

An analytical approach and framework of protection of domestic violence act, 2005

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Abstract

The definition of domestic violence will be when one adult in a relationship abuses their authority to exert control over another. It is the use of violence as well as other abusive methods to instil fear and control in a relationship. Threats, physical abuse, as well as sexual assault are possible forms of violence. The subtle forms of abuse will include depriving someone of their money, making them feel unworthy, and also preventing them from leaving the house. Beyond physical violence, the long-lasting impacts can also result from emotional abuse and social isolation.

It is one of the crimes against women that has to do with how well-off they are in society. The term "domestic violence" describes violence against women, particularly in married households.

The Act protects women who live in shared households as mothers, sisters, wives, widows, or partners. The subject matter of the relationship could be adoption or marriage. Furthermore covered are the relationships among family members who cohabit as a combined family. The mother-in-law, for example, cannot file a complaint against her daughter-in-law, but she may file one against her daughter-in-law for encouraging her son to harm her. However, no female relative of the husband or the male partner may file a

complaint against the wife or the female partner.

Keywords: *Domestic Violence Act, Abuse, Assault, Shared Households, Relationships, Offense, Criminal Law, Shelter Homes.*

Introduction

Domestic violence is a type of violence or any other abuse against a woman that would happen in a domestic life at the time of marriage or before marriage. Generally, it happens after marriage. Section 498A of the IPC mentions domestic violence. Domestic violence can take many different forms, including physical, verbal, emotional, economic, religious, reproductive, financial, and sexual abuse forms.

The offense under Section 498A is a non bailable offense. The offenses against women are also mentioned under Section 354 of the IPC. So to prevent domestic abuse against women, the Protection of Women from Domestic Violence Act of 2005 was enacted.

An overview of domestic violence act:

There are 37 sections and 5 chapters in domestic violence act.

Chapter 1 of domestic violence act mentions about the preliminary.

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The chapter 2 of domestic violence act connotes about the Domestic violence.

Chapter 3 of domestic violence act mentions about the powers given to the protection officers, service providers, etc.

The chapter 4 of domestic violence act mentions about the procedure for obtaining orders of reliefs.

The chapter 5 is miscellaneous.
The domestic violence act is both civil law and criminal law.

The domestic violence is non bailable offence. It means that a person who will be arrested for the crime of domestic violence can not claim for bail as a matter of right.

Enactment of domestic violence act:

The short title means the name of the act from which the act is known. Section 1 mentions about the short title and the act is known as the protection of women from domestic violence act, 2005. The extension is also mentioned under section 1 of domestic violence act and it extends to whole of India and also in Jammu and Kashmir after the Jammu and Kashmir reorganisation act, 2019. The commencement date of domestic violence act is also mentioned and it is 26th October, 2006 whereas Bill was passed in 2005.

Terms used in Domestic Violence Act:

The definitions of the terms which are used in domestic violence act are mentioned under section 2 of domestic violence act.

The first term is 'aggrieved person'. So under section 2(a) of domestic violence act, an

aggrieved person is the woman who is a victim of domestic violence.

According to section 2(b), the child means any person below the age of 18 years. The child here is also a girl because girl is minor below the age of 18 years and the child can be adopted, step or foster child.

Section 2(c) of domestic violence act mentions about the compensation order.

The compensation will be given to aggrieved woman mentioned under section 2(a) of domestic violence act. The compensation means an order granted in terms of section 22.

Section 22 of domestic violence act deals with passing an order that would direct the respondent to pay compensation or damages for the injuries of physical, emotional, verbal, sexual as well as economical means.

Section 2(d) mentions about the custodial order under section 21 of DV act. The Magistrate who grants custody of child to mother can refuse the visit of father if Magistrate finds that it is harmful for the child.

Section 2(e) of DV act mentions about the Domestic incident report in prescribed form. The domestic incident report comprises of the description of the incident of domestic abuse happened with the woman.

Section 2(f) of domestic violence act mentions about domestic relationship. The domestic relationship mentions about the domestic relationship of an accused with the harasser.

1. If the relationship is blood relationship with the harasser.

2. If the relationship is by marriage.
3. The relationship which is similar to the nature of marriage.
4. If the relationship is related by adoption.
5. If the harasser is living as a member of joint family. In Joint family, an accused can complain against all the members of family.

Section 2(g) mentions about the domestic violence. The definition of domestic violence is given under section 3 of domestic violence act. Domestic violence or family violence includes all injuries from economic, physical, sexual, emotional and psychological abuse.

Section 2(h) of domestic violence act mentions about the dowry which is mentioned under section 2 of dowry prohibition act, 1961.

According to section 2(h), the magistrate means the Judicial Magistrate of first class under criminal procedure code, 1973 or the Similar Magistrate.

Section 2(i) mentions about the Medical facility which means the facilities provided by the state government.

