posses experience and qualification as mat be prescribed.
- **Section-10:** Service Providers: The service provider should be registered under Societies Registration Act, 1860 or any company

<sup>7</sup> Bare Act, The Protection Of Women From Domestic Violence Act, 2005. By Universal Law Publishing Lexis Nexus, Edition-2020



registered under the Companies Act, 1956 with the objective of protecting the rights of the women and providing them medical aid, financial aid and legal aid.

The other duty of the service provider is to record the domestic violence incident from the aggrieved party and forward the copy of that reports to the magistrate and the protection officer under whose jurisdiction the issue of domestic violence took place. He/she should the aggrieved person medically examined and similarly should give the copy of the report to the protection officer and to the police station within the local limits.

No lawsuit or legal proceeding or prosecution should lie against the service providers or any member of the service provider who was act for anything was in good faith.

- **Section-11:** Duties of the Government. Central and every State Government should take all the necessary measures to make sure that the provisions of this are given wide publicity through media, television, media and print at regular intervals.

Central government and every state government should include police officers and the member of the judicial services as far as the periodic sensitization and awareness on the issues addressed by this Act is concerned.

There should be proper co-ordination amongst the service providers and the concerned ministries and other departments dealing with law, which includes the health and human resources to address the issue of domestic violence.

- **Section-13:** Service of Notice. A notice of the date of hearing is fixed under section-12 of the act and shall be given by the magistrate to protection officer, who shall

then get it served by such means as prescribed on the respondent and any other person within the maximum period of two days or the time period which may be allowed by the magistrate from the date of its receipt.

A declaration of notice is made by the protection officer in such as manner that may be prescribed shall be the proof that such notice was served upon the respondent and any other person as instructed by the magistrate.

- **Section-14:** This section of the act deals with counseling of the aggrieved person or the respondent. Under this section the magistrate shall at any stage of the proceeding may direct the victim or the respondent to either singly or jointly go through the counseling with an member or the service providers who is qualified and experienced in counseling. The magistrate shall fix the next date of hearing of the case within period not exceeding two months.

- **Section-15:** Assistance of welfare expert: This section states that in any proceeding under this act, the Magistrate may secure the services of such person who is preferably a women whether she is related to the aggrieved person or not, including any person engaged in promoting the family welfare as he may think fit for the purpose of assisting him in discharging its functions.

- **Section: 17:** Rights to reside in a shared household. Under this section it is clearly mention that every women in a domestic relationship shall have the right to reside in a shared household, whether or not she has any right, title or any beneficial interest for the same. The victim or the aggrieved person shall not be excluded or evicted from the shared household by the respondent save in



accordance with the procedure established by law.

➤ **Provisions Provided By The Constitution Of India In The favor Of Women**<sup>8</sup>.

Part-3 of the constitution containing Articles 12 to 35 provides for fundamental rights. Fundamental Rights without these rights a human cannot survive. Fundamental Rights are also known as basic rights or justiciable rights and are enforceable. Among the fundamental rights Article-14 that is equality before law and equal protection of laws, Article-19 which deals with Right to speech and Article-21 Right to life and personal liberty are of great importance and are also described as Golden Triangle.

Article-12 to 35 are applicable to all the citizens of the country irrespective of sex, certain fundamental rights contains specific and positive provisions to protect the rights of the women.

Article-14, 15 and 16 of the Constitution, not only grant the gender equality but also empowers the state to adopt measures of affirmative discrimination in favor of women, which is not violation of right to equality in any. Article-14 guarantees that the government shall not deny to any person equality before law or the equal protection of the laws. Further the Article-15 declares that the government shall not discriminate against any citizen on the ground of sex. No citizen shall on the grounds of religion, race, caste, place of birth and gender be subjected to any disability or liability or any restriction. They

shall also have access to wells, tanks, baths ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

The special provisions, which the states may make to improve women's participation in all the activities under the supervision and control of the state, can be in the form of either affirmative action or reservation.

Provisions such as:-

- Women's reservation for admission into colleges.
- Women's reservation for employment.
- Women's reservation in election to local bodies.

Part-4 of the Constitution deals with the Directive Principles Of state Policy. Articles 36 to 51 lay down various provisions relating to directive principles. Society is guaranteed with certain directives for certain directives for creation of welfare state. Indian Constitution envisages the establishments of a welfare state, which can only be achieved if the state endeavors to successful implementation of the directives principles.

