6.1 Introduction

Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women. Violence against women and girls continues to be a global epidemic that kills, tortures, and maims physically, psychologically, sexually and economically. It is the one of the most pervasive of human rights violations, denying women and girls equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms.¹

A life free of violence is woman’s right. Domestic violence is a serious, widespread social problem not limited to the social context of India, but is a world wide phenomenon which affects both the developed and the under developing world.²

It is ironical that today despite the proliferation of education and the social advancement with revolutionary changes in the people’s attitude towards the institution of family all over the world, the incidents of domestic violence persist and are still tolerated. The reported cases on domestic violence are but the mere tip of iceberg. In our Indian society which is primarily crystallized in the matrix of

patriarchy, the phenomenon of domestic violence exists unabatingly and continue to be so, as long as the socio-cultural and economic factors in the society keep one of the spouses subservient to the dominance of the other.

More often it has been found that the socialization pattern in our society, has to a considerable degree ensured the continuing dominance of the males over the females.³

Patriarchal values regulate sexuality, reproduction and social production and are exposed through specific cultural metaphors. Overt rules prohibiting women subtle expressions of patriarchy are through symbolism giving messages of inferiority to woman through legends highlighting the self-sacrificing, self-effacing pure image of woman and through the ritual practices, which day in and day out emphasize the dominant role of a woman as a faithful wife and devout mother. Woman are not only socialized into being silent about their sufferings but also made to realize that being a woman she is supposed to bear the unbearable. The Traditional norms and values teach them to accept and tolerate and even rationalize domestic violence. Indian society greets the problem of domestic violence with a deafening silence.⁴

6.2 Domestic Violence: A Human Rights Issue

Violence against women is a human rights issue. Conventionally, ‘civilized life’ and ‘human dignity’ are perceived within the public sphere. The human rights law has primarily aimed to protect against the limitations imposed on the individual rights by

⁴ The Tribune, May 24, 2009 at 8.
the State. The trespass on civilized life and human dignity manifested in domestic violence, which occurs within the private sphere, has therefore eluded the human rights concern. Domestic violence, occurring as physical and physiological abuse, defiles the very existence of the abused person, who most often happens to be a woman.\(^5\)

Domestic violence thus contravenes the Universal Declaration of Human Rights (Article 3): ‘Everyone has a right to life, liberty and security of person’ and the Section 2(d) of the Protection of Human Rights Act, 1993: Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the International Covenants and enforceable by courts in India. Immune from law, domestic violence perpetuates beyond boundaries, constantly challenging the universality of human rights, i.e. their applicability in all places and domains.\(^6\)

6.3 Domestic Violence: A Health Challenge

Discrimination exists against women in their access to nutrition and physical and mental health services, endangering their current and future health. Domestic violence is linked with malnutrition among both mothers and children. Researchers from the Harvard School of Public Health (HSPH) have found that Indian mothers and children experiencing multiple incidents of domestic violence are more likely to be anaemic and underweight. Anaemia, characterized by a low haemoglobin count, impedes the oxygen

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\(^6\) Ibid.
carrying capacity of blood. While its mild symptoms are weakness and fatigue, in extreme cases it can be life threatening. Among adolescents, anaemia affects concentration ability and memory and in pregnant women it increases the risk of infant morality. The anaemic are generally more susceptible to diseases. While there are many kinds of anaemia, each with its own cause, in India iron deficiency anaemia is most common. Poor diet is a major culprit. Higher occurrence of anemia among women has a correlation with their poor status. S.V. Subramanian, associate professor of society, Human Development and Health at Harvard school of Public Health (HSPH), and co-author of the study said, “in India, the withholding of food is a documented form of abuse and is likely correlated with the perpetration of physical violence”.

The link between domestic violence and nutritional deficiencies may also reflect the effects of psychological stress. Women and children who experience domestic violence tend to have higher level of psychological stress, which has been associated with anaemia and being underweight. Malnutrition has emerged as a major health challenge needing urgent response, so the nutrition programmes, a concerted campaign stressing upon health and balanced diet must be launched, particularly targeting children, women and the poor in rural areas and urban slums.

6.4 Need for a Civil Law on Domestic Violence

The Protection of Women from Domestic Violence Act, 2005 is a civil law aimed at providing immediate support to women facing...
domestic violence. It is different from criminal law, which is directed at providing punishment to perpetuators of violence (those who commits violence) through imprisonment or fines.\textsuperscript{10}

The law recognizes the right of a woman to live in a violence free home and provides legal remedies if this right is violated. Legal remedies pertain to civil reliefs such as injunctions, compensation and monetary relief. There can be no arrests made on a complaint filed under this law.\textsuperscript{11}

In addition to the above reliefs, under the Act a woman can also file criminal complaints under criminal law (Section 498A of the Indian Penal Code) seeking the arrest of the perpetrator of violence, under the circumstances mentioned there in. The decision of whether to go under the new law or Section 498A Indian Penal Code is that of the woman and depends on her goals.\textsuperscript{12}

Though we have number of marriage laws, but these laws serve different functions. Marriage laws are meant to define the manner and method of entering into a marriage, rights on marriage and manner and method of dissolving a marriage. They do not deal with domestic violence. Our marriage laws do not contain any provision for the sharing of matrimonial property upon the breakdown of marriage. Hence, often upon a divorce a woman is at a disadvantage and loses all her rights and status which she had on marriage.

Violence is used by the abuser as a method of coercing her to give up her claims to her property, to her assets and to her children, all of which are often in the control of the man. Given the repeated
violence, the abuser will achieve his aim of getting rid of the liabilities by driving the woman to such a point that she will agree to walk out of the house in destitution and deseparation giving up all claims only to be free from the violence.\textsuperscript{13} The purpose of a domestic violence law is to prevent such situation and to restore a woman to a position of equality within the marriage so as to give her the time and the space to decide what she wants to do in the rest of her life.

The Dowry Prohibition Bill was introduced in 1961, it did not bring much succour. Initially, the offences under the Act were made non-cognizable, bailable and non-compoundable. The Act failed in its operation because of this. Also, it made the giver or the victim on par with the receiver, who is actually the demander.\textsuperscript{14} Generally the Dowry Prohibition Act is rendered ineffective due to inability of the victim to access the law.

Section 498A of the Indian Penal Code was introduced in the law book in the year 1965, envisages only two situations. The cruelty within the meaning of Section 498A, Indian Penal Code shall be restricted to two situations only. The first type of cruelty envisaged is that there should be willful conduct that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; the second type is the harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet

\textsuperscript{13} Supra note 2 at 293-294.

such demand. It is felt that Section 498A of the Indian Penal Code which entails in filing a criminal complaint for cruelty and harassment, do not take into account the other kind of harassment, such as violence, beating, mental torture, deprivation of finances, failure to provide maintenance and abuse of children. The Indian Penal Code empowers punishing the guilt of perpetrators of the cruelty within the meaning of Section 498A, at the same time it does not rescue the women from a situation of continued violence. Under Section 498A there is no emergency relief available to the victim, the remedy that is available linked to proceedings and the court proceedings are always protracted, during which period the victim is invariably at the mercy of the abuser. So the Protection of Women from Domestic Violence Act, 2005 was needed to provide for a remedy under the civil law to protect the women from problems arising out of domestic violence and all problems which were not overcome by criminal law.

