

THE JURAT INTERNATIONAL LAW JOURNAL**"DOMESTIC VIOLENCE DURING COVID-19: A PARALLEL
PANDEMIC IN INDIA"**

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ABSTRACT

Domestic Violence has been an enormous matter of concern for everyone, as this malicious act violates basic human rights of people in a civilized society. It is an atrocious act committed by one human being on a woman in a domestic relationship with him, with punishments laid down in "THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 ". This paper concentrates on the challenging fight to protect women from these types of venomous acts of perpetrators who exploit women in a domestic relationship. At this time of the global pandemic, when the government is advising everyone to stay at homes and on the other hand, women are being treated as objects in their household. Victims of domestic are sometimes unable to stand for themselves to get justice for their mental, physical, emotional, sexual, and other destruction caused. The administration is obliged to make every woman aware about their rights or dignity and work on the implementation of laws, which are enacted for their protection against such heinous offences. Such protection is useless if women are not conscious about their rights and procedures to get relief from such suffering. This paper also talks about the procedures prescribed for relief from such offenses, judicial relief, etc. Amidst this global pandemic, there has been a rapid rise in domestic violence cases, some of which are not reported because of social pressure, lack of awareness, and fear of survival. There are several steps taken by the government and judiciary to deal with this crime against humanity. During the present scenario, we have to research the remedy or rather question the administration about the steps taken to protect these aggrieved women. As of the time's need, it is an urgency to come-up with suitable measures.

INTRODUCTION:

The term 'Domestic Violence' has been defined under Section 498A of the Indian Penal Code (IPC), which has been broadly defined later in the Protection of Women from Domestic Violence Act, 2005. In India, Domestic Violence includes any form of violence, physical, emotional, or sexual, where a female suffers from violence caused to her by her family members or relatives. The laws related to protection against Domestic Violence are not just restricted to the ones stated so far, but the graveness and depth of this problem to an unimaginable extent. However, the matter which actually requires more attention at the present point of time is that this problem which itself extends to a very controversial level has rapidly increased during the current time of the outbreak of the Covid-19 pandemic.

The number of women becoming a victim of it has increased drastically since the lockdown for preventing spread of Coronavirus has been imposed. People are staying home in order to stay safe, but this is nothing less than a threat to the safety of the ones who have already been staying inside. This rise in the number of women being subjected to Domestic Violence is rather alarming since it has now taken the form of a parallel pandemic that needs to be controlled soon. Presently, violence is creeping into homes and posing threat to many family relationships. The present lockdown period could have been used as an advantageous ground to work on these rather than destroying them to an irreparable extent.

THE MEANING OF DOMESTIC VIOLENCE:

Domestic violence includes any act, commission, and conduct of a person on women who have been in a domestic relationship. According to the legal definition, of domestic violence, provided by sec. 3 of, THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, the act of Domestic Violence also includes harm or injury to health, life, safety, protection, and well-being of the women by an act of physical, verbal, sexual, and economic abuse.

Firstly, to understand domestic violence, it is important to know, what domestic relationship is, the legal definition of a domestic relationship is given in the said act, under sec. 2(f), it states, that, "domestic relationship" means 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.¹

Secondly, domestic violence with women is considered as a violation of human rights in a civilized society. It is a malicious act of violating and destroying the dignity of women by depriving them of their rights, which amounted to the crime against humanity. When administration and judiciary are failing to protect women from such types of offenses then it's also a massive violation of their fundamental rights enriched by the constitution of India, for protecting the life and liberty of women, to live a peaceful and dignified life.