The Directive principles of State Policy contained in part-4 of the Constitution incorporates many directives to the state to improve the status of women and for their protection.

Article-39: States certain principles of policy to be followed by the state. The state shall in particular, direct its policy towards securing-

- That the citizens of the country men and women both equally, should have the right to an adequate means to livelihood.
- That the operation of the economic systems does not result in the concentration of wealth

<sup>8</sup> V.N.Shukla. Text Book Of Constitution Of India, Twelfth Edition. Eastern. Published By Book Company, Lucknow.



and means of production to the common detriment.

- That there should be equal pay for equal work for both men and women in the country.
- That the health and strength of the workers both men and women, and the tender age of children are not abused and that citizens are not forced by any of the economic necessity to enter into avocations unsuited to their age or strength.

Article-42: The Constitution incorporates a very important provision for the benefit of women and it directs the state to make provisions for securing just and humane conditions of work and for maternity relief. The state has tried to implement this directive by enacting The Maternity Benefit Act, 1961.

### **Increase In The Number Of Domestic Violence Cases During Covid-19<sup>9</sup>**

According to India's National Commission for Women, which is also known as NCW, had registered 587 domestic violence complaints by the victims from March 23<sup>rd</sup> to April 16<sup>th</sup>. The spread of the virus has also led to the increase of forced domestic violence in the country as the victims have very little options to find themselves a safe shelter or even a solace. Under these situations women had to face the aggression of the male members inside their houses and had to deal with the virus outside. Living with an abusive partner hurts the victim both physically as well as emotionally.

In low wage household husbands are more abusive towards their wives, and they physically and verbally exasperate them. Lack of income during the pandemic is a looming threat towards hunger, which also leads to a situation where women who are financially dependent on their husbands also suffered.

During the lock down due to the pandemic many women who were victims of the domestic violence were not able to contact the police or the social workers because they were trapped at home with the abusers.

<sup>10</sup>The Domestic Violence cases during the lockdown period increase rapidly in India and similar situations were recorded many other countries as well such as, France, China, Spain, Germany, Argentina, Norway etc. due to which the United Nations Agency For Sexual Harassment And Reproductive Health (UNFPA) also stated that there would be 31 million domestic violence cases if the lockdown continues for another few months. India's condition is not an exception as far as domestic violence is concerned during the pandemic. Mostly Haryana, Bihar, Uttar Pradesh, and Punjab were the states which reported most of the cases during this time. The government has also taken some few preventive measures for such issues and one of them is that the government has declared a concept of One-Stop Centers which was introduced in the early 2015 as a scheme known as Sakhi which is sponsored by the Central Government.

<sup>9</sup>

<https://www.aljazeera.com/news/2020/04/18/locked-down-with-abuser-India-sees-surge-in-domestic-violence/>

<sup>10</sup><https://www.unfpa.org/press/new-unfpa-projections-predict-calamitous-impacts-womens-health-covid-19-pandemic-continues>



<sup>11</sup>Sakhi is a scheme, which is formed to support the women who are affected by violence in private or in public places. The violence can be of any form Sexual abuse, physical abuse, human trafficking, economical abuse or emotional abuse.

The main object of this scheme is to facilitate the victims with emergency and non-emergency services, which includes legal aid, medical aid and psychological aid. Under this scheme all the women who are the victims of domestic violence will be provided with police help, counseling, medical, shelter for 5 days, which is stated in the guidelines of the “One-Stop Centre”.

### **Case Study: Shachi Mahajan V. Santosh Mahajan.**<sup>12</sup>

#### 1. Facts of the Case:

Mrs. Shachi Mahajan was married to Sh. Aditya Mahajan S/o Smt. Santosh Mahajan on 01/03.2008. After their marriage they resided at a property no. D-113, Anand Vihar, New Delhi. On 21/10/2012 Mr Aditya Mahajan left the matrimonial house without informing anyone.

The Daughter in law Mrs. Shachi Mahaja then alleged that her Mother in law Mrs. Santosh Mahajan wanted her to unlawfully expel her from her matrimonial house and

also filed a petition on which protection order was passed on 07/11/12, restraining the mother in law from disposing her the shared household, later the Mother in law Mrs. Santosh Mahajan also challenged the order dated 07/11/12 by filing crl.M.C418 , but it was dismissed.

