



## Need of the hour: A gender neutral violence act

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### Abstract

The Constitution of India being the fundamental law of the land grants the right to equality under Article-14. But, due to certain practices prevalent in Indian societies against women, it was necessary to grant some legislative protection to them against violence being perpetrated by her family members. So, Protection of Women from Domestic Violence Act, 2005 has been enacted under the provisions of Article 15(3) which authorizes the State to make special provisions for women in addition to Section-498A in the Indian Penal Code, 1860 which has been added in the Penal Code in 1983. The sole intention behind these laws is to protect the women as from the time immoral women have been subjected to violence both inside and outside the four walls of the house. But, the present scenario reveals that women instead of using these laws as a shield taking these as a sword against husbands and in laws and thereby misusing these laws as held by the Hon'ble Supreme Court of India in number of cases in recent past. In a matrimonial dispute, it is not always necessary that aggrieved party is a wife. In various incidences, men are the aggrieved persons and suffering violence at the hands of wife. So, the question arises if the men are aggrieved then, where can they seek justice? Don't they have any right to equality and justice? So the need of the hour is to have gender neutral violence Legislation.

**Keywords:** need, hour, gender neutral violence

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### Introduction

In a democratic set up principle of equality and principle of natural justice are the backbone of the country. Existence of these principles implies the equal rights and duties and equal access to justice without any discrimination to every section of the society. India is such a country. The Constitution of India grants both these rules to every citizen. But, there are certain issues where these principles are denied to men because of the enactment of the gender specific legislations. Such gender specific legislations clearly undermines the rule of law and has the tendency to shake the roots of foundation of family leading to social unrest and bitterness.

### Constitution and Equality

Constitution being the fundamental law of the country lays down the principle of equality universally applicable to its persons without any distinction. Article 14 lays down that, "The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India". The concept of equality enunciated under art.14 includes within its sweep two expressions equality before the law and equal protection of law which supplements the social and economic equality and justice in a political democracy <sup>[1]</sup>. Thus, the principle of equality and the absence of discrimination is the essence of democracy and accordingly a basic feature of Constitution. Article 15 further implements the principle of equality and prohibits any discrimination among citizens on the ground of religion, race, caste, sex, place of birth or any of them. But equality enunciated under art 14 is subject to exception contained under clause (3) of art. 15 which authorizes the state to enact special provisions for women and children. This sub clause (3) gives the jurisdiction and power to the state as well as central government to enact special laws for the protection and safety of women and children. Many legislations have been enacted for the protection of women under clause (3) of art.15 read with art. 253 of the Constitution. The legislations like Dowry Prohibition Act, 1961 and Protection of Women From Domestic Violence Act, 2005 and section 498A <sup>[2]</sup> in the Indian Penal Code, 1860, section 113 A <sup>[3]</sup> and 113 B <sup>[4]</sup> in the Indian Evidence Act, 1872 have been enacted and introduced to extend protection to the women.

### Domestic Violence of Women

The problem of domestic violence is not of a recent times. It has its roots in society from the patriarchal times. Women because of their unequal position in a society always subjected to some kind of violence everywhere within the houses and outside the houses. Apart from the offences of rape, sexual harassment and dowry deaths there are also other expressions of violence which can be considered more brutal in nature which includes wife beating, cruelty, torture and humiliation <sup>[5]</sup>. Generally these expressions takes the meaning of wife abuse because it takes place within the four walls of the house. Legally, this has been termed as a Domestic Violence. Domestic Violence has its manifestations like physical, verbal and psychological abuse which is more brutal than any other violence. It is considered more brutal because it leads the victims towards the depression and loss of psyche.

Such form of violence clearly erodes the personality, dignity and faith of the women because it is practised by her own family members <sup>[6]</sup>. Because of the close intimacy and financial dependency with the perpetrators generally the women hesitate to bring the case on its own family members and reconcile with such situation. Legislature has taken into consideration such state of things of the women and in order to redress the issue section 498A which is Cruelty by the husband and his relatives upon the wife has been introduced in the Indian Penal Code, 1860 in the year 1983 through the Criminal Law (Second Amendment) Act, 1983. Under this section complaints filed by the wife against husband or the relatives of his husband who have subjected her to cruelty with a view to fulfil the demand of dowry.