TYPES OF ABUSES:

This brutal act of "domestic violence" includes innumerable types of abuse, which affect the women physically, mentally, emotionally, economically, etc., in society. These all abuses are punishable under the penal law, and, also it is punishable under, THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005. According to the legal categorization, these are the following types of abuses: -

- **Physical Abuse:** This act of "Physical abuse" means an act or conduct of the respondent in such nature, which provide, harm, injury, bodily pain, a threat to life, criminal intimidation, etc., which affects the women physically. The legal definition of "Physical abuse" is provided under the section, 3(d)(1) of THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005. Physical abuse gives bodily pain to the victim, which is considered as an inhuman activity of a respondent on the victim of "Domestic violence".
- **Sexual Abuse:** "Sexual abuse" includes any act or conduct of a person, which amounts to strong harm, degradation, humiliation, or otherwise, destroy the dignity of women, sexually. The legal definition of "Sexual abuse" is given under section, 3(d)(2) of THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005. It shrouds all the act or conduct of sexual nature without the consent of women, for the purpose of her exploitation.

¹ THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 NO. 43 OF 2005 [13th September, 2005.] Section, 2(f).

- **Verbal and Emotional Abuse:** “Verbal and emotional abuse” means, to insult, humiliate, ridiculous comments particularly for not having a child or male child. In other words, it is an act, conduct, and expression of a respondent, which gives mental stress, pain, discomfort, anxiety, or affects the mental condition of a woman. The legal definition of “verbal and emotional abuse” is given under section, 3(d)(3) THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.
- **Economic abuse:** “Economic abuse” means, deprivation from the property, shares, and, all kind of financial benefits, which the aggrieved person is entitled to get, by any law or customs to fulfill their necessity, and also not specifically the necessity of household, but, all their fundamental needs. It also includes deprivation from any kind of financial or economic right, which aggrieved person has an equal share, for instance, share in the household, entitled to utilize or enjoy by the integrity of the domestic relationship. The legal definition of “economic abuse” is given under section, 3(d)(4) of THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.

FACTORS LEADING TO THE INCREASING NUMBER OF DOMESTIC VIOLENCE CASES DURING THE PANDEMIC:

There are a number of factors that have led to the rapid rise in the number of Domestic Violence cases that have been filed in the time of this Global Pandemic, when everyone has been advised to stay in their houses and pursue work from home. The factors can be classified into various categories, some of which are as follows: -

- **Pent-up Aggression:** In the times when everyone is dispirited about the prevailing pandemic situation, it is bottling up multiple emotions in people. The public has been advised to stay within the four walls of their houses considering the worsening situation of the virus outbreak. People’s emotions are taking the form of pent-up aggression, leading them to behave in an unacceptable manner. The aggression is emerging out in the form of violence. The women who are home-makers are experiencing the worst repercussion of this aggression, since in such households, the family’s financial needs totally rely upon the income of the male earning member. Such males have been restricted to their households and at the same time have to carry on work from home. Their aggression from all these restrictions is coming out

while dealing with their wives, making these innocent women subjects of male supremacy and Domestic Violence.

- ***Damaged Matrimonial Relations:*** In the present times, many married couples have been having compatibility issues. Some of them consider getting divorced or living separately, whereas some consider sticking together for the sake of their families, but actually lead two different lives under the same roof. In such scenarios, the second categories of couples are being forced to spend time with each other, which might help them as they could give their relationship a second chance. But the harsh reality is that the condition of these couples is getting worse day by day. It is difficult for those couples to even bear the sight of each other in the same room. In such a situation, mostly the outcomes are increased arguments, disturbing atmosphere affecting the mental health of the couple as well as their children, and many other distressing consequences. This often leads to the wife becoming a victim of Domestic Violence, since the violent side of the husband acts up in this situation, thereby further deteriorating the condition of their relationship.
- ***Break from Reality:*** Movies, television shows, web-series, and many other things act as a break from reality and make us see things from someone else's perspective, we tend to get influenced by such things and sometimes end up changing our perspectives. All these sources of recreation are mostly fictional and are of multiple genres. Some aim at bringing into light the unseen or dark aspects of society, but in no way intend to influence their audience in a negative way. Some men take these things too seriously. If some movie or show showcases misogynist or patriarchal elements or the ones where women are objectified or being subjected to domestic violence, it in no way intends to influence the audience to follow those ugly practices. Some people tend to take these immoral and wicked elements showcased as a correct approach to life and are unable to differentiate between right and wrong behaviour. In such situations, the ultimate sufferer is again the woman of the house, since she is subjected to these atrocious acts.
- ***Prevailing Unemployment:*** Presently, where survival of people is in trouble because of the prevailing pandemic condition, another major drawback increasing the number of obstacles in the way of citizens is the prevailing financial crisis. This problem has worsened as a number of people are now unemployed. The financial crisis during the pandemic has only added fuel to the existing fire of unemployment, leading to a

