

## **PROTECTION OF WOMEN UNDER DOMESTIC VIOLENCE ACT, 2005: CRITICAL ANALYSIS**

**Nikita Gulia<sup>1</sup>**

<sup>1</sup>BA, LLB, Fairfield institute of management and technology, India.

### **ABSTRACT**

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was a significant legislative step toward addressing domestic violence against women in India. The act provides a comprehensive definition of domestic violence, encompassing various forms of abuse beyond physical violence, such as emotional, economic, and sexual abuse. This inclusive definition acknowledges the multifaceted nature of domestic violence. The PWDVA offers a range of protective measures to assist women facing domestic violence, including protection orders, residence orders, and monetary relief. These provisions aim to safeguard victims and provide them with necessary support. The act maintains provisions for confidentiality to protect the privacy of the victim during legal proceedings, ensuring their safety and reducing the stigma associated with reporting domestic violence. Current article critically examines the Protection of women under domestic violence act (PWDVA) 2005.

**Keywords:** PWDVA, women, provision, IPC, punishment.

### **1. INTRODUCTION**

Domestic violence against women is not a new concept in society. It means intimate partner violence which includes physical, verbal, sexual, and economic abuse. According to the world health organization, one in every three women experienced physical or sexual violence in their lifetime, and 30% of women experienced physical and sexual violence from their partners. Women are facing violence from men, which affects their mental health and physical health. In India, women feel unsafe in the marital home. It is because the patriarchal society doesn't give enough opportunities to women.

They are facing violence from husbands, their in-laws, or others. Most of the domestic violence cases don't report by the woman because of orthodox society and norms. Many women experience various kinds of domestic violence, but they don't respond to it. Although the countries had adopted a mechanism through which women can file domestic violence complaints against their husbands, they are still not reporting the incidents.

There is no one single factor to account for violence perpetrated against women. Increasingly, research has focused on the inter-relatedness of various factors that should improve our understanding of the problem within different cultural contexts. Several complex and interconnected institutionalized social and cultural factors have kept women particularly vulnerable to the violence directed at them, all of them manifestations of historically unequal power relations between men and women. Factors contributing to these unequal power relations include: socioeconomic forces, the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males, and legislation and cultural sanctions that have traditionally denied women and children an independent legal and social status.

The Constitution of India has given various rights to its citizens like the right to equality under article 14, prohibition of discrimination on the ground of religion, race, caste, sex, or place of birth under article 15, the state shall make special provisions for women and children under article 15(3), right to life under article 21, etc. An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters related with or incidental to. The incident of domestic violence is commonly prevalent but has remained largely invisible in the public domain. At present, where a woman is subjected to cruelty by her husband or his relatives, it is a crime under Section 498A of the Indian Penal Code, 1860. As a result of that, a law is proposed keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to grant for a remedy under the civil law which is intended to protect the women from being sufferers of domestic violence and to prevent the incidence of domestic violence in the society. "Any act, omission or commission or conduct of the respondent shall constitute domestic violence when it harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct; or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

## **2. JUDICIAL APPROACH**

In the case of *Madhusudan Bhardwaj v. Mamta Bhardwaj*, it was established that two important factors need to be proved in favour of the aggrieved woman: (i) an opportunity of hearing to the parties and (ii) *prima facie* satisfaction of the occurrence of domestic violence or the likelihood of its occurrence. However, it was clarified that the requirement of providing an opportunity for a hearing does not imply that such orders can only be passed after the hearing. Furthermore, in the case of *Saraswathy v. Babu*, it was held that the parties' conduct before the commencement of the Domestic Violence Act, 2005 can be considered while issuing orders under Sections 18, 19, and 20 of the Act. This allows for the examination of relevant conduct even before the Act came into effect. However, in the case of *S.R. Batra v. Taruna Batra*, it was clarified that the wife's claim for alternative accommodation under Section 19(1)(f) can only be made against her husband and not against her in-laws or other relatives. In the case of *Ishpal Singh Kahai v. Ramanjeet Kahai*, it was held that the victim could apply to the court for a residence order concerning the shared household, including their matrimonial home, regardless of her ownership or interest in the property. However, in the case of *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel*, the court clarified that the woman's right of residence under the Act is limited to joint properties in which the husband has a share, and she is not entitled to the respondent's property. This landmark judgment overruled the previous ruling in *Ajay Kant Sharma v. Alka Sharma*. In the *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*, it was held that female relatives could be considered "relatives" of the husband or male partner under the Act. The legislature never intended to exclude female relatives from the Domestic Violence Act 2005 provisions, even though the term "female" is not explicitly used in Section 2(q). The expression "relative" should not be given a restrictive meaning, nor has it been defined as specific to males only. Section 2(q) of the Act defines respondents as individuals who can be considered perpetrators of violence against women. In the case of *Hiralal P. Harsora v. Kusum Narottamdas Harsora*, it was held that the definition is not limited to adult males but also includes women and non-adult males.

