

**“KNOW IT. NAME IT. STOP IT” – PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT, 2005: AN ANALYSIS**

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“A house where a woman is unsafe is not a home”

- Woman, Liberia

*“Violence against women is an appalling human rights violation. But it is not
inevitable. We can put a stop to it”*

- Nicole Kidman

ABSTRACT

In the recent years, the role of the judiciary has extended beyond issuing directions on social issues concerns to ensuring effective and fair implementation of the same. As a judge this requires elimination of subtle ways in which the courtroom perpetuates discrimination and violation of women’s right. As judges need to be proactive and take charge of courtroom to ensure that the subtle plays of discrimination though spoken and unspoken words are eliminated.²

The author very pleasantly like to twitch this venture by toting his idea on the domestic violence that *“For every wound there is a scar, and every scar tells a story. A story that says “I survived”*. If you look it from the perspective of the survivor *“Domestic Violence is any behaviour involving physical, psychological, emotional, sexual or verbal abuse. It is any form of aggression intended to hurt, damage, or kill an intimate person”*.

The parliament in 2005 passed Protection of Women from Domestic Violence, which subsequently came into effect on 2006, but even after the introduction of such an Act, yet the crime against women are high and could not be reduced, because of the lack of knowledge among people, so this is the basic reason as to the effectiveness of the Act could not be properly achieved.

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² AS Anand, Former Chief Justice of India, *“Bringing the rights home Justice for Women; Concerns and Expressions”*, Universal Law Publication, Delhi (2002).

In this paper, the author tries to highlight idea on the protection laws and also the effectiveness of the Act, so that the women's who are subjected to Domestic violence can take this as a measure to institute the case in the court of law.

“DOMESTIC ABUSE IS WRONG, BUT DOMESTIC RETRIBUTION IS OKAY” -

INTRODUCTION

Home is a place where everybody feels comfortable and safe but for some people it is not true and that remains true. They **face a regime of trepidation and violence** but whereas they should feel relaxed and loved by everyone. This category includes women who face domestic violence from their close relationships, mainly by their husbands and in-laws. They do not have any rights and decisions making choices within their family itself. There are many women who are facing such kind of inhumanities in this world and especially in India (Crime against women in India up to now is 34%³). Violence against women is present across the world cutting across boundaries of culture, class, education, income, ethnicity and age. When looking at the problems faced by the women in 21st century, domestic violence comes among top of all such violence. Domestic violence is not a new concept, it has prevailed in our societies from a long time and is still prevailing. This century brought with it the concept of women empowerment, and it also helped women come forward in society. But crimes against women did not come to an end with this empowering. This issue is still unresolved.

Even in the ancient times womens were given high respect in the society in comparison with the men, as mentioned in Rigveda.⁴ But as time passes, the status of the womens were drastically reduced and it is all because of social, political and economic changes, women lost their status and were relegated to the background. Many evil customs and traditions trodden in the society which enslaved the women and tied and confined them to house.

It is on the face of it all the records that are produced in the Newspapers, National Crime Record Bureau, highlights on the crime against women is growing every year and there is no measures taken to curtail this. Over the recent times, **social evil violence's** like

³ Arun Janardhanan, *Crime against women up 34% in four years; most reposts from UP, Maharashtra, West Bengal*, FIRST POST NEWS, (Chennai Ed., September 6th,2016), <http://www.firstpost.com/india/crimes-against-women-up-34-in-four-years-most-reposts-from-up-maharashtra-west-bengal-2991754.html> Last Visited on December 8th 2017

⁴ Aruna Goel, *“Violence and Protection measures for women development and empowerment”*, Deep & Deep Publication, pp. 3-4, New Delhi (2004).

dowry deaths, child marriages, **domestic violence, rape**, sexual harassment, exploitation of women workers are rampant in different parts of India.

MEANING OF VIOLENCE AND CRIME AGAINST WOMEN

The Semantic meaning of “**Crime against women**” is that of a direct or indirect causing physical or mental cruelty to women. **Crimes which are “directed specifically against women”** and in which “**only women are victims**” are characterized as “**Crime against women**”.⁵

The concept of “**Violence against women**” is different from crime against women. Violence is also known as abuse and include any sort of physical aggression or misbehave. When violence is committed at home it becomes “Domestic Violence” and includes such inmates as to Husband and in-laws.

Domestic violence may involve different means such as **threats, sexual abuse, and emotional abuse, controlling or domineering, intimidation, stalking, passive/covert abuse and economic deprivation, rape, abduction, kidnapping, murder** in all these cases, women are subjected to deeper distress of violence and many don't file the case and suffer in silence.

