



E-ISSN: 2789-8830
P-ISSN: 2789-8822
IJLLR 2023; 3(2): 01-06
Received: 04-04-2023
Accepted: 05-05-2023

Lakshlata Prajapati
Research Scholar, Department
of Law, MJP Rohilkhand
University, Bareilly, Uttar
Pradesh, India

Dr. Amit Singh
Head & Dean, Faculty of legal
studies, MJP Rohilkhand
University, Bareilly, Uttar
Pradesh, India

Correspondence
Lakshlata Prajapati,
Research Scholar, Department
of Law, MJP Rohilkhand
University, Bareilly, Uttar
Pradesh, India

International Journal of Civil Law and Legal Research

The protection of women from domestic violence act 2005 A critical study of the constitutional and other legal provisions: Related Women

Lakshlata Prajapati and Dr. Amit Singh

Abstract

In order to create such violence which is free from any violence and provide protection to women against exploitation, discrimination and violence, The PWDVA 2005, constitutional and legal provisions have been made. A number of legal Acts have been enacted to provide justice to the victims of violence and also to prevent the crimes and violence against women. There has been a long history of judicial response, legal control towards the protection of women's rights prevention of violence and rehabilitation of victims. However the protection of women against women Domestic Violence Act, 2005 is the milestone in the history of legal control and judicial attitude in this area.

In order to make the de jure equality into a de facto one, women specific and women related legislations have been enacted by legislates to safeguards the rights and interest of women, besides protecting against discrimination, atrocities, violence and also to prevent socially undesirable practices like child marriage, sati, dowry etc. Through this research paper researcher throws light the features and some of the important legislative support for women in India.

Keywords: Domestic, Violence, discrimination, Exploitation, constitutional, legal, Judicial, response, rehabilitant, de jure, de facto, maternity, Diagnostic, promulgated, safeguard

Introduction

The Beijing Declaration, The Vienna Accord of 1994 and the Platform for Action (1995) have accepted that domestic violence is undoubtedly a human rights problem. The United Nations Committee on Convention on Elimination of All Forms of Discrimination against women in its General Recommendations has recommended that state parties should act to protect state parties should act to protect women against violence of any type especially that occurring within the family. In India the phenomenon of domestic violence in India is widely prevalent but has remained disappear in public domain and society.

The civil law does not address this phenomenon in its entirety cruelty by women's husband and his relatives is an offence under section 498-A of the Indian Penal Code. To prevent the occurrence of provide a remedy in the civil law for the protection of women from being victims of domestic violence the protection of women from Domestic Violence Bill was introduced in Parliament.

Objects and reasons

Undoubtedly domestic violence is human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledge this. The CEDAW in its General Recommendations No. XII (1989) has recommended that state parties should act to protect women against violence of any type which is occurring in the martial home cruelty is defined under section 498A JPC but this section is has failed to prevent the cruelty or domestic violence and in this way the civil law does not however address this problem in its entirety.

The Bill, inter aila seeks to provide for the following

1. It covers those Females who are or have been in a relationship with the abuser where both parties have reside in a shared household and are related by consanguinity adoption, marriage or through a relationship in the nature of marriage. Joint family relations are included in this regard. Even those who are widows, sisters, mothers single women, or living with the abuser are entitled to legal protection under the proposed legislation.

However whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any female relatives of husband or the male partner, it does not capable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

2. It secure the right of housing. It also provide household, whether or not she has any right or title in such home or house hold. This right is safe by a residence order, which is passed by the Magistrate.
3. It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, mental, emotional, sexual economic or verbal. It include the unlawful dowry demands also from her and her relatives.
4. It empowers the Magistrate to pass such protection orders which is in favor of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her help from the domestic violence.
5. It provides for appointment of protection officers and registration of NGO’s as provides for providing help to the victims with respect to her obtaining legal aid safe shelter, medical examination etc.

