



## PROTECTION OF CHILD AGAINST DOMESTIC VIOLENCE: LAWS IN INDIA

By Divyanshi Maheshwari  
From University of Petroleum and Energy Studies

### INTRODUCTION

*“There can be no keener revelation of a society’s soul than the way in which it treats its children.”*

— Nelson Mandela, Former President of South Africa

Children are the stepping stones of a country. They build, create and are themselves the future of any nation. Most important element in a country’s demographic dividend is its percentage of youth population, as on their shoulders the country’s economic potential resides. Any country would pay most attention to its population of growing assets, children, as their prosperity and health would yield superior prosperity and health to the nation. Children have a unstructured mentality and personality, they are like soft clay, whatever is formed out, and they take that structure. Hence it very crucial to provide them with a proper health and free environment to let them fly their wing wide open, and take the most beautiful structure that they can. As per Census 2011, India, with a population of 121.1 Cr, has 16.45 Cr

children in the age group 0-6 years and 37.24 Cr in the age group 0-14 years which constitute 13.59% and 30.76% of the total population respectively.<sup>1</sup> With such a wide population, it is important that the rights of children are also protected with a greater focus and force. It would be most expected from developing country as India, which is flourishing in every sector and area, that they would accord priority to rights of child and their protection. However, the same is not true, a total of 94,172 cases of crimes against children were registered in the country during the year 2015 as compared to 89,423 cases during 2014, showing an increase of 5.3%. The crime rate i.e. number of cases reported under crimes against children per 1,00,000 populations of children (below 18 years of age) was observed as 21.1 at all India level during 2015.<sup>2</sup> India lists among one of the most crime rated countries in respect of children of the world, including all sorts of crime. According to a survey, India ranks at 149<sup>th</sup> place out of 196 countries in respect for Child Rights<sup>3</sup>, which is dismally low rank, especially for world’s largest democracy. In India there are various laws, regulation and organizations for protection of child rights including, Indian Penal Code 1860, Juvenile Justice Act 2015, *The Protection of Children from Sexual Offences Act, 2012*, and many more. There have been many recent changes and amendments in laws to further broaden the scope of child rights in India. However, no specific law has been made to protect child from domestic violence in India. Domestic violence is a great cause of concern

<sup>1</sup>Social Statistics Division, Central Statistics Office, Ministry of Statistics and Program Implementation, *Children in India, 2018 - A Statistical Appraisal* (2018)

<sup>2</sup> Crime against Children, Additional table chapter reports , NCRB (Nov. 15, 2016), [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_t](https://ncrb.gov.in/sites/default/files/crime_in_india_t)

[able\\_additional\\_table\\_chapter\\_reports/Chapter%206-15.11.16\\_2015.pdf](https://www.humanium.org/en/rcr-world-ranking-by-countries/)

<sup>3</sup> Ranking of countries according to their respect for the Rights of the Child , Humanium <https://www.humanium.org/en/rcr-world-ranking-by-countries/>



which has only been addressed in respect of women in India. There are stringent laws against Domestic violence with women, Protection of Women against Domestic Violence Act 2005 prohibits and penalizes domestic violence. In most of the countries including India, Women and Children are regarded as weaker section of the society, which require special protection. Article 15(3) of the Indian constitution states that, "Nothing in this article shall prevent the State from making any special provision for women and children".<sup>4</sup> In today's society where crimes are taking place everywhere, one of the potential places of crime is behind the closed doors of house. Not only women but children are also subjected to frequent domestic violence, which has been overlooked in India. There are certain laws which indirectly protect child from abuse at home, but no specific law.

#### THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

As per the data of NCRB, a total of 89,097 cases related to crimes against women were registered across India in 2018.<sup>5</sup> Women have always been subject to social scrutiny and exploitation at every front, whether at home, at work, at market or anywhere else. This is due to presence of the web of patriarchal society. Men are considered the mighty and bread-earner of the family, whereas women are placed at a lower pedestal from men. The Protection of Women from Domestic Violence Act, 2005 was brought up by the parliament in 2005, with a view to curb the increasing cases of domestic violence in

the country. The Act defines domestic violence, provides for relief and punishment for the same. Section 2(a) of the Act 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.<sup>6</sup> Thus the victim or the aggrieved person according to this Act can be a woman who is, or has been, in a domestic relationship with the person who commits domestic violence. Section 2(f) defines "domestic relationship" as, a relationship between two persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.<sup>7</sup> Domestic relationship covers, not just relationship of marriage or relationship in nature of marriage, but also of adoption or are family members living together as a joint family. Therefore this Act covers domestic violence against:

1. Woman who live or have, at any point of time, lived together in a shared household with the respondent.
2. Woman related by consanguinity with the respondent.
3. Woman in marriage, or through a relationship in the nature of marriage with the respondent.
4. Woman who has been adopted with the respondent.

