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DOMESTIC VIOLENCE IN INDIA: A LEGAL PERSPECTIVE- Rahul Verma¹**Introduction**

In the framework of the social control process, which aims to preserve peoples' cultural traditions and strengthen social ties, the word "legal punishments" is rather significant. The term "sanction" is described by renowned sociologist Radcliff Brown as a social response to a behaviour pattern that is either approved or rejected. According to him, the concept of "sanctions" is crucial to social interactions since they offer a useful tool for controlling people's behaviour and bringing it in line with societal norms, usages, and practises. In other words, a penalty is a tool that aids people in upholding the social fabric.²

When it comes to a sanction's practical importance, it might be said that it serves as a deterrence. Any violation of a norm triggers its activation. While it is typically used to signify a gesture of disapproval and a form of punishment for the prohibited activity, it is also a term used to indicate praise, acceptance, or reward for upholding the known and accepted rules of behaviour.

Thus, a sanction denotes the proper action that is taken to rectify the situation when a norm has been violated or to show approval when it has been followed. The idea of "sanction" is crucial to the legal system because it takes the shape of fines, remedies, or other legal avenues of relief and serves as a tool for enforcing compliance with social norms.

Significance And Need For The Act

According to the 2011 census, there were 900 million women in India, or about 50%

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²MyersM.AandHaganJ,*Private andPublicTrouble:SocialProblems*,p.439–451 (1980)

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of the country's overall population. Even with such a large margin, Indian women's social status is not very favourable. Why is the question? Despite being equal at birth, people are never treated equally. Gender bias or unequal treatment of women is not a recent phenomenon. If our mythology is used as a guide, it demonstrates the gender bias that pervaded India. Goddesses Sita or Draupadi as portrayed in the Epic both had to submit to this unfair treatment. Women are still frequently the targets of violence today.

The use of force against someone is referred to as violence. Violence against women is merely the destruction of creators, even if women are the ones who give life to humans. Simply said, violence against women is the eradication of creators. Since ancient times, India has continued to conduct many sorts of biological and psychological violence against women. The complete dependence of women on men in the male-dominated society is the root cause of this phenomenon. According to Hindu Law, in a patriarchal family, the husband has the full authority to discipline his wife if she disobeyed social expectations.

The facts on the violent incidents in our nation shows how serious the issue is. 84% of doctors, or the vast majority, are engaged in performing abortions on female foetuses. According to a government study from 1986, one doctor typically evaluates 270 foetuses per month. Additionally, the number of abortions involving female foetuses was rising by 20,000 annually. Prior to a woman's birth and up until the moment of her death, crimes against her are committed. A female cannot even be born in this day and age. Female foeticide is now a common problem. She needs to get used to her parents picking on her and her brothers from the time she is born throughout her youth.³

Salient Features Of Domestic Violence Act, 2005

By providing an extensive definition of "domestic violence," the Protection of Women from Domestic Violence Act of 2005 has provided a new depth to the concept of domestic assault, including spousal violence and even marital cruelty. The Act's definition of domestic violence includes attacks on women by their siblings as

³Domestic Violence: Overview of Types & Punishments under Domestic Violence Act, *Available at:* <https://blog.ipleaders.in/domestic-violence/>, Last accessed on November 2022

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well as their husbands or parents. Domestic violence, as defined by Section 3 of the Act, is defined as real abuse or the threat of abuse that is sexual, physical, mental, verbal, or emotional. The concept also includes harassment of the woman or her family members through illegitimate dowry demands. The overall facts and circumstances of the case shall be a guiding factor in deciding whether any act, omission, commission, or conduct of the responder constituted "domestic violence." The definition includes "economic abuse" as well as "verbal and emotional abuse," which refers to any act or conduct that causes bodily pain, harm, or danger to life, limb, or health or impairs the health or development of the aggrieved person. It also includes assault, criminal intimidation, and criminal force.⁴ The term "economic abuse" refers to the deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, whether payable pursuant to a court order or otherwise, or which the aggrieved person needs 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.