6.5 Legislative History

Before the passing of this Act, there was no express recognition of the domestic violence in any law. In fact, the entire concept of domestic violence was restricted to cruelty and that too only to a married woman. It did not cover within its ambit the aggrieved sisters, mother, daughter or unmarried women. Married woman also could get only two kind of remedies, on getting a decree of divorce, under personal laws and second by resorting to Section 498-A, Indian Penal Code. In both the cases, she does not get much relief herself except that in the former case she can get rid of her

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unwanted husband and in the latter case she can get her husband or any relative of husband, who is guilty of cruelty, punished. But it takes long time followed by long procedure. So need was felt to pass the Act to protect the women from domestic violence.16

Domestic Violence has since 1983 been recognized as a crime and also constituted a considerable part of the workload of police, prosecutors and the courts. In 2001, the Lawyer’s Collective Group formulated the ‘Domestic Violence against Women (Prevention Bill)’. The Bill was given to the government for consideration. In December 2001, the Government of India, circulated another Bill, ‘the Protection from Domestic Violence Bill, 2005’. It also provided for protection orders and protection officers.17 But, on December 13, terror attack on Indian Parliament prevented introduction of a legislation for women suffering from Domestic Violence. The legislation was likely to have for-reaching impact on society. On March 8, 2002 the Government of India through the Department of Women and Child and Ministry of Human Resources and Development introduced the Protection from Domestic Violence Bill, 2002 in the Lok Sabha. The women’s groups throughout the country vehemently opposed the Bill. As a result of the mass protest, a Parliamentary Standing Committee was constituted in August 2002, under the chairmanship of Shri Arjun Singh. On December 12, 2002, the said Committee submitted its report to the Rajya Sabha and Lok Sabha. On February 5, 2004 the Lok Sabha was dissolved and the Bill met with an unnatural death. After United Progressive Alliance Government took over in 2004, the Protection from

17 Humans Cape, April 2002 at 20.
Domestic Violence Bill, 2002 has been included in its common minimum programme.  

Under the Protection from Domestic Violence Bill, 2002, the danger was the very definition of domestic violence, the Bill defined domestic violence as:  

1. For the purposes of this Act, any conduct of the respondent shall constitute domestic violence if he:
   
   a. habitually assaults or makes the life of the aggrieved person miserable by cruelty or conduct even if such conduct does not amount to physical ill treatment; or
   
   b. forces the aggrieved person to lead an immoral life; or
   
   c. otherwise injures or harms the aggrieved person.

2. Nothing contained in clause (c) of sub-Section (1) shall amount to domestic violence if the pursuit of the course of conduct by the respondent was reasonable for his own protection or for the protection of his or another property.

The definition neither represented the dimensions of violence against women nor it addressed the issue of domestic violence properly. It left everything to the imagination of the judge and to his/her individual perception of what is violence and what is not. The very purpose of the law is to provide the guidelines within which judges are to give decisions. But this Bill was avoiding its responsibility and left it to the judges to perform this legislative function. Moreover, the terms 'habitually assaults' and 'miserable'

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18 Supra note 2 at 294.
are not used anywhere in the world so these terms should not be used in Indian Bill.\textsuperscript{20}

To say that the expression ‘otherwise injures or harms’ covers all forms of violence is not enough. It is not the definition but only a residuary clause; intended to cover all forms of violence not specifically mentioned in the definition. The residuary clauses are meant to cover unforeseen acts of domestic violence, which fall into a pattern similar to the one defined.

The Bill makes it possible to file a complaint against relative. It means that daughters, sisters and mothers will be in the position to file a complaint against the abuser. However, it does not enable a woman whose marriage has been declared bigamous or invalid to file a complaint. But under present the Protection of Women from Domestic Violence Act, 2005 the second wife in a bigamous marriage or invalid marriage can file a complaint under the PWDVA, 2005.

The Protection of women from Domestic Violence Bill, 2005 passed by Parliament represented a watershed for women’s rights. It was the result of long standing demands of civil society women’s organization in particular to assure victims of domestic violence freedom from total of eviction or physical harm in their family home, and to have access to family resources for adequate maintenance.\textsuperscript{21}

Former President Dr. A.P. Abdul Kalam gave assent to the Protection of Women from Domestic Violence Act, 2005, which

\textsuperscript{20} Supra note 2 at 294.
\textsuperscript{21} Employment News, November 12-18, 2005 at 1.
aimed at protecting women from verbal, emotional, economic and sexual abuses and offers free legal service to such victims. Under this Act, any woman subjected to mental or physical injuries, physical abuse, criminal intimidation or force, sexual abuse (any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women) will be covered under domestic violence. The Protection of Women from Domestic Violence Act, 2005 was enacted by the Parliament keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

6.6 Definitions

(i) Domestic Violence

It becomes necessary to put in place a comprehensive definition of ‘domestic violence’ that captured a woman’s experience of violence in its diverse forms – physical, verbal, emotional, sexual and economic. This Act sets a precedent by widening the definition of domestic violence, which included physical violence, emotional abuse (humiliation, ridicule, name calling, threats to cause physical harm), sexually degrading conduct, or economic deprivation. Harassment by way of unlawful dowry demands to the woman or her relatives will also be covered under

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22 The Tribune, September 17, 2005 at 2.
24 The Tribune, October 16, 2005 at 12.
the notification. And if a man who commits any kind of violence or even insult his wife, he can land in jail with a fine up to 20,000.\textsuperscript{25}

According to Black's Law Dictionary, domestic violence means violence between members of a household, usually spouses, an assault or other violent act committed by one member of a household against another.\textsuperscript{26}

According to Merria Webster's Dictionary, domestic violence means the inflicting of physical injury by one family or household member on another; also a repeated or habitual pattern of such behaviour.

According to Britannica Encyclopaedia domestic violence means social and legal concept that, in the broadest sense, refers to any abuse that takes place among people living in the same household, although the term is often used specifically to refer to assault upon women by their male partners.

Under the Protection of Women from Domestic Violence Act, 2005,\textsuperscript{27} domestic violence means any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –

(a) 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; or

\textsuperscript{25} The Tribune, October 27, 2005 at 2.
\textsuperscript{26} Black's Law Dictionary, 1564 (1999).
\textsuperscript{27} Section 3, The Protection of Women from Domestic Violence Act, 2005.
(b) harasses, harms, injures or endangers the aggrieved person into a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property of valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

**Explanation I:** For the purpose of this Section –

(i) ‘Physical abuse’ means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) ‘sexual abuse’ includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) ‘verbal and emotional abuse’ includes:

   a. insult, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

   b. repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) ‘economic abuse’ includes:
a. deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

b. disposal of household effects, an alienation of assets whether moveable or immoveable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

c. prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

**Explanation II:** For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes ‘domestic violence’ under this Section, the overall facts and circumstances of the case shall be taken into consideration.
This explanation puts a naught to the vigorousness of the provisions of section 3. It gives ample discretionary powers to the Magistrate or the authority that deals with the case in question. In fact this explanation may drastically reduce the protections provided to an aggrieved woman insofar as if the overall facts are taken into consideration, it may not be possible to do requisite justice to the woman so aggrieved by individual acts. If this explanation is silenced then there is ample scope for over-use of the provisions of the Act by an aggrieved woman. So Explanation II to section 3 requires redrafting in a suitable manner.

