



# REMEDIES AGAINST THE MISUSE OF THE PROVISIONS OF DOMESTIC VIOLENCE ACT

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**Abstract--** Domestic violence denotes to violence or abuses by one individual against the other in domestic settings, like in marriage or cohabitation. In India, 25% of Indian woman is a victim of domestic violence sometime of her life. The Protection of Women from Domestic Violence (DV) Act 2005 has been approved under Indian Constitution which guarantees safeguard of woman against domestic and for matters linked therewith or incidental thereto.

DV Act has been heavily being misused. The Supreme Court has expressed it “Legal Terrorism”. In India only woman is seen as victim. Man who protests of being attacked at home or harassed by his wife are always disregarded. This is infringement of fundamental rights also. At present wife torture their spouse emotionally and physically. DV Act is misguided effort to ratify legislation to allowed woman legal supremacy over man and to make a community where man is deprived of his right. It requires urgent revision in law on behalf of justice as well as safeguard from infringement of fundamental rights of man, his relatives.

**Keywords:** Domestic violence, Misuse

## INTRODUCTION

Domestic violence is an international problem reaching across nationwide boundary as well as social, economic, cultural, ethnic and class differentiations. Domestic violence Acts and sec-498A have been greatly being misused. The term ‘misuse’ is itself misused by the court. All the time woman uses the laws, she is told she is misusing it; shockingly, when an Indian women access the laws, she is frequently labelled as a woman of bad characters.

The patriarchal system has been intensely rooted in Indian civilization since time immemorial. It may be believed that this system laid the foundation stone for the abuse of women. Domestic violence affects women from every social background irrespective of their age, religion, caste, or class. It is a violent crime that not only affects a person and her children but also has wider implications for society. Although the root behind the crime is hard to decipher, certain reasons behind the violence can be traced to the stereotyping of gender roles, and the distribution of power.

The definition of violence has evolved over the years to an extent it not only includes physical forms of violence but also emotional, mental, financial, and other forms of cruelty. Thus, the term domestic violence includes acts which harm or endangers the health, safety, life, limb, or wellbeing (mental or physical) of the victim, or tends to do so, and includes causing: physical abuse, sexual abuse, verbal abuse, emotional abuse, and economic abuse, perpetrated by any person who is or was in a domestic relationship with the victim.<sup>1</sup>

This research paper tried to the biased nature of DV Act towards woman and how they misuse this safeguard for acquiring advantages and harass the man. This Act is completely prejudiced towards woman, from the accessibility of reservation to the statutory provision. This study give effort on identifying the problems by enumerating certain legislations that are misused at the blink of an eye by woman which result in the destruction of men’s career and life. Despite these provision, there are many more law such as rape, abuses, fraud, defamations that are concerned as male perpetrated and there are not enough evidence and legal sanction to change this view point.

<sup>1</sup> Sugandha Indulkar, ‘When a woman uses law, she is accused of misuse; when an Indian woman uses law, she is labelled with bad character’, The Times of India, August 14, 2017



## DOMESTIC VIOLENCE (DV) ACT

DV Act gives definition of "domestic violence" for the first time in Indian law, with this definition being wide and comprising not only physical violence, but also other types of violence such as emotional and psychological abuses. It is civil laws meant mainly for protection orders, rather than criminal law.

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse, whether physical, sexual, verbal, emotional or economic, or the threat of abuse. This definition also includes harassment by way of unlawful dowry demands to the woman or her relatives.

Key provisions of DV Act:

- damages or jeopardize the wellbeing, life or limb of a blamed individual, either mentally or physically, comprising the cause of physical violences, verbal and emotional sexual abuses and financial abuses;
- Harasses, harms or threat the individual being mistreated with the intentions of coerce him or any personal or her to meet any illegal demand for dowry, money or other valuable properties or safety;
- the effect of any behaviour refer to in clauses (a) or clauses (b) threatening the aggrieved or any individual associated to him; or
- Injure or hurt the accused individual, be it physically or mentally.

The DV act has given too much benefit to the woman and it is the most dangerous weapons which woman can utilize against man to extorts, exploits, and threaten man just such as terrorism. The DV act has provision such as rights to residence in spite of of legal rights on the property, maintenances. These provisions in law make the law simply weak to use wrongly. For the name of protection of woman the prosecution of innocent man is against the rule of laws. A woman can misuse the law very simply. If she insult and abuse him mentally or even physically, he doesn't have any legal remedy in DV Act, even the minor difference in matrimonial ties could invoke the provision of this act, in addition the procedures of laws are administered by CRPC that mean men even making a very light abuse to women is treated such as a criminal offence. if the case is fake the status of men and their families are tainted and there are no measures or legal safeguard available to man to safeguard his status. Conversely, this Act treats man like a sitting duck.

