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RESEARCH ARTICLE

AN INSIGHT INTO THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

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ABSTRACT

The issue of violence against women in India was publicly highlighted and discussed for the first time in the mid-1970s through the campaign against dowry and related violence. The campaign led to the passing of the Criminal Law (Second Amendment) Act in 1983, which introduced Section 498-A in the Indian Penal Code, 1860, as amended (hereinafter, the "IPC"). Under this provision, 'cruelty' to a wife by her husband or his relatives was made a cognizable, non-bailable offence, punishable with imprisonment up to three years and fine. 'Cruelty' was defined to include both physical and mental cruelty, and any harassment associated with the demand for dowry i.e., an inclusive definition was accorded to the term so as to keep its ambit broad; keeping in terms with the mischief the provision intended to cure. However, criminal law, by its very nature, requires the State and its agencies to trigger it, which means it necessitates the police to act, to make an arrest, to investigate and to prosecute. Hence, more often than not, the law was defeated by sheer inaction which soon came to be institutionalised all over the country along with the policy of 'counselling, conciliation and mediation'. Similarly, Section 304-B was introduced in the IPC in 1986, creating a new offence of 'dowry death', making it possible to prosecute the husband and in-laws of a woman, in the event such woman died as a result of burns or other injury within seven years of marriage under suspicious circumstances, and if it could be established that she was subjected to cruelty or harassment by the husband/in-laws in relation to the demand for dowry. The offence of 'cruelty' also posed difficulties when one tried to include within its purview, issues of sexual violence, economic violence or even threats of violence. Additionally, when the issue of support systems for affected women came into play, the criminal law itself had little to offer with respect to taking care of the woman's immediate needs of protection, shelter and monetary relief. Looking at the domestic front, starting from Vedic age to twenty first century, women in India perhaps have never experienced equal rights and freedom compared to their male counterparts. The concept of 'Ardhangini' [half of the body] seems to be restricted only in literatures and has never been implemented in practical life. In addition to this, extracts from Ramcharitmanas such as "Dhol, Gawaar, Shudra, Pashu aur Nari; Sakal Tadan ke Adhikari" [drums, uncivilized illiterates, lower castes, animals and women are all fit to be beaten]; the Pardah system [veiling], and Sati system [self-immolation of a lady with her husband's pyre] that only women are subjected to, is a reflection of the history of women's subordinate status. In short, it is always women who have to be in the tight rope, subject to inequality and looked down upon as the inferior sex. Since the age of Manu, women were denied rights and Manu Smriti states that "Pita rakshite komary, pati rakshite tarunya, putro rakshite vurdotav, na stri swatantra maharti" [during childhood, a female must remain subjected to her father, in youth to her husband, then to her sons; a woman must never be independent]. Indian scriptures also emphasize the concept that there is no God on earth for a woman than her husband, and she must on the death of her husband allow herself to be burnt alive on the same funeral pyre. The subordinate status of women combined with socio-cultural norms that are inclined towards patriarchy and chauvinism can be considered as an important factor determining the existence, prevalence and acceptability of domestic violence in Indian society. Domestic violence, as any act of physical, sexual, or psychological abuse, or the threat of such abuse, inflicted against a woman by a person intimately connected to her through marriage, family relation, or acquaintanceship is universal and has its root in the socio-cultural setup of the society. The perpetrators of domestic violence have often been found to be the males. According to a recent study, one in three women (around the world) have been beaten, coerced into sex or abused in their lifetime by a member of her own family. In view of the prevalence as well as the pervasiveness of domestic violence, many researchers in the past have attempted to assess the situation besides exploring its possible cause and subsequent consequences for society in general, and women in particular. Domestic violence cuts across age, education, social class and religion in India. While many researchers came out with findings that lifestyle of men such as smoking, alcoholism and drugs promoted domestic violence, some were of the view that masculinity and domestic violence are closely interlinked. Studies have also revealed that sons of violent parents, men raised in patriarchal family structure that encourages traditional gender roles are more likely to abuse their partners. However, it is universally considered that gendered socialization process is mainly responsible for the occurrence, existence and continuation of domestic violence in the Indian setup. As Freedman points out, violence by husbands against wife should not be seen as a break down in the social order, rather it should be seen as an affirmation to the patriarchal social order. Similarly, Jejeebhoy (1998) is of the view that not only wife beating is deeply entrenched, but also people justify it. Thus, domestic violence is simply not a personal abnormality but rather it has its roots in the cultural norms of the Indian society. Again, looking from another angle, it is found that many of the victims of domestic violence have either refused to name the perpetrator of the assault or attributed the injuries to other reasons. In order to develop effective intervention programme and policy, it is vital to know the attitude and perception of women towards the issue.