<sup>5</sup> Ians, Domestic violence tops crime against women in 2018: NCRB, National Herald (Jan. 9, 2020) <https://www.nationalheraldindia.com/national/domestic-violence-tops-crime-against-women-in-2018-ncrb>

<sup>6</sup> The Protection of Women From Domestic Violence Act, 2005 § 2(a)

<sup>7</sup> The Protection of Women From Domestic Violence Act, 2005 § 2(f)



5. Woman who are family members living together as a joint family with the respondent.

Therefore this Act covers domestic violence against 'Female child' but not against 'Male child', as it would be covered under domestic violence against either adopted child or a female child living as a joint family. There are two observations regarding this Act, which point out need for a separate legislation on Domestic violence against child. Firstly this Act, The Protection of Women from Domestic Violence Act, 2005 is not a gender neutral law. It covers domestic violence against female child but not against male child. However both of them are subject to same violence within four walls. Secondly, the objective of Parliament in bringing forward this statute was to protect women from domestic violence and not protecting children from domestic violence. Parliament took into notice the increasing crime rate of domestic violence against women and to prohibit such actions, this law was brought into force, ironically domestic violence against child is a crime of same inhumanity and cruelty which was not considered by the law makers. If this act would have focused on both, women and children domestic violence cases, then it would have been titled as, 'The Protection of Women and Children from Domestic Violence Act', and would have specific provisions relating to punishment of domestic assault on children and not just women.

INDIAN PENAL CODE, 1860

Indian Penal Code, 1860 covers a wide range of offences against children, including specific provisions such as, Procurement of a minor girl<sup>8</sup>, Kidnapping or abducting child under ten years with intent to steal it from its person<sup>9</sup>, Selling minors for purpose of prostitution<sup>10</sup>, Buying minor for purpose of prostitution<sup>11</sup>, Punishment for gang rape on woman under twelve years of age<sup>12</sup>, Punishment for rape on woman under twelve years of age<sup>13</sup> and many more such provisions. However Indian Penal Code has no specific provision against domestic violence against a child. Law makers don't see problem of domestic violence against child as major problem, as if it does not even exists. Every year, as many as 275 million children worldwide become caught in the crossfire of domestic violence and suffer the full consequences of a turbulent home life.<sup>14</sup> Domestic violent against children is a serious and growing problem, which cannot be overlooked. There are some provisions in IPC which may be used to charge a person with domestic violence against child such as from Section 319 to 326 which provides for Hurt and Grievous hurt. Under section 319 Hurt is defined as: "Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt"<sup>15</sup> and under section 320 Grievous Hurt is defined as: "The following kinds of hurt only are designated as "grievous":—

1. Emasculation.
2. Permanent privation of the sight of either eye.
3. Permanent privation of the hearing of either ear.
4. Privation of any member or joint.

<sup>8</sup> Indian Penal Code, 1860 § 366A

<sup>9</sup> Indian Penal Code, 1860 § 369

<sup>10</sup> Indian Penal Code, 1860 § 372

<sup>11</sup> Indian Penal Code, 1860 § 373

<sup>12</sup> Indian Penal Code, 1860 § 376DB

<sup>13</sup> Indian Penal Code, 1860 § 376AB

<sup>14</sup> Domestic violence against children, UNICEF [https://www.unicef.org/sowc07/docs/sowc07\\_panel\\_2\\_1.pdf](https://www.unicef.org/sowc07/docs/sowc07_panel_2_1.pdf)

<sup>15</sup> Indian Penal Code, 1860 § 319



5. Destruction or permanent impairing of the powers of any member or joint.
6. Permanent disfiguration of the head or face.
7. Fracture or dislocation of a bone or tooth.
8. Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”<sup>16</sup>

Punishment for voluntarily causing hurt is provided under section 323, “imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both”<sup>17</sup> and Punishment for voluntarily causing grievous hurt is provided under section 325, “imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”<sup>18</sup>. However these sections do not specifically talk about domestic violence against child, but complaint under these sections can be filed for the same.