To take simple divorce and maintenances this act is the primary tool utilized by the woman though she is not subjected to any such kind of domestic violence, though the subject is sub-judice the man is forced to pay maintenance to woman, this means that penalization for man begin as soon as fake complaints are lodged, which is against the principle of natural justices where there is assumption of innocence.<sup>2</sup> In *Kamtachi v Laxmi Narayanan*<sup>3</sup> case the SCI has held that there is no restrictions to file complaints as per DV act.

<sup>2</sup> Aruna Sharma, "Women's rights: Misuse of laws erode faith in justice system", The Financial Express, Nov 14, 2017

<sup>3</sup> *Kamtachi vs. Laxmi Narayanan* CA NO 627 OF 2022



## HOW DV ACT IS MISUSED?

Against Partner and his parents: With the growth in education, economic safety, and modernization, the more independent and the radical women have made Sec.498A as weapons in their hands than a shelter.

Because of this, many husbands have become the victim of the revengeful daughters-in-laws of their houses.

Blackmail Attempt: These days in many cases where Sec498A is invoked, they turn out to be fake cases as they make to be just blackmail attempt by the wife when troubled with stressed marriages.

Because of this, in most cases in DV Act complaints are normally followed by the demand of cash to settle the cases outside the court.

Degradation of Marriages: The court held specially that there are misuses and mistreatment of the provision to such an amount that it was hitting on the basis that is the base of marriages itself. This has eventually proved to be not better signs for the wellbeing of community for the public in general. Woman has started misusing S.498 as these laws are an instrument for their revenge or to loophole of marriage.

### Sec 498A and the Allegations of Misuses

In the past 20 year of criminal law reforms general arguments made against law associating to violence and abuse against woman has been that woman misuses this legislation. The police officials, community, political leaders and even judges of the Courts have provided this argument of the "misuses" of law intensely. The allegations of misuses are made specifically against Sec 498A of IPC and against the crime of dowry death in Sec 304-B. The Malimath Committee reports on reform in the CJS also noted, vitally, that there are common complaints that Sec 498A is put through gross misuses; it utilizes this as justification to recommend amendments to the provisions, but gives no information to address how often the section is being misused. It is significant therefore that this "argument" is replied to, in order to present clear pictures of the current real position of the impact of numerous criminal legislations ratified to safeguard woman.

DV and abuses by spouse and relatives are multifaceted behaviour and the societal arrangement of court, police officials and legal culture thoroughly be liable to lessen DV instances. S.498A was initiated in 1983 and the reform has not been effectively assessed at all by the government regarding their deterrence objectives, in spite of the institutionalization of laws and policies to criminalise DV. The perspectives of the state authorities requires to alter from that of safeguarding the husband and in-laws against potential "misuses" of the law of DV to that of executing their actual purposes – to identify that such violence and abuses are crimes and safeguard woman who has the bravery to file complaint against their abuser and criminals.

## CRITICAL ANALYSIS OF CASES

In *Susheel Kumar Sharma vs UOI*<sup>4</sup>, the Court opined that simple misuse of provisions of law don't as such invalidate law. But it also recognized that in various examples, complaint as per Sec.498-A were being filed with a slanting motivation to demolish individual feud and obviously said that it is for the law to find way on how to manage misuse of this laws as well as on how to eradicate the disgraces undergone during and after the trials by the wrongly accused. It also criticized the misuse of Sec 498-A IPC by describing that it amount to unleash legal intimidation.

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<sup>4</sup> (2005) 6 SCC 281.



in the case of *Balwinder Singh vs Richa Sharma*, it was held that it has been viewed that the Protection of Woman from DV Act, 2005, suffer from intrinsic flaw which entice woman to misuses its provision and man to fear being prosecuted under the Act without any reasons. It has been observed that the remarkable flaws in these laws are that it lend itself to such idle misuse that woman will find it difficult to resist 8 of 9 the temptations to teach lessons to men and his relatives and would file false case.

*Shamshada Akhter v Ajaz Parvaiz Shah*<sup>5</sup> The court in J&K has inflicted Rs. 10 lac fine on women who had dragged her husband into a domestic violence issue, pursued the matter right up to the Apex Court, and ultimately decided to depart it. Court observed that the case was a good example of a violence of the processes of law where the wife had drawn out the proceeding as per DV Act upto its "maximum capacity of elasticity" just to make sure that her husband remain deprived of the shared household although it was owned by him.

