

# **The Protection of Women From Misuse Under The Domestic Violence Act , 2005**

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## **Abstract**

*Women have been the disproportionately high number of victims of intimate partner violence from the beginning of recorded history. This pattern has not eased in the modern day. Women of all ages and social backgrounds are susceptible to domestic violence. This is true across cultures, religions, and socioeconomic statuses. However, domestic violence may harm everybody in a household, not just women. This includes men, children, and the elderly. Domestic abuse permeates all strata of society and cuts across all demographics. Domestic violence is defined as any violent offence committed against a household member. People who are linked to you in some way or another are included. The term "domestic violence" is often used when the offender and the victim have a close relationship, most notably the one in which they reside. Abuse by an intimate partner may come in a wide variety of forms, including abuse of the elderly, abuse of children, honour-based violence such as honour murders or female genital mutilation, and abuse in general. Several strategies have been used in the twenty-first century to address the pervasive issue of domestic violence. Governments across the globe have passed domestic violence prevention laws and regulations. Furthermore, because of the efforts of the media, politicians, and advocacy organisations, people have come to recognise domestic violence as a social ill. According to Section 3 of the Protection of Women from Domestic Violence Act, 2005, any act, deed, omission, or behaviour of a person that causes mental or bodily injury or endangers the health or safety of an individual is deemed to constitute domestic violence in India. No distinction is made between mental and bodily damage in this definition. Domestic violence also includes acts of physical abuse, emotional harassment, or bodily harm committed against an*

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*individual or an affiliated person intending to meet any unlawful demand.*

*Keywords: Domestic Violence, Protection Of Women, Safeguards, Judgement*

## **Introduction**

Both the 2005 Protection of Women from Domestic Violence Act and the Indian Penal Code have their own standards regarding domestic violence. In India, both bills were passed with widespread support. The Protection of Women from Domestic Violence Act expands both the sorts of abuse considered domestic violence and the groups of persons entitled to legal protection from it. A woman must be in or have been in a domestic relationship with the respondent and make allegations of domestic abuse against her in order to qualify as a "aggrieved person" under the Act. This concept encompasses both current and previous partners in a married or cohabiting couple. In this context, "spouse" includes both current and previous members of a married or cohabiting pair. Women are protected against violence not just within the context of husband-wife relationships, but also when they share a home with someone with whom they have a domestic connection. This regulation also shields wives from male aggression in marital settings. This safeguards women in marital relationships (e.g., husband-wife, daughter-in-law with father/mother-in-law), biological relationships (e.g., father-daughter, sister-brother), adoptive relationships (e.g., adopted daughter-father), and marital-like relationships (e.g., stepmother-stepdaughter). In addition, this shields women from (ex: live-in relationships, and legally invalid marriages). It was widely believed that this Act was the first piece of law to provide formal protections for unmarried couples who choose to live together. On December 18, 2005, the legislature passed this law. **(Chandra, Mukherjee and Ridula)**

The phrase "domestic violence" is defined in Section 3 of the Act, and it states that "any act, omission, action, or behaviour of the respondent may be held to constitute domestic violence in the case that it:

1. threatens the victim's physical or mental health, safety, life, limb, or well-being in any way; causes the victim physical pain, sexual harm, verbal/emotional abuse, or financial hardship.
2. or has the effect of endangering the complainant or anybody linked to her by any of the actions described in (a) or (b); or harms the victim in some other way, whether psychologically or physically. threats, intimidation, abuse, or harassment are used to coerce the victim into paying a dowry or other valuable security. **(Nigam)**

### **Objective**

1. *Discuss about Safeguards for Victims of Domestic Violence*
2. *Discuss about types of domestic violence*
3. *Discuss about responsibilities of different organisation*

### **Safeguards for Victims of Domestic Violence**

The purpose of the Domestic Abuse Act of 2005, and the things associated therewith and ancillary thereto, are to safeguard better the rights of women granted by the Constitution who are victims of violence inside the home.

The DV Act defines domestic violence as any behaviour that endangers, threatens, or causes physical, sexual, verbal, or economic damage to a woman. In addition, this includes any physical damage done to the victim or her family to force her to pay an illegal dowry. **(Jhamb)**

### **Domestic Violence Act 2005**

Actual and threatened acts of violence fall under this category as well. Domestic violence is defined for statutory purposes under Section 3 of the Domestic Violence Act of 2005. There are no restrictions on age, religion, or marital status; all women are welcome. Domestic violence in India is governed under the Protection of Women from Domestic Violence Act of 2005, and the word is defined in Section 3 of this

statute.