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INTRODUCTION

The issue of violence against women in India was publicly highlighted and discussed for the first time in the mid-1970s through the campaign against dowry and related violence. The campaign led to the passing of the Criminal Law (Second Amendment) Act in 1983, which introduced Section 498-A¹ in the Indian Penal Code, 1860, as amended (hereinafter, the "IPC"). Under this provision, 'cruelty' to a wife by her husband or his relatives was made a cognizable, non-bailable offence, punishable with imprisonment up to three years and fine. 'Cruelty' was defined to include both physical and mental cruelty, and any harassment associated with the demand for dowry i.e., an inclusive definition was accorded to the term so as to keep its ambit broad; keeping in terms with the mischief the provision intended to cure.² However, criminal law, by its very nature, requires the State and its agencies to trigger it, which means it necessitates the police to act, to make an arrest, to investigate and to prosecute. Hence, more often than not, the law was defeated by sheer inaction which soon came to be institutionalised all over the country along with the policy of 'counselling, conciliation and mediation'. Similarly, Section 304-B³ was introduced in the IPC in 1986, creating a new offence of 'dowry death', making it possible to prosecute the husband and in-laws of a woman, in the event such woman died as a result of burns or other injury within seven years of marriage under suspicious circumstances, and if it could be established that she was subjected to cruelty or harassment by the husband/in-laws in relation to the demand for dowry. The offence of 'cruelty' also posed difficulties when one tried to include within its purview, issues of sexual violence, economic violence or even threats of violence. Additionally, when the issue of support systems for affected women came into play, the criminal law itself had little to offer with respect to taking care of the woman's immediate needs of protection, shelter and monetary relief.

Looking at the domestic front, starting from Vedic age to twenty first century, women in India perhaps have never experienced equal rights and freedom compared to their male counterparts. The concept of 'Ardhangini' [half of the body] seems to be restricted only in literatures and has never been implemented in practical life. In addition to this, extracts from *Ramcharitamanas* such as "Dhol, Gawaar, Shudra, Pashu aur Nari; Sakal Tadan ke Adhikari"

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Domestic violence, as any act of physical, sexual, or psychological abuse, or the threat of such abuse, inflicted against a woman by a person intimately connected to her through marriage, family relation, or acquaintanceship is universal and has its root in the socio-cultural setup of the society. The perpetrators of domestic violence have often been found to be the males. According to a recent study, one in three women (around the world) have been beaten, coerced into sex or abused in their lifetime by a member of her own family.⁴ In view of the prevalence as well as the pervasiveness of domestic violence, many researchers in the past have attempted to assess the situation besides exploring its possible cause and subsequent consequences for society in general, and women in particular. Domestic violence cuts across age, education, social class and religion in India. While many researchers came out with findings that lifestyle of men such as smoking, alcoholism and drugs promoted domestic violence, some were of the view that masculinity and domestic violence are closely interlinked. Studies have also revealed that sons of violent parents, men raised in patriarchal family structure that encourages traditional gender roles are more likely to abuse their partners. However, it is universally considered that gendered socialization process is mainly responsible for the occurrence, existence and continuation of domestic violence in the Indian setup.

As Freedman points out, violence by husbands against wife should not be seen as a break down in the social order, rather it should be seen as an affirmation to the patriarchal social order.⁵ Similarly, Jejeebhoy (1998) is