The United Nation defines “Violence against Women” in 1993 in the **Declaration on the Elimination of Violence against women**. It defines “*it as any act of gender-based violence that results in, or likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life*”.⁶ This definition is the apt one to consider and wider in nature, which includes all sort of violence against women.

Basic crimes women are subjected to:

Although women may be victims of any of the general crimes such as Murder, Robbery, Cheating, etc. Only the crimes which are directed specifically against women are characterized as “Crime against women” and this crime will also include **Domestic Violence** too.

⁵ Awadhesh Kumar Singh & Jayanta Choudhury, “*Violence against Women and Children-Issues and Concerns*”, , Serials Publications, p. 2, New Delhi (2012)

⁶ United Nation, *Declaration on the Elimination of Violence against women*, (20th December 1993), available at <http://www.un.org/documents/ga/res/48/a48r104.htm> Last Visited on December 10th 2017

Various legislations have been brought and amendments have been made in existing law with a view to handle these crime against women effectively, such as Criminal Law Amendment in 2013 and various other special laws. Therefore, these are broadly classified under two categories:

- a) **The Crimes under the IPC** and
- b) **The Crimes under the Special and Local laws.**

Various Crimes under Indian Penal Code:

1. **RAPE – Section 376 IPC:** An increasing trend in cases of rape has been observed during 2015-16. A mixed trend in the incidence of rape has been observed during the periods of 2017. After the Nirbaya Rape case in 2013, the rapist numbers have been vigorously and drastically increasing in the today's trend and number of men are committing rape on the innocent girls who cannot show their face in the society at large.

“There were 24, 270 victims of rape out of 24, 206 rape cases in the country. 10.6% of the total victims of rape were girls under the age of 14 years, while 19% victims were teenaged girls aged between 14-18 years. While 54.7% victims were women in the age group of 18-30 years. However, 15% victims were in the age group of 30-50 years, while 0.6% was over 50 years of age”⁷.

So this clearly proves that at one stage, India will be the top most country with leading rapist in the world. So sad and look at the plight of the Women.

2. **DOWRY DEATHS – Section 302, 304B IPC and Dowry Prohibition Act, 1961:**

A unique form of violence experienced by women is the “Dowry Death”, which can be considered as one such type of Domestic Violence by the husband and their in-laws. **These cases have increased by 4.7% during the year 2016 and 29.6% of the total such cases reported in the country with UP leading the list and followed by the Bihar⁸.**

3. **TORTURE – Cruelty by husband and relative, Section 498A IPC**

Torture and cruelty cases in the **country have increased by 5.4% in 2015-2016 and about 29.9% were reported from West Bengal and the highest crime of 31.6 was also**

⁷ Kamla Bhasin, “Women’s Empowerment in the Indian context”, Yojana, Vol. 6 (2016), available at <http://yojana.gov.in/Final%20september%20yojana%202016.pdf> ,

⁸ India, Ministry of Home Affairs, National Crime Records Bureau, Crime in India.

reported from West Bengal as compared to the National rate which is just 8.2.⁹ So before the enactment of the **Domestic Violence Act, 2005** the victim could only take the defence of **Section 498A** under the Indian Penal Code and after looking at the rapid increase in the crimes against women, the Indian parliament legislated the Domestic Violence Act, 2005.

***“DOMESTIC VIOLENCE IS THE FRONT LINE OF THE WAR AGAINST WOMEN
DOMESTIC VIOLENCE ACT” – THE CONCEPT***

The women are always subjects to the victimization, it is all because of improper Criminal Justice delivery system. There is an alarming need to change the criminal justice delivery system, in order to protect the plight of the victims, who suffer so much because of the pressures from the different agencies of the Criminal Justice system.

Despite the cultural, social and economical justification for spousal violence, still some women try to turn to the justice system for assistance, yet the end result is that, they are even more victimized. However, prior to the passing of the Protection of Women from Domestic Violence Act in 2005 and its enforcement in October 2006, women could only seek criminal sanctions for domestic violence under **Section 498A**¹⁰ of the Indian Penal Code that talks about the “**Anti-Cruelty Act**”. Or the other possible defence would be that the victim can take is Section 304B that talks about the Dowry Death or face the social stigma of getting divorce.¹¹ These two pieces of legislation could be used only in very limited circumstances: **498A only punishes husbands or relatives of husbands for acts of harassment or violence that would likely drive a woman to commit suicide or cause grave danger to her life, limb or health. While 304B may also be used to post-mortem to punish violence**

⁹ *Ibid.*

¹⁰ Recent News as to Section 498A is that, the Supreme Court has issued New Guidelines to prevent misuse of Section 498 IPC on July 27, 2017 in the case of: *Rajeesh Sharma & Ors v. State of U.P & Anr.* “The Honourable Supreme Court held by saying that, it is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned trial courts being sensitized. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose”.