The section also takes care to prevent the respondent from selling household items, alienating property owned by the aggrieved person, whether jointly or separately, including valuables, shares, securities, bonds, and the like, as well as any other property in which the aggrieved person has an interest or is entitled to use as a result of the domestic relationship or which may be reasonably required by the aggrieved person, her children, or her stridhan. Additionally, it forbids or limits continuous use of resources or amenities that the harmed party is entitled to use or enjoy as a result of the domestic relationship, including use of the joint home. In addition, "sexual abuse," which refers to any sexual behaviour that violates a woman's dignity in any way, has been specifically included in the definition of "domestic violence."

Section 3 calls for the Magistrate to use judgement in determining whether any act, omission, commission, or conduct by the respondent qualifies as "domestic violence"

⁴Domestic violence against women: Recognize patterns, seek help, Available at, <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/domestic-violence/art-20048397>, last accessed on November 2022

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for purposes of the aforementioned section. The Magistrate is also required to take into account the overall facts and circumstances of the case. Simple marital discontent brought on by indifference, neglect, withdrawal from spouse's company, and cessation of sexual relations may even be a chronic condition, but this has never been enough to prove matrimonial cruelty. To establish such cruelty, only situations of the most extreme nature and total impossibility of compromise can be taken into consideration.

Cruelty is defined as deliberate, irrational behaviour that endangers another person's life, limb, or physical or mental health or that causes a reasonable fear that they might do so. According to Halsbury's Laws of England, "If the Court finds that one spouse has, by repugnant conduct or departure from the normal standards of conjugal kindness, caused injury to health or a reasonable apprehension of it on the part of the other spouse then it is cruelty, if a reasonable person after taking due account of all the circumstances of the case would consider that the conduct complained of is of such grave and weighty in nature that the other spouse has suffered injury to health or a reasonable. Even though a course of action is not specifically intended to harm the other spouse, it may nevertheless constitute cruelty if it is carried out with a callous disregard for that spouse's sentiments and, of course, if it threatens their health. However, it should be noted that it would not be safe to adopt English rulings on all matters of cruelty due to the disparities in social structures, moral standards, cultural norms, way of life, and economic standards. The cumulative impact of the facts and circumstances in each case will determine whether or not it is applicable as viewed and evaluated in accordance with the social mores, traditions, and usages.

In *Umabai v. Chittar*,⁵ pointing out this important factor, it has been rightly observed that, "The Courts should be extremely careful while seeking assistance and guidance from English decisions or even Indian decisions on any laws, now in force or previously in force, and should not follow them blindly, particularly when dealing with persons whose manners, customs and mode of life may be different in those of the parties concerned in those decisions."

⁵AIR2008 SC236

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Judicial review

As observed by the Supreme Court in *B.R. Mehta v. Atma Devi*⁶, In India, there is no equivalent of the Matrimonial Homes Act 1967, which governs spouses' rights to the matrimonial home in England. deals with the rights of occupation in matrimonial homes, and Para 1047 deals with and provides that where one spouse is entitled to occupy a dwelling house because of any estate, interest, contract, or law that grants him or her the right to remain in occupation, and the other spouse is not so entitled, then the spouse not so entitled has certain rights, such as the right to remain in occupation and not be evicted or excluded from the dwelling house, or an equivalent right.⁷But in India, these rights are not recognised. However, the Supreme Court noted in the same ruling. "It may be time to grant the wife or the husband a right of occupation in a truly matrimonial home, in case the marriage breaking up or in case of strained relations between the husband and wife, given the change in circumstances and complex problems emerging."

What is required is that the two claims—right to protection from bodily harm or domestic violence, right to life, liberty, and the pursuit of happiness, right to the matrimonial home, and right to shelter and survival—be not seen as competing but as two distinct claims arising from the marriage contract itself. The protection of these two rights, which are guaranteed by our Constitution, rests with the Court. The Court is not permitted to favour one over another. With a court-issued protective order in hand, she may continue to reside in her marital home.