The term "like marriage" has been broadly interpreted. In the case of *Indra Sarma v. V.K.V. Sarma* the Supreme Court laid down guidelines for determining whether a live-in relationship falls within the scope of a relationship "like marriage." However, in the case of *D. Velusamy v. D. Patchaiammal*, it was held that a one-night stand or weekend together does not establish a domestic relationship. In the *Social Action Forum for Manav Adhikar v. Union of India*, the constitutional validity of Section 498-A was upheld. The court also established guidelines for investigating officers, emphasising their duty of care while handling such cases. The Supreme Court has expressed concerns regarding the misuse of Section 498-A. In the case of *Rajesh Sharma v. State of U.P.*, the court noted the tendency to implicate all family members based on general allegations to resolve marital disputes. It observed that many complaints were filed impulsively over trivial issues, lacking sincerity. Unwarranted arrests and the non-compoundable nature of the offence caused hardships for the parties involved and hindered the possibility of settlement.

The court emphasised the need for comprehensive investigations to address these concerns. In the case of *Vajresh Venkatray Anvekar v. State of Karnataka*, the court held that the belief that one or two incidents of beating are insufficient to drive a woman to commit suicide is unacceptable. The court emphasised that assault on women cannot be accepted as a social norm. In the case of *V.D. Bhanot v. Savita Bhanot*, it was held that a woman of 63 years, with no means of sustenance after 31 years of marriage, compelled to live alone, falls within the definition of "domestic violence."

## **3. SALIENT FEATURES**

It seeks to cover women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with are entitled to get legal protection under the proposed Act. "Domestic violence" includes actual abuse or the threat of abuse that is corporeal, sexual, spoken, emotional and financial. Pestering by way of dowry demands to the woman or her relatives would also be covered under the definition. One of the most significant characteristics of the Act is the woman's right to secure accommodation. The Act provides for the woman's right to live in the marital or joint household, whether or not she has any rights in the household. This right is secured by a residence order, which is passed by a court.

These residence orders cannot be passed against anyone who is a woman. The other relief envisaged under the Act is that of the power of the court to pass protection orders that stop the abuser from assisting or performing an act of domestic violence or any other specific act, entering a workplace or any other place frequented by the abused, attempting to communicate with the sufferer, dividing any assets used by both the parties and causing violence to the victim, her relatives and others who provide her assistance from the domestic violence.

The Act provides appointment of Protection Officers and NGOs to provide help to the woman with respect to medical check-up, legal aid, safe asylum, etc. The Act provides for violation of protection order or temporary protection order by the respondent as a cognizable and non-bailable offence punishable with sentence for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the Protection Officer is also sought to be made an offence under the Act with similar punishment.

#### **4. CRITICAL ANALYSIS**

In the garb of providing protection, this legislation in fact, strikes at the very foundation of marriage by promoting intolerance and encouraging unnecessary litigation even for petty domestic dispute. This law is based on a wrong notion and assumes man as the sole perpetrators of domestic violence. This is altogether a wrong impression and only confirms the gender bias in favour of women created by this law. The law confers a right in favour of a woman without imposing any liability, while the man is overburdened with discriminative liabilities with total denial of any such similar right. The law is wholly gender specific and rules out any possibility of domestic violence against a man.