Therefore, the Honourable Supreme Court laid down new seven guidelines to these and upheld the Section 498A.

<http://www.livelaw.in/breaking-misuse-of-s-498a-sc-directs-to-form-family-welfare-committees-to-examine-each-cases-no-arrests-before-committees-report-read-new-guidelines/>

¹¹ Amy Hornbeck, Bethany Johnson, Michelle LaGrotta & Kellie Sellman, “*The Protection of Women from Domestic Violence Act: Solution or Mere Paper Tiger?*” 4 Loy. U. Chi. International Law Review, p. 273 (2007)

against a woman when the cause of her death can be shown to be related to dowry demands.¹²

But more these plights, there is no such legislation, which could guarantee protection to the survivors and ensure certain amount of rights to the victims, therefore in light to protect the domestic violence against women, a separate legislation was ensured and recognised to the victims.

Even, according to the Declaration on Elimination of Violence against Woman¹³, 1993, pointed out:

*“Violence against woman is a manifestation of historically unequal power relations between men and women, which have led to domination over and discriminations against women by men and to the prevention of the full advancement of women, and that violence against woman is one of the crucial social mechanism by which women are forced into a subordinate position compared with men”.*¹⁴

Article 4 of the said Declaration on Elimination of Violence against women, 1993. It states that *“... state should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end...”*¹⁵

The Protection of Women from Domestic Violence Act, 2005, for the first time, **“Formally recognises a woman’s right to a violence free home”**. This law is the first step towards bringing women’s human rights into the sphere of the “home”, which has been an important site of violence.

Violence against women is defined *“as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring*

¹² Guruappa Naidu, *“Violence against Women in India”*, New Delhi, Serials Publications, p. 23 (2011)

¹³ Declaration on the Elimination of Violence against Women. The declaration on the elimination of violence against women was adopted without vote by the United Nations General Assembly in its resolution 48/104 of 20th December 2017.

¹⁴ General Assembly, *“UN Committee on Elimination of Discrimination against Women”*, available at <http://www.un.org/documents/ga/res/48/a48r104.htm>, Last Visited on 11th December 2017.

¹⁵ Para 6, General Recommendations 19, *“UN Committee on Elimination of Discrimination against Women”*, 1992; available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>, Last Visited on 11th December 2017

in public or in private life".¹⁶ The DEVAW further goes on to explain the forms in which this violence is manifested to include, "*Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other related practises which are harmful to women, non-spousal violence and violence related to exploitation*".¹⁷

Therefore, these are the stepping stones for the successful achievement of such protection of women, **but they are all only in letter, but when it comes to practicability, it has no applicability.**

Important features of the Protection of Women from Domestic Violence Act, 2005:

1. **RECOGNITION OF THE RIGHTS TO BE FREE FROM VIOLENCE:** The statement of objects and reasons of the PWDVA recognises that "**domestic violence is undoubtedly a human rights issue and serious deterrent to development**". Accordingly, the act provides a comprehensive definition of domestic violence, to include **physical, emotional and verbal, sexual and economic violence**; all things required to allow a woman to live with dignity. The Act functions not only to protect the rights of the victims but also provides a remedy to preserve those rights.
2. The PWDVA provides a declaration of a woman's right to reside in the shared household. What the PWDVA does it to declare this as a substantive right based on the fact of "having established a household together" and flowing from the domestic relationship. **Section 17 of the Act** therefore, is a declaratory provision which puts the entitlement of residence beyond any doubt.
3. **The Act provides a single window clearance system for women seeking legal redress, wherein an aggrieved woman can seek multiple reliefs in one single proceedings.** In pre-2005 regime, the existing reliefs had to be sought and obtained from separate courts, inevitably leading to multiplicity of proceedings. The significance of the alternate remedy envisaged by this act lies in the attempt to provide easier and speedier access to justice.

¹⁶ Article 1 of the Declaration on Elimination of violence against women 1993, available at http://pu.edu.pk/images/journal/csas/PDF/13_V28_1_2013.pdf Last Visited on 12th December 2017

¹⁷ *Ibid.*

4. In recognition of the fact that women need more than just access to court, the law has put in place multiple support structures, such as **protection officers**¹⁸, **service providers**¹⁹ and **shelter homes**²⁰ to support the woman distress and assist courts in justice delivery. The law therefore, clearly mandates a multi-agency response to provide comprehensive relief to women facing violence at home.²¹

¹⁸ Protection officers are to facilitate a woman's access to court remedies and other support services. Most importantly, they are vested with the responsibility of assisting the court in the discharge of its functions.