- Difference Between IPC and CrPC
- IPC Sections List

Some claim that the dowry is directly responsible for a woman's harsh treatment in her new household. Right now, it is a crime under section 498-A of the Indian Penal Code for a husband or family member to be cruel to his wife. The legislation provides civil remedies such as maintenance, guardianship, security, and concession to ensure that women's rights are upheld. (**Abeyratne**)

### **Types of Domestic Violence**

Domestic violence is classified into four main types by the Protection of Women from Domestic Violence Act of 2005, which classifies it as a violation of human rights.

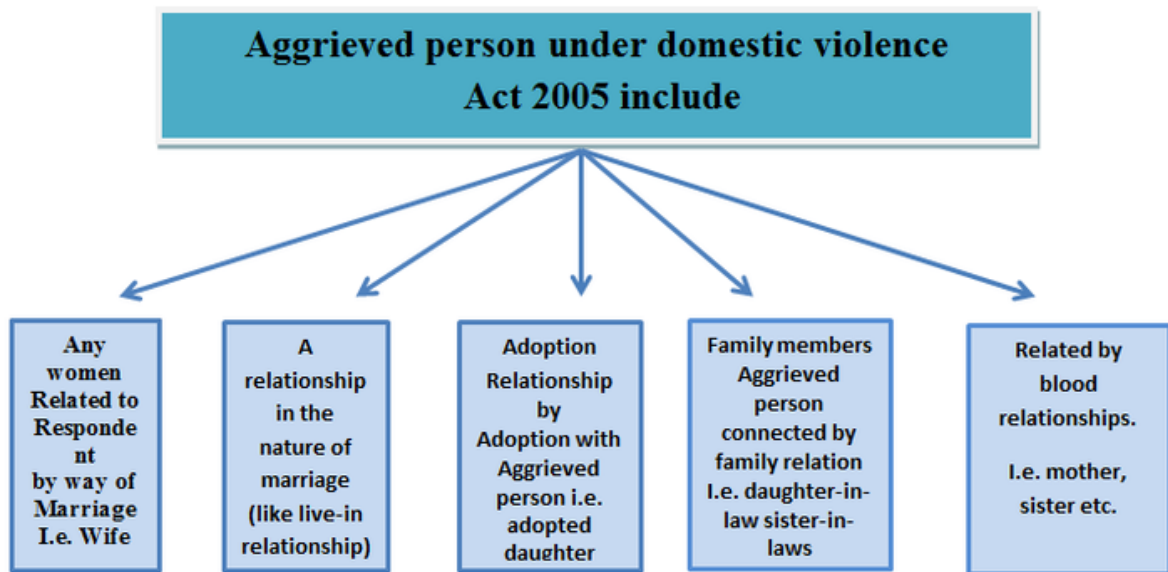
- Abuse on the physical level may take many forms.
- The act of violating another person's sense of worth via sexual abuse, humiliation, or degradation.
- Negative comments on a person's character or behaviour constitute verbal or emotional abuse.
- Abusive financial practices, such as failing to provide a woman's or child's basic needs, constitute economic abuse.

### **Key Provisions of the 2005 Domestic Violence Act**

The 2005 Domestic Abuse Act provides victims with both criminal and civil remedies for domestic violence. Some of the most important provisions of the Domestic Violence Act of 2005 are as follows:

- decisions made within 60 days of a case being filed; recognition of the significance of women's participation in the legal system and various forms of assistance;

- Protection Officers may be hired with the help of this law, and Service Providers are given official status.
- recognises the reality of psychological and verbal mistreatment;
- Provides monetary assistance by exposing instances of economic aggression;
- Either the petitioner or the respondent may initiate an Appeal;
- The 2005 Domestic Abuse Act mandates the reporting of incidents of domestic violence.
- Allows for temporary custody of children;
- Transnational litigation;
- Safeguarding the Family Home (Section 17).



### **Protective Services and Their Providers' Functions**

When a woman alleges domestic abuse or sexual assault by her husband or another adult male, the government will appoint a Protection Officer to help her file a report with the appropriate authorities. Protection Officers coordinate with local law enforcement to enforce a court order when required.