bigger fire. Maximum dependence regarding financial concerns presently is on the savings people have had over the years. Many people working on daily wage basis, who do menial jobs, who have been on probation, who have started work with a company recently, and several other people who do not have a job now, since their employers do not have enough funds to supply them for a long time, lack savings and are now unemployed. Other than that, entrepreneurs with businesses like tour and travel, hotels and restaurants, etc., now have their businesses at stake. This is leading to the affected people experiencing the burden of their family's responsibility, since most of these people are the bread-winners of the family. This is consequently leading to some of these people releasing their frustration on their wives in the form of violent actions, making these actions fall within the ambit of domestic violence. Eventually, the ultimate sufferers of this major deterrent are the women.

REMEDY LAWS TO PROTECT WOMEN FROM DOMESTIC VIOLENCE:

The laws involved to protect women from domestic violence that they face in their households, are aimed to prevent these types of malicious and inhuman activities by the perpetrators on the victim. These laws do not distinguish between married women and women who are in live-in relationships. It provides equal protection to both from abuse at the hands of their partners.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

The Act has been enacted by the Centre, which is the Union of India. This Act prevails in all States as well. States appoint 'Protection Officers' for it. The work of the protection officer is to provide financial, medical, and other necessary assistance to aggrieved women, who go through such harassment and experience violation of their rights. Protection officers appointed by the State and Magistrate form the core assisting unit for imposing the provisions of this Act for the protection of victim women as and when required. When any act which comes under the category of Domestic Violence is committed, the victim may file the matter to the Magistrate, who then transfers the matter to the Protection Officers associated with the Court. The victim can also approach the Service Providers or the Protection Officers directly for assistance. This Act abides them by a duty to furnish the aggrieved woman immediate

medical assistance and help provide a safe shelter home as per the situation's requirement. The Protection Officer/Service Provider shall report the incident before Magistrate as soon as possible, in case they are intimidated first. If any medical assistance and residence are not already furnished by the Protection Officers, the Magistrate may guide them accordingly. The victims may be any female members living in the shared household in Domestic Relationships. The wrongdoers may be male relatives and may also be female relatives of the victims. In the case of, *Kokum Sharma v. Mahindra Kumar Sharma*², the Delhi High Court has stated that "the affidavit of assets, income and expenditure of both the parties are necessary to determine the rights of the parties and hence it is essential that both parties on sworn affidavits file the same before the court so as to pass orders regarding monetary reliefs".

1) Against Whom The Complaint Filed (Respondent): The term "Respondent" states any major male person, who is, or has been in a domestic relationship with the victim and against whom the aggrieved person has files, suit for any relief under the Act provided that an aggrieved wife or female living in a relationship in nature or marriage may also file a suit under the act against the relative or male person.

In the case, *V.D. Bhanot v. Savita Bahnot*³ the Apex Court upheld the Delhi High Court's view that - "even a wife who had shared a household before the Domestic Violence Act came into force would be entitled to the protection of the Domestic Violence Act".

2) Duties Of Police Officers, Protection Officers And Service Providers: Sec. 5 of this Act clearly states, the duties of Protection Officers, Service Providers, Police Officers, and the Magistrate is to advise the aggrieved women about her right to filing an application for the purpose of one or more reliefs under the rights guaranteed by this Act. These Officers' services are free to every aggrieved woman as free legal aid, under the Legal Services Authorities Act, 1987 and under sec. 498A of Indian penal code, 1860.

If the aggrieved person requests Protection Officer or service provider it is the duty of this officer to provide shelter to that aggrieved woman. In case, the woman or

² FAO 369 OF 1996 Decided on 14/1/2015

³ SLP (CRL.) No. 3916/2010

protection officer on her behalf requests any medical officer, then they are bound to provide free medical assistance to the woman.