In the zeal of providing protection and assistance to women, this Act has given recognition and legal status to extra-marital relationship or other immoral relationship, which are neither recognised by our society or by our existing matrimonial and penal law. The legislature while passing the Act did not notice that having sexual intercourse with any person other than his or her spouse is a ground for divorce. Even sections 24 and 25 of the Hindu Marriage Act, 1955, which provide for maintenance pendente lite and permanent alimony respectively do not recognize any relationship except that of a legally wedded husband and wife. Besides this section 125 of the Code of Criminal Procedure, which provides for grant of maintenance to wife, children, father and mother in a broader perspective, does not recognize persons having illegitimate relationships, entitled to claim maintenance except an illegitimate child. Section 125(4) specifically prohibits a wife living in adulterer' from claiming any maintenance from the husband under section 125(1) of the Code of Criminal Procedure. The legislature also did not notice that adultery is also an offence under section 497, Indian Penal Code. So therefore, while on one hand a man will be prosecuted for adultery, at the same time he will be compelled to pay maintenance as well as residency rights to a women with whom he is alleged to have maintained illegitimate relationship. This provision will destroy the matrimonial relationships thereby disturbing the social fabric of the society. Prior to this Act there was no comprehensive legislation defining domestic violence except the offence of cruelty punishable under section 498-A, IPC. Critics feel that the term violence should not be given such a wider interpretation. The meaning of the term 'economic abuse' as given in section 3 of the Act implies that even if a male member of family merely misappropriates, or disposes of the share of a women member of the family i.e. movable or immovable assets, he may be hauled up for committing domestic violence. This meaning is against the spirit of the Act and the basic concept of domestic violence.

Again the Act does not distinguish between actual abuse and threat of abuse and gives equal weightage to even a likelihood of abuse. Also in regards to the notion of emotional abuses, insults and verbal abuse, enshrined in the Act, the terms in itself are extremely relative and subjective, often depending on one's mindset and shockingly, the husband does not have any recourse in case of any abuse by the wife. Refusal to pay any sum of money for whatsoever reason will attract the provisions of this law. Non-payment of rent related to the shared household will also constitute an economic abuse even if the husband himself is devoid of sufficient resources or even if he is in jail. In this enactment the Magistrate has been entrusted with unaccountable powers as he is invested with the responsibility to take cognizance of the case and also for executing his own orders in favour of the aggrieved woman even without being approached for the execution of his orders. An additional disturbing aspect is that the Magistrate trying the case has to evaluate not only the individual incident of violence, but the overall circumstances as well. Section 14 of the Protection of Women from Domestic Violence Act, 2005 contains a very dangerous provision whereby the Magistrate may order the aggrieved person to undergo counseling jointly with the respondent and any member of the service provider. This goes against all accepted principles of counseling. The victim, and the abuser are in an unequal situation and no joint counseling is possible in that situation. It can only lead to the disempowerment of the unequal party. Counseling is one of the methods of correcting abusive behaviour and hence, it is only appropriate that the abuser and not the victim is counseled. The victim may have the possibility of seeking voluntary counseling. Section 16 of the Protection of Women from Domestic Violence Act, 2005 allows the Magistrate to hold proceeding in camera if either party to the proceedings so desire. But, in camera proceedings sometime, intimidate the aggrieved party in favour of the respondent.

This is especially so when the aggrieved party is the only woman in the court facing a completely male phalanx of hostile, sneering Magistrates, lawyers, officials, police, male respondent, etc. The situation is to change this section is to allow for in-camera proceeding not when either party so desire but only if the aggrieved party so desires. The aggrieved party should be allowed to be accompanied by any relative/woman social worker etc., of her choice for her

moral support. Under the Act, complaint of domestic violence may be given to both the protection officer and the police officer as under section 498-A of the Indian Penal Code. Both the agencies can out their investigations respectively and submit their reports to the Magistrate. In case of contradictory reports of both the agencies, the duty rests upon the Magistrate, who is the ultimate authority to pass the decision. This double enquiry of the same offence is over to the major demerits of the Act. The Act is silent about non-compliance of some orders. It shuts down the chance of reconciliation in future. The major inappropriate implication would be that it would shut down the chances of reconciliation in future. On the one hand, the Act punishes a man for forcing his wife to leave her job while on the other it provides maintenance to the very same wife. But the law does not provide for any such remedy to a male in any similar circumstances. Under the Act, when no eye witnesses are available, the women will be the primary witness and her statement is considered as circumstantial evidence, to arrive at a conclusion on the facts of the case. This has virtually empowered all women to punish men at their will. The slack drafting of this, law will allow cunning and unscrupulous women to teach a lesson to any of her male relatives at her sole behest. No doubt that the Act is landmark legislation in the Indian history and people of India welcomed the same with great enthusiasm yet, there is an apprehension in the minds of the people about the misuse of the Act against the innocent husband and his family members. It definitely cannot be said in general that the troubles and tortures of all kinds and differences always arises from the side of the husband and the in-laws.