Later on the electricity supply of the above said property was also disconnected due to the non payment of the bills, in March 2015 and the Daughter in law was forced to shift to her mother’s house. When she got the order for restoration of electricity, she could not enter the house because the Mother in law had changed all the locks of the house.

<sup>13</sup>Due to this the daughter in law filed a complaint under **section-31** of the Protection Of Women Form domestic Violence Act, 2005 against her Mother in law Mrs. Santosh Mahajan (mother in law) also filed an application under **section-25** of the domestic violence act in which the modification of the protection order dated 07/11/12 was sought.

The Metropolitan Magistrate directed the Mother in law, Mrs Santosh Mahajan to hand over the keys of the house to her Daughter in law Mrs. Shachi Mahajan by impugning the order dated 02/04/2016 (crl.M.C. 1643/2016). The Mother in law filed a Revision Petition before The High Court and

<sup>11</sup> [chdsw.gov.in/?q=contact/sakhione-stop-centre](http://chdsw.gov.in/?q=contact/sakhione-stop-centre)

<sup>12</sup>Shachi Mahajan VS Santosh Mahajan Available at [https://www.scconline.com/blog/post/tag/subject-property/CRIMINAL\\_MISCELLANEOUS\\_NO.1868\\_OF\\_2016\\_AND\\_CRIMINAL\\_MISCELLANEOUS\\_APPEAL\\_NO.35881\\_OF\\_2018,7580\\_OF\\_2016,CRL.REV.P.NO.345\\_OF\\_2016|10-01-2019](https://www.scconline.com/blog/post/tag/subject-property/CRIMINAL_MISCELLANEOUS_NO.1868_OF_2016_AND_CRIMINAL_MISCELLANEOUS_APPEAL_NO.35881_OF_2018,7580_OF_2016,CRL.REV.P.NO.345_OF_2016|10-01-2019).

<sup>13</sup> <https://verticallegal.com/blogs/mother-in-law-to-provide-alternate-residence-and-compensation-when-she-sold-off-the-matrimonial-home-of-daughter-in-law/>



the subject CrI.Rev.P345/2016 had been filed consequently. The mother in law sold the property to a third party by the way of Registered Sale Deed dated.31/03/18.

2. Observed:

Before the Trial of the court the subject property now stands transferred to the third party by the way of a Registered Sale Deed. As the property is in the favor of a third party after the registration of the sale deed, the husband and the mother in law both don't have any surviving share in it.

Equities have to be balanced in the case. The rights of the third party that is the purchaser of the subject property has to be balanced vis-à-vis the rights of the daughter in law which she is seeking to enforce.

3. The court Held:

The said property was sold for Rs. 3,40,00,000. The daughter in law claimed that her husband had a 1/3<sup>rd</sup> share in the subject property and therefore the mother in law was directed to deposit 1/6<sup>th</sup> share of the sale that is the half of the 1/3<sup>rd</sup> share with the trial court for securing the rights in favor of the daughter in law and her minor son.

Since there was no order restraining mother in law from selling or alienating the property therefore she could not be penalised in terms of Section-31 of the act. But this action of mother in law has caused a loss to the daughter in law Shachi Mahajan.

The Mother in law stated that she sold the property for her benefit and the rights of the third party has also arisen. The Daughter in law got deprived of her rights in the subject property.

It was proved that the daughter in law Shachi Mahajan had a possession of the first floor

and the kitchen and common area on the ground floor was shared, by showing the documents on record prima facie in court.

Under Section-19(1)(f) of the Protection Of Women From Domestic Violence Act,2005, inter alia stipulates that the Magistrate shall secure same level accommodation for the aggrieved person which is the Daughter in law as enjoyed by her in the shared property or direct payment of rent for the security deposit, equivalent to 12 months rental for the same.

Since the subject property was sold by the Mother in law Mrs. Santosh Mahajan to the third party, the order could be passed directing the Mother in law to ensure that either a ground or the first floor should be obtained for the residence of the daughter in law in Anand Vihar in a similar property. The Mother in law Santosh Mahajan had to grant adequate, fair and reasonable compensation or mandatory relief for the deprivation of the subject property to the Daughter in law in terms of Section-20(2) of the Protection Of Women From Domestic Violence Act, for the period till she provided by an alternative house.

