

ANALYZING THE ROLE OF LAW ENFORCEMENT IN RESPONDING TO DOMESTIC ABUSE

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Introduction

Domestic refers to being in one's own country. Domestic abuse is mainly caused by abuse that a female experiences at the hands of her spouse or his family. Abuse within the four walls is often considered violence between spouses. However, it also comprises partnerships where family members cohabit and interact. The Court determined that "A relationship like marriage" is not defined by the Act. In *D. Velusamy v. D. Patchaiamal* A one-night stand or a weekend spent together would not qualify as a "domestic relationship." No "live-in relationship" can compare to a marriage in the truest sense. Domestic violence comprises a wide range of violent incidents in which females are subjected to physical harm, assault, bodily injury, mental stress, misery, humiliation, harassment, abuse, danger, and fear of retaliation. In *Indra Sarma v. V.K.V. Sarma*, the Court determined that domestic abuse encompasses all types of violence, including but not limited to physical beatings that occur within a household, including emotional, mental, sexual, and financial abuse. Domestic violence refers to any type of abuse that occurs within a household, including financial, emotional, mental, sexual, and other forms of brutality in addition to physical beatings. Women's lives are inextricably linked to abuse and harassment. She encounters violence of various forms almost everywhere she goes: at home, at work, or elsewhere; from strangers or close friends; in public or private spaces.

This demonstrates how violence against women still exists in many spheres of society. For a long time, there has been a severe gap in our

judicial system, and there is no mechanism in place to handle allegations of domestic abuse against women. Because our current laws are inadequate to offer victims of violence in the private domain legal help and protection, it has been difficult for victims of domestic abuse to obtain legal redress. However, the Act currently establishes guidelines to close the gap and end the issue of domestic abuse. The Preamble of the Act states unequivocally that the aim is to eradicate and eradicate evil. It says that the primary focus will be on giving the victims immediate relief and that reasonable efforts will be made to aid in the aggrieved parties' rehabilitation. One of its goals also includes the provision for compensation. Stated differently, the primary objective is to shield female sufferers from abuse being done within four walls. Protection also paves the way for rehabilitation and compensation to the victim.

Historical Perspective

The Act was passed, and it offers support to tortured females. Although the Indian Penal Code of 1862 had provisions like Section 304B and 498A, they were insufficient to end the exploitation and harassment of women. If we ignore the past, it is pertinent to note that Indian law has, for the most part, concentrated on the dowry issue whenever we want a solution for domestic abuse. In fact, police have frequently refused to file cases under the rules unless the case relates to a demand for dowry. Eventually, the Bill was passed in 2005, and its commencement was in 2006.

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Scope and Incidents Covered under the Act

All women in household relationships, whether they are mothers, wives, sisters, widows, or otherwise, are to be protected by this Act. Therefore, under this Act, a wife has rights against her husband's family members and is protected from female relatives, regardless of the fact that they are her sister-in-law, mother-in-law, daughter-in-law, etc. In order for someone to be held accountable under this Act, they must be in a domestic relationship. According to Section 2 f, a domestic relationship is defined as a relationship between two individuals who live together or have lived together in the past and are related by birth, a relationship based on adoption, or there is a matrimonial relationship, or they are cohabiting as one single family. It includes a significant provision for women's right to residence. A woman is entitled to live in the marital dwelling no matter whether she owns the house or not. Under Section 19, residence orders can be passed by the Court. These residency orders, however, cannot be applied to a woman. There are provisions for refuge homes in this Act as well. The service providers are responsible for ensuring that those who have been wronged are given a place to stay if necessary. This Act also provides for the employment of Protection Officers. According to Section 8 of the Act, a State Government may designate as many protection officers as it deems appropriate in each district and designate the region in which these officers would carry out their duties by publishing a notification in the official gazette.