▪ *“Section 8 of the Domestic Violence Act, 2005 states that “Appointment of Domestic Violence”-*

- 1) *The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a protection officer shall exercise the powers and perform the duties conferred on him by or under this Act.*
- 2) *The Protection Officer shall as far as possible be women and shall possess such qualification and experience as may be prescribed.*
- 3) *The terms and conditions of service of the protection officer and the other officers subordinate to him shall be such as may be prescribed.”*

¹⁹ Service providers are organisations, registered under this law, that provide assistance to aggrieved women by recording the DIRs (*Domestic Incident Report, is same as the First Information Report (FIR) which is actually used to file the complaint and this is forwarded by the police or the service providers to the Magistrate*) and specifically in terms of shelter, counselling, legal aid, medical aid, vocational training etc. The PWDVA protects actions taken in good faith by such organisations

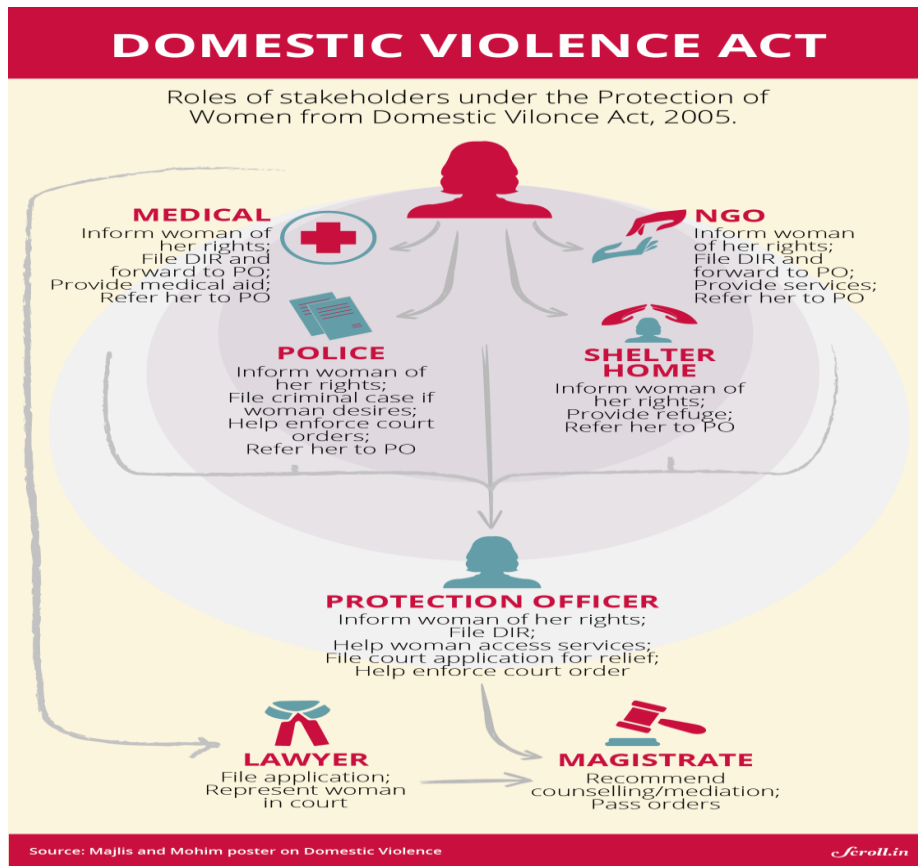
▪ *“A service provider registered under the sub section 1 of Section 10 shall have the power to record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the magistrate and the protection officer having jurisdiction in the area where the domestic violence took place, and get the aggrieved person medically report to the protection officer and the police station within the local limits of which the domestic violence took place. They also ensure that the aggrieved person is provided shelter in a shelter home, if she requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within limits of which the domestic violence took place.”*

²⁰ Shelter homes are notified by the state governments and cannot be refuse to provide shelter to aggrieved women

▪ *“According to Section 2 (t) of the Domestic Violence Act, 2005, “Shelter home” means any shelter home as may be notified by the state government to be a shelter home for the purposes of this Act.”*

²¹ Indira Jaising, Ministry of Women and Child Development, Government of India & National Commission for Women, *“Ending Domestic Violence through Non-violence: A manual for Protection of women from domestic violence”*, Lawyers Collection, Print graphics, New Delhi, 2006.