The concept of "community of property," which states that spouses have an equal share in all assets amassed during the course of marriage, has been the basis of ground-breaking judgments that have acknowledged and secured this right for women, even though there was no such statutory protection as such prior to the passage of the current Act of 2005. It has been explicitly held that in cases of matrimonial conflict or even after the grant of divorce, a wife can continue to live in her errant husband's home until the terms and conditions of maintenance and property are resolved. This acknowledges women's contribution to the matrimonial

⁶AIR 1998SC452

⁷Halsbury's Laws of England, Fourth Edition, 1967, Vol. 22 page 650

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home through services rendered as "housewives." The Calcutta High Court in a recent decision in the matter of *Mala Viswanathan v. P.B. Viswanathan*,⁸ while upholding the right of the wife to reside in the matrimonial home has observed.

“When a question relating to grant of injunction restraining one of the spouses from entering into the matrimonial house comes before the Court, the Court has to deal with the same with utmost care and caution. Once a person becomes part of the house by reason of marriage, her right to reside in matrimonial house cannot be denied. Marriage confers a right to reside in the matrimonial home on both spouses as well as their offspring. Such a right is a joint and indivisible right which cannot be taken away. The marriage carries a liability and right to maintenance and maintenance includes residence. Hence the spouse who has title to the house cannot deny the other the right in the matrimonial home.”

In *Anu Seth v. Rohit Narain Seth*⁹, According to the Delhi High Court, the husband has a duty under the law to give his wife a place to live and to have access to their marital house. It has also been ruled that the husband's new residence does not automatically become the matrimonial home just because he moves out of the former one to establish a new one.

Review

The Dignity of Women and its protection from Indecent Representation¹⁰

The indecent portrayal of women (prohibition) Act of 1986 is a piece of legislation that was approved by the parliament. Society has a responsibility to treat women with respect and decency rather than making them the target of crude jokes and remarks. Women's bodies have inherent value, and people shouldn't treat them as mere objects of gratification or indulgence. Women's bodies are inherently attractive to those of the other sex, which can lead to sexual sensations and romantic ideas. It is normal, but entanglement in it must be discouraged.

⁸II(2003)DMC809(DB)(Cal)

⁹1992MLJ205(Del)

¹⁰Indecent Representation of Women, Available at: <https://wcd.nic.in/act/indecnt-representation-women>, Last accessed on November 2022

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Indecent representation of women is defined by the Act's section 2(c) as "depictions of the figure of a woman, her form of body, or any part thereof in any manner that has the effect of being indecent or derogatory to or denigrating women, or that are likely to deprive, corrupt, or otherwise harm the public morality or morals."

Both men and women in the society may feel upset by immoral ideas and sensations as a result of such depictions on numerous times. Public morals and mortality are disturbed as a result of obscene depiction of women.

Despite its good intentions, the Act prohibiting degrading depictions of women cannot be halted because the public does not appear to support its execution. The majority of the time, the average citizen appears to appreciate indecent representations and makes no attempt to report them to any public authorities. The general public is completely unhelpful in this regard.

Putting aside for a moment the fact that most people do not ask for government assistance. It is almost clear that the law enforcement agency, in spite of having access to intelligence and police informers, has engaged in widespread arrests of innocent persons in order to make money. As a result, this piece of legislation has done much to uphold the status and dignity of women. Additionally, it is recommended that the police monitor the city and take the appropriate steps to protect the populace from dirty and offensive depictions of women.

Domestic Violence Protection Act:

There are countless rights that exist, and it is difficult for lawmakers to pinpoint each one in the context of the society or group that women are a part of. In other communities, women might previously have had some rights to a particular way of life that would be regarded as being less obvious. In a specific society, a certain behaviour of women may be seen as inconsequential and commonplace. However, the same behaviour may be viewed differently and as unacceptable in one society and in another. The social, economic, and religious doctrines and ideas that have been adopted and accepted in a particular society determine whether or not a woman's behaviour is acceptable. Regarding how women should behave in a society, there are

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previously established rules and customs in every civilization. As a result, women are either allowed or prohibited to do specific things depending on what the society in question permits.¹¹ However, the ideas of women's rights as they are largely and universally accepted transcend the limited societal notion. The right of women to live their lives in peace, make their own choices, and raise their families in accordance with their preferences and in accordance with the rights of all women generally must be considered with caution. When the behaviour of women in a particular society conflicts with the rights of women as universally acknowledged, the former takes precedence.