Mrs.Santosh Mahajan (mother in law) shall also deposit 1/6<sup>th</sup> of the sale that is Rs.57,00,000 with the trial court and also pay the interim compensation of Rs: 75,000 to Mrs. Shachi Mahajan ( daughter in law) within 2 weeks time.

The following Relevant Provisions under the Protection Of Women From Domestic Violence Act,2005 were taken into consideration while giving the judgement.



▪ **Section-19(1)(f):**<sup>14</sup> **Residence Orders.**

Under this section the magistrate may on being satisfied that the domestic violence has taken place, passes the residence order, which restrains the respondents from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the same household.

The magistrate directs the respondent to remove himself from the shared household, restrains the respondents or any of his relatives from entering any portion of the shared household in which the aggrieved is residing.

It also directs to restraining the respondent from alienating or disposing of the shared household. Along with this the Magistrate also directs 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 for the same if the circumstances require so.

- **Section-20(1)(c):** This section talks about the monetary reliefs. Under this section the Magistrate may direct the respondent to pay the monetary relief to meet the expenses incurred by the victim or the aggrieved person and the losses suffered by the aggrieved person and any of the child of the victim and it includes loss of earning or medical expenses or any any loss which is caused by the destruction or damage or

removal of any property from the control of the victim.

- **Section-20(2):** The monetary relief which is granted to the victim should be fair, adequate, reasonable with the standards of living to which the aggrieved person is accustomed.
- **Section-25(2):** The Magistrate on the receipt of an application from the aggrieved person or the respondent is satisfied that there is a change in the circumstances requiring alterations, modifications or revocations under this act, he may deem appropriate.

**Case Analysis**

- There is no doubt that the action of the Mother in law by disposing of the subject property by the way of a Registration Of Sale Deed had caused a lot of loss and damages to the Daughter in law which is Mrs. Shachi Mahajan.

However it has also been seen that there was no order restraining the Mother in law (Mrs. Santosh Mahajan) from selling the subject property. If the Mother in law had not caused any of the trouble for her Daughter in law and gave her the said share then Mrs. Shachi Mahajan would have not gone through so much loss and damages.

**Other Relevant Cases Related To Domestic Violence.**

- **Lalita Toppo V/S State Of Jharkhand & anr.(2018)**<sup>15</sup>

<sup>14</sup> V.N.Shukla. Text Book Of Constitution Of India, Twelfth Edition. Eastern. Published By Book Company, Lucknow.

<sup>15</sup> Lalita Toppo VS State Of Jharkhand & Anr available at <https://www.google.co.in/amp/s/lexlife.in/2020/05/21/law-regarding-domestic-violence-in-India/amp/> Criminal Appeal no.1656/2015



In this case the apex court which is the Supreme Court Of India held that a women can claim maintenance from her abuser partner under the Protection Of Women From Domestic Violence Act,2005.

The court further in this case stated that aggrieved person doesn't need to be legally married to the offender in order to do so. Which means that even an estranged wife may invoke the provisions of this Act. Under section-3(A) of the Act states the defintion violence which also includes "Economic Abuse". In this case the victim is entitled to a shared household and it will not be limited by section-125 of the Criminal Procedure Code which solely grants relief.

• **Banita Dass V/S Uttam Kumar (2019)<sup>16</sup>**

In this very judgement which was given by Justice Sachdeva of the Hon'ble Delhi High Court stated that a wife may not be denied from the interim maintenance by the Magistrate on the grounds that the aggrieved person is self-sufficient and qualified person and that she has the capacity to earn.

The aggrieved person must be granted compensation regardless of the abilities to earn and to sustain on her own.

**International Conventions For Protection Of Women**

- **Convention On Elimination Of All Forms Of Discrimination Against The Women**<sup>17</sup>

<sup>16</sup> Banita Dass VS Uttam Kumar available at <https://www.latestlaws.com/latest-nwes/interim-maintenance-to-qualified-wife/CRL.REV.P/659/2017> & crl.MA.14463/2017.

This convention was adopted in the 1997 by the United Nations General Assembly and it is also described as an International Bill Of Rights For Women. This convention mainly deals with equality between men and women, by ensuring that women should have access to equal opportunities in public and political life both without any discrimination.