Section 2(k) mentions about the monetary relief and it is the relief related to money for the losses borne by the aggrieved person.

The notification is mentioned under section 2(l) of specific relief act and is published in the Official Gazette.

Section 2(m) mentions about the prescribed which means rules prescribed under this act.

Section 2(n) mentions about the protection officer appointed by state government under Sub-Section (1) of section 8.

Section 2(o) mentions about the protection order which means an order mentioned under section 18 of this act.

According to section 2(p) of domestic violence act, if the woman is expelled from shared household, she can claim for the order of residence under section 19 of domestic violence act and the Magistrate has the power to grant residence because she was expelled from the the shared residence.

Section 2(q) mentions about the respondent who is an adult male person and is in the domestic relationship with the victim or aggrieved woman. The partner of husband can also come under respondent if he is also an aggrieved person.

Section 2(r) mentions about service provider. The service provider will be the registered entity under section 10(1) of this act.

Section 2(s) mentions about the shared household and shared household means an household where the aggrieved person lives with an accused.

Section 2(t) mentions about the shelter home which is notified by the state government.

Definition of Domestic violence:

Section 3 of domestic violence act mentions about the domestic violence.

According to section 3 of domestic violence act, anything that endangers the health of woman , safety and life of woman , limb or social -being ill be considered as domestic violence. There are five types of domestic violence against woman according to this section. These are physical abuse, sexual abuse, verbal and emotional abuse as well as economic abuse.

Duties of public servants in domestic violence act:

Section 4 of domestic violence act mentions about the information which is given to protection officer by any informant and it also mentions about the liability which has been excluded i.e., no civil or criminal liability will be imposed on that person who gives the information to protection officer about the domestic violence.

The duties of police officers, service providers and Magistrate are given under section 5 of domestic violence act.

Section 5 of domestic violence act mentions when it comes to fulfill the duties of police officer, service provider and Magistrate, all of them have the duties towards the aggrieved person.

The five responsibilities are given here and are as follows:

- a) Right to make an application for monetary relief, custody order, residence order and compensation order.
- b) About the availability of services of service providers.
- c) About the availability of services of protection officers.

d) About her right to free legal services under the Legal Services Authority Act, 1987.

d) About her right to file complaint under section 498A of Indian Penal Code.

At last, it is also mentioned that it does not prevent any police officer to do his duty in case of cognizable offence.

Duties of shelter homes:

Section 6 of domestic violence act mentions about the duties of shelter homes. Generally, it mentions that the shelter homes will be provided to aggrieved woman if she is deprived of the shelter home on the request of aggrieved person or by protection officer or service provider.

Medical facilities to an aggrieved person:

Section 7 of domestic violence act:

It is same as section 6 of DV act and the only difference is that it tells about the medical facilities.

If the aggrieved person or the protection officer or service provider on behalf of aggrieved person request to the person in charge about the medical facility, the medical facility will be provided to an aggrieved person.

Appointment of protection officers:

Section 8 of domestic violence act mentions about the appointment of protection officers. According to section 8(1) section, the state government can appoint the protection officers for the security of women.

The section 8(2) mentions about that the protection officers shall be most probably women .

The section 8(3) mentions about the terms and conditions of protection officer as well as other officers who are subordinate to the protection officers.

Duties and functions of protection officers:

Section 9 of domestic violence act mentions about the duties and functions of protection officers.

1. The duties of protection officers are as follows:

Section 9(1)(a): The protection officer says to Harish what he likes the most is to do his duty. So, Harish says that the duty of protection officer is to assist the magistrate in cases of domestic violence and the protection officer says that he doesn't mind to assist the magistrate in cases of domestic violence. So here the duty of protection officer is to assist the magistrate in cases of domestic violence.

Section 9(1)(b) of domestic violence act:

The protection officer says to Harish that no sooner had he entered into the house of aggrieved than he found his husband beating her. In this case, the protection officer will make the domestic incident report and will submit it to the Magistrate and will also submit the copies to the police officer and the service provider.

Section 9(1)(c) of domestic violence act :

In accordance with this section, an aggrieved person can also claim the issuance of protection order.

Section 9(1)(d) of domestic violence act mentions to maintain the list of all service providers rendering legal aid or counselling.

Section 9(1)(e) mentions about providing a safe shelter home.

Section 9(1)(g) mentions about providing the medical facilities.

Section 9(1)(h) mentions about providing the monetary relief to an accused.

Section 9(1)(i) mentions about performing other such duties prescribed.

Section 9(2) mentions about that the protection officer shall work under the control and supervision of the magistrate and the protection officer will perform the duties in accordance with the instructions of magistrate and government.

Functions and duties of service providers:

Section 10 mentions about the functions and duties of service providers.

According to section 10(1) of domestic violence act, the service provider will be any NGO or any association registered under societies registration act, 1860 or a company registered under companies act 1860.

