

DO YOU KNOW?

SOME FACTS ABOUT DOMESTIC VIOLENCE ACT, 2005

What is Protection of Women from Domestic Violence Act 2005 ?

It is an act to provide for more effective protection of the rights of Women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Domestic Violence Act 2005 is the first significant attempt in India to recognise domestic abuse as a punishable offence, to extend its provisions to those in live-in relationships, and to provide for emergency relief for the victims, in addition to legal recourse. It extends to the whole of India except the State Jammu & Kashmir.

Why there is a need for the legislation of this Act?

Till the year 2005, remedies available to a victim of domestic violence in the civil courts on grounds of divorce and in criminal courts (vide Section 498A of the Indian Penal Code) were limited. There was no emergency relief available to the victim and the remedies that were available were linked to matrimonial proceedings. The court proceedings were always protracted, during which period the victim was invariably at the mercy of the abuser. The relationships outside marriage were not recognised. This set of circumstances ensured that a majority of women preferred to suffer in silence. It is essentially to address these anomalies that the Protection of Women from Domestic Violence Act was passed.

Who are the primary beneficiaries of this Act?

Section 2(a) of the Act will help any woman who is or has been in a domestic relationship with the 'respondent' in the case. It empowers women to file a case

against a person with whom she is having a 'domestic relationship' in a 'shared household', and who has subjected her to 'domestic violence'. Children are also covered by the Act; they too can file a case against a parent or parents who are tormenting or torturing them, physically, mentally, or economically. Any person can file a complaint on behalf of a child.

Who is defined as 'respondent' by this law?

Section 2 (q) states 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. Thus, a father-in-law, mother-in-law, or even siblings of the husband and other relatives can be proceeded against.

What is domestic abuse according to the new Law ?

Section 3 of the law says any act/conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered 'domestic violence'. Under this, the law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same. Even a single act of commission or omission may constitute domestic violence — in other words, women do not have to suffer a prolonged period of abuse before taking recourse to the law.

How does the law protect a person against intimidation and harassment ?

An important aspect of this law is that it aims to ensure that an aggrieved wife, who takes recourse to the law, cannot be harassed for doing so. Thus, if a husband is accused of any of the above forms 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. In short, a husband cannot take away her jewellery or money, or throw her out of the house while they are having a dispute.

What are the main rights given to a woman in this Legislation ?

The law is liberal and forward-looking and it recognises a woman's right to reside in the shared household with her husband or a partner even when a 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 be deemed illegal, not merely unethical.

A woman who is the victim of domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under Section 498A of the Indian Penal Code. Sections 18-23 provide a large number of options for legal redressal. She can claim through the courts Protection Orders, Residence Orders, Monetary Relief, Custody Order for her children, Compensation Order and Interim/ Exparte Orders. If a husband violates any of the above rights of the aggrieved woman, it will be deemed a punishable offence. Charges under Section 498A can be framed by the magistrate, in addition to the charges under this Act. Further, the offences are cognisable and non-bailable. Punishment for violation of the rights enumerated above could extend to one year's imprisonment and/or a maximum fine of Rs 20,000. □