**Physical violence**- Physical violence includes beating, slapping, hitting, kicking, pushing, shoving and inflicting pain.28

**Sexual violence**- Sexual violence covers offences such as forced sex, forced exposure to pornographic material, any sexual act with minors etc.29 According to leading gay rights activist Gautam Bhan says, “sexuality is a much more difficult struggle not only for women in India but also for lesbians. The same patriarchal constraints that control and limit women’s sexuality apply to lesbians. Also, men have more mobility and economic freedom. They can afford to be more open about their sexuality, they have more spaces to meet other men, whereas women don’t, and they can resist family pressure for marriage”.30 In an essentially male-dominated terrain, lesbian women deal with gruesome domestic violence. There are cases where women are raped by their husbands.

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28 Supra note 4.
29 Ibid.
30 The Times of India, July 19, 2009 at 9.
and brothers in a desperate bid to ‘cure’ them. This is also a sexual violence.

**Emotional violence**- Emotional violence spans insults, jibes for not having a male child, preventing a woman from taking a job, forcing marriage against a woman’s will, threat of suicide, preventing a woman from meeting someone etc.

**Economic violence**- Economic violence includes denial of money, food, clothes and medicines, forcing a woman to quit her job, not allowing her to use her partner’s salary, not paying rent, forcing her out, depriving the aggrieved person of economic or financial resources to which she is entitled under any custom or law or which she acquires out of necessity such as household necessities, stridhan, her jointly or separated owned property, maintenance and rental payments, disposing of household assets or alienation of moveable or immoveable assets, restricting continued access to resources or facilities in which she has an interest or entitlement by virtue of the domestic relationship including access to the shared household.

(ii) **Domestic Relationship**

Domestic Relationship is defined as a relationship between two persons who live or have at any point of time lived together in a shared household and are related by blood through a common ancestor; marriage or a relationship in the nature of marriage, adoption, or one family members living together in a joint family.

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31 Supra note 4.  
33 Supra note 24.
Section 2(f) of the Act defines domestic relationship and includes, inter alia, through a relationship in the nature of marriage. This expression covers within its ambit the women involved in live-in relationship, bigamy or adulterous relationship and thus encourages extra-marital relationship or relations between persons of opposite sex outside or without marriage. This is a threat to the sanctity of institution of marriage. The purpose of law was to protect woman from violence but it unintentionally purports to penalize them and may add to their miseries.

(iii) Respondent

Section 2(q) says that any adult male member who has been in a domestic relationship with the aggrieved person is the 'respondent'. The respondent can also be a relative of the husband or male partner.

By reading this Section it makes clear that a respondent must be an adult male person and it cannot be an adult female person. As such female persons are not deemed to be effected by the vigour of causing domestic violence within the meaning of Section 3. This aspect is more apparent if a reference to the proviso to sub-section (1) of Section 19 dealing with residence orders which reads thus: “Provided that no order under clause (b) shall be passed against any person who is a woman”, is made. This is an area of bottleneck where a female adult person is the main actor in causing domestic violence against aggrieved woman.

However, the Bombay High Court has ruled that a complaint can be filed against female relatives of the husband under the Domestic Violence Act. The case before the Bombay High Court was that petitioner, a woman who was driven out of house by her in-
laws, had filed complaint against her husband, mother-in-law and two sisters-in-laws. The complaint against the mother-in-law was relevant because the petitioner had sought a relief that she be allowed to live in the house which was in her mother-in-law's name. Archana Naik, the petitioner, married Hemant Naik in May 1986. Her relations with in-laws soured a few years after the marriage. In June 2004, according to her complaint under the Domestic Violence Act, she was beaten up by her husband, mother-in-law and others, and was thrown out of the house. She filed a complaint with a magistrate under the Act, demanding, among other things, that she be allowed to live in the matrimonial house. The Magistrate, in 2008, passed an interim order asking her in-laws to allow her to stay in their house. The Judge also asked the police to provide her protection. Urmilaben Naik, her mother-in-law, along with others challenged the Magistrate’s order before Sessions Court. They contended that under the Domestic Violence Act, relief cannot be sought against a female relative of husband. They also argued that house which they were ordered to share with Archana - belonged solely to Urmilaben, so Archana had no claim on it. The Sessions court upheld this contention, deleting names of female relatives, including the mother-in-law, from the proceedings. But the Bombay High Court reversed this direction by upholding that a complaint can be filed against female relative of the husband under the Protection of Women from Domestic Violence Act,2005.34

6.7 Beneficiaries Under the Act

The Act covers women who have been living with the respondent in a shared household and are related to him by blood,

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34 The Tribune, September14, 2009 at 12.
marriage, or adoption and includes women living as sexual partners in a relationship that is in the nature of marriage.\textsuperscript{35} Relationships with family members living together as a joint family are also included.\textsuperscript{36} Women in fraudulent or bigamous marriages or in marriages deemed invalid in law are also protected. The Act covers a mistress or live-in partner. The Act also covers children who are below the age of 18 years and includes adopted, step or foster children who are the subjects of physical, mental, or economical torture.

Though the live-in relationship has been recognized for the purpose of domestic violence yet it may not be of much use for the woman. In case of Woman having live-in relationship with man it could be fairly assumed that the relationship was initiated by the man. Women within live-in relationship will hardly get any help under the law because though live-in relationships are now legal, the man concerned can simply walk out of the house and out of the relationship, sticking a thumb out at the Act.

\section*{6.8 Violence by Husbands Against Wives is Widespread}

Indians worship woman as a Goddess, regard her as a mother, love her as a wife and she is most affectionate to us as a daughter but still we commit violence against her. According to National Family Health Survey-3,\textsuperscript{37} violence against women is a serious problem in India. Overall, one-third of women age 15-49 have experienced physical violence and about 1 in 10 has experienced sexual violence. In total, 35 percent have experienced physical or sexual violence.

\textsuperscript{35} \url{http://www.helpline law.com/docs/violence/phd} accessed on 10-07-2009.
\textsuperscript{36} \textit{Supra} note 21.
Married women are more likely to experience physical or sexual violence by husbands than by anyone else.

Nearly two in five (37 percent) married women have experienced some form of physical or sexual violence by their husbands.\(^{38}\)

One in four married women has experienced physical or sexual violence by her husband.

- Nearly 5% married women have experienced sexual violence by forcing them to perform any sexual acts that they did not want to perform.

\(^{38}\) Acts of physical violence by the husband against his wife include: pushing, shaking, throwing something at her, slapping, arm twisting, hair pulling, punching, kicking, dragging, beating, trying to choke or burn her on purpose, and threatening her or attacking her with a weapon. Acts of sexual violence by the husband include physically forcing the wife against her will to have sex or perform other sexual acts that she did not want to perform.
• 10% of married women have experienced sexual violence at the hands of their husbands i.e. they have been physically forced to have sexual intercourse with their husbands even when they did not want to have.

• 10% of married women have been threatened or attacked with a knife, gun, or any other weapon.

• 2% of married women said their husbands tried to choke them or burn them on purpose.

• 12% of married women have been kicked, dragged or beaten up.