This Section further stipulates that female protection officers must be there and must have the training and experience specified by the Central Government through regulations. Under Section 4, a victim of domestic abuse has the authority to report the incident to the Protection Officer. It further states that reporting domestic abuse without any malafide intention will not subject one to legal or criminal consequences. A sufferer of injustice, a protection officer, or someone acting on their behalf may ask the Magistrate, as per Section 12, for one or more reliefs. Before making a decision on such an application, the Magistrate must consider any domestic abuse event report submitted by the protection officer.

It also empowers the Magistrate to schedule the initial hearing date, which can be scheduled up to three days after the Court receives the application. Additionally, it states that the Magistrate must try to decide on each application filed under this provision within sixty days after the first hearing.

According to Section 14, a magistrate may order any of the parties, individually or together, to seek counselling from any service provider with the necessary counselling training and expertise during the proceedings. In line with Section 15, the Magistrate may ask a suitable individual (preferably a woman) for support to take care of the Court's responsibilities, including someone who works in women's welfare. In addition, According to Section 16, the Magistrate may conduct the proceedings behind closed doors if he thinks the case's circumstances justify it and if any party requests it. Various orders, including protection orders, residency orders, financial reliefs, custody orders, and compensatory reliefs, may be granted under Sections 18–22.

Protective Provisions Provided to Woman

1. It is the right of any woman who has experienced domestic abuse to report the incident to a protection officer, police officer, Magistrate, or service provider.
2. The police officer, service provider, protection officer, or Magistrate must inform the victim of their legal rights to remedies as soon as they receive the complaint.
3. With the help of DLSA, 1987, the offended woman is having a right to free legal services, which the concerned officers shall inform her of.
4. The woman who feels mistreated has the right to file a complaint in accordance with IPC section 498A.
6. The aggrieved person is allowed to stay in a refuge house.
7. The angry woman receives medical attention. The person overseeing the facility is required to provide her with medical attention.
8. The person who feels wronged should receive professional counseling.

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9. Everything will happen behind closed doors.
10. Financial assistance must be given—maintenance for the children and the resentful party. Any awarded monetary relief must be sufficient, rational, consistent, and equitable.

Judicial Concern

A few court rulings indicate the Court's stance about the Act's implementation. In the case of *Dr Vinod Parashar v. State of U.P.*, it was decided that the Judicial Magistrate has the authority to enforce rights under the Cr.PC., and the reliefs are primarily civil in nature with the only goal of reducing procedural delays. The Apex Court in *Delhi Domestic Women's Forum v. Union of India* acknowledged the seriousness of women's condition and the harm that sexual assault does to them. In this instance, the Court established guidelines for helping the victim of rape. A qualified attorney will give the victim of sexual assault with legal assistance. Besides representing the victim, the attorney will advise her about other different options that she can utilize, like mental health therapy and medical assistance.

The Apex Court in *Lalita Toppo v. State of Jharkhand & Another* stated, "a claimant is also eligible for maintenance if she has been living as a live-in partner or is not a legally wedded wife". The Apex Court in *Krishna Bhattacharjee v. Sarathi Choudhary* It held that the 2005 Act is comprehensive and includes every kind of abuse and violence. It also provides a broad definition of terms such as aggrieved and domestic abuse as per the Indian Constitution. Every such right, which is necessary for fundamental human existence and dignity, is guaranteed to women by this Act. The goal of protecting victims of domestic abuse is articulated in the Act's Preamble. This ruling was re-examined, leading to a different conclusion from *Satish Chander Ahuja v. Sneha Ahuja.*, it was ruled that females have separate housing rights from other family members, and the trial court, not the Family Court, was instructed to decide this matter further. The reason for this decision is that the fundamental goal in the eyes of the judiciary is to protect women from violence. This interpretation is urgently needed,

given the limitations of the reliefs mentioned in the 2005 Act.