This convention (CEDAW) also directs the state parties to take all kind of appropriate measures which includes temporary, special and legislative measures, so that the women can enjoy all fundamental and human rights such as Right to Vote, Right To Stand for Election, Right To Education, Employment and health.

- **Declaration On Elimination Of Violence Against Women**<sup>18</sup>

Declaration On the Elimination Of Violence Against women was adopted in 1993 by the United Nations General Assembly. The main aim of this convention is to protect women with their rights and principles with regard to liberty, security, dignity and integrity.

This convention establishes a comprehensive set of standards in the International law as far as the protection of women against sexual and gender biased violence is concerned.

The violence against women defined as per the convention is physical, sexual, psychological harm or any kind of suffering to women which includes threats, coercion and deprivation of liberty. Violence against

<sup>17</sup> CEDAW available at <https://www.un.org/womenwatch/daw/cedaw>

<sup>18</sup> DEVAW available at [https://stopvaw.org/declaration\\_of\\_violence\\_against\\_women](https://stopvaw.org/declaration_of_violence_against_women)



women also includes rape, sexual abuse of children and female and marital rapes.

This convention not only directs that the actors of crime should refrain from engaging in violence against women but it also directs the state to take accurate measures to prevent such violence.

➤ Maputo Protocol.<sup>19</sup>

Maputo Protocol was adopted by the Assembly of African Union in Maputo, Mozambique. This protocol earlier was known as African Charter on Human and People rights and was enforced on July 11, 2003.

This protocol mainly came into force to protect the rights of the women. To eradicate Female Genital Mutilation. Article-41 of the protocol also ensures right to health of women which includes sexual and reproductive health of the women such as right to protection against sexually transmitted disease.

Right to decide whether to have children and number of children.

Right to control their fertility.

Right to have family planning education.

Under this protocol state also ensures health services such as parental and post natal and nutritional services.

➤ Declaration On Elimination Of Discrimination Against Women.<sup>20</sup>

This declaration was formed to ensure human rights and it has issued by the United Nations

<sup>19</sup> Maputo Protocol available at <https://releifweb.int/sites/releifweb.int/files/resources/paper295.pdf>

<sup>20</sup> DEDAW available at <https://www.refworld.org/docid/3ae6b3970.html>

<sup>21</sup> Istanbul Convention available at <https://www.euronews.com/2020/07/27/istanbul->

General Assembly and was adopted on 7<sup>th</sup> November, 1967. This declaration was a precursor to the legally binding 1979 CEDAW which was drafted by the commission on the status of women 1967.

➤ Istanbul Convention.<sup>21</sup>

The Istanbul convention is also known as council of Europe Convention, which is made to prevent and combat the violence against women and domestic violence.

This conventions outlines what acts must be criminalized by the countries which amounts to psychological violence, stalking, sexual and physical violence which includes rape, forced marriage, Female Genital Mutilation (FGM) and Honor Crimes. Etc.

As per to the Parliamentary Assembly of the European Council (PACE), Istanbul Conventions has already have a tangible effect due to which higher legislative and policy standards have been introduced in Nationals of various countries. PACE also stated that Istanbul Convention has also helped in raising awarness of Domestic Violence and also helped to educate the victims.<sup>22</sup>

Turkey was the first country to ratify this convention on 12<sup>th</sup> March,2012<sup>23</sup> which was followed by other 33 countries and finally in 2017 the European Union signed as well. But there are various countries which never ratified the convention and never enforced it. Countries such as: United Kingdom, Ukraine,

convention-whar-is-the-domestic-violence-treaty-and-has-it-had-an-impact.

<sup>22</sup> <https://www.coe.int/en/web/istanbul-convention/home?>



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Bulgaria, Armenia, Hungary, Republic Of Moldova, Czech Republic, Russia and Azerbaijan.

**Conclusions And Suggestions.**

Domestic violence is a very grave worldwide crisis and a very crucial issue which affects many countries in the world.

We should be swift and agile in making and executing our strategies for curbing this challenging problem of Domestic Violence and wiping out the grounds underneath the criminals involved in this activities and to stop them to continue to deal in this inhuman misery that is caused to women and children. Various organizations should combat the evil of domestic violence for any purpose which causes horrible degradation, very effectively and swiftly. The people in this society should be educated enough to honor and respect the females so that they would be safe and secure from such evil and gruesome crimes against them.

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