Under section 10(2), the service provider will have the following powers:

A) The service provider would record the domestic incident report in the prescribed form and would submit it to the protection officer and police station and also a copy to the Magistrate.

B. The service provider would also assist by providing medical facilities to an aggrieved and the copy of medical report which proves domestic violence will be sent to police officer and protection officer.

C. The service provider would also ensure that an aggrieved person would get the shelter home if she is deprived of at the time of domestic violence.

3. No suit for prosecution or other legal proceeding shall lie against any service provider which is discharging its duties under this act.

Relief in domestic violence act: In Domestic violence Act, the relief is provided to aggrieved women. The orders of relief are provided by the magistrate.

The right to reside in a shared household is also given under Section 17 of the Domestic Violence Act.

The protection order is a type of relief and is mentioned under Section 18 of the Domestic Violence Act. The residence order is a type of relief and is mentioned under Section 19 of the Domestic Violence Act.

The monetary relief is granted under section 20 of the Domestic Violence Act.

The custody order is mentioned under Section 21 of the Domestic Violence Act and is a type of relief given to women.

The compensation order is also a type of relief mentioned under Section 22 of the Domestic Violence Act.

The power to grant interim and ex parte orders are also mentioned under section 23 of domestic violence act.

All these orders are given by magistrates. The protection order is given by the magistrate under Section 18 of the Domestic Violence Act. The residence order for an aggrieved is given by magistrate under Section 19 of the Domestic Violence Act. The order for monetary relief for an accused woman is also given under Section 20 of the Domestic Violence Act. After a residence order and monetary relief, the custody order of child is given under Section 21 of the Domestic Violence Act. In the custody order, the magistrate can restrict the accused from meeting the child if it is not good for the child.

The compensation order is also given under Section 22 of the Domestic Violence Act. Compensation is always for damages, whereas monetary relief is provided if the financial condition of the aggrieved party is not good. The power to grant interim and ex parte orders is mentioned under Section 23 of the Domestic Violence Act.

False domestic incident report by protection officer:

Under section 33 of domestic violence act, if protection officer is not discharging his duties properly and filing false domestic incident report, he shall be punished with an imprisonment for a term which may extend to

one year or fine of around 20 thousand rupees or both.

Protection of action taken by protection officer in good faith:

Section 35: Protection of action taken by protection officer in good faith and provisions of this act:

There will not be any suit or prosecution or legal proceeding against the protection officer if he has performed the act in good faith which is mentioned under section 35 of domestic violence act.

Section 36 of domestic violence act:

The section 36 of domestic violence act also mentions that the provisions of this act shall be in addition to the provisions of any other act and not in derogation of the provisions of any other act.

Proceedings in Domestic violence case:

Section 27 of domestic violence act mentions about the jurisdiction.

The magistrate of first class or the Metropolitan Magistrate has the jurisdiction in cases of domestic violence.

Section 28 of domestic violence act mentions that all the proceedings of domestic violence will be governed by the code of criminal procedure, 1973.

Legislative objective of enactment of domestic violence act:

The case of Indra Sarma v. V.K.V. Sarma delves deeply into the legislative intent behind the enactment of the Protection of Women from

Domestic Violence Act, 2005. The purpose of the legislation, according to the statement, was to defend the rights of women who are victims of domestic violence of any kind. The purpose of this Act is to protect women from domestic violence.

In the Vandhana v. T. Srikanth case, the Madras High Court asserted that the Protection of Women from Domestic Violence Act, 2005, was designed to enhance the safeguarding of constitutionally guaranteed rights for women who experience violence within their families, as well as address related issues.

Conclusion: The provisions for ameliorating the condition of women are also mentioned in the Constitution of India.

The fundamental duty mentioned under Article 51A(e) is to renounce practices that are derogatory to the dignity of women.

Article 243 D(3) and Article 243 T(3) also render reservations for not less than one third of total number of seats in panchayats and municipalities to women. The humane conditions of work and maternity relief for women are mentioned under Article 42 of the Indian Constitution.

Previously, separate acts were enacted for the betterment of women. These acts were the dowry prohibition act, 1961, the prohibition of child marriage act, 2005, the commission of sati (prevention) act of 1987, the immoral traffic prevention act, 1956, etc., but there was not any act to prevent domestic violence. Thus, the Protection of Women from Domestic Violence Act was enacted in 2005.



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References:

1.
<https://www.scconline.com/blog/post/2020/07/27/law-on-domestic-violence-protection-of-women-from-domestic-violence-act-2005/>
2.
https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf
3.
<https://sunderlandsocialsciences.wordpress.com/2018/09/21/how-is-domestic-violence-a-social-problem/>
4.
<https://www.legalserviceindia.com/articles/dm t.htm>
5.
<https://www.indiacode.nic.in/handle/123456789/2021>