• 11% of married women were punched with husband’s fists or with something that could hurt them.

• 15% of married women said their husband has pulled their hair or twisted their arms.

• Slapping is the most common act of physical violence by husbands. 34% of married women say their husband has slapped them.

• 14% have been pushed, shaken or had something thrown at them.

6.9 Allegation of Misuse of The Protection of Women From Domestic Violence Act, 2005

Several non-government agencies working in the area have voiced concern that the new law i.e. the Protection of Women from Domestic Violence Act, 2005 might become instrumental in ‘breaking families’ and being misused for “economic blackmail of
Save Indian Family Foundation member Abdul Wajid says it will take more than a law to change perceptions against domestic violence. There are problems in every household, but now situations are likely to arise when even after a minor quarrel wife might decide to teach her husband a lesson. In this way the Act will only end up destroying families.40

According to Save Family Foundation the Statistics from the National Crime Records Bureau show that in the year 2005 and 2006 alone, nearly twice as many married men (52,485 in year 2005 and 55,452 in year 2006), compared to married women (28,186 in year 2005 and 29,869 in year 2006), committed suicide unable to withstand verbal, emotional, economic and physical abuse of legal harassment.

Save Family Foundation (SFF) and its sibling organizations have adopted 19th November as International Men's Day to recognize and honour men – our fathers, brothers, partners, sons, male friends and colleagues, for the numerous services they render and the innumerable sacrifices they make to ensure the health and well being of the family, society and the country.

Save Family Foundation said that thousands of men are becoming victims of ‘legal terrorism41 unleashed by the misuse of the Indian Penal Code, Section 498-A, Protection of Women from Domestic Violence Act, 2005, adultery laws, laws against rape and

39 Supra note 25.
40 Ibid.
41 The Supreme Court in Sushil Kumar Sharma v. Union of India, 2005 has recognized that the Dowry Act and Domestic Violence Act is a legal terrorism, which many unscrupulous women use to threaten to mend the husband and his family, using the draconian provisions.
sexual harassment, and even divorce, maintenance and child custody laws.

But from the experience of women’s organizations, the few cases of misuse that may have occurred are an exception rather than the rule.\textsuperscript{42} The number of women is so large who do not come forward to file complaints against their husbands. A great chunk of such people remain outside the ambit of such laws because of lack of awareness and education and values which have taught them to internalize that a woman is bound to be thrashed and abused by their husbands. No doubt there is a possibility of its being misuse, so, to check this misuse all efforts should be made to sensitise officials concerned to ensure that this does not happen. So it would be unfair to label this Act as pro-women or loaded against men – it is pro-justice and equality. In applying the law, judges are not absolved of their responsibility to uphold the principles of natural justice by giving both sides an opportunity to be heard, and to base their decision on an objective assessment of the facts and surrounding circumstances of the case. Clearly, those opposed to the Act, 2005 overlook the larger context and its true value as a buffer to protect victims of domestic violence, by unjustifiably and inaccurately labeling it as an instrument for potential misuse. What the Act seeks to ensure is that it assures women who have been subjected to the worst forms of violence in their home – whether they are wives, daughters, daughters in law, aunts or grandmothers- legal remedies to end the violence.\textsuperscript{43} These attacks on the Protection of Women from Domestic Violence Act, 2009 have no basis in research or in

\textsuperscript{42} *Frontline*, August 1, 2008 at 46.

\textsuperscript{43} *Supra* note 24.
law. On the contrary to Save Family Foundation, the National Health Survey III, 2007, shows that while 37% of married women and 16% of never married women have experienced violence from husbands and close family members, only 2% of the abused women have ever sought institutional help.

The success of this law is dependent upon whether the society and policy makers are able to identify domestic violence as a violation of human rights and not as a mere domestic disputes. The law sends out a powerful message on the standards of behaviour that will not be tolerated. However, the law remains only an instrument in bringing about social change, it will be recognition of women as equal stakeholders that shall ultimately bring an end to violence.44

6.10 Women Rights under the Protection of Women from Domestic Violence Act, 2005

Under the Protection of Women from Domestic Violence Act, 2005 the victim of domestic violence has the following rights:

(i) In the social milieu of this country, women are often excluded from ownership of jointly held family property, which is traditionally registered in the man’s name, be it in his position as husband, father in law, son or brother. A woman subjected to domestic violence is always in fear to seek remedies to end the violence- in law or otherwise for fear of being evicted from the household or being denied access to funds, necessary to maintain herself and her children.45

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44 Supra note 23 at 28.
45 Supra note 24.
It became clear that India's Domestic Violence Act does focus on two main issues: woman securing the household and victim protection. Major rights are recognized under this law. One of the most important features of the Act is the woman’s right to secure housing. The Act provides for the woman’s right to reside in the matrimonial or shared household, whether or not she has any title or right in the household. This right is secured by a residence order, which is passed by a court. Even if she is a victim of domestic violence, she retains the right to live in 'shared home' that is, a home or homes that she shares with the abusive partner. The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or partner. The law, significantly, recognizes the need of the abused woman for emergency relief, which will have to be provided by the husband. The law is so liberal and forward-looking that it recognises a woman’s right to reside in the shared household with her husband or a partner even when a

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46 Section 2(s) reads: “Shared household - a household where the aggrieved person lives/lived in a domestic relationship, either singly or along with the respondent, is a shared household. This applies whether the household is owned or tenanted, either jointly by the person aggrieved and the respondent, or by either of them, where either the person aggrieved or the respondent or both jointly or singly have any right, title, interest or equity. Shared household also includes a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or person aggrieved has any right, title or interest in the shared household. However, the ownership pattern of the household cannot be affected by the Act – in other words, the fact that a woman lives in a home legally owned by her husband does not under the Act alter the legality of ownership; it does not for instance transfer that ownership in whole or part to the wife”.

47 Section 17, The Protection of Women from Domestic Violence Act, 2005.

48 The Hindu, March 30, 2008 at 8.
dispute is on thus, it legislates against husbands who throw their wives out of the house when there is a dispute. Such an action by a husband will now be deemed illegal, not merely unethical. Thus, if a husband is accused of any form of violence, he cannot during the pending disposal of the case prohibit/restrict the wife's continued access to resources/facilities to which she is entitled by virtue of the domestic relationship, including access to the shared household.49

However definition given in Section 2(s) seems to be defective. It does not clearly define the meaning of shared household. The Supreme Court observed and criticized the legislation in R. Batra and Another v Taruna Batra,50 for clumsy drafting of section 2(s) of the Protection of Women from Domestic Violence, 2005. The Supreme Court said that the manner in which the Section 2(s) was drafted not to give a clear-cut meaning to the shared household. Defiantly if this section is accepted then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. On the face of this stand, a wife could claim a share in every house where she had stayed with her husband, whether it was owned by his parents, grandparents, uncles, aunts, brothers, sisters, nephews and nieces. So there is need for clarification of law.

(ii) The victim has right to immediate and emergency relief against domestic violence.

(iii) The victim has right for the assistance of a Protection Officers and Service Providers to inform her about her right and the relief which she can get under the Act under Section 5.

(iv) The victim has right for the assistance of Protection Officers, Service Providers or the Officer-in-charge of the nearest police station to assist her in registering her complaint and filing an application for relief under Sections 9 and 10 of Act, 2005.