3) ***Procedure For Obtaining Order Or Reliefs*** :A victim or a Protection Officer or any other person while representing the aggrieved woman may file an application to the Magistrate demanding one or more reliefs for protection under the provision, who shall fix the first date and time of proceedings of the complaint ordinarily within three days of its acknowledgment and shall be finished up or to dispose of every complaint within sixty days of the first proceeding (given under Section 12 of the Act). The reason for this is necessity with which the proceedings under the provision are required to be inferred in an expeditious way. The Magistrate may at any phase of the hearing, guide the parties, either singly or jointly, to undergo counselling with any official of the Service Provider who is qualified and experienced. The Magistrate may secure the assistance of a person, preferably a woman, immersed in promoting family welfare for the objective of assisting the Court to ensure timely disposal of the matter (given under Section 14 of the Act). The hearings may be done in front of a camera if either party demands or prefers. The Magistrate, under the Act is authorized to deliver Protection Order, Residence Order, Monetary Relief, Custody Directions, Compensation Orders, and interim or ex-parte directions. As per Rule 15(6) of Rules, the paragraph trial procedure should be pursued. Under section 25 the magistrate may change, modify, or revoke any direction delivered by him on the receipt of application of aggrieved woman or of the respondent. According to Section 28, the Court can lay down its own procedure for adjudicating the application for any relief or for ex-parte direction. Under Section 24 of the said Act, Magistrate can provide copies of order passed, free of cost, to the parties to the application, to police officer-in-charge and the service providers.

4) ***Judicial Reliefs Available to The Victim:***

(a) Protection Order (given under, Section 18): Through the Protection Orders, the Magistrate may prohibit respondent from committing any act of domestic violence, aiding or abetting the commission of offence of domestic violence, entering the place of employment of the victim, entering the school of the victim, if it is a kid, any sources of communication, isolate any assets or bank account held together, violence on the relatives of the aggrieved person or any other acts not prohibited by the Act. In

one of the important cases, *Namita Mohanty and another v. Pankaja Kumar Mohanty & Ors*⁴, court ruled that, “There is no need to wait for domestic incident report of protection officer for issuance of notice.”

“To issue direction to undergo counselling is not compulsory when Magistrate comes to the conclusion that matter can be settled.”

(b) Residence Order (given under, Section 19): A Residence Order may be delivered by the Court if the aggrieved person feels she may be thrashed out of the house or in case where she has been expelled but expects to return to the house. In lawsuits where a woman does not want to reside with the husband, an order may be delivered to eliminate the husband from the shared household.

(c) Monetary Relief (given under, Section 20): This ruling can be pursued to meet any expenditures that the victim overlooked while facing violence e.g. medical bills, etc. A married woman can also claim maintenance. The Bombay High Court ruled in the case of *Deepak Gupta V. Sonu Gupta & Ors*⁵, “The maintenance order under Section 125 of CrPC or under Protection of Women from Domestic Violence Act can be passed on the basis of palpable income of husband.”

(d) Custody Order (given under, Section 21): An aggrieved woman can ask for interim custody ruling of her children. This is to avoid the victim from being separated from her children.

(e) Compensation Order (given under, Section 22): A Compensation Order can be demanded for, by the woman for mental and physical pains tolerated.

(f) Interim/ Ex parte Order (given under, Section 23): A temporary order may be delivered by the Court after the filing of case and before the pronouncement of conclusive order. This is to ensure that aggrieved woman is taken care of while the proceeding is going on.

⁴ AIR 204 NOC 503 Orissa.

⁵ Cri. Rev. Appln. No. 215/14 Bombay High Court, Hon'ble M. L. Tahaliyani, J. on dated 1/10/2014.