On the other side, the NGO members that have been informed are the Service

Providers. They work with everyone involved to get justice and help for victims of domestic abuse. The Service Providers help the victims of domestic violence file a Domestic Incident Report and find temporary housing. They also provide them with vocational training to help them get employment and establish themselves financially. **(Hornbeck, Johnson and LaGrotta)**

### **Provisions of the Domestic Violence Act of 2005 Regarding Government Obligation**

Each individual state government and the federal government must do all possible to guarantee that:

- Officers in the Central and State Governments, including the police and the legal system, regularly undergo training to raise their understanding and sensitivity to the concerns brought up in the Protection of Women from Domestic Violence Act of 2005. Public media such as television, radio, and newspapers often broadcast this instruction.
- Protocols are created and executed for the several Ministries responsible for providing assistance to victims of domestic abuse under the Domestic Violence Act 2005, including the courts, in order to guarantee efficient coordination between the various services offered by these agencies.
- A domestic violence victim may seek for assistance from the staff at a shelter or hospital, or her Protection Officer or service provider can do so on her behalf. **(Gupta)**

### **Remedies Under Protection of Women from Domestic Violence**

The following provisions were made in 2005's Protection of Women from Domestic Violence Act:

- **Under Section 18:** Protection Order;
- **Under Section 19:** Court Order for Spouse to Remain in Marital Home;
- **Under Section 20:** Orders for Payment, which may include Child Support;

- **Under Section 21:** Temporary Custody of Children;
- **Under Section 22:** The court has awarded her monetary damages for the harm done to her.

### **The Future of the Domestic Violence Act**

The Domestic Violence Act of 2005 (also known as the DV Act) was a watershed moment for women's rights in India. From a testing perspective, certain aspects of the Domestic Violence Act of 2005 are important to remember. If you want to understand the Domestic Violence Act, which is included in the IAS syllabus's Polity part, you can read Polity Books for UPSC.

Candidates should also routinely practise Domestic Violence Act 2005 UPSC questions and stay up with the current advancements in the law by reading Current Affairs. (**Martin, Tsui and Maitra**)

### **Domestic Violence Act 2005 UPSC**

The DV Act, or Domestic Violence Act of 2005, was a watershed moment for the advancement of women's rights in India. From a testing perspective, the Domestic Violence Act of 2005 is significant for a number of reasons. Reading Polity Books for UPSC can help you better understand the Domestic Violence Act, which is included in the Polity portion of the IAS curriculum.

Candidates should study Current Affairs for updates on the Domestic Violence Act 2005 and should not neglect frequently practise of Domestic Violence Act 2005 UPSC questions.

### **Officers of Protection's Duties and Authority**

The powers and functions of Protection Officers include the following:

1. To assist the Magistrate in carrying out their responsibilities under the Act.



2. After obtaining information about domestic abuse, you must file a report with the Magistrate and send a copy to the official in charge of the police station with jurisdiction over the occurrence.
3. If the injured party wants to apply to the Magistrate for a protection order, they must do so in the appropriate manner.
4. To guarantee that the victim receives free legal representation under the Legal Services Authorities Act of 1987.
5. Keeping track of all the clinics, hospitals, and other medical and social care organisations in a certain region within the Magistrate's purview.
6. If the victim has been physically harmed, she should seek medical attention and submit her findings to the Magistrate and the local police department as required.
7. If the victim requests refuge, you must locate a suitable facility and report the victim's whereabouts to the Magistrate and the local police department.
8. For the purpose of ensuring that the victims get the monetary remedy ordered under This Act.

### **Provider Authority And Responsibilities**

The Act specifies the roles and responsibilities of service providers under Section 10. The Act defines service providers as "any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956" that protects women's rights legally through providing legal aid, medical aid, financial aid, or other assistance. Below, we'll go through the authorities and obligations of service providers.

1. If a service provider suspects domestic violence has occurred, they must document it and report it to the local Magistrate or Protection Officer.
2. A domestic violence victim must be seen by a doctor and a report must be filed with the local Protection Officer, Magistrate, and police department by the attending physician.
3. Service providers must also find a safe place to stay for the victim and inform the police of the victim's whereabouts. **(Ellsberg)**



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## **The responsibilities of law enforcement and the Magistrate**

The responsibilities of the police and the Magistrate are spelt out in detail in Section 5 of the Protection of Women from Domestic Violence Act of 2005. It mandates the following actions to be taken by a police officer, service provider, or Magistrate upon receiving a complaint of domestic abuse, being informed of an event of domestic violence, or being present at the site of an incident of domestic violence:

1. The victim may petition the court for a variety of results, including a protection order, monetary relief order, custody order, residency order, compensation order, etc.
2. They need to let the victim know that others who can help are making themselves available.
3. The victim must be made aware of the Protection Officers' capabilities and responsibilities.
4. They should also inform the victim that she has the right to submit a complaint under Section 498A of the Indian Penal Code, 1860 and that she is entitled to free legal assistance under the Legal Services Authorities Act, 1987.