Apex Court established many rules and principles in *Amarendu Jyoti v. State of Chhattisgarh*, which serve as a basis for determining compensation amounts, particularly in matrimonial situations. In *M. Palani v. Meenakshi*, it was concluded that the length of time together as partners is irrelevant and not required to evaluate the maintenance claim, and the woman has the authority to ask for maintenance if she and the opposing party cohabitated in "a close relationship". Upon examining all of these rulings and decisions, it is evident that the judiciary is enthusiastically assuming the position of protector for victims of domestic abuse. Even if numerous obstacles remain in the victim's way of receiving justice, these gaps will eventually be closed.

How to Apply for Orders of Relief

Step 1: Informing the Protection Officer

A protection officer designated under Section 8(1) can be contacted by anybody who has cause to suspect that she has been the sufferer of domestic abuse. It is even better if the protection officer in question is a woman. A legally recognized volunteer organization whose mission is to defend women's rights and interests), or a magistrate who had received the complaint or was present when the offence took place would all inform such women of their rights. These entitlements consist of:

1. These women have the right to apply for relief by getting a residency order, compensation order, guardianship order, financial relief, or protection order.
2. They also possess the entitlement to utilize the services offered that are accessible.
3. Right to utilize the protection officers' services.
4. The Legal Assistance Authority Act of 1987 makes them entitled to receive free legal assistance.
5. Under IPC Section 498-A, they can also initiate a criminal case.

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6. It should be mentioned that the authorized protection officer who neglects to fulfil their appointed duties could spend up to a year in jail and pay a fine.

Step 2: Making a Domestic Incident Report by the Protection Officer

The protection officer is required to report domestic incidents to the Magistrate after receiving complaints about domestic abuse. If the individual who was wronged wants one, this report should include ask for relief like a protection order. The report is addressed to a Magistrate or a metropolitan magistrate or the first class magistrate, with jurisdiction:

- The respondent's residence;
- The temporary residence of the injured party; or
- The location of the alleged domestic violence.

Copies of the report should be sent to the local police officer in charge of the police station where the alleged domestic abuse occurred. In addition, the protection officers' responsibilities include keeping track of local service providers, refuge houses, and medical facilities and ensuring the abuse victim receives all advantages specified in her rights.

Step 3: Procedure Regarding Application

The Magistrate will set the date of the first hearing after receiving an application from the harmed party, someone acting on their behalf, or a protection officer. Typically, this date is at most three days after the Magistrate receives the application. In addition, the Magistrate will try to decide on the application within sixty days following the initial hearing.

Step 4: Notice to the Respondent

The protection officer will receive notice of the first hearing date after the Magistrate has scheduled it, and they will then notify the informant and any other individuals the magistrate designates. Unless the Magistrate grants an extension, the protection officer must complete this within two days of receipt.

Step 5: Other options that the Magistrate can

make use

Section 14 permits the Magistrate to propose, either singly or in conjunction with the aggrieved party, that the respondent undergo counselling from a service provider member. Such a person needs to have prior counselling experience. Section 15 of the Act allows the Magistrate to ask someone, preferably a woman, for help in performing his duties. For someone like this, a career in family welfare would be great.

Step 6: Giving Orders

- Protection Orders

The Court may issue a protection order and forbid the respondent from doing any of the following after providing the victim and respondent with an opportunity to be heard:

- Attempting any act of domestic abuse; or
- assisting in the commission of any domestic abuse.
- Getting into the offended party's workplace or, if the victim is a youngster, going to their educational institution or the place they frequently go.
- It is making an effort to get in touch with the individual who feels wronged in any way possible, whether it be through personal, writing, oral, electronic, or telephone communication.
- Inflicting violence on dependents, other family members, or anybody else who provides support to the victim of domestic abuse
- Performing any further acts that the protective order specifies.