The wedded woman cannot be said to be just and fair in all cases. This Act is being misused in a number of cases where it is used as a weapon by the wives and their paternal relatives to put an innocent husband and their relatives to unnecessary harassment. Hence before going to apply the provisions of the Protection of Women from Domestic Violence Act, 2005, the concerned parties and authorities should think about the consequences of the application, so that innocent persons and their families are not put to unnecessary harassment.

Domestic violence is not only visible but it is a part and parcel of life of women in India. Violence starts with her from the day her mother conceives her existence in the womb and since then in every phase of her life span she has to fight for her survival in this rude society. Most of the women in our country are illiterate and they are not aware of the basic law provision and also about their rights, due to which most of the time they do not register the cases against those person who violate their rights and commit crimes against them. Lack of awareness about the law and rights guaranteed under that legislation for them but most serious problem is that the women's are not aware about their rights which are due to traditional customs. Victims are unable to get the legal remedies which are guaranteed by the government for the protection of women. In our society which is said to be tradition bound and a male dominated, women are still treated as secondary sex which makes her to suffer the violence silently. The fact in India women is made to suffer human right abuses in a gender specific way. She is often ignored and underestimated.

The Protection of Women from Domestic Violence Act (PWDVA), 2005 is passed by the Parliament in response to worldwide demand for such legislation and also the outcomes of the continuous efforts of Women Organizations working for women. The Act gives right and Protection to the women's. The remedies available to the victim prior to the PWDVA 2005 were in the form of punishment of the offender under IPC, the civil remedy of divorce and maintenance were not giving her ultimate relief, the remedies which were available that were related to matrimonial proceeding and also according with court proceeding.

The statutory provision and constitutional provision were available to women but these provisions were insufficient and the most important problem about it was lack of awareness about their rights which constitution provide for the protection of women.

## **5. CONCLUSION**

Despite the existence of the law, implementation remains a challenge. Awareness about the act among both victims and law enforcement agencies is often lacking, leading to underreporting and inadequate enforcement. Access to support services such as counseling, shelters, and legal aid is uneven across different regions. Improved infrastructure and resources are needed to ensure these services are readily available and accessible to all women in need. There's a lack of uniformity in the application of the act across states, leading to disparities in the level of protection and support available to victims. Streamlining implementation and ensuring consistent application of the law nationwide is crucial. While the act primarily focuses on protecting women, it's important to acknowledge that men can also be victims of domestic violence.

There's a need to address this issue and provide support to male victims as well. The PWDVA is a significant step toward addressing domestic violence, but its effectiveness relies heavily on its implementation, awareness, and the support infrastructure available to victims. Continuous efforts to address these challenges are necessary to ensure better protection and support for women facing domestic violence.

## **6. REFERENCES**

- [1] The Protection of Women from Domestic Violence Act, 2005
- [2] Sec 3 of Protection of Women from Domestic Violence Act, 2005
- [3] 2009 Cr LJ 3095
- [4] MANU/SC/1193/2013
- [5] (2007) 3 SCC 169
- [6] 2011(3) ALL MR 353
- [7] 2008 ALL SCR 1707
- [8] 2008 CriLJ 264
- [9] (2011) 3 SCC 650
- [10] (2016) 10 SCC 165
- [11] AIR 2014 SC 309
- [12] (2010) 10 SCC 469
- [13] 2018 SCC OnLine SC 1501
- [14] (2017) 3 SCC 821
- [15] (2013) 3 SCC. 462.
- [16] AIR 2012 SC 965
- [17] Nagpal, Vijay and Singh, K. P., The Protection of Women from Domestic Violence Act 2005 - A Critique, CBI Bulletin, Jan-March, 12 (2007)