## **Responsibilities of Hospitals And Shelters**

In accordance with Section 6 of the Act, if a victim of domestic violence requests refuge in a shelter home, the person in charge of the shelter home should provide the victims of domestic violence with appropriate shelter in the shelter house. In addition, Section 7 of the Act states that the person in charge of the medical institution must provide the aggrieved individual with any necessary medical aid. **(Kumar)**

## **Government Obligations**

Several clauses in the Act outline the government's responsibilities and mandates. In this regard, you must:

1. To ensure that all residents of our nation are familiar with this Act and its contents, widespread coverage of the Act in the public media is required.

2. cement and State Government employees, including law enforcement and the judiciary, must receive regular training on the Act's requirements to ensure compliance.
3. The federal and state governments are jointly responsible for ensuring the implementation of this Act's provisions relating to providing services to women.

### **Application to the Magistrate**

It is required that the person who has been wronged, the Protection Officer for that area, or any other person acting on behalf of the person who has been wronged file an application to the Magistrate requesting one or more reliefs under the Protection of Women from Domestic Violence Act, 2005. The application must include all of the required particulars in accordance with the Act's specifications.

The Magistrate will decide when the hearing will occur, and the time allotted for it will not be more than three days from the day the application was received. In addition, the Magistrate is required to make it his or her goal to rule on all of the applications filed in accordance with Section 12 of the Act within a period of sixty days beginning with the date of the first hearing in the case. In addition, the Protection of Women from Domestic Violence Act of 2005 gives the Magistrate the authority to award the orders and reliefs listed below. **(Kimuna)**

### **Judgement given by the Court**

A three-judge bench of the Supreme Court, including the Chief Justice at the time, Ranjan Gogoi, as well as Justices U.U. Lalit and K.M. Joseph noted that a live-in partner is entitled to greater remedy than is provided for under Section 125 of the Code of Criminal Procedure, 1973. Although the petitioner is not the lawfully married wife and is not entitled to support under Section 125 of the Code of Criminal Procedure, the court pointed out that she would have a remedy to seek maintenance under the Domestic Violence Act. The Court also noted that the provisions of the Domestic Violence Act define domestic violence to include economic abuse.

### **1) Inder Raj Malik v. Sunita Malik, (1986)**

The parties here were Sunita Malik (Complainant) and Inder Raj Malik (Respondent), a married couple. Complainant Sunita alleges that after she was married, her husband and in-laws cruelly tortured, beat, starved, and abused her, particularly during festivals, in an effort to take more and more money and items from her. She was abused in her marital house until she fainted from physical and emotional abuse one day, but no doctor was summoned.

If Sunita Malik didn't force her parents to sell their land in Hauz Qazi, her mother and brother-in-law threatened to kill and abduct her. Because of this, it became clear that the Complainant, Sunita Mailk, had been subjected to severe treatment and physical torture at the hands of her husband and in-laws. Sunita Malik was the target of harassment in an effort to coerce her or a third party into complying with a prohibited demand for personal and real estate assets.

#### **Issues involved in the case**

- Does Article 20(2) of the Indian Constitution's Double Jeopardy provision apply to the Dowry Prohibition Act of 1961's Section 4 and the Indian Penal Code's Section 498A?
- Can Section 498A of the Indian Penal Code be considered unconstitutional?