Section 351 to 352 provides for Assault and Punishment for them respectively. Section 351 states that, “Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.”<sup>19</sup> Section 352 provides punishment for assault or criminal force otherwise than on grave provocation, “imprisonment of either description for a term which may extend to three months, or

with fine which may extend to five hundred rupees, or with both.”<sup>20</sup> Any parent found assaulting their child can be charged under section 352. Although 351 provide for only verbal abuse in form of gestures, or actions but such verbal abuse also amounts to domestic violence, it mentally exploits a person. Section 3(a) of the Protection of Women from Domestic Violence Act, 2005 defines domestic violence as, “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”.<sup>21</sup>

Indian Penal Code takes into account domestic violence against women, section 498A states that, “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”<sup>22</sup>, but there is no such law for children, which itself is the hypocrisy and negligence of Indian law makers, as both children and women are identified as weak sections of society, abuse and violence at home is a problem against both, but law is only for women.

#### JUVENILE JUSTICE ACT, 2015

The Juvenile Justice Act (JJA) was enacted by Government of India in 1986. The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. Further amended in 2006 [Juvenile Justice

<sup>16</sup> Indian Penal Code, 1860 § 320

<sup>17</sup> Indian Penal Code, 1860 § 323

<sup>18</sup> Indian Penal Code, 1860 § 325

<sup>19</sup> Indian Penal Code, 1860 § 351

<sup>20</sup> Indian Penal Code, 1860 § 352

<sup>21</sup> Protection of Women from Domestic Violence Act, 2005 § 3(a)

<sup>22</sup> Indian Penal Code, 1860 § 498A



(Care and Protection of Children) Amendment Act, 2006]. However in order to curb more serious & heinous crimes being committed by juveniles, new legislation "*The Juvenile Justice (Care and Protection of Children) Act, 2015*" was passed.

JJA outlines two target groups:

1. Juveniles in conflict with law.
2. Children in need of care and protection

The juvenile justice (care and protection of children) act, 2015 is an Act to consolidate and amend the law providing for proper care, protection and treatment, by adopting a child-friendly approach in the disposition of matters in the best interest of children, and for their ultimate rehabilitation through various institutions established under this enactment. This act was created with intention of the legislature to control and curb increasing crime rate by juveniles and against juveniles. Juvenile Justice Act, 2015 is an act ideally created to protect children from all kinds of violence and abuse, ironically this special Act does not account for law prohibiting domestic violence against children.

This act however does not have law specifically against domestic violence but it has sections which cover violence and abuse towards child by any person, anywhere. Section 75<sup>23</sup> of the act states, punishment for cruelty to child, "Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or willfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or

physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both." This section covers a wide range of offence in it. The essential of this section are: firstly, the person in question should be having actual charge or control over child. Secondly, such person should assaults, abandons, abuses, exposes or willfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected. Thirdly actions of such person are in a manner likely to cause such child unnecessary mental or physical suffering. This section does not specifically talk about or mentions domestic violence against child, but it has such a wide ambit that domestic violence will be included in this section. Domestic violence against child would include essential elements such as: firstly parent or guardian of child, secondly such person shall assault, abuse, hurt the child and thirdly such actions shall physically or mentally harass and abuse the child. All the essentials of section 75 of the Juvenile Justice act, 2015 coincides with essentials of domestic violence against child.

Children who have gone through domestic violence, their personalities, nature, perseverance, and way of thinking, all of it are drastically affected. Many children are reported to development psychological disorders and mental health problems these can include mental health conditions, such as depression and anxiety. They may also include diabetes, obesity, heart disease, poor

<sup>23</sup> Juvenile Justice Act, 2015 § 15



self-esteem, and other problems.<sup>24</sup> Children having gone through any kind of abuse have often seen to developed Antisocial Personality Disorder, in which a person consistently shows no regard for right and wrong and ignores the rights and feelings of others.<sup>25</sup> Thus it is important that children who have faced domestic violence should properly and timely be rehabilitated, so that they are not prone to such mental disorders.