RIGHTS AND REMEDIES UNDER THE LAW



Even though the Act recognises so many Rights and Remedies, yet there is no sturdier achievements in the procedural aspects, they are clearly well defined in the Letters of Law, but in reality, the applicability is nearly zero, domestic violence's against women still in prevalence, some of the Rights guaranteed in the Act are:

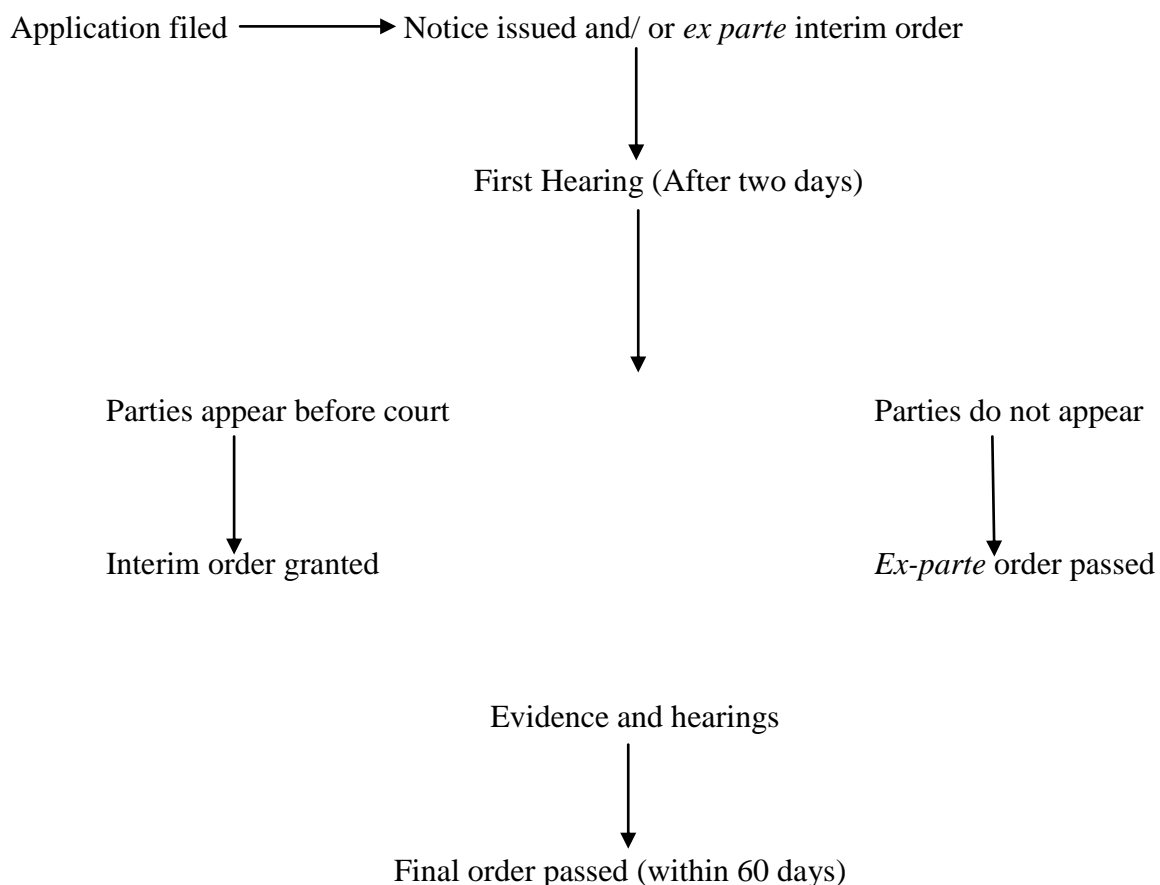
1. The **Right to be free from violence**, which is to be inferred from the definition of 'domestic violence' contained in **Section 3**.
2. The **Right of residence** in the shared household that is recognised in **Section 17** and
3. The **Right to seek** remedies under this law is provided for in **Section 12**.
4. The **Right to get relief in other suits and legal proceedings** under **Section 26**.

Remedies prescribed under the law are **in the form of orders** they are namely listed below;