Purpose of the Act

The main purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person was to protect women against violence of any kind, specially occurring in the marital home, as the civil law does not address the phenomenon in its entirety. It is treated as an offence under section 498-A of IPC, 1860. The main purpose of enacting the law was to provide a remedy in the civil law. The scheme of the Act provides that in the first instance that first order passed by Magistrate on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated it assumes the character of criminality^[1].

Nature of Legislation

When we talk to about the nature of the legislation, a more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability there has to be an opposite discussion and through deliberation on the issues raised. It should be kept in mind that helpless aggrieved person under the 2005 Act approaches the court under the compelling situations it is the pious duty of the court to scrutinize the facts from all angles whether a plea advanced by the respondent to mollify the grievance of the aggrieved person is really legally correct and sound. The court of law is bound to uphold the truth which sparkles when justice is done. The principle “Justice to the cues is equivalent to the salt of ocean” should be kept in mind. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the Act 2005 Act as court

has stared is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence^[2].

International Laws on Domestic Violence

In U.K through the civil Partnership Act, 2004 have been recognized. Family Law Act, 1996, through the chapter IV. titled Family Homes and Domestic violence; cohabitants can seek reliefs if there is domestic violence. In USA, the violence against women is a crime with for-reaching consequences under the violence against women Act, 1994^[3].

Scope of the Act

The Act provides for remedies to a women subjected to domestic violence, empowers the Magistrate to pass variety of orders to make such remedies effective. All these proceedings are in the nature of civil remedy^[4].

Act is a social welfare legislation

Statement of object and reasons, purpose for which the Act is enacted and several provisions leave no manner of doubt that the Act is a social manner of doubt that the Act is a social welfare legislation aimed at securing better position for women in the society for their independence and dignity and to fulfill an important constitutional goal of equality amongst all citizens^[5].

Act is retrospective in operation

The intention of the legislation is to provide certain remedies to the victims of domestic violence and also to prevent occurrence of domestic violence. In the society. Therefore the acts of violence occurred prior to 25.10.2006 could come within the meaning of ‘domestic violence’ as defined under the Act. For the foregoing reasons, this court is of the opinion that the Domestic violence Act, 2005 is retrospective in operation^[6].

Remedial Statute

If a statute does not provide an offender liable to any penalty (conviction or sentence) in favor of the state, it can be said that legislation will be classified as remedial statute, Remedial statutes are known as welfare, beneficent or social justice oriented legislations, A remedial statute receives a liberal construction. In case of remedial statutes, doubt is resolved in favor of the class of persons for whose benefit the statute is enacted. Whenever law prescribe a duty or penalty, fine for breach of it, it must be understood that the duty is prescribed in the interest of the community or some part of it and the penalties prescribed as a sanction for its purpose, None of the provisions of the Domestic violence Act 2005 has direct penal consequences^[7].

Determination of nature of the Act

The following statutory provisions of interpretation have to be kept in view while considering whether the main Act as well as its amendment are prospective or retrospective in effect.

1. What was the object of the Act.
2. What was the evil that was intended to be cured by the Act.
3. The establishment of the machinery for achieving the object^[8].

4. "Domestic Violence" infringes the basic right to feel comfortable.
5. 'Domestic Violence' is any act of physical, sexual mental violence and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or had family or kinship ties or cohabit or dwell in the same house.
6. It infringes the basic right to feel comfortable within the confines one's house to all domestic violence victims is not a home. A home where one can live without any fear or in security it is with this in mind, the new Protection of women from Domestic violence Act was passed.

Protection of women from domestic violence

DV Act is envisaged mainly with intention to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society, however, the definition of 'aggrieved person' only recognizes a woman in domestic relationship with the respondent as defined under section 2(q) of the Act refers to an adult^[9] male person who is in domestic relationship with aggrieved person and against whom the aggrieved person has sought a relief. Both the provisions recognize the relationship of adult male with a woman does not refer to any other relationship no doubt, domestic relationship includes relationship in the nature of marriage adoption or are family members living together as a joint family. When it comes to the question of aggrieved person, it does not recognize the relation of women with any other person except with the respondent. Such a relationship may be by adoption or being a member of family living together as a joint family. Domestic relationship also identifies a relationship between two persons^[10].