(v) She can get the following orders issued in her favour through the Court once the offence of domestic violence is prima facie established:

**Protection Orders:** The Court can pass a protection order to prevent the accused from aiding or committing an act of domestic violence, entering the workplace, school or other places frequented by the aggrieved person, establishing any kind of communication with her, transferring and operating assets and bank accounts jointly held by or enjoyed (utilized), causing violence to her relatives or doing any other act specified in protection order.

**Residence Orders:** This order ensures that the aggrieved person is not dispossessed, her possessions not disturbed, the shared household is not alienated or disposed off, she is provided an alternative accommodation by the Respondent if she so requires, the Respondent is removed from the
shared household and he and his relatives are barred from entering the area allotted to her. However, an order to remove oneself from the shared household can not be passed against any woman.

**Monetary Relief:** The Respondent can be made accountable for all expenses incurred and losses suffered by the aggrieved person and her child due to the infliction of domestic violence. Such relief may include loss of earning, medical expenses, loss or damage to property, and payment towards maintenance of the aggrieved person and her children.

**Custody Orders:** This order grants temporary custody of any child or children to the aggrieved person. It may make arrangements for visit of such child or children by the Respondent or may disallow such visit if it is harmful to the interests of the child or children.

**Compensation Orders:** The respondent may be directed to pay compensation and damages for injuries caused to the aggrieved person as a result of the acts of domestic violence by the Respondent e.g. for loss of earnings, medical expenses incurred because of domestic violence and loss caused by destruction or removal of property from the victim’s control.

**Interim and Ex parte Orders:** Such orders may be passed if it is deemed just and proper upon commission of an act of domestic violence or likelihood of such commission by the
Respondent. Such orders are passed on the basis of an affidavit of the aggrieved person against the Respondent.

(vi) To receive protection for her and her children from acts of domestic violence under Section 18.

(vii) She has the right to measures and orders protecting her against the particular dangers or insecurities she or her child are facing.

(viii) To regain possession of her stridhan, jewellery, clothes, articles of daily use and other household goods under Section 18.

(ix) To get medical assistance, shelter, counselling and legal aid under Sections 6, 7, 9 and 14. Under the Act, medical professionals and shelter homes are under a duty to assist the woman who has faced domestic violence, in case she approaches them.

(x) To retain the person committing domestic violence against her from contacting her or communicating with her in any manner under Section 18.

(xi) To file complaint or applications for relief under the Act directly to the Court under Sections 12, 18, 19, 20, 21, 22 and 23.

(xii) To get the copies of the complaint filed by her, applications made by her, reports of any medical or other examination that she or her child undergoes.

(xiii) To get copies of any statements recorded by any authority in connection with domestic violence.
(xiv) She can file a complaint under Section 498A of the Indian Penal Code simultaneously. This right has been recognized under the Protection of Women from Domestic Violence Act, 2005.51

6.11 Duties of Medical Practitioner, Shelter Homes, Police and Government

The Protection of Women from Domestic Violence Act, 2005 obligates State Governments to notify medical facilities and shelter homes. According to Sections 6 and 7 of the Act, if an aggrieved person or on her behalf, a Protection Officer or Service Provider requests the person in charge of the shelter home or medical facility to provide shelter or medical aid, then the person in charge of the shelter home or the medical facility shall be bound to provide the relevant services to the aggrieved person.

(i) Duties of Medical Practitioner under Section 7

If an aggrieved person or, on her behalf a protection officer or a service provider requests the person in-charge of a medical facility to provide any medical aid to the aggrieved person such the person-in-charge is under a duty to provide such medical assistance.

Such request should be in writing clearly stating that the application is being made under Section 7 of the Domestic Violence Act and the same should be accompanied with a Domestic Incident Report. The medical facility should not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility. If no Domestic

Incident Report has been made, the person-in-charge of the medical facility shall forward the medical report to the protection officer. A copy of the medical examination report shall be provided to the aggrieved person by the medical facility free of cost.

Though the Protection of Women from Domestic Violence Act, 2005 provides for medical facility or shelter homes, in reality there is a dearth of State sponsored facilities meeting the medical and shelter needs of aggrieved women.

(ii) Powers and Duties of the Police

The police have the duty to take appropriate action in accordance with law upon receipt of information for commission of a cognizable offence. Hence if a complaint of a cognizable offence such as dowry death, causing hurt, criminal breach of trust or cruelty to a married woman is disclosed to the Police officer, he is bound to register the offence apart from fulfilling his obligations/duties under the Domestic Violence Act. The Domestic Violence Act does not override the existing criminal law and civil law remedies that victims of domestic violence have under the law.\(^{52}\)

Thus, if the Domestic Incident Report is registered by the police officer, then wherever the information provided discloses an offence under the Indian Penal Code or any other law, the police officer shall inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report. If the aggrieved person does not want to initiate criminal proceedings then the police officer concerned shall make a daily entry as per the information contained in the Domestic Incident Report with a remark

\(^{52}\) Supra note 24 at 26.
that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR. If any physical injury or pain being reported by the aggrieved person, the authority receiving the complaint must offer immediate medical assistance and get the aggrieved person medically examined.53

(iii) Duties of Government

Under Section 11 of the Protection of Women from Domestic Violence Act, 2005, the Government has the obligation to take affirmative action to prevent violence and protect victims of domestic violence by taking all measures to ensure that:

(a) The provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) The Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) Effective co-ordination between the services provided by concerned Ministries and Departments dealing with the law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted.

53 Ibid.
(d) Protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

6.12 Three Tiers Relief System

The Act provides three tiers relief system for the aggrieved persons. They can complain to-

Protection Officers;
Service Providers;
Magistrate

(i) Protection Officer

(a) Appointment of Protection Officers

According to Section 8 of the Protection of Women from Domestic Violence Act, 2005 the State Government shall be vested with the responsibility of appointing Protection Officers. The number of Protection Officers appointed is left to the discretion of the respective State Governments. Rule 3 of the Protection of Women from Domestic Violence Act, 2005 clearly States that:

- Every person appointed as Protection Officer under the Act shall have at least three years experience in social Section;
- The tenure of Protection Officer shall be a minimum period of three years;
- The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act.
This table\textsuperscript{54} given below presents a detailed, State-wise picture of Protection Officer appointments in 2008: numbers, level and post. The final column in this table enumerates the number of Protection Officers appointed in 2007 for comparison.