The object of the section is to protect the weaker spouse that is the woman against the cruelties practised by the husband and his relatives. Apart from this the legislature has also enacted the Protection of Women from Domestic Violence Act, 2005. This Act has been enacted to provide a remedy in civil law for protection of women from being victims of domestic violence in the society.

The definition of aggrieved persons provided under section 2(a) of the Act states that “aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”. Thus, under the act only the wife can file a complaint a domestic violence. The definition of respondent provided in section 2(q) states that, “respondent means any adult male person who is or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this act.

Form of domestic violence contemplated under the act <sup>[7]</sup>:

1. Physical violence
2. Verbal violence
3. Emotional violence
4. Economic
5. Sexual Violence

**Against the domestic violence aggrieved women may approach the following authorities [8]:**

1. police station
2. Protection officer
3. service provider
4. filing a complaint under section 498A

**Rights provided to the women under the Protection of Women from Domestic Violence Act**

1. Shared household <sup>[9]</sup>
2. Maintenance <sup>[10]</sup>
3. Custody of children <sup>[11]</sup>
4. Compensation <sup>[12]</sup>

Looking towards the rights and remedies guaranteed to the wife, it is not desirable to have the prosecution of husband and his relatives. Prosecution can lead to more bitterness and agony on the part of husband which can reduce every chance of amicable settlement. Ultimately the relief in matrimonial disputes comes in the form of monetary compensation, right to reside in shared residence, separate residence, amicable settlement, separation and ultimately the divorces. All these remedies can be pursued under Hindu Marriage Act, 1955 under section 24 <sup>[13]</sup>, 25 <sup>[14]</sup> and 27 <sup>[15]</sup>. Section 18 <sup>[16]</sup> of the Hindu Adoptions and Maintenance Act, 1956 also provides the maintenance and separate residence to women i case of any dispute and section 125 <sup>[17]</sup> of the Criminal Procedure Code, 1973 also provides the maintenance. Further, the Protection of Women from the Domestic Violence Act, 2005 are also there for the protection of their rights. So, there is no need of unnecessary aggravating the remedies. That is why, it is required that section 498-A should be decriminalised or the offence should be made bailable in order to save the matrimonial alliance among parties because in every marriage there is some hue and cry among spouses like every rose has thorns but it doesn't mean that it should be thrown away or in other words launch prosecution against husband and his relatives due to some kind of hue and cry among spouses. With respect to save the matrimonial alliance the Hon'ble High Court of Madhya Pradesh in case of Smt. Ramvilas Sharma vs. State of M.P and others <sup>[18]</sup> expressed the necessity of bail in the matrimonial disputes in the interest of matrimonial and domestic peace. By refusing the bail, courts only add the feeling of revenge and acrimony between the husband and wife. The amicable settlement would be successful only when the parties would be given the opportunities to approach each other. So, in furtherance of the amicable settlement of matrimonial alliance, at least the courts are not to deny the anticipatory bail in offence under section 498-A of the Indian Penal Code, 1860. Thus, the Hon'ble High Court is also of the view that every care has to be taken to cause the amicable settlement of the spouses and prosecution of the husband and his family is the biggest hurdle in such settlement.

In case of Arnesh Kumar Vs. State of Bihar and others <sup>[19]</sup> a special leave petition was file before the Hon'ble Supreme Court for the grant of anticipatory bail in cases of 498-A and Section 4 and 5 of the Dowry Prohibition Act, 1961 which was rejected by the sessions court and thereafter by the high court. While deciding the grant of anticipatory bail the apex court observed that section 498-A which was introduced in the Indian Penal Code, 1860 for the protection of their rights have been misused and used it as weapons against the husband by the

wives. It has become the simplest way to harass the husband and his family because of its cognizable and non-bailable nature. In its observations and opinions the apex court was against the practice of making arrest in cases of cruelty and any other matrimonial disputes as the arrest brings humiliation and leaves its remarks on the psychology of a man forever. In this Special Leave Petition a number of directions were passed to state governments which were to be followed by the police officers everywhere in making the arrest under section 498-A and other cases. The Hon'ble Supreme Court cautions the police officers not to automatically arrest when a case u/s 498-A of the Indian Penal Code is registered but to satisfy themselves about the genuine action of arrest under the parameters laid down in section 41 of the Criminal Procedure Code, 1973.