Unconstitutional classification of women

Considering the object sought to be achieved as spelled out from the reason and object introduced in the bill it is clear as crystal that the bill was introduced, purportedly to give protection to women as a whole in the areas covered by the Act and it is unconstitutional to further classify "women" to give rigid meaning as 'wife' and limiting various protective measures meant for women, to the wife or daughter-in-law alone, especially when the definition under section 2(9), an "aggrieved person" does not confine to such category of women, i.e., wife or daughter-in-law alone. Thus it can be safely concluded that the law making authority never intended to make a further classification among the women and to exclude the class of women, namely, the wife or daughter-in-law in fixing the liability, if the aggrieved persons are subjected to domestic violence by such person^[11].

Less reported in India

Domestic violence is a global phenomenon. It is the most common but least reported crime in India. Indisputably, it is a facet of human rights violation, many women suffer the atrocities in silence for fear of graver offences that may be committed on them if they were to muster sufficient courage to divulge to others the acts of cruelties done to them during covertures. Divorce or separation between connubial partners can never be the solution for this intra-moral atrocity mostly taking place at the matrimonial habitat.

Indian women do not want a divorce since they have realised that they have no means of survival once they are alone. Separated or divorced women constitute the most vulnerable section in this male-dominated society^[12].

Problem of preventing, eradicating and curbing all forms of violence against women

The problem of preventing, curbing and eradicating all forms of violence against women is a major concern of the nation with the pronouncement of the apex court in *Visaka v/s state of Rajasthan*, AIR 1997s3011, Occupational violence against women in their workplace stands, by and large abated even though there are shortcomings in that area also. It is not the dearth of adequate legal framework which is the cause for the escalating crimes against women but it is the disinclination of the victims to come out with complaints against the perpetrators of the crimes. For a brave and bold woman to complain, offences like sections 294, 354, 509, 498-A 376 and 80 on IPC and even attempts to commit the said offences and punishable under section 511 of I.P.C are sufficient to take care of almost every situation. But to a timid and non-complaining woman, every *Visaka's* case may not provide sufficient protection what is shortcoming is the bold and courageous disposition among the victims and the preparedness to shed all their fears and to boldly prosecute the wrongdoers by lodging complaints before person in charge or authority and relentlessly pursue the same. The wordings of Pt. Jawahar Lal Netru our first Prime Minister of India that success always goes to those who dare and act seldom it goes to the timid should motivate every Indian woman in distress thus, the mindset of the Indian women should change. What we need is a fearless class of women who will not take the disgrace silently^[13].

The protection of women form Domestic violence Act, 2005: A Bird's Eye view

1. The Act was passed by the Parliament of India in August, 2005 and it is a piece of social legislation. It received the assent of the president of India on 13th September, 2005 and it came into force on 26th October, 2006. It extends to the whole of India. Now it is a part of the law of the land, that is, of India.
2. Its object is to protect women from domestic violence in the society especially within the premises of the house. Infact there was no law earlier in India dealing with violence against women. Former law, however, was not specific to domestic violence against women that is why not very effective in controlling violence committed against women, within the family or inside, the household.
3. Domestic violence in simple and literal meaning, it means violence committed by a member of the family against another member of the family.
4. The Act does not, however, cover all kinds of violence against women. The violence, to be within the meaning of the Act, has to fulfill certain conditions, namely.
 1. The violence should be committed by an adult male person.
 2. The victim must be a woman.
 3. The violence against the children under the custody and care of the victim woman is also covered by the Act.

5. Relief under the act available are

1. Protection order (Sec.18).
2. Residence order (Sec.19).
3. Monetary Relief (Sec.20).
4. Custody order (Sec.21).
5. Compensation order (Sec. 22).
6. Interim and expert order (Sec.23).