#### **Judgement given by the Court**

The matter of whether or not a defendant may be found guilty under both Section 4 of the Dowry Prohibition Act and Section 498A of the Indian Penal Code was brought before the Delhi High Court. The issue at hand was whether or not a defendant can be found guilty under both provisions. It was asked that the court make a decision about the case. According to the finding reached by the court, a person who is facing charges under the Dowry Prohibition Act of 1956 as well as Section 498A of the Indian Penal Code does not suffer from double jeopardy. The Supreme Court of India came to the conclusion that Section 498A of the Indian Penal

Code and Section 4 of the Dowry Prohibition Act are two separate pieces of legislation due to the fact that Section 4 of the Dowry Prohibition Act makes it illegal to merely demand dowry, whereas Section 498A of the Indian Penal Code makes it illegal to commit acts of cruelty against a newlywed lady. This would imply that a person might be susceptible to criminal charges under both Section 4 of the Dowry Prohibition Act and Section 498A of the Indian Penal Code. Both of these sections prohibit dowries. The Indian criminal code is where you'll find these two clauses, respectively.

## 2) **Hiralal P. Harsora and Ors v. Kusum Narottamdas Harsora and Ors, (2016)**

Facts of the case

A mother and daughter duo by the names of Pushpa Narottam Harsora and Kusum Narottam Harsora have taken legal action on this incident. They claimed that they were wrongfully terminated from their jobs. They claimed that their son or brother, Pradeep, and Pradeep's wife and two sisters had attacked them. Also allegedly involved in the attack was Pradeep. In addition to this, they said that Pradeep had verbally abused them. A "adult man" is the sole kind of individual that may be the focus of a complaint in accordance with Section 2(q), which states that phrase. As a result, the Respondents asked the Metropolitan Magistrate to let Pradeep's wife and two of his sisters or daughters go free. The Respondents' request was not satisfied since it was turned down.

When interpreting the provisions of Section 2(q) of the aforementioned Act, which protects women from being subjected to domestic violence, the Bombay High Court has ruled that the definitions found in Sections 2(a), 2(f), and 2(s) of the Protection of Women from Domestic Violence Act must be taken into account. This ruling was made in accordance with the Protection of Women from Domestic Violence Act. This verdict was handed down by the Bombay High Court in conformity with an earlier order that it had handed down. This functioned as an assurance that complaints could be submitted not just against "adult male members," but also against female relatives.



In practise, this helped to ensure that complaints could be lodged. On the other hand, allegations of abuse inside the home cannot be made only against the women who live there. It's possible that the only people that respond are adult men of any age. The meaning of the word "adult male person" was not constrained in any way by the Court as a direct consequence of this fact. Following that, the mother and daughter brought their case all the way to the Supreme Court and petitioned for a writ of certiorari there.

### **The Judgement That Was Handed Down By The Court**

The Supreme Court has ruled that the term "mature man" cannot be used as a "Respondent" because it is not based on any comprehensible differentia that has a reasonable relation to the objective that is being pursued. The Supreme Court made it very plain in the same instance that the DV Act provides protection for adults and youngsters. It is not permitted to limit the definition of "Respondent" in Section 2(q) or the class of people against whom remedies under the DV Act are available to merely "adult male persons." Rather, this restriction must be avoided at all costs (q). Therefore, the recourses provided by the DV Act may be used even against female members of the household or children.

### **Conclusion**

The Act is a crucial aspect of the Indian legal system in protecting women's rights, allowing them to feel safe and secure in their own homes away from the potentially dangerous public sphere. Simply put, the Act makes it possible for women to feel safe and secure in their own homes. As an alternative way of putting it, the Act allows women to feel secure in their own homes. It's a thorough piece of law since it outlines everything from the authorities' responsibilities to the victims' rights to the procedures for filing a domestic violence complaint to the support services accessible to them and the scope of the Indian judicial system. The law encompasses the aforementioned elements fully. The Central Government is also granted the power to enact rules under this provision. With the enactment of this legislation, victims of

domestic violence may seek legal recourse for the problems they've encountered. Domestic violence victims had to go via the civil court system to seek a divorce, child custody, injunctions of any type, or maintenance before the Act was passed. This included orders for dissolution of marriage, child custody, and protection orders. This was true irrespective of whether or not the abuser let the victim to see the kids. As a direct consequence of this and the Act itself, necessary changes have been made to the Indian legislative structure. Relationships between members of the LGBTQ+ community, such as cohabitation or marriage, are not recognised under the Act. Furthermore, it does not provide any solutions for the afflicted male family members. Even while the Act has the necessary measures to protect women from domestic violence risks, it does not provide any alternatives for the male family members. Despite these protections being included in the Act, women are still vulnerable to domestic abuse. As a result, the Act has to be amended to include new provisions if it is to fulfil its promise of ending domestic abuse in India once and for all. There are now plenty of incidents of domestic violence in India.

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