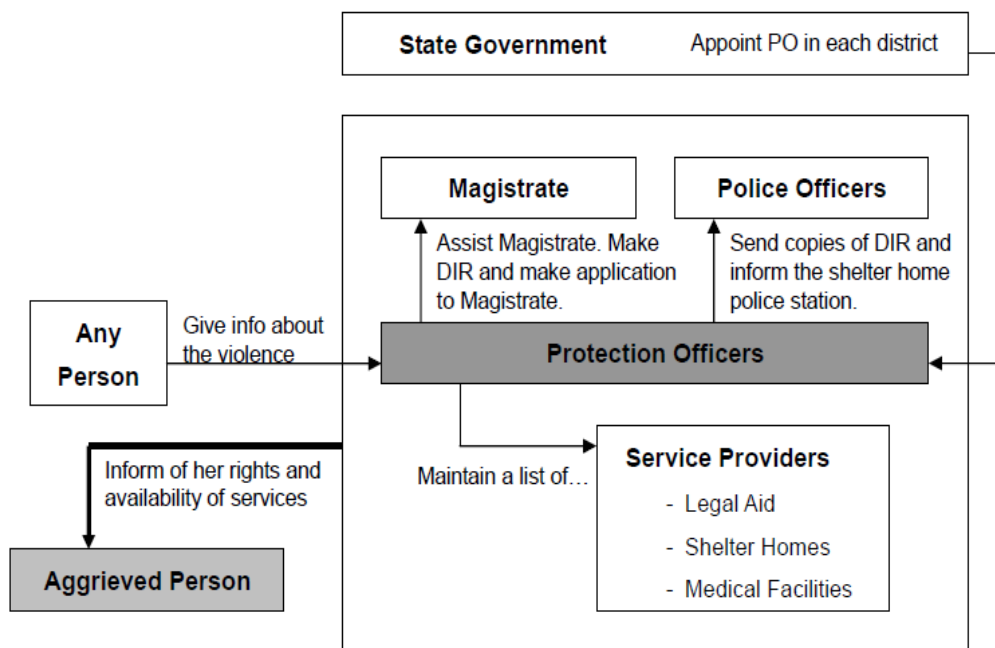
²² Aarefa Johari, *Twelve years since the Domestic Violence Act, How well do protection officers help women in need?*, (Mar 28th, 2017), available at <https://scroll.in/article/830882/twelve-years-since-the-domestic-violence-act-how-well-do-protection-officers-help-women-in-need> Last Visited on 12th December 2017

1. **Protection Orders** (*Section 18*): Injunctive orders to stop and prevent domestic violence
2. **Residence Orders** (*Section 19*): Are to prevent a woman's dispossession and to prevent any acts that impact upon her peaceful occupation of the shared household;
3. **Monetary Relief** (*Section 20*): To reimburse actual expenses incurred due to domestic violence such as medical expenditure and the loss of earning as well as maintenance.
4. **Compensation Orders** (*Section 22*): For mental torture and emotional distress caused to the aggrieved woman.
5. **Order granting** (*Section 25 and 26*): Temporary custody of children
6. **Mechanisms:**