6. Following Facilities are available in this Act

1. Medical facilities (sec .7)
2. Shelter homes (sec. 8)
3. Counseling (sec .14)
4. Assistance of welfare experts (sec. 15)
5. Support by protection officers, Police officer and service providers (Section, 4, 5,8, 9 and 10)

7. The reliefs available under the Act are of civil nature and not criminal. The purpose of civil justice is the enforcement of rights, while that of criminal justice is punishment of the offenders.

8. Satisfaction of the Magistrate and standard of proof is must, It is preponderance of probability and not proof beyond reasonable doubt.

1. The standard of proof is just like in civil nature cases. The weight of evidence tilts the balance in favor of which party is the point to be decided.
2. The Magistrate ought to be prima facie satisfied for passing protection orders.
3. Means of "Prima Facie Case" is a case established by sufficient evidence which would stand out, if not rebutted by the evidence to the contrary.

9. The Magistrate may instruct/direct the office-in-charge of the police station, concerned to assist in the implementation of the protection order.

10. Following offences are created in the Act

1. Violation of Protection order (vide sec-31(1) is an offence.
2. Not discharging duties by the Protection officers, without any sufficient cause as directed by the Magistrate in the Protection order is an offence (sec-33).

The Act is not in derogation on of any other law (sec-36) in India. It means that the Act provides for additional reliefs apart from the remedies available under any other law, civil or criminal and does not stand in the way of invoking any other legal remedy.

Constitutional Privileges

1. Equality before law for women (Article 14).
2. The state not to discriminate against any citizen on grounds only of religion, caste, race, sex, place of birth or any of them (Article 15 (i)).
3. The state to make any specific provision in favor of women and children (Article 15 (3)).
4. Equality of opportunity for all- citizens in matters relating to employment or appointment to any office under the state (Article 16).
5. The State to direct its policy towards securing for men and women equally the right to an adequate means of

livelihood (Article 39 (a)) and equal pay for equal work for both men and women (Article 39 (d)).

6. To Promote justice on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by causes of economic or other disabilities (Article 39A).
7. The State shall endeavor to make provision for securing just and humane conditions of work and for maternity relief. (Article 42).
8. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from exploitations and social justice.
9. The State to raise the (Article 46) level of standard and nutrition of its people and the improvement of public health (Article 47).
10. To promote harmony and the spirit of common brotherhood, fraternity amongst all the people of India and to renounce practices derogatory to the dignity of women. (Article 51 (A), (C)).
11. One third of the total number of seats to be filled by direct election in every panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in Panchayat. (Article 243 D (3)).
12. Not less than 1/3 of the total number of offices of chairpersons in the panchayats at each level to be reserved for women. (Article 243 D (4)).
13. Not less than 1/3 of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotations to different constituencies in a Municipality (Article 243 T (3)).
14. Reservation of offices of chairpersons in Municipalities for the Scheduled Castes, the Scheduled tribes and women in such manner as the legislature of a state may by law provide (Article 243T (4)).

The child Marriage Restraint Act, 1929 while providing punishment for child marriages make an exemption that no women shall be punished under the Act.

The Dowry Prohibition Act, 1961, This Act is amended time to time. It is a another socio-legal reform under which acts of giving and taking dowry demanding dowry and abatement of these three acts, have been declared offences punishable with imprisonment and fine or both. This Act is totally for the protection of women in the sense that it endeavors the social evil dowry.

The Indian Penal Code, 1860

The Indian Penal code, 1860 keeping in view the religious, moral, social and ethical background of the Indian community, made induced abortion, a criminal offence under section 312-316 of IPC 1860.

Section 497 of the IPC, 1860 enables a man to prosecute another man for committing adultery with his wife however, it excludes from the purview of this provisions the adulteress wife, though a participant in the act of adultery.

The Supreme court of India in the case of Yusuf Abdul Aziz V/s

Somtri Vishnu, upheld the views of this provisions as protective measures for women on the basis of Article 15(3) of the Indian Constitution.