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Protection Officers (To date)</th>
<th>Level</th>
<th>Post</th>
<th>Number of Protection Officers as per the 1\textsuperscript{st} M&amp;F Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>104</td>
<td>District and Revenue Division</td>
<td>Revenue Divisional Officers; Project Directors (WCD\textsuperscript{55})</td>
<td>23</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>15</td>
<td>District</td>
<td>Deputy Directors and CDPOs\textsuperscript{56} (ICDS\textsuperscript{57})</td>
<td>16</td>
</tr>
<tr>
<td>Assam</td>
<td>27</td>
<td>District</td>
<td>DSWOs\textsuperscript{58}</td>
<td>27</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>3</td>
<td>n/a\textsuperscript{59}</td>
<td>Tehsildars</td>
<td>3</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>16</td>
<td>District</td>
<td>District Programme Officers (WCD)</td>
<td>16</td>
</tr>
<tr>
<td>Delhi</td>
<td>18</td>
<td>District</td>
<td>Independent, on contractual basis</td>
<td>19</td>
</tr>
<tr>
<td>Gujarat</td>
<td>25</td>
<td>District; Municipal Corporation Area</td>
<td>District Social Defense Officers; Zonal Dowry Prohibition Officers</td>
<td>25</td>
</tr>
<tr>
<td>Goa</td>
<td>13</td>
<td>District; Taluka</td>
<td>Chief Executive Officer; Block Development Officer</td>
<td>2</td>
</tr>
</tbody>
</table>


\textsuperscript{55} Women and Child Welfare Department (WCD)

\textsuperscript{56} Child Development Programme Officer (CDPO)

\textsuperscript{57} Integrated Child Development Scheme (ICDS)

\textsuperscript{58} District Social Welfare Officer (DSWO)

\textsuperscript{59} Data not available
<table>
<thead>
<tr>
<th>State</th>
<th>District</th>
<th>Sub-Division</th>
<th>Existing Government Officials; District Programme Officers (ICDS); Appointment of independent POs on a contractual basis in process</th>
<th>n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Haryana</td>
<td>20</td>
<td>District</td>
<td></td>
<td>n/a</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>385</td>
<td>Sub-Block</td>
<td>Supervisors (ICDS)</td>
<td>324</td>
</tr>
<tr>
<td>Karnataka</td>
<td>212</td>
<td>District; Block</td>
<td>Deputy Directors (WCD); CPDPOs (ICDS)</td>
<td>212</td>
</tr>
<tr>
<td>Kerala</td>
<td>31</td>
<td>District</td>
<td>District Probation Officers</td>
<td>31</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>367</td>
<td>Block</td>
<td>CDPOs (ICDS)</td>
<td>361</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>3687</td>
<td>District; Block</td>
<td>District WCD Officers; Tehsildars, Nayab Tehsildars, Sub-Divisional Magistrates; CDPOs (ICDS); Extension Officers; Block Development Officers; Community Development Officers</td>
<td>800</td>
</tr>
<tr>
<td>Manipur</td>
<td>9</td>
<td>District</td>
<td>CDPOs and District Programme Officers (ICDS)</td>
<td>9</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>7</td>
<td>District</td>
<td>DSWOs</td>
<td>n/a</td>
</tr>
<tr>
<td>Mizoram</td>
<td>8</td>
<td>District</td>
<td>CDPOs (ICDS); DSWOs; Superintendent of Homes</td>
<td>9</td>
</tr>
<tr>
<td>Nagaland</td>
<td>30</td>
<td>n/a</td>
<td>District and Sub-Divisional Extra Assistant Commissioners</td>
<td>n/a</td>
</tr>
<tr>
<td>State</td>
<td>Districts</td>
<td>Programme Officers (WCD)</td>
<td></td>
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</tr>
<tr>
<td>-----------------------</td>
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<td></td>
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<tr>
<td>Orissa</td>
<td>30</td>
<td>30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Punjab</td>
<td>148 Block</td>
<td>CDPOs (ICDS) n/a</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>548 District; Block</td>
<td>Project Directors (WCD); CDPOs (ICDS); Prachetas 0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sikkim</td>
<td>4 District</td>
<td>Deputy/Joint/Assistant Directors (Nutrition Cell) 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>31 District</td>
<td>DSWOs; Appointment of independent POs on a contractual basis in process 30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tripura</td>
<td>4 District</td>
<td>Inspector of Social Welfare &amp; Education 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>70 District</td>
<td>Probation Officers 39</td>
<td></td>
<td></td>
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<tr>
<td>Uttranchal</td>
<td>13 District</td>
<td>CDPOs (ICDS) 13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Bengal</td>
<td>19 District</td>
<td>DSWOs; Appointment of independent POs on a contractual basis is in process 19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andaman and Nicobar</td>
<td>6 District</td>
<td>n/a 6</td>
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</tr>
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<td>Dadar and Nagar Haveli</td>
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<td>Daman and Diu</td>
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<td></td>
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<td>Lakshadweep</td>
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<td>n/a 9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Puducherry</td>
<td>n/a</td>
<td>n/a n/a</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

By going through a chart, it may be observed that the only sixteen States have appointed Protection Officers. In the 1st M&E Report, most States had appointed Protection Officers at the District level; only five States had Protection Officer appointment below the District level: Bihar, Himachal Pradesh, Jharkhand, Karnataka and Madhya Pradesh. However, in this 2nd M&E Report, I find an
increase in appointments at the sub-District level (total 10 States), thus improving women’s access to justice at the local level. In these States, the officials appointed as Protection Officers include Tehsildars, Prachetas and Nayab Tehsildars. Maharashtra has made a special effort to make appointments at lower jurisdictional levels so as to maximize women’s access to Protection Officers. However, a balance must be maintained between the need to have high numbers of Protection Officers and the need for these Protection Officers to be well-qualified to provide services under the Protection of Women from Domestic Violence Act, 2005. Although the post of officials appointed as Protection Officers varies from State to State, the most common post seems to be District Social Welfare officers and officers serving under the Integrated Child Development Scheme (ICDS). Furthermore, with regard to posts, Kerala and Uttar Pradesh are an exception to the trend in that they have appointed Probation Officers as Protection Officers. Some States, such as Andhra Pradesh, have also appointed revenue officials as Protection Officers. Except in Delhi and, recently (effective October 2008), West Bengal, where Protection Officers are on contract and full-time, all other States have given the duty of working as Protection Officers to existing government officials. Informal sources indicate that Haryana and Tamil Nadu are also in the process of appointing Protection Officers on an independent, contractual, full-time basis.

(b) Protection Officers: Qualifications, Training and Support

Section 9 of the Protection of Women from Domestic Violence Act, 2005 addresses the duties and functions of Protection Officers. This provision is further elucidated under Rules 8 and 10 which divide the role of the Protection Officer into two stages:
Pre-litigation role: To assist the woman in accessing the Courts and support services as well as taking steps to prevent further violence.

Post-litigation role-As per the directions of the Courts; assisting the Court in arriving at a decision and in the enforcement of orders.

In light of these responsibilities, ideally, Protection Officers should be appointed keeping in mind the following:

A Protection Officer’s post should be full time;

A protection officer should have an educational degree in social work and/or law, in addition to training and sensitization on gender issues;

Since the Protection Officer must assist the Magistrate in the discharge of his/her duties, each Magistrate’s Court should have one dedicated Protection Officer assigned to it.

Protection Officers must be provided training and skills upgrading on a regular basis.

(c) Duties and Functions of Protection Officers

These are officers who are under the jurisdiction and control of the Court and have specific duties in situations of domestic violence. They provide assistance to the Court in preparing the petition filed in the Magistrate’s office, also called a Domestic Incident Report. It is their duty to provide necessary information to the aggrieved person or Service Providers and to ensure compliance with the orders for monetary relief.
Duties of Protection Officer under Section 9 of the Protection of Women from Domestic Violence Act, 2005 are as follows:

- To assist the Magistrate in the discharge of the functions of the Court;

- To make a Domestic Incident Report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in-charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

- To make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

- To ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

- To maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

- To make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and Magistrate having jurisdiction in the area where the shelter home is situated;
• To get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

• To ensure that the order for monetary relief under Section 20 is complied with and executed, in accordance with the procedure prescribed under the Criminal Procedure Code, 1973;

• To perform such other duties as may be prescribed.