(i). Proceedings in Court

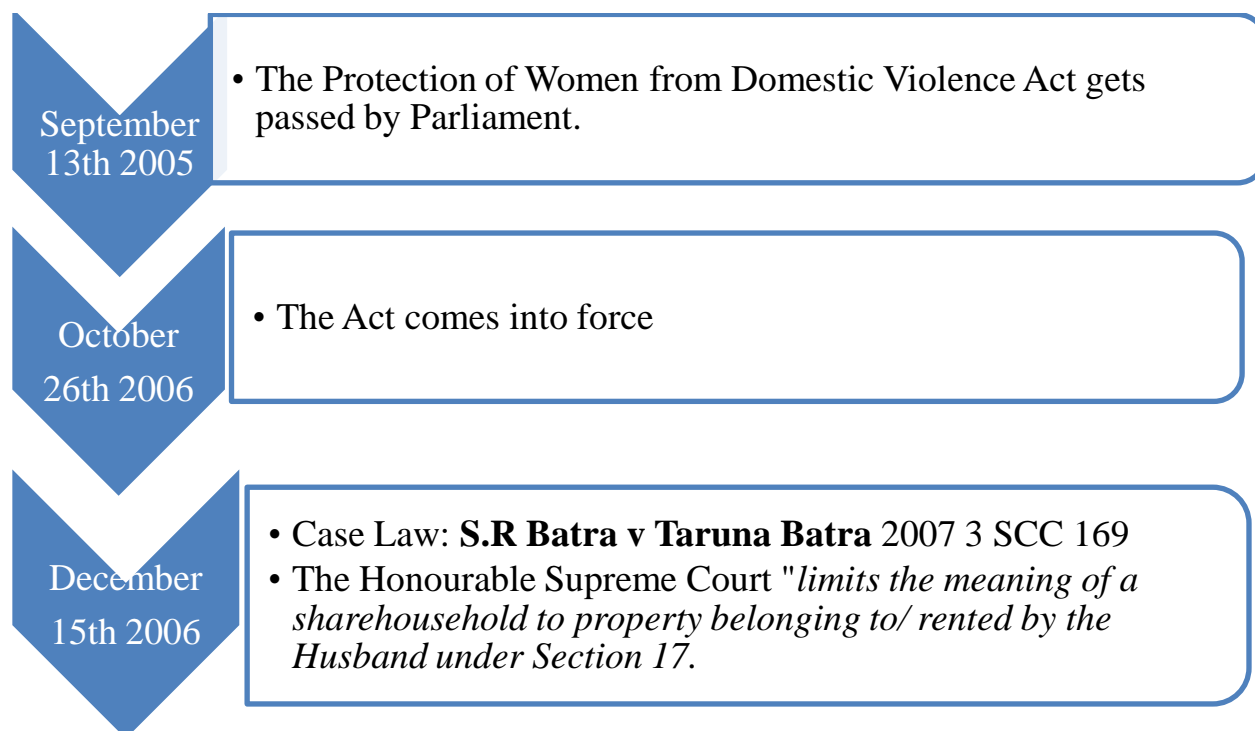


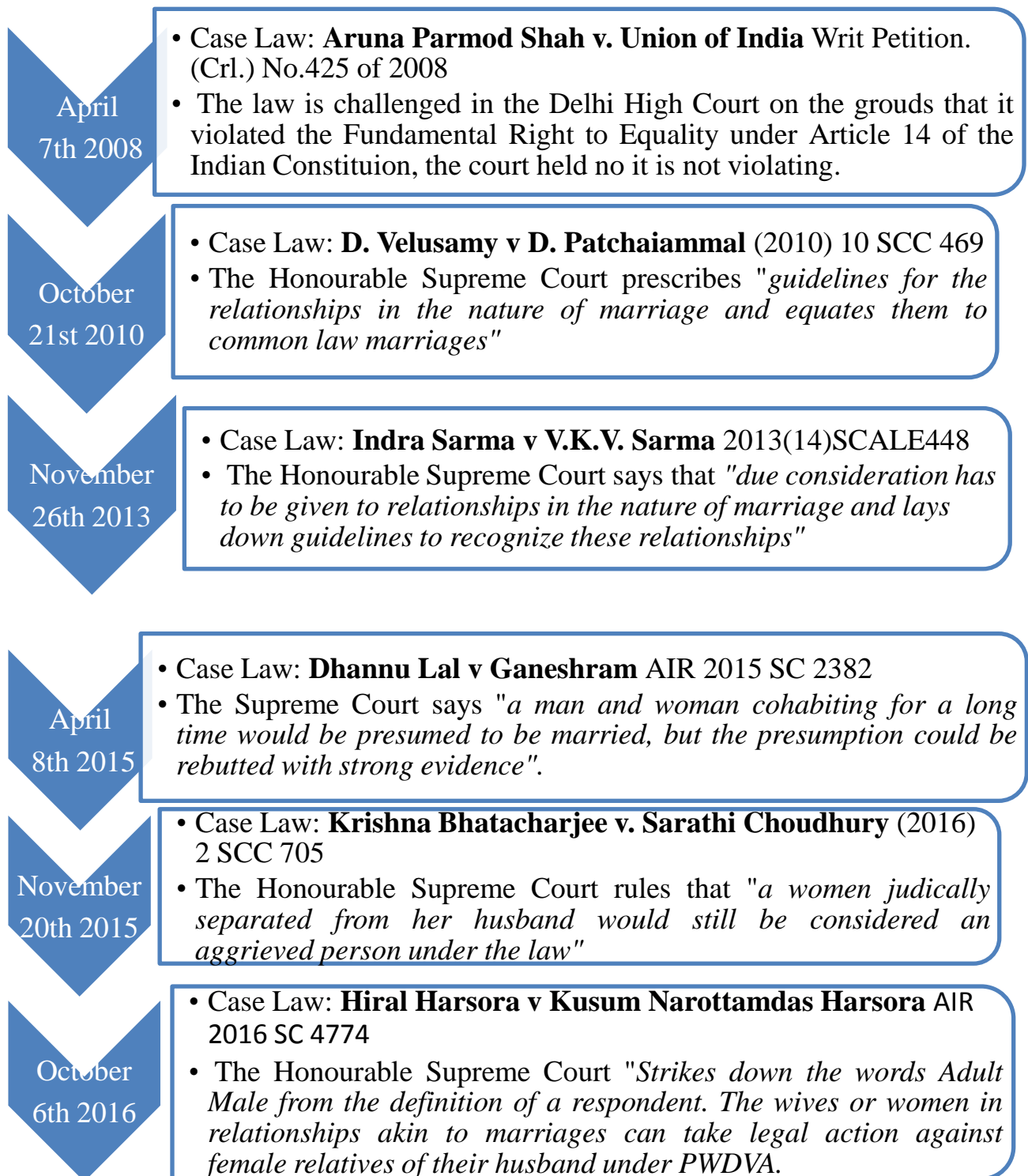
(ii). Protection Officer's role.