The Criminal Procedure Code, 1973 Section 174 of the Crpc has also been amended in 1983 and sub section (3) has been inserted which provides that the case involves the suicide if it is caused with him seven years of her marriage.

The Indian Evidence Act, 1872

Sec 113-A inserted in 1983, Provides that when the question is whether the commission of suicide by a women had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within the period of 7 years from the date of marriage and that her husband or such relative of her husband and subjected to her cruelty the court may pressure, having regard to all other circumstance of the case, that such suicide had been abetted by her husband.

The Medical Termination of Pregnancy Act, 1971

In order to eliminate the high incidence of illegal abortions, the Medical Termination of Pregnancy Act, 1971 was enacted, which permitted abortions on three grounds:

- On E genic Grounds- Where there is a sustainable risk that the child, if born, will suffer from diseases and deformities.
- Humanitarian Grounds- where pregnancy is caused as a result of a sex crime or inter course with a lunatic man etc and.
- Health grounds – where there is a danger to the life or risk to physical or mental health of the women.

Some another Legislative Support for women

1. The Dowry Prohibition Act, 1961.
2. The Immoral Traffic (Prevention) Act, 1956.
3. Indecent, Representation of women (Prohibition) Act, 1986.
4. The Commission of Sati (Prevention) Act, 1987.
5. Indian Penal Code, 1860.
6. The Christian marriage Act, 1872.
7. The Married women's Property Act, 1874.
8. The Indian Succession Act, 1925.
9. The Child marriage Restraint Act, 1929.
10. The Muslim Personal Law (Shariyat) Application Act, 1937
11. The Special Marriage Act, 1954.
12. The Hindu Marriage Act, 1955.
13. The Hindu Adoption & Maintenance Act, 1956.
14. The Indian Divorce Act, 1969.
15. The Medical Termination of Pregnancy 1971.
16. The Child Labor (Prohibition as Regulation) Act, 1986.
17. The Prenatal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994

Conclusion

It, therefore, appears that in spite of the best intentions the PWDVA may not be very effective to check domestic violence unless necessary actions are initiated to change the public mindset, including the views and actions of different stakeholders like the police and judiciary, Domestic Violence inflicted upon women is systematic and structural violence perpetuates women's dependence and her dehumanisation as other a servant and a form of property.

Like many another statutes the PWDVA too has its weaker sides, but the shortcomings do not erase its necessity. The act has provided new options of maintenance and other kind of protections to a large number of women in India who

dare to challenge the old patriarchal system of submission and subjugation. From this perspective the act has for the first time put up certain challenges to our patriarchal social structure and consequently it is attaining popularity among the urbanites and villagers. While laws do not necessary and domestic violence parse, they certainly provide victims with recourses for survival, allow them to separate from the abuser and abusers accountable for their violence and send a message to the community.

Yet the Act may not be able to foster any qualitative transformation in the social fabric of Indian society. In Indian country where women are socialized to consider marriage as "essential and domestic violence's as" normal' for the sake of her own and children's interest no act can help particularly those majority who often fail to recognize even their basic human rights, Furthermore the dwindling rate of conviction in the dowry and domestic violence related cases might discourage those who hope for justice It is a fact that even educated and resourceful women have to run from pillar to post to get justice. Hence there remains serious anxious about how any law can be made effective to provide much needed justice to women coming from weaker class and sections . If the lawmakers are serious about protecting the rights of women in the domestic sphere they should create appropriate institutions and mechanisms to realize the goal. Also our concern for gender justice and gender equality may remain on paper unless otherwise conceived by the people at large and actualized by prompt civil society actions. There is also no substitute to economic political and social empowerment of women to challenge the existing socio-structural imbalances.

Women coming from weaker sections. If the law makers are serious about protecting the right of women in the domestic sphere, they could create proper institutions and mechanism to realize the object.