The Act also provides that the protection officer shall be under the control and supervision of the Magistrate and shall perform the duties assigned to him by the Magistrate and the Government under this Act.\(^{60}\)

The protection officer shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code while acting or purporting to act under any of the provisions of the Act or the rules or orders made there under.\(^{61}\) If any protection officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause shall be punished with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both.\(^{62}\) However, no prosecution or other legal proceedings shall lie against the protection officer except on a complaint filed with the

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\(^{60}\) Section 30, the Protection of Women from Domestic Violence Act, 2005.

\(^{61}\) Ibid.

\(^{62}\) Id., Section 33.
previous sanction of the State Government or an officer authorized by it in this behalf. Every action taken by the protection officer in good faith shall be protected and no suit, prosecution or legal proceedings shall lie against him.

(d) Problems Faced by Protection Officers

Over-burdening is a major problem for all Protection Officers, whether they are appointed as additional charges or on full-time contract. In the former case, they have too many simultaneous government programmes to implement, making it difficult to devote adequate time and attention to any one responsibility. In the latter case, although they have just one job profile— that of Protection Officer— they are given little or none of the infrastructure support required to realize the multi agency response system mandated by the Protection of Women from Domestic Violence Act, 2005.

(ii) Service Providers

Section 10 of the Protection of Women from Domestic Violence Act, 2005 states that, any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means by providing of legal aid, medical,
financial or other assistance shall register itself with the State Government as a service provider for the purpose of this Act

(a) **Powers of the Service Provider**

The service provider so registered under the Act shall have the following powers:

- to record a Domestic Incidence Report if the aggrieved person so desires and forward a copy thereof to the Magistrate and Protection Officer having jurisdiction in the area where the domestic violence occurred;

- to get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence occurred;

- to ensure that the aggrieved person is provided shelter in a shelter home if she so requires and forward a report of shelter home lodging to the concerned police station.

The Act provides protection to the service provider or any member of the service provider for anything done or intended to be done in good faith or in exercise of powers or discharge of functions under this Act, from any suit, prosecution or other legal proceedings.

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65 Id., Section 10(1).
66 Id., Section 10(2).
The members of the service providers shall be deemed to be public servants while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder.\footnote{Id., Section 10(3).}

The registration of Service Providers under the Protection of Women from Domestic Violence Act, 2005 is a recognition of the pioneering role played by Non Governmental Organisations in providing women in distress various forms of relief not limited merely to legal remedies. In addition, Service Providers with experience of domestic violence cases are in a position to provide Protection Officers much-needed support in dealing with complaints received under this Act.

<table>
<thead>
<tr>
<th>State</th>
<th>Number of SPs</th>
<th>Profile of SP</th>
<th>Services Provided</th>
<th>Whether Government Funded or Not</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>72</td>
<td>NGOs working on issues of child rights, HIV/AIDS, domestic violence, etc.</td>
<td>Counseling; Vocational Training</td>
<td>Most receive government funds</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>Registration in process</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Assam</td>
<td>32</td>
<td>NGOs working mainly on women’s issues</td>
<td>Counseling; Shelter</td>
<td>Yes</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>12</td>
<td>NGOs</td>
<td>n/a</td>
<td>Yes</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>Registration in process</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>New Delhi</td>
<td>27</td>
<td>n/a</td>
<td>Counseling; Shelter homes; Legal Counseling</td>
<td>Yes</td>
</tr>
<tr>
<td>Gujarat</td>
<td>Registration in process</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>State</td>
<td>NGOs</td>
<td>Work/Programs</td>
<td>Registration Status</td>
<td>Notes</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Goa</td>
<td>5</td>
<td>NGOs; Family Counseling; Vocational training</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>Registration in process</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Haryana</td>
<td>8</td>
<td>NGOs; Child Welfare Councils; Red Cross Society; Women’s Development Corporations</td>
<td>n/a</td>
<td>Yes</td>
</tr>
<tr>
<td>Kerala</td>
<td>58</td>
<td>22 NGOs; 9 helpline Centres; 27 FCCs[^68]</td>
<td>n/a</td>
<td>NGOs notified as SPs are given Rs. 5,000 to appoint a legal counselor and Rs. 10,040 to provide other assistance</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>38</td>
<td>NGOs; Police Paramarksh Kendra</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Maharashtra</td>
<td>85</td>
<td>20 Special Cells for women and Children; 62 FCCs; 3 NGOs</td>
<td>Family Counseling</td>
<td>FCCs and Special Cells receive government funds under several Central and State Government schemes</td>
</tr>
<tr>
<td>Manipur</td>
<td>7</td>
<td>NGOs</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Mizoram</td>
<td>6</td>
<td>NGOs working on gender related issues and HIV/AIDS</td>
<td>n/a</td>
<td>No</td>
</tr>
<tr>
<td>Nagaland</td>
<td>1</td>
<td>Nagaland State Social Service Board</td>
<td>n/a</td>
<td>Yes</td>
</tr>
<tr>
<td>Orissa</td>
<td>30</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Punjab</td>
<td>Registration in process</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>79</td>
<td>Women’s groups; NGOs</td>
<td>Work with women and children</td>
<td>No</td>
</tr>
<tr>
<td>Sikkim</td>
<td>Registration in process</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>58</td>
<td>NGOs; Helpline Centre; FCCs</td>
<td>n/a</td>
<td>Yes</td>
</tr>
<tr>
<td>Tripura</td>
<td>1</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>35</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Uttrakhand</td>
<td>15</td>
<td>NGOs</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>West Bengal</td>
<td>43</td>
<td>NGOs</td>
<td>Organisations working on social welfare</td>
<td>Most receive government funds</td>
</tr>
</tbody>
</table>

[^68]: Family Counseling Centres (FCCs).
By going through a chart, it may be observed that 18 States have taken proactive steps towards registering Service Providers. The profile of organizations registered as Service Providers varies across and within States. However, the predominant trend is to register those organizations as Service Providers that provide either counselling or shelter home services or some combination of both. Organizations that are registered as Service Providers are either entirely State-run or receive funds from Central or State Government Schemes. Very few entirely privately funded organizations are registered as Service Providers.

(iii) Powers and Duties of the Magistrate

Section 5 of the Act lays down that it is duty of a police officer, Protection officer, service provider and the Magistrate to inform the aggrieved woman that she has a right to make an application for one or more relief under the Act.

