**Introduction to the Domestic Violence Legislation of India-**

Domestic Violence against women's rights perpetrated by partners and close family members has long been a source of silent pain in the home. While the precise origin of the crime is unknown, some variables that contribute to the Violence might be linked to gender stereotypes and power dynamics. Domestic Violence against women is frequently considered a personal problem, regardless of whether or not a perpetrator is a man or a woman. According to this position, Violence is a matter of personal responsibility. According to official figures, a crime against women is perpetrated every three minutes on average, accord percent of married women experience domestic abuse at some time during their marriage. Worryingly, in a 2001 survey, 87 percent of males acknowledged perpetrating some kind of domestic abuse that year.[[1]](#footnote-1)

Women are held accountable for complying more effectively with the circumstances prescribed by societal standards or developing a proper method of silently struggling, limiting the scope of legislative remedies. As early as 1983, the government established legislation to provide women with various options by criminalizing domestic abuse against married women. They added Section 498A to the Indian Penal Code (IPC) in 1983, which allowed women to file criminal complaints against their spouses and in-laws for any "cruelty" they had experienced.[[2]](#footnote-2) Domestic abuse inside a marriage is the subject of these laws, such as Section 498 A and 304 B[[3]](#footnote-3). As a result, several women's movements fought to pass legislation that addressed Violence against single women, for instance, those who lived in live-in relationships.[[4]](#footnote-4) Then, in 2005, the Protection of Women from Domestic Abuse Act (the "DV Act") was enacted to speed up the legislative process and protect women from domestic abuse in all industries. The DV Act is progressive, with its specific parts and clauses, and offers civil protection rather than criminal protection, such as the right to marital property. For example, section 3[[5]](#footnote-5) of the DV Act defines Violence as "physical, emotional, mental, financial, and other types of abuse inflicted."

The DV Act has been shown to have a considerably larger reach than Section 498 A of the Indian Penal Code, which was confined and only applied to husbands or relatives of husbands who oppressed a woman. The DV Act, on the other hand, deals with cases that may be brought against anybody who is involved in a domestic relationship, such as the spouse, parent, siblings, live-in partner, and husband's relative, among others. Domestic Violence is limitedly defined in Section 498 A as "mere cruelty," which only involves physical acts or conducts that result in severe harm or death. However, the DV Act covers all types of cruelty, including physical, emotional, mental, financial, and other forms. Furthermore, the DV Act has been praised for its broad reach, which includes sexual abuse and provides justice in cases of marital rape. The DV Act is a significant step forward for women's rights by defining economic abuse as a type of domestic Violence.

**Who can file a complaint under these legislations?**

The DV Act is intended to protect women. Only women who meet the definition of "aggrieved person" as stated in clause (a) of Section 2[[6]](#footnote-6) can file a complaint under this Act. "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" is defined as "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 abuse by the respondent. The definition of the "aggrieved person" states that it has to be an (i) woman (ii) in a domestic relationship with the accused/respondent or has been (iii) subjected to Domestic Violence.

"Domestic relationships" are defined under clause (f) of Section 2 of the DV Act as "a relationship between two persons who live or have at any point of time lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship like marriage, adoption or are family members living together as a joint family." The joint reading of clauses (a) and (f) of Section 2 clarifies that the term "aggrieved person/complainant" refers to a woman who is presently living or has previously lived in a shared home with the respondent who has subjected her to domestic abuse."

**Against whom can a complaint under DV Act be filed?**

The Act defines a respondent under clause (q) of Section 2 as "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." Given that the aggrieved wife or partner in the live-in can also file a complaint against the respondent's relative. A live-in relationship is also considered a domestic relationship under the DV Act. The word "adult male" was struck down by the Supreme Court in Hiral P Harsora v. Kusum Narottamdas Harsora, and it was changed to include all persons involved in domestic relationships irrespective of their age or gender. "Respondent" has been expanded to include relatives of the husband (in case of lawful marriage) or the male partner (in case of live-in relationship akin to marriage).