In a remarkable case, *Rajesh Sharma vs State Bihar*<sup>6</sup>, the court provided some directions to evade the misuse of Sec.498-A. The court gave an order to make welfare committees in all districts, which must include para legal volunteer, wife of officers and social worker. The committee would talk about this problem and give reports to the concerned authority. The arrest must be kept on pending until the report of the committees is got. The court allowed the LSA to give training to the committee associates once eventually.

In *Narendra vs K Meena*,<sup>7</sup> a spouse always compelled her partner to live separate from his parents and relatives. The aim of the wife spends entire income of her partner herself. She alleged fake charge against her husband that he illegal relation with their maid. In addition, she had tried to do suicide. The husband saved her from doing suicide. According to the bench, "if the wife had succeeded husband, it would have entangled the husband into clutches of law. It is mental cruelty to husband. Only one event was sufficient for the husband to get divorce on the ground of cruelty." Therefore, the orders, passed by the Court against the appellant, is said to be keep back and quashed.

The misuses of the DV Act can reduce if:

- There should be added the word "Male" in the DV Act. It will result in reduce of misuses.
- Men must not get threatened with the warning of his wife. Men must file complaints against their wife.
- An accurate investigation must occur by the police officials after registering the complaints by the wives.
- The committees must also be made where the innocent males have been acquitted, as watchdog to watch and review orders by the courts.
- Even before arresting men appropriate enquiry should be made as DV is non-bailable and no evidence is needed for arrests.

## CONCLUSION

Domestic violence is kind of abuse, spousal abuse or family violence. It is a pattern of behavior which involves the abuse by one partner against another. The definition of the term traditionally, domestic

<sup>5</sup> *Shamshada Akhter vs Ajaz Parvaiz Shah* Case No 3722349/2019

<sup>6</sup> *Rajesh Sharma and Ors. vs. State of Bihar (CrI.)* No. 2013 of 2017]

<sup>7</sup> 2016 (5) Recent Apex Judgments (R.A.J.) 664 : 2016 (4) R.C.R. (Civil) 706 (9) JT 564 : 2016 (3) DMC 429 : 2016 (9) Scale 681.





violence was mostly associated with physical violence. But, this scenario has been totally changed. To prevent violence against women and to protect the rights of aggrieved women, the legislation 'The Protection of Women from Domestic Violence Act, 2005' was passed by the parliament. Through this enactment, the women are very much protected now-a-days. A country in which women are respected and protected can develop very well. So, domestic violence is a human right issue and it is obstacle in the development of country.

Domestic violence is an extremely complex. It is a different form of abuse, committed most often within four walls of the family house. Domestic violence is defined as an act of omission or commission stressing the fact that omission can cause as much heat burn as acts of commission. Now women do not have to suffer a prolonged period of abuse before taking recourse to the law. The legislation has widened the scope of domestic violence and can be broadly related to human rights. A woman of any age, she may be a girl child, and unmarried, married or elderly women including a widow are such women with whom men have marriage like relationship. Violence can be both physical and psychological. It indicates threats or aggressive behaviour towards her not only to her physical being, but towards her self-respect and self-confidence. Supreme Court has evolved new trends in the concept of domestic violence from time to time and expanded its scope.

The misuse of DV law is a mistreatment to the legislations and the purpose of this law. Lawyers are the authority to reveal before the judiciary associating the disadvantages and limitations of not making DV laws gender neutral. They have the chance to begin the changes and stop egoistic woman from damaging the transparency of the institution by misusing the law that are supposed to perform as a shelter. Prior to making amendment, solutions to these issues must be made. The judiciary must make compulsory rules and regulations concerning the misuses. These rules and regulations will be follow by all lawyers before prosecuting the male and assure that no misuse is occurring. If the solutions are not fair and powerful enough to stop the misuses, the only method is to revise.

#### SUGGESTIONS

- The Judiciary must begin inflicting penalty and strict action should be taken against the person for creating fake accusation since DV Act lack the deterrent aspect for which the dowry cases are growing at these alarming height.
- Strong action should be taken against the corrupt police officials; they should either be punished if it becomes obvious that there has been coarse negligence of duties on their part.
- NGOs must examine complaints appropriately without any partiality towards the women regarding that the DV Act being misused largely to harassing more women in their husband and his relatives.
- The basic cause of DV Act being misused to harass innocent husband and his relatives is its non-bailable nature. The section must be made bailable to stop innocent old parents, pregnant sisters, and school going children from languishing in arrest for weeks without any mistake of them.
- Everybody must have equivalent privileges and duties, irrespective of gender. In the current scenario, there must be similar laws to safeguard harassed husband and his relatives from an dishonest wife.



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