As per the newspaper report dated 12th March, 2022, complainant wife by making various complaints compelled the husband and his family to appear in police station about 30-40 times in the entire period. Accusing the character of husband and his family and making them to appear in police station so frequently on frivolous complaints has been accepted by the Hon'ble High Court of Delhi as cruelty of the husband by the wife as it brings humiliation and attaches social stigma in society. So, on this basis the Hon'ble High Court of Delhi has granted the decree of divorce to husband. In concluding the situation, it can be said that even the courts have accepted that males can be victims of cruelty at the hands of wives. Such cruelty gives the husband a ground to take divorce but not to prosecute the wife as no law is provided to them like the wife who can prosecute the husband and his family for cruelty and domestic violence [20]. While dealing with an appeal filed by the complainant husband for the decree of divorce, the Hon'ble Punjab and Haryana High Court reiterated that where the wife has made false complaints against her husband to his superiors which were found to be frivolous is clearly a case of harassment and torture to the husband which amounts to mental cruelty as it leaves to destroying his career and lowers his reputation in the department of the husband. On the basis of above observations, the Hon'ble High Court has passed decree of divorce in favour of the husband [21].

### **Domestic Violence of Men**

It is not disputed that domestic violence of women are not there. Everywhere in any of the forms domestic violence of women takes place. But, in any domestic violence it is not necessary that women are always the victims. There have been many incidents and cases where men have been subjected to physical, mental and economic torture by the wife and her relatives. The acts of slapping, hitting by wife, pushing, threatening to him to commit suicide and intimidation to implicate in false case of dowry and domestic violence are all forms of domestic violence of men by the wife and her relatives. Generally, the men hesitate to bring the case of domestic violence on record and publicly because of the social stigma. Male victims of domestic violence are considered ridiculed and unmanly in the eyes of general public [22]. The situation is mainly because of the prevalence of male dominating society and the belief that men are the head of the family and they are stronger than women. Unreported and disguised domestic violence leads to separations, divorces, depressions and even suicides. If a male victim of domestic violence tries to open up the he becomes a mockery in society. No one listens to his grievances, not even the police and not the courts.

Whenever a domestic violence case is filed, it always raises the presumption that husband is the perpetrator not the victim. But, every time husband cannot be the perpetrator, he can be a victim as he is not a superman. He is also a human being like a woman. If a man suffers domestic violence (which may be physical, moral and economically) in India, where can he go or where can he pursue his case. Indian legislations does not provide this remedy and does not redress the grievances of male victims. This is clearly a slap on the Indian judiciary and on the Indian Constitution that denies the justice to victims because the victims are male persons. This is the Indian rule of law and principle of equality that denies the equal rights and justice to one gender by enacting gender specific legislations. More than 70 years have been passed since India got independence and its own Constitution enacted for the development of the country. But, still the foundation of marital relationships continues to be the same prevailing from the patriarchal times. The earning of wife may be equal or sometimes go beyond the husband's earnings but still the husband is legally as well socially responsible to maintain the wife and bear the household burden. In the year of enactment of the Protection of Women from Domestic Violence Act, 2005 an online based foundation called Save Family conducted the study on Indian husbands in association with My Nation. The study was undertaken on husbands from various social-economic strata, but majority of the husbands belonged to upper middle and middle class of the society. About 1650 husbands aged between 15-49 years interviewed with respect to the issue of domestic violence and cruelty. The final result that appeared on the scene was that among the entire number of respondents 32.8% respondents suffered economic violence at the hands of wife, 22.2% suffered emotional violence, 25.2 % suffered physical and 17.7% husbands suffered sexual violence. Further, the study that major number of respondent husbands who suffered domestic violence were quite educated and earning good money. About the general nature of Indian women, they were found to be most abusive and dominating. The copy of said report had been furnished to the Ministry of Law and Justice to take into account such state of things prevailing in the society and to enact the concerned legislation in order to have regulations and harmony in society but without any considerations, the gender biased violence Act was passed by the Parliament in the year 2005.