Juvenile Justice Act, 2005 section 2 (14)(iii) states “child in need of care and protection” means a child— who resides with a person (whether a guardian of the child or not) and such person—

(a) Has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) Has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) Has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or<sup>26</sup>

A child in need of care and protection, who has been abused by parent or guardian or any other person, has to be first produced before working for child welfare. Section 36 of Juvenile Justice Act states that, “On production of a child the Committee shall hold an inquiry in such manner as may be

prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of section 31, may pass an order to send the child to the children’s home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer.”<sup>27</sup> Section 37 provides for different orders that may be passed regarding a child in need for care and protection including, placement of the child in Children’s Home or fit facility or Specialized Adoption Agency, placement of the child with fit person for long term or temporary care; foster care orders under section 44; sponsorship orders under section 45; declaration that the child is legally free for adoption under section 38 and many other orders.<sup>28</sup>

#### THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Domestic violence according to the Protection of Women from Domestic Violence Act, 2005 includes four types of abuse:

1. Physical abuse
2. Sexual abuse
3. Verbal and emotional abuse
4. Economic abuse

Domestic violence is not just limited to physical abuse or bodily injury but it also includes sexual abuse. Domestic violence against child includes sexual abuse by parent/parents towards child below eighteen

<sup>24</sup> Shannon M. Monnat, Long Term Physical Health Consequences of Adverse Childhood Experiences, National Library of Medicine (Oct. 23, 2015) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4617302/>

<sup>25</sup> Antisocial Personality Disorder, Mayo Clinic (Dec. 10, 2019) [https://www.mayoclinic.org/diseases-](https://www.mayoclinic.org/diseases-conditions/antisocial-personality-disorder/symptoms-causes/syc-20353928)

[conditions/antisocial-personality-disorder/symptoms-causes/syc-20353928](https://www.mayoclinic.org/diseases-conditions/antisocial-personality-disorder/symptoms-causes/syc-20353928)

<sup>26</sup>Juvenile Justice Act, 2015 § (14)

<sup>27</sup>Juvenile Justice Act, 2015 § 36

<sup>28</sup>Juvenile Justice Act, 2015 § 37



years of age. The World Health Organization (WHO) defines Child Sexual Abuse (CSA) as “*the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society...*”<sup>29</sup> Children, under the age of 18, contribute to 37% of India's population.<sup>30</sup> A large-scale national study conducted in 2007 by Ministry of Women and Child Development (MoWCD), to assess the extent and nature of child abuse in India, uncovered some alarming statistics; that among the 12,447 children interviewed, more than half (53 percent) reported experience of sexual abuse, and over 20 percent reported severe sexual abuse.<sup>31</sup> Among these cases of child sexual abuse majority constitute abuse from parents, guardians, and relatives. India is a country where one in five Indians is poor<sup>32</sup>, poverty leads to frustration and exasperation which in turn results in, exploitation of the weaker section of society that is, women and children by the male of the family in form of domestic violence.

The Protection of Children of Sexual Offences Act, 2012 provides punishment for sexual abuse by parent, guardian, or relative in home or elsewhere, which suffice domestic violence by sexual abuse on child. Section 3 of the Act defines Penetrative Sexual Assault

and section 6 provides punishment for Aggravated Penetrative Sexual Assault, “Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.”<sup>33</sup> Section 5 (n) states, “whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child;”<sup>34</sup> and section 5 (p) states, “whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else;”<sup>35</sup> is said to commit aggravated penetrative sexual assault. Section 7 of the Act defines Sexual Assault and Section 9 states people who may be punished for Aggravated Sexual Assault, same as Aggravated Penetrative Sexual Assault as defined under Section 6 of the Act.

Therefore, The Protection of Children of Sexual Offences Act, 2012 provides a rigorous punishment for sexual abuse by relative, guardian, and people in position of trust or authority of child which are usually

<sup>29</sup> World Health Organisation. Report of the consultation on child abuse prevention, WHO (WHO/HSC/PVI/99.1). Geneva(Switzerland): World Health Organisation, 1999.

<sup>30</sup> Census of India New Delhi 2011, Registrar General & Census Commissioner of India <http://www.censusindia.gov.in>.