The rights of women¹² are said to have vanished in societies where they are denied or restricted, including the rights to education, work, and other related rights. As a result, the legislative branch acts to fix the flaw. The right of a woman to choose her life partner, with whom she can live until the end of her days, is obviously violated when a society insists that the married life of women shall be determined and decided by the elders of the community, without obtaining the consent of women. No woman in this situation may be forced to wed a man against her will, according to the law. She might receive advice from the elders to help her choose her husband, though, given her lack of worldly knowledge. Whatever the religious or customary laws may be in this country, they must not be followed if they conflict with a woman's right to marry.

The Protection of women from Domestic Violence Act 2005

The rights of women, which are protected by the Indian constitution, are better protected under this act. Within the four walls of the family home, women are demonstrating that they are powerless victims of all forms of abuse. Violence is typically committed by modern-day family members who are men and women equally. The international community has taken numerous steps to protect the

¹¹ Protection of Human Rights in India: women, children and prisoners, *Available at:* <https://lawcorner.in/protection-of-human-rights-in-india-women-children>, Last accessed on November 2022

¹²How far will her success ripple out to others?,*Available at:* <https://share.america.gov/women-have-right-education/>, Last accessed on November 2022

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protection and security of women in the family unit through different resolutions, declarations, and agreements. Domestic violence is defined in Section 3 as "any act that endangers the health, safety, life, limb, or mental or physical wellness" and includes physical abuse, sexual assault, verbal abuse, emotional abuse, and economic abuse. Furthermore, any form of harassment applied to a woman or anyone who is related to her in order to comply with an unlawful demand for dowry, other property, or valuable security.¹³

Deprivation of economic resources to which the harmed party is entitled under any law or tradition gives the aforementioned abuses a broader meaning than is typically associated with them. Misappropriation of household goods and other valuable possessions will also count as financial abuse. The law calls for the appointment of officers such as protection officers in addition to regular police officers as service providers and magistrates to intervene on behalf of victims of domestic violence, as well as to address complaints, ensure protection in the future, and take action against offenders.

Protection officers' responsibilities are outlined in Section 9. It states that he must assist the magistrates in carrying out their duties and report domestic incidents to them, and that the protection officers must conduct a thorough investigation into any allegations of domestic violence and send copies of their findings to the relevant police officers. He will simultaneously ask the court to issue a protective order to the party who is requesting redress. Additionally, he must see to it that the harmed party receives legal representation in accordance with the 1997 Legal Services Authorities Act.

CONCLUSION

The advancement of the legal framework that criminalises gender-based violence and safeguards women's standing in Indian society has been the main focus of this study project. The word "status" often refers to a person's personal and property rights as well as his or her obligations, liabilities, and duties in any kind of legal connection.

¹³ Ibid.

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When referring to women, the term "status" refers to their identity, personal property rights, and social obligations. The term "violence" in the context of "violence against women" refers to the harmful behaviour of men toward women that affects their rights to life, liberty, safety, and property, and the term "status" in the context of "domestic violence" refers to the private and property rights of women in their familial relationship. Therefore, violence against women refers to a larger spectrum of behaviours in which the behaviour of men toward women is taken seriously and is subject to legal sanctions. Law governing one's status, whether they are men or women, generally evolved as a result of numerous events that happened over a long period of time. Consequently, the positions it takes can be used to determine the relationship between civilizations.¹⁴When we examine the history of women's standing in India, we see that amazing women, from warrior queens to perfect wives, have come from the Indian Civilization. Hindu mythology from the past bears testament to the honourable and respectable status of Hindu women during the Vedic Period. Men and women were on an even playing field throughout the Vedic Period. Alongside males, women offered sacrifices in public. In the past, it was generally believed that women should be honoured and decorated by their fathers, brothers, spouses, and other relatives in order for them to reap good fortune. Where women are honoured, it was thought, the gods joy; nevertheless, when they are not honoured, all of their sacred rituals are ineffective. Where female relatives in a family experience grief, that family soon goes completely extinct; however, where they do not experience any grief, that family always prospers.

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¹⁴ Introducing Human Rights, *An Overview Including Issues of Gender Justice*, South Asia Human Rights Documentation Centre, (Oxford Press)

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