### **Clog on the Gender Equality**

In a democratic country, rule of law and principle of equality operates everywhere. Men and women are born equally and entitled to every rights and duties recognised under the law without any distinction. In the light of equality principles, any gender specific legislations giving undue advantages to one gender and undermining the

interest of another gender is clearly against the principle of equality and natural justice. Those days have gone when women were considered helpless victims. Now-a-days they are equally educated and also earning more than men. Article 15(3) which authorizes the state to enact special provisions for women as an exception to the principle of equality was necessary and was rightly enacted in the Constitution of India in the year 1950. the situation of women and overall society was largely different. Women at that times were essentially a weaker section. To uplift and develop the country, it was necessary to have some provisions for the weaker section of the society. In present times that scenario has changed tremendously. If in a democratic country, we can have gender equality with respect to the equal opportunities of work and equal pay for equal work then why can't we have gender equality with respect to issue concerning cruelty and domestic violence. This is a clear discrimination which gives unnecessary advantage and more powers to women which are misused and abused by the wife against the husband and his relatives. In case of *Preeti Gupta & Another v. State of Jharkhand & Another* <sup>[23]</sup> the Hon'ble Supreme Court while setting aside the impugned judgment of the High Court expressed the need for re-consideration of the provisions of section 498-A and the Protection of Women from Domestic Violence Act, 2005 by the legislature. The Apex court took notice of the exaggerated versions of incidents in various complaints which not only increased the burden of the courts but also leads to disharmony and unrest in the society. Criminal prosecution leads to immense sufferings in the family. So, it is high time that legislature must take into account the practical realities and amend the existing law accordingly. The Hon'ble Supreme Court urged the legislature to amend the existing law as per prevailing practical realities. It also urged the courts to be quite careful and cautions in dealing with matrimonial disputes. As in every matrimonial dispute, amicable settlement of the spouses is the primary goal of the courts so every care has to be taken. Arrest and lodging of the husband and his relatives in jail would frustrate the chances of amicable settlement. In case of *Saritha Vs. Ramachandran* <sup>[24]</sup> case it was observed by the Hon'ble High Court of Andhra Pradesh that section 498-A is extremely exploited by the married women to harass the husband and their in-laws. So, the apex court largely emphasized on the need of making the offence as bailable and non-cognizable one. Even the Law Commission of India in its 243rd report observed about the offence of cruelty under section 498-A that although there are number of cases of false implication of husbands and misusing the provisions of the section 498-A but looking at the object for which it has been introduced in the penal statute to protect the women it cannot be completely taken away from the statute. Rather, the need is there to make the offence as bailable and non-cognizable so as not to harass the husband and family by the legal process <sup>[25]</sup>.

It has to be understood that both men and women are born human beings and equally entitled to fundamental right to equality on same footing. The domestic violence whether of male and female is more grievous in nature which can shake the foundations of family. So, appropriate opportunities and access to legal recourse must be given to both of them. In the absence of which the principles of natural justice would lose its meaning. It is also against the fundamental right to live with dignity enshrined under Article 21 of the Constitution of India.

### Conclusions and Suggestions

The provisions of the Protection of Women from Domestic Violence Act, 2005 are good enough as it protects the women against the domestic violence practised by the male persons at home. It is not denied that domestic violence and cruelty of women is not there. It is there. But, domestic violence of men also takes place because men are also human beings and they also have their own weakness and strengths. That is why, the point of contention is that why the right to legal recourse to male victims against domestic violence and cruelty is not provided to them. It is really an agony that neither any legislation is enacted for their protection nor any authority listens to them. So, the question arises that don't the men have any dignity? Aren't they human beings? Don't they have equal access to natural justice? Presently, time has changed a lot. Now the women are not helpless entity.

In the light of above discussions and changed scenario, it is suggested that there is a dire need for the gender neutral violence act to redress the grievances of both husband and wife equally without any distinction and discrimination. Or the required changes must be made in the Protection of Women from Domestic Violence Act, 2005 in order to make the act more adaptive with the changed scenario as to provide a new ray of hope for the men who have suffered and is suffering at the hands of women. So, it is utmost necessary to impose proper checks and balances so that no party is injured and punished against the principles of natural justice. Following are some of the suggestions to redress the grievances of male victims:-