The protection officer's testimony, which claimed that the complainant was being denied basic necessities and that the respondents were abusing her at home, was deemed by the Court in the *Yadwinder Singh v. Manjeet Kaur* case to be a significant and objective piece of evidence. Respondents are prohibited from participating in any domestic abuse, providing assistance or incitement to commit domestic violence, entering the injured person's place of employment, and engaging in any connected activity by a protective order issued by the

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Magistrate under Section 18. Section 26(1) of the Act states that since Sections 18 to 22 of the Act are civil in character and unconnected to a criminal conviction, relief under them may be obtained in the Civil Court, Family Court, or Criminal Court. The *Parijat Vinod Kanetkar v. Malika Parijat Kanetkar* case established that any legal process before the Civil, Family, or Criminal courts may seek relief under section 26, which lays down the provisions accessible under sections 18, 19, 20, 21, and 22. These are supplemental reliefs; they do not take away from other reliefs afforded by other statutes.

- In case of contempt of Protection Order

As per Section 31, a provision has been laid of penalties for the respondent's violation of Protection Order

1. if the respondent violated a protection order or an interim protection order. He will be liable for the maximum term for this offence, which is one year in jail, a fine of up to twenty thousand rupees, or both.
2. The Magistrate who issued the order, whose violation the accused is said to have caused, will be tried for the offence under sub-section (1).
3. The magistrates may also file charges under sub-section (1) while doing so if the evidence indicates that an offence under Section 498A of the Indian Penal Code, any other provision of that Code, or the Dowry Prohibition Act, 1961, as applicable, may have been committed.

Cognizance and Proof

Only individuals who violate a protection order granted under Section 18 or a temporary protection order imposed under Section 23 of the Act are subject to penalties as per Section 3. As a result, domestic abuse is not considered an infraction under the Act, and breaking a magistrate's order in accordance with Sections 18 or 23 is punishable under Section 31. Consequently, it is now unlawful for anybody to carry out acts of domestic abuse against a woman or to refuse her entry to the shared residence in violation of orders issued under Sections 18 and 23 of the Act.

Residence Orders

The subject property should be a shared household if a woman who feels mistreated obtains protection orders or orders allowing her to remain in a shared household. Under Section 19(1)(f) of the Act, the resentful woman may seek alternative lodging as a remedy if she finds the idea of a shared home unappealing. The term "shared household" is used only to allow a woman who feels aggrieved to search for alternative housing that is comparable to the shared home she previously enjoyed under Section 19(1)(f) of the Act. In the case of *Chhangur Ram Nishad v. State of UP*, it was determined that when a wife complies with the specified procedure and has the legal right to dwell in the shared household, section 17 must be applied.

It was resolved to read Sections 12 and 19 of the Act, 2005, concurrently in the case of *M. Nir-mala v. Dr. Gandla Balakotaiah*. Section 19 addresses orders of residence. It is a well-known fact that a learned magistrate must receive an application under Section 12 and independently ascertain that domestic abuse has occurred prior to granting an order under Section 19 of the Act. The case of *Samir Vidhyasagar Bhardwaj v. Nandita Samir Bhardwaj* established that, based on the prima facie evidence supporting the wife's domestic abuse accusation, the Court could compel the husband to vacate the married house in order to prevent any interference.

Monetary Relief

The Court may grant a monetary award under Section 20 of the Act if the abuse caused the lady to incur financial loss. This might pay for a woman's lost income, medical bills, repairs to her property, and other expenses. The abused woman may also request upkeep from her male companion. The paragraph further states that any monetary award must be reasonable, fair, and adequate in order to be commensurate with the quality of living of the injured party. The Court may order the respondent to place a percentage of their earnings, salaries, and cred-

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it-related debt with them to be used as a down payment for any financial aid they may need to provide. If the respondent does not make payment in accordance with the monetary order, the Magistrate may order the respondent's employer or a debtor to reimburse the person who was directly harmed.