(a) Procedure for Obtaining Orders of Relief

Section 12 of the Protection of Women from Domestic Violence Act, 2005, which describes the procedure to commence proceedings under this Act and how they should be terminated. Magistrate is the authority to receive the complaint. This is called an application. The applicant in all the cases is the aggrieved woman. The Respondent is the person who is subjecting her to domestic violence. The applicant may make more than one application for each of the reliefs, the Magistrate can grant separately. If the application is made by the aggrieved woman direct to the Magistrate,
he may call for a report from the concerned Protection Officer and if such report is already filed by the Protection Officer, the said report will be taken into consideration by the Court along with her application.69

The application for reliefs can be made by the woman personally or through any other person authorized by her. An advocate may himself cannot file the application unless he files it on her behalf or on behalf of some other person claiming reliefs for her.70

The application for reliefs can be filed by the Protection Officer on behalf of the woman aggrieved. He will do so only after first filing Domestic Incident Report.71

The application for reliefs is in the nature of a civil proceedings. Therefore there shall be a cause of action for the application. The cause of action is the domestic incident occurring in the course of domestic violence. The Magistrate entertaining the applications for reliefs under the Act must first satisfy himself that it is a case coming under domestic violence. If it is otherwise a natural civil dispute or a case of criminal offence the party shall be directed to take the course available under the normal civil or criminal law. If the case disclosed is a neat crime unconnected with domestic violence, the Magistrate may direct the concerned Police Officer to enquire into and report. If the case disclosed a mere civil claim such

70 Ibid.
71 Ibid.
as guardianship over children the Magistrate may advice the applicant to approach the appropriate district Court for relief.\textsuperscript{72}

The domestic violence complained may be a single event or a series of events. There is no limitation of time within which it must have occurred. Even old acts of domestic violence can be counted for purposes of arriving at the nature of the case as one coming within the scope of domestic violence or not. There is nothing like stale event or an event the complaint against which is time barred or any event the occurrence of which may appear to have been condoned. That is the reason why the Act directs the Magistrate to take into consideration the overall facts and circumstances of the case into consideration.\textsuperscript{73}

There is no need to contain all the reliefs in a single application. Any number of applications can be filed successively or simultaneously for one or the other reliefs in accordance with the convenience of the applicant and depending upon the circumstances of the case as it evolves. The application must be in the prescribed form. There is one very significant provision about the service of notice. Protection Officer shall be treated as an officer of the Court. The Magistrate shall direct him to serve notice on the respondent. In doing so he will direct that notice shall be served in two days and fix the date of first hearing on the third day. This one more innovation introduced in the procedure. The other is that the application shall be

\textsuperscript{72} Ibid.
\textsuperscript{73} Id. at 48.
disposed of finally within sixty days from the date of first hearing. This is so because any delay that may be caused in the disposal of the case may increase the hardship and agony of the applicant.\textsuperscript{74}

If the Magistrate grants any maintenance either interim or final, the amount granted by the Magistrate will be set off against any higher amount granted by the Courts under Section 125 of Criminal Procedure Code or by Family Court or by any other Civil Court provided the same is being paid.\textsuperscript{75}

The Magistrate may instead of getting the notice on the respondent served through police gets it served through Protection Officer who is expected to be in contact with all the parties involved in the domestic violence. The notice shall be directed to be served in two days and hearing shall commence from the third day onwards. The statement of Protection Officer about the service may be treated as service duly effected. In civil matters one of the difficulties in the procedure is service of notice. Unless satisfactory personal service is proved, notice through registered post and notice by substituted service may become necessary. In the case of criminal proceedings summons are served through police. In the case of proceedings arising under this Act the notice to the Respondent ordered by the Magistrate on the basis of Domestic Incident Report prepared by the

\textsuperscript{74} Ibid.
\textsuperscript{75} Ibid.
Protection Officer is required to be served by the Protection Officer himself.\textsuperscript{76}

After the notice is served on the Respondent the Magistrate shall in appropriate cases arrange for counseling of the parties under Section 14 of the Protection of Women from Domestic violence Act, 2005. Such counseling may be arranged for the aggrieved woman even before the notice is served on the Respondent. The counseling shall be by competent and qualified person. Such counselor may be preferably a lady. The counseling may be arranged with the Service Provider also.

Lest the proceedings be delayed in the name of counseling the Magistrate may fix time for counseling which shall not exceed two months.

The provision of joint counseling under section 14 of the Act, 2005 has a drawback. Under Section 14 whereby the Magistrate may order the aggrieved person to undergo counseling jointly with the respondent and any member of a service provider. This goes against all accepted principles of counseling. The victim and the abuser are in an unequal situation and complainant may not be in position to put forward her viewpoint fearlessly and independently. It can only lead to further disempowerment of the unequal party. Counseling is one of the methods of correcting abusive behaviour and hence it is only

\textsuperscript{76} \textit{Id.} at 50.
appropriate that the abuser and not the victim is counseled. The victim may have the possibility of seeking voluntary counseling.\textsuperscript{77}

In order that he may be enable to carry out the purpose of the Act including bringing about if possible reconciliation, the Magistrate may seek the assistance of welfare expert. Such person may preferably be a woman welfare expert. The services of the expert shall be confined to the methodology to be adopted for securing reconciliation among the parties and not extend to the nature of the orders to be made. The services of the expert here means the advice, such expert may offer in respect of the measures to be adopted in bringing peace in the family.

Section 16 of the Protection of Women from Domestic violence Act, 2005 states that if the Magistrate considers that the circumstances of the case so warrant, and if either party to proceeding so desires, he may conduct the proceedings under this Act in camera.

By nature the proceedings under this Act relate to intimate family relations. It is better they are not conducted in open Court. The Court may hold proceedings after the Court hall is cleared off the public. This is all the more necessary if any of the parties requests the Court to hold the proceedings in what is called in camera. The request needs not to be from the woman only. If male

Respondent makes such request the Court may not refuse such request. Such request may be for the whole duration of the case or it may be made for a particular day or for a particular hearing the Magistrate may pronounce.

It may be noted that respondent may also request for in camera proceedings. This may have serious repercussions. Sometimes in camera proceedings the aggrieved party may be intimidated in favour of the respondent. This is especially so when the aggrieved party is the only woman in Court facing a completely male phalanx of hostile, sneering Magistrates, lawyers, officials, police, male respondents etc. The solution is to change this Section to only allow for in camera proceedings not when either party so desires but only if the aggrieved party so desires.

(b) **Penalty for Breach of Protection Order by the Respondent under Section 31**

A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.
While framing charges under sub-section (1), the Magistrate may also frame charges under Section 498-A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.

It may be observed that Section 31 of the Act is in contravention of the provisions of Indian Penal Code and Dowry Prohibition Act. Section 31 states that a breach of order shall be an offence which is punishable with imprisonment extending to one year. At the same time under Section 31(3) the Magistrate has been empowered to frame charges under Section 498-A of Indian Penal Code or any offence under Dowry Act. The offence under sub-Section (1) of section 31 is cognizable and non-bailable. There appears to be a conflict. In criminal law offence punishable with imprisonment for one year is called a summon case and the procedure for trying a summon case is totally different from trying a case under Section 498-A of the Indian Penal Code. This is likely lead to complication.

Only breach of protection orders is an offence. The law is silent on an aspect of breach of other orders such as Residence Order (Section 19), Monetary Relief (Section 20), Custody Order (Section 21) and Compensation Order (Section 22). Under these circumstances, the perpetrator of domestic violence can easily ignore these orders and render the Act ineffective.
The Act has been enacted to provide remedy to the victims of domestic violence under civil law. However, the Act itself makes violation of protection orders issued by the Magistrate a penal offence under Section 31. Thus, the resolve of the Parliament to make it purely a civil law has not been achieved fully. The Act does not make domestic violence per se an offence. But the non-compliance of the Magistrate’s order makes it a penal offence.