PROBLEM AS OF THE PREVAILING PANDEMIC SITUATION:

During the present time, when most of the world is under severe lockdown and people are being advised to stay at home and continue with their work from home, this problem has rapidly risen. The consequences of the epidemic on human behaviour had not been given much thought before imposing this lockdown. These consequences have just started coming into light and would raise multiple obstacles in the way of tackling them effectively. Domestic violence has definitely been an unintended repercussion behind the lockdown's idea. The victims and the perpetrators are eventually under the same roof and will have to continue with that for a while. In such a scenario, even if the victims take a stand and rebel against such wrongdoers, there is a great chance that their rebellious actions might not be impactful for a long while.

The problem is a lot more gigantic than it looks like, but that does not mean that it cannot be controlled. Certain awareness measures would definitely help to look after the current situation. This is a problem that people all over the world are struggling with. Attitudes towards domestic violence play an important role in the reporting and incidence of domestic violence during the lockdown⁶. There should be more helpline numbers so that maximum affected women can reach out to the authorities as soon as possible. Immediate action needs to be taken once such a crime is reported. Security and relief measures for affected women need to be increased. No woman shall be exploited anywhere, under any circumstances merely for the sake of keeping the family together. Not only the victims, but the ones around them should be vigilant as well. If any woman is being subjected to Domestic Violence anywhere, and is unable to seek for help or is refraining from doing so under any fear, the spectators or the ones having any sort of such knowledge should immediately report the matter.

This time should be seen as a blessing in disguise and should be spent with families, balancing other responsibilities alongside. The time spent with family members should be effective and productive and should be spent following and respecting the basic boundaries of humanity. The laws should be followed and punishments should be feared for people to continue to live peacefully while also following basic social norms. The remedies provided

⁶See, UNINTENDED CONSEQUENCES OF LOCKDOWNS: COVID-19 AND THE SHADOW PANDEMIC BY SARAVANA RAVINDRAN AND MANISHA SHAH, also available at,

<https://www.nber.org/papers/w27562>

by law under the acts mentioned previously, should be adhered to in case Domestic Violence is reported by anyone and serious as well as timely action should be initiated. The grievousness of the punishment is definitely a matter of consideration. The nature of the punishment should definitely be looked into. Punishments of more stern nature are required so that the thought of those is enough to haunt the culprits before any such act is committed.

Court on its *Own Motion v. Union Territories of Jammu & Kashmir and Ladakh through Secretaries, Social Welfare Department*⁷ judgment took *suo moto* cognizance of the cases related to domestic violence and issued notices to the Secretary, Department of Social Welfare, Government of Union Territories of Jammu and Kashmir and Ladakh, and Member Secretary, Jammu and Kashmir State Legal Services Authority, to submit a report highlighting the steps taken regarding domestic or any other kind of violence being faced by women on account of the implementation of the COVID-19 lockdown. The Bench also issued a list of measures for immediate assistance to the victims, which were, creation of dedicated funding to address issues of violence against women and girls as part of the COVID-19 response by the Union Territories of the Jammu and Kashmir and Ladakh, increased availability of call-in services to facilitate discreet reporting of abuse, increased online legal and counseling service for women and girls, designate shelters and safe spaces for women who are compelled to leave their houses because of the domestic situation.

CONCLUSION:

It cannot be inferred that the lockdown is the sole reason behind the rapid rise in the number of Domestic Violence sufferers. All the factors discussed previously are just a few reasons for the problem in light. The mentality that such perpetrators possess is actually the factor that plays the most significant role in the rising problem. Many families which were on the verge of breaking have now re-united and are willing to give their relationships second chances. On the other hand, some people are experiencing the ugly consequences and are now stuck on the possibility of breaking their relationships.

Patience is the most effective key. People with aggressive and short-tempered mentalities should think twice before acting up. Issues should be resolved as peacefully and as patiently as possible so that such situations can be avoided. Every human being, irrespective of gender,

⁷WP(C) PIL No. 1/2020, the High Court of Jammu & Kashmir

age, nationality, such other factors, are experiencing an emotionally depressed phase because of the lockdown and the prevailing pandemic situation. Everyone is worried about its repercussions and future effects. It is best that in such a time, everyone is supportive of each other, rather than making survival conditions more difficult and problematic for one another.



The Jurat