<sup>31</sup> Kacker Loveleen, Vardan Srinivas, Kumar P. Study on Child Abuse: India 2007 Ministry of Women and Child Development, Government of India, 2007.

<sup>32</sup> India's Poverty Profile, The World Bank, ( May. 27, 2016)

<https://www.worldbank.org/en/news/infographic/2016/05/27/india-s-poverty-profile>

<sup>33</sup> Protection of Children of Sexual Offences Act, 2012 § 6

<sup>34</sup> Protection of Children of Sexual Offences Act, 2012 § 5(N)

<sup>35</sup> Protection of Children of Sexual Offences Act, 2012 § 5(P)



parents of the child. Although this Act deals with all sexual offences relating to child but this does not specifically provide for an offence relating to domestic violence against child in form of sexual abuse, which makes it appear as a non-essential element in domain of child sexual abuses, whereas it holds a majority of section in such offences.

#### THE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS ACT, 2005

An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.<sup>36</sup> This act was brought forward in lieu of India's participation in the **United Nations (UN) General Assembly Summit in 1990**, which adopted a Declaration on Survival, Protection and Development of Children.<sup>37</sup> In 1990 the largest gathering of world leaders in history assembled at the United Nations to attend the World Summit for Children. Led by 71 heads of State and Government and 88 other senior officials, mostly at the ministerial level, the World Summit adopted a Declaration on the Survival, Protection and Development of Children and a Plan of Action for implementing the Declaration in the 1990s.<sup>38</sup> India has also acceded to the **Convention on the Rights of the Child (CRC) on the 11th December, 1992**<sup>39</sup>. The

Convention has 54 articles that cover all aspects of a child's life and set out the civil, political, economic, social and cultural rights that all children everywhere are entitled to. It also explains how adults and governments must work together to make sure all children can enjoy all their rights.<sup>40</sup> India established National Commission and State Commissions for Protection of Child Rights, complying with the Convention on the Rights of the Child as a signatory to the convention it was mandatory to take all necessary steps to protect children's rights enumerated in the Convention.<sup>41</sup> India being a member state of the United Nations General Assembly, undertook the goals, objectives, strategies and activities enlisted in the **UN General Assembly Special Session on Children held in May, 2002 adopted an Outcome Document titled "A World Fit for Children"**.<sup>42</sup>

The commission formed under the act of The Commission For the Protection of Child Rights Act, 2005, according to section 13(j) has the function to inquire into complaints and take suo motu notice of matters relating to,— (i) deprivation and violation of child rights; (ii) non-implementation of laws providing for protection and development of children; (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such

<sup>36</sup> The Commission For the Protection of Child Rights Act, 2005

<sup>37</sup> The Commission For the Protection of Child Rights Act, 2005

<sup>38</sup> General Assembly 27th special session New York (May. 10, 2002)  
<https://www.un.org/en/development/devagenda/children>

<sup>39</sup> The Commission For the Protection of Child Rights Act, 2005

<sup>40</sup> What is the UN Convention on Child Rights? UNICEF <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

<sup>41</sup> The Commission For the Protection of Child Rights Act, 2005

<sup>42</sup> The Commission For the Protection of Child Rights Act, 2005



children.<sup>43</sup> Therefore any case of domestic violence against child which is direct abridgment of the child rights, can be directly inquired into by the commission and action can be taken but the major issue is that there is no specific law in India relating to Domestic violence against child, thus if the commission takes action against domestic violence cases, it has to charge the assaulter in different penal Act sections. Section 13(f) of the Commission For the Protection of Child Rights Act states, study treaties and other international instruments and undertake periodical review of existing policies, programs and other activities on child rights and make recommendations for their effective implementation in the best interest of children<sup>44</sup>, India as a signatory to the **Convention on the Rights of the Child (CRC)**, has responsibility to implement various Article of the convention into the domestic law. **Article 19, Paragraph 1 (21) (e)** of the Convention on the Rights of the Child (CRC) states that, “Mental violence”, as referred to in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect and this can include: (e) Exposure to domestic violence,<sup>45</sup> and **Article 19, Paragraph 2 (46)** of the Convention on the Rights of the Child (CRC) states that, Prevention includes public health and other measures to positively promote respectful child-rearing, free from violence, for all children, and to target the root causes of violence at the levels of the child, family,

perpetrator, community, institution and society.<sup>46</sup> Therefore the Convention provides for taking steps to prevent Mental Violence in form of exposure to domestic violence and prevention from violence targeting root causes violence which includes Family.