Approach to financial support. The petitioner in *Ramu Singh v. Smt. Bhuri Bai* objected to receiving the maintenance money in one lump sum, even though the Court ordered it to be given in monthly installments. Financial support should be reasonable, equitable, and sufficient. Since the petitioner's spouse in *Abhishek Dubey v. Archana Tiwari* makes between 50,000 and 1,000,000 rupees a month, the respondent is considered the petitioner's lawful wife and is obligated to support her in line with his status. The spouse maintained his standard of living. Thus, the High Court decided to raise support from Rs. 10,000 to Rs. 20,000. The Act's Section 2(k) specifies a monetary remedy in *Kanchan v. Vikramjeet Setiya*. For the monetary order made under Section 12 to be executed, the petitioner must apply under Section 20 of the Act. However, only those who may have accrued credit or who are salaried are covered by this rule. In the event that the petitioner works for themselves, this condition will not help. When an order of monetary relief is not obeyed, Section 31 will not be enforceable; Section 125 must be utilized. The DV Act's monetary relief orders are to be implemented in line with section 125 Cr.P.C., except that no formal application is required.

Custody Orders

The Magistrate may grant the mother who is angry or whoever applies on her behalf temporary custody of the children. This prevents a woman from experiencing the perilous situation of being violently torn from her children. According to Section 21, at any point during the hearing of the application for a protection order or for any other relief under this Act, the person who feels abused or the person applying on her behalf may ask the Magistrate for temporary cus-

tody of any child or children. The Magistrate may further specify how the respondent will see the child or children if necessary. If the Magistrate believes the respondent's visitation with the child or children will be detrimental, she may reject the contract. When the mother and father are fighting their claims without considering the child's welfare, the Court has a significant responsibility to apply its discretion judiciously and prioritize the child's needs. This was determined in the case of *Gayatri Bajaj v. Jiten Bhal-la*.

Ex- Parte Orders

The Magistrate may grant temporary directions under Section 23 if he determines they are just and suitable. In addition, if the Magistrate determines from the application that there is a reasonable chance the respondent will use domestic violence or that the respondent has already done so, he may issue an ex-parte order based on the aggrieved party's prescribed format affidavit. Upon the aggrieved party's application, the Magistrate may issue an order requiring the respondent to pay damages to the injured party as well as compensation for the mental and emotional suffering caused by the respondent's domestic violence acts.

Step 7: Steps to take in case of violation of the order given

The respondent will be held accountable under this Act if he violates the Magistrate's protection order. A fine of up to 20,000 Rupees may be levied on him, or imprisonment for one year.

Conclusion

The primary motivation for the Act's enactment was to give females of our country the much-needed protection against the harassment they endure. Ending the scourge of domestic violence against women has been the primary goal of the Act from its establishment. The only goal under the Act is to provide equality before the law for all genders, although frequently it seems that the monetary relief

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provided to women is insufficient. Nonetheless, male children are not covered under it. Thus, it is humbly proposed that this Act should add all male children. Undoubtedly, there are some hurdles standing while implementing the Act's goal. For example, it is next to impossible to consider a family's reconciliation if everyone in the family was jailed following the filing of a complaint. It would undoubtedly result in the irreversible dissolution of the marriage, which will ultimately undermine the goal of giving women happiness and dignity.

The family courts must hear the matter to confirm that the women's marriage rights and obligations are met. Furthermore, passing laws alone will not be adequate until we are all attentive enough to the problem. Now, the correct time has arrived for the women who have endured harassment and

oppression in silence for the most significant period to rise above the injustice and suppression. Domestic abuse is among the most heinous forms of abuse that women endure in our culture. As per the report, over 85% sufferers of domestic abuse are women. No one is immune from the ill effects of domestic abuse, regardless of their color, faith, religion, or social standing. Domestic abuse incidents will undoubtedly continue to climb across all societal segments if the problem is continuously ignored. Thus, in order to remove this crime from our society, we must all work as a team and make all feasible efforts. It is time to come together, stand as a group, and enact more stringent legislation that will assist victims of abuse in escaping this kind of heinous crime. Marx's statement, "Equal Laws cannot be applied to Unequal people," encapsulates it.