1. The definition of aggrieved person provided under section 2(a) must include the word 'male' which includes husband and the male relatives of the husband so that male victims can also approach the courts in case they suffer domestic violence. Along with this the definition of respondent given under section 2(q) also includes any female persons as to include the wife and its relatives.
2. Before taking the cognizance proper inquiry must be made into the facts in order to ascertain the truth.
3. Appropriate action should be initiated against the perpetrators of frivolous and false complaint to deter and discourage such future complaints.
4. Cases filed under Section 498-A and Protection of Women from Domestic Violence Act, 2005 should not end at the arrest and prosecution of husband. Amicable settlement of the parties must remain the primary goal of the magistrate. Arrest and prosecution of the husband is the hindrance to such amicable settlement.
5. The Protection of Women from Domestic Violence Act, 2005 should be renamed as the "Protection of Spouses from Domestic Violence Act" as to make it gender neutral.
6. Either the offence under section 498-A should be made decriminalised as no purpose is served in the prosecution of husband or it should be made bailable and non-cognizable offence.

7. A separate Family Counselling Centres must be set up in order to redress the grievance and needs of the aggrieved family members.

### References

1. <https://socratic.org>.
2. Dr. Durga das Basu, introduction to the constitution of India 87 (Lexis Nexu Buttersworth Wadhwa 20th Edn. 2012).
3. Sec.498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
4. Explanation- For the purpose of this section,"cruelty" means,-
5. any willful conduct which is of such a nature as 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; or
6. harassment of the woman where such harassment is with a view to coercing 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 elated to her to meet such demand.
7. Sec.113-A. Presumption as to abetment of suicide by a married woman- when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
8. Explanation- For the purpose of this section,"cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).
9. Sec.113-B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand of dowry, the court shall presume that such person had caused the dowry death.
10. Explanation- For the purpose of this section "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).
11. Mamta Rao, Law Relating to Women and Children, 165 (Eastern Book Company 2nd Edn. 2011).
12. *Ibid*.
13. The Protection of Women From Domestic Violence Act, sec.3.
14. *Id*, sec.5
15. *Id*, sec.19.
16. *Id*, sec.20.
17. *Id*, sec 21.
18. *Id*, sec. 22.
19. Sec. 24,"Maintenance pendente lite and expenses of proceedings,- Where in any proceeding under this act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding, such sum as, having regard to the petitioner's own income and the income of the respondent,it may seem to the court to be reasonable.
20. Permanent alimony and maintenance-(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be,order that the husband, as the case may be, order that the respondent shall, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and property of the applicant the conduct of the parties and other circumstances of the case,it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.
21. (2) if the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.
22. (3) if the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock,[it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just]
23. Disposal of property- in any proceeding under this Act, the court may make such provisions in the decrees as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife".

24. Sec.18.”Maintenance of wife-(10 Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during the life-time.
25. (2) A Hindu wife shall be entitled to live separately from her husband with out forfeiting her claim to maintenance-
26. if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish or of wilfully neglecting her;
27. if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
28. if he is suffering fro virulent form of leprosy;
29. if he has any other wife living;
30. if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere
31. if he has ceased to be Hindu by conversion to another religion;
32. (e) if there is any other cause justifying her living separately.
33. Sec.125. Order for maintenance of wives, children and parents-(1) If any person having sufficient means neglects or refuse to maintain-
34. his wife, unable to maintain herself, or
35. his legitimate or illegitimate minor child, whether married or not, unable to maintain itself or
36. his legitimate or illegitimate (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
37. his father or mother, unable to maintain himself or herself,
38. a Magistrate of the Fist Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:
39. Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:
40. “Provided further that the Magistrate may during the pendency of the proceeding regarding monthly allowance for the maintenance under the sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable and to pay the same to such person as the Magistrate may from time to time direct”.
41. MCRC Number 23649/19 (Order dated June 19, 2019) MPHC.
42. 2014 (8) SCC 273.
43. Dainik Bhaskar Bhopal Edition, March 12, 2022, pg. 6
44. Devesh Yadav v. Smt. Meenal, 2022 LiveLaw (PH) 66
45. Seep Gupta, *Domestic Violence against Men in India*, (March 6, 2022, 02:45 P.M.) <http://blog.ipleader.in/domestic-violence-men-india>.
46. SLP (Crl.) No.4684 of 2009, Judgment dated August 13, 2010.
47. 2002 (6) ALD 319.
48. <https://criminallawstudiesnluj.wordpress.com>, March 15, 2022 8:30 P.M.