**Would the husband's partner from the extramarital affair fall under the respondent under the DV act?**

As the explanation above shows, a domestic violence complaint can be brought by an aggrieved woman against any individual in a domestic relationship. To be included in the definition of the respondent, the husband's extramarital partner must either meet the primary purpose as specified in clause (q) of Section 2 or complete the proviso of clause (q) of Section 2 or must be covered by the provision of clause (q). To qualify as a respondent under the primary definition, the extramarital partner must be in a domestic relationship with the complainant and share or have shared a household with the complainant at any time. An extramarital connection would not be considered a domestic relationship under the criteria of kinship, marriage, adoption, or a marital relationship. Then the question arises: Can the husband's partner from the extramarital affair be called the relative under the proviso?

The live-in relationship was termed as a "relationship like marriage" in the case of D Velusamy v. D Patchaiammal[[7]](#footnote-7) , and the Supreme Court set aside certain conditions for the couple, which are as follows-

*a) They hold themselves out to society as being akin to spouses.*

*(b) They must be of legal age to marry.*

*(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.*

*(d) They must have voluntarily cohabited and held themselves out to the world as akin to spouses for a significant time.*

The court also mentioned that if the relationship is merely sexual and not in the nature of marriage, then that would not fall under the above category for the purpose of the DV Act. This view was reiterated in Indra Sarma v. VKV Sarma[[8]](#footnote-8).

Coming to the phrase "relative of the husband" and if that should be used for the "girlfriend" or the partner from the husband's extramarital affair was answered by the court in U Suvetha v. State by Inspector Police[[9]](#footnote-9). The Supreme Court clarified that the term "relative" includes only those persons who are related by blood, marriage, or adoption. Hence, the "girlfriend" or the partner from the husband's extramarital affair cannot be referred to as the relative of the husband, neither under the DV Act nor Section 498A of IPC. The same was reiterated in Sunita Jha v. the State of Jharkhand[[10]](#footnote-10). Therefore, the "girlfriend" or the partner from the extramarital affair of the husband doesn't fall under the definition of "respondent" given under clause (q) of Section 2 of the DV Act. Subsequently, no complaint can be invited against the "girlfriend" or the partner from the husband's extramarital affair under the domestic violence legislation.

The Judgement given by Justice Shreeniwas Harish Kumar of Karnataka High Court in the case of Smt Harini H v. Smt Kavya H @Sangeetha & Ors[[11]](#footnote-11) made it clear that the petition filed under Section 12 of the DV Act by a wife against the partner from the extramarital affair of the husband will not be maintainable because the girlfriend cannot be a "respondent" as defined under the DV Act. The wife (respondent) objected to the plea, claiming that she was harassed in the first place because of the petitioner's and her husband's illegitimate affair. Domestic Violence was also allegedly perpetrated as a result of the petitioner's provocation. As a result, including her as a party to the DV Act's Section 12 application is inevitable. But after further evaluation of the scope of Section 2(q) of the DV Act, the bench decided that the girlfriend (petitioner) doesn't fall within the ambit of 'the respondent" under the said section. The court went on to quash the proceedings started due to the petition of the wife.

Thus, a domestic violence case cannot be made against the husband's partner from the extramarital affair.

1. Indira Sharma, *Violence against Women*: WHERE ARE THE SOLUTIONS, 57(2) Indian J Psychiatry 131-139 (2015). [↑](#footnote-ref-1)
2. The Indian Penal Code 1860, § 498 A [↑](#footnote-ref-2)
3. The Indian Penal Code 1860, § 304 B [↑](#footnote-ref-3)
4. Anjali Dave and Gopika *Solank, Journey from Violence to Crime: a Study of Domestic Violence in the city of Mumbai,* TATA INSTITUTE OF SOCIAL,SCINCES,MUMBAI(2001). [↑](#footnote-ref-4)
5. The Protection of Women from Domestic Violence Act 2005, § 3. [↑](#footnote-ref-5)
6. The Protection of Women from Domestic Violence Act 2005, § 2. [↑](#footnote-ref-6)
7. (2010) 10 SCC 469 [↑](#footnote-ref-7)
8. (2013) 15 SCC 755 [↑](#footnote-ref-8)
9. (2009) 2 KLT 686 [↑](#footnote-ref-9)
10. (2010) 10 SCC 190 [↑](#footnote-ref-10)
11. Criminal Petition No. 2148 of 2021 [↑](#footnote-ref-11)