Suggestions or recommendations

According to Karl Marks, when the thesis (female society) will clash with the anti-thesis (male society) then there will be formation of Anti thesis (equality). Clearly a question arises that whether this Act will change the mentality of the Indian society, which is the most responsible factor for success of any law beneficial to female interest.

In order to bridge the gap between legislations and their implementations a multi sectoral approach is needed that tackles various levels concurrently, Improving the legal and institutional framework for the protection of women and girls is crucial to preventing and combating gender bases violence effectively.

- NGO's play an important role in counseling and assisting victims of violence and also raising awareness regarding domestic violence.
- There is need to upgrade skills of people working in different organizations.
- Fundamental social change that eliminates women's subordinate status may bring an end to domestic violence.
- Special courts must be setup for cases of violence against women and children with up to date technological support like video graphey of statement of rape and child abuse victims. Mobile court should also be introduced as an effective strategy for reaching out to more and more victims in the remote area.

- The central and State Governments should conduct regular training program's of law enforcement judges and other court personnel and prosecutors to indentify and respond more effectively to the cases of domestic violence against women.
 - The implementing agencies and authorities should be sensitized how to deal with the problems of violence against women and the court established under the Act should be strengthened with adequate staff, judicial magistrates and machinery.
 - Focus must be placed on the appointment of protection officers specially women.
 - The law implementing authorities need to be sensitized how to deal with the problems of violence against women and the women police officers should be appointed to deal with the cases of violence against women. Gender sensitivity should be included in the training of judiciary police public officials, policy makers, social workers, service providers, etc.
 - Supreme Court of India and the High Courts may issue guidelines as protocols for dealing with all procedural and substantive issues including the manner and method of conducting hearings on applications filed under section 12 and trial under section 31.
 - There is need to multi agency response between the protection officers, police, legal services Authorities, service providers, counselors etc. to aid women facing domestic violence.
 - None of the provisions of the law should be interpreted to deny women access to court directed reliefs. Hence an amendment should be effected to the provision to section 12 (1) clarifying that neither a DIR nor a home study report is mandatory before passing any order under the Act. Whether or not they are required is a matter of judicial discretion and may be called for by the judge.
16. CP Singh. Protection of women from Domestic Violence: Problems in Implementation of Domestic Violence Act; c2005.
 17. AK Singh. Domestic violence against women and Implementation of Domestic Violence Act; c2005.
 18. Domestic violence against women in India and Implementation of PWDV Act, Awadhesh Kumar Singh and Amit Singh; c2005.
 19. In Association with Gurukul Sewa Samiti Jaipur.
 20. Bhuvaneshvar Singh "Bhuvan", Subodh Pandey-Advocares. Commentaries on the protection of women from Domestic violence Act; c2005.

References

1. Amruth Kumar V/S Smt. Chitra Shetty, 2010 CriLj 2680 (Kant).
2. Johnson Fernandes V/S Mrs. Maria Fernandes, 2011 Cri LJ 1505 (Bom).
3. Indra sarma V/s V.K.V sarma, AIR 2014 SC 309.
4. Jaydip singh India V/S State of Gujrat, 2010 Cril, 2462 Guj.
5. Ibid.
6. Mohit yadam v/s State of A.P, 2010 cri LJ 3751 AP.
7. Ibid.
8. Ibid.
9. Words "Adult male person" as contrary to object of affording protection to women, hence struck down. (Hiralal P Harsora and others V/S kusum Narottamdas Hassora and others, (2016) 10 Sec 165:2016 (2) ADCC 918 (SC).
10. Amruth Kumar V/s smt. Chitra Shetty, 2010 Cri LJ 2680 (Kant).
11. Bismi Sainudheem V/S P.K Nabeesa Beevi, 2014 CriLJ 904 (Ker).
12. Sunita V/S state of Kerala, 2011 CRI LJ 2005 (Ker).
13. Ibid.
14. Edited Book Chapters.
15. Domestic Violence Against women in India and Implementation of PWDV Act, 2005-Awadhesh Kumar Singh and Amit Singh.