“THE TRUTH WILL ALWAYS BE THE TRUTH, EVEN IF NO ONE BELIEVES IT” - JUDICIAL MILESTONES

The Judiciary with respect to this Act, has time and again interpreted and have given people, all the reliefs that they want by giving wider interpretation to the Definitional/ Interpretation clause. The important milestones of the Act are listed below:





“REALITY OF KNOWLEDGE OF THE ACT” – CONCLUDING OPINION

When it comes to the idea/ Knowledge over the Act, it got well renounced good opinion from the people, since the Act deals with various ideas on different orders and different remedies,

which are ensured to the survivors of the Domestic Violence. But the biggest problem with the Act is the practical applicability, it lacks way behind because of no proper applicability of the laws which the Act prescribes.

People do not possess any idea over the Act, is because of the lack of knowledge on the Act. This is all because of lack of procedural applicability of the Act to the victims of Domestic violence. This is a pioneering law because it recognises not just physical violence alone but also recognises emotional, verbal, sexual and economic violence against women. It includes the wider ambit of the definition of Violence is because, every person has a Right to life under Article 21, that is **Right to Live a life free from such violence.**

It is important that, the post of the Protection Officer, plays a crucial role in cases of Domestic Violence. This is because, he has to help the aggrieved women by helping her to take the complaint to the court of law and also connect with police and support services provided under the Act. But in reality, there lacks protection officer, according to the rules of Domestic Violence Act, State Government must appoint at least one protection officer in the jurisdiction of every judicial magistrate. According to the said Act, *“protection officer can be either from government appointed or even from a Non-governmental organisation (NGOs), with atleast of 3 years of experience in the social sector and most preferably that person should be women”*.²³ But the existing situation is that, there is no such protection officer properly appointed, he plays a very important under this Act, if his appointment itself lacks, this results in reduction of effectiveness of the Act itself. *“The protection of women from Domestic Violence Act, 2005 is a social legislation enacted with a view to ameliorate the position of women in Indian society. This legislation is a rights based law aimed at protecting the women from being victim of domestic violence. It is a remedial statute having beneficial object behind it.”*²⁴ **A remedial Statute prohibits certain acts by declaring them invalid and provides for redress to the persons aggrieved.**²⁵

Another important duty of the protection officer is to inform the women of her rights and prepare a detailed Domestic Incident Report. But, it is not properly done and the procedural

²³ *Parameters for effective implementation of the Domestic Violence Law*, (May, 2014) http://shodhganga.inflibnet.ac.in/bitstream/10603/122156/14/14_chapter%206.pdf

²⁴ *Ibid*

²⁵ G.P.Singh, *Principles of Statutory Interpretation*, Lexis Nexis Butterworths Wadhwa, Nagpur, p. 820, (11th Ed. 2014)

part again lacks here. It makes the applicability of the Act weak in the eyes of common people.

Therefore, it is requested that all the procedures which is prescribed under the Act have to be carried out without any dereliction of duty by the officer or the non-appointment itself, **the more the effective application of the Act, the less is the Violence against women.**

If the effectiveness of the Act and the protection towards the victimized women also fails, then the idea which is still embedded in the society that, womens were regarded inferior to men continues at no cost. So even more the women will be treated as chattels by men, because there is a lack of protection. Be it a girl child or a fully grown women, all the time **she** is subjected to all kinds of violence.

The Act specifies that the maximum period for solving of a case within two months or in a period of 60 days, however in reality when it is analysed, the number of pending cases before the magistrate makes it almost impossible for the victim to get relief within the specified time period. So this makes so many cases in backlogs and huge number of petition just keep on piling in the court room. If it is not properly looked into then the idea in the vintage concept where preference of male child was so intense that it always results in the death of female foetus will again gain momentum in the society. So there is an alarming need for the effective implementation of Act and its procedural formalities respectively.

“Has he ever trapped you in a room and not let you out?

Has he ever raised a fist as if he were going to hit you?

Has he ever thrown an object that hit you or nearly did?

Has he ever held you down or grabbed you to restrain you?

Has he ever shoved, poked, or grabbed you?

Has he ever threatened to hurt you?

If the answer to any of these questions is yes, then we can stop wondering whether he'll ever be violent; he already has been.”²⁶

“We Want To Change, We Want To See, We Can”

²⁶ Lundy Bancroft, Why Does He Do That?: Inside the Minds of Angry and Controlling Men