Therefore according to section 13(f) of the Commission for the Protection of Child Rights Act, commission should make recommendations for implementation of the laws against Domestic violence in India as specified under Convention on the Rights of the Child.

#### LAWS REGARDING DOMESTIC VIOLENCE AGAINST CHILDREN IN U.K.

Statistics on child abuse and neglect are gathered by the Office of National Statistics. In the year ending December 2018, there were 2,574 offences of cruelty to children young persons.<sup>47</sup> U.K. has very stringent laws against domestic violence on child. The Domestic Violence, Crime and Victims Act, 2004 deals specifically with issue of domestic violence against not just women but children as well. Section 5 of the Act states the offence of domestic violence as:

*(1) A person (“D”) is guilty of an offence if—  
(a) a child or vulnerable adult (“V”) dies or suffers serious physical harm as a result of the unlawful act of a person who—*

<sup>43</sup> The Commission For the Protection of Child Rights Act, 2005 § 13(j)

<sup>44</sup> The Commission For the Protection of Child Rights Act, 2005 § 13(f)

<sup>45</sup> The Convention Of Child Rights Article 19 Para1 § (21)(e)

<sup>46</sup> The Convention Of Child Rights Article 19 Para2 § (46)

<sup>47</sup> *Crime in England and Wales: Year Ending December 2018*, Office for National Statistics (April. 25, 2019) <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingdecember2018>



*(i) was a member of the same household as V, and*

*(ii) had frequent contact with him,*

*(b) D was such a person at the time of that act,*

*(c) at that time there was a significant risk of serious physical harm being caused to V by the unlawful act of such a person, and*

*(d) either D was the person whose act caused the death or serious physical harm or—*

*(i) D was, or ought to have been, aware of the risk mentioned in paragraph (c),*

*(ii) D failed to take such steps as he could reasonably have been expected to take to protect V from the risk, and*

*(iii) the act occurred in circumstances of the kind that D foresaw or ought to have foreseen.<sup>48</sup>*

This section specifically mentions that when due to actions of any person who either was a member of the same household or had frequent contact with a child or vulnerable adult, the child or vulnerable adult dies or suffers serious physical harm, then this offence is committed. Sub section (3) of section 5 states, *If D was not the mother or father of V—*

*(a) D may not be charged with an offence under this section if he was under the age of 16 at the time of the act that caused the death or serious physical harm.<sup>49</sup>*

<sup>48</sup> The Domestic Violence, Crime and Victims Act, 2004 § 5

<sup>49</sup> The Domestic Violence, Crime and Victims Act, 2004 § 5

<sup>50</sup> The domestic Abuse Bill, 2020  
<https://publications.parliament.uk/pa/cm5801/cmpublic/DomesticAbuse/memo/DAB33.htm>

This clearly reflects the intention of the Parliament that this section is to prohibit domestic violence by parents on their child. This section provides punishment for the offence, imprisonment for a term not exceeding 14 years or to a fine, or to both if the victim dies and imprisonment for a term not exceeding 10 years or to a fine, or to both if the victim suffers serious physical harm.

Parliament of U.K. has notice of the increasing rates of domestic violence, and how the current laws of U.K. are not sufficient to combat them. Parliament of U.K. has proposed a new Bill, Domestic Abuse Bill, 2020 which largely focused on the criminal and family justice systems. The Domestic Abuse Bill is an opportunity to make significant progress in reducing domestic abuse and affording greater protection and support to survivors. It is vital that this opportunity is not missed and the full range of legislative changes needed to offer increased support and protection to survivors is implemented.<sup>50</sup>

#### LAWS REGARDING DOMESTIC VIOLENCE AGAINST CHILDREN IN U.S.A.

Nearly 1 in 4 women (24.3%) and 1 in 7 men (13.8%) aged 18 and older in the United States have been the victim of severe physical violence by an intimate partner in their lifetime<sup>51</sup>. Crimes rates in USA are very high. United States had 47.70 crime rate indexes for the year 2020, which is 50<sup>th</sup> rank among 133 countries<sup>52</sup>. There is a serious need for

<sup>51</sup> Domestic Violence Statistics, Get the Facts & Figures National Domestic Violence Hotline

<https://www.thehotline.org/resources/statistics/>

<sup>52</sup> Crime Index by Country 2020 Mid-Year, Numbeo (2020)

[https://www.numbeo.com/crime/rankings\\_by\\_country.jsp](https://www.numbeo.com/crime/rankings_by_country.jsp)



strict laws and implementation of laws in the country. U.S. however has stringent laws prohibiting domestic violence against children in the country. 18 U.S. Code § 117 states, *Domestic Assault by an habitual offender, any person commits any assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or against a child of or in the care of the person committing the domestic assault; shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.*

The section defines Domestic Assault as, *an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.*<sup>53</sup>

According to the section, domestic violence can be by,

1. *current or former spouse*
2. *parent*
3. *child*
4. *guardian*
5. *person with whom the victim shares a child*
6. *by a person who is cohabitating with or has cohabitated with the victim*

Parent is mentioned in the list of persons recognized by the act who can commit domestic violence, which clearly and in

simple terms penalizes domestic violence against child by parents.

34 U.S. Code § 12341 states, Rural domestic violence, dating violence, sexual assault, stalking, and child abuse enforcement assistance. The purpose of this section is:

1. To identify, assess, and appropriately respond to child, youth, and adult victims of domestic violence, sexual assault, dating violence, and stalking in rural communities.
2. To establish and expand nonprofit, nongovernmental, State, tribal, territorial, and local government victim services in rural communities to child, youth, and adult victims.
3. To increase the safety and well-being of women and children in rural communities, by—dealing directly and immediately with domestic violence, sexual assault, dating violence, and stalking occurring in rural communities; and creating and implementing strategies to increase awareness and prevent domestic violence, sexual assault, dating violence, and stalking.<sup>54</sup>

#### CONCLUSION

“The best way to make children good is to make them happy.” — Oscar Wilde, author and poet

India is a developing country, where every part of society is growing then why the most essential element of the society is, children most out casted? Children are the foundation of any country, their development is, country’s development. Children who are exposed to domestic violence experience emotional, mental, and social damage that

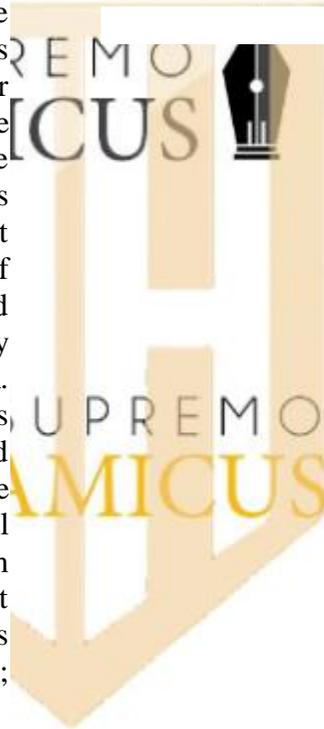
<sup>53</sup> 18 U.S. Code § 117

<sup>54</sup> 34 U.S. Code § 12341



can affect their developmental growth.<sup>55</sup> The greatest evil for a family man is making their family unhappy and not being able to protect them. Husband and wife are responsible for each other's well being, whereas parents are responsible for the well being of their child. Primary responsibility of a parent is protection of child, and not just from outside world but from their own self as well.

Domestic violence in India is addressed by the Parliament for women, however for children it has been sight sided. Few laws which provides for punishment for domestic violence against children, are not prime facie laws prohibiting domestic violence, it is incident to it. India is in urgent need for establishment of a separate statute prohibiting specifically domestic violence against child. A country can never progress if, children are not healthy. It is not just political but moral responsibility as well of the law makers to provide protection to child within the four walls of a house. Every development country, such as U.S. and U.K. has separate laws prohibiting this heinous crime. India is a signatory to many child rights conventions; it is an obligation on the country to perform its international agreements and make laws for the same in municipal domain. As one of the biggest democracy of the world, India should address plight of its building blocks of nation; children.



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<sup>55</sup> Impact on Children and Youth, U.S. Department of Health and Human Services  
<https://www.childwelfare.gov/topics/systemwide/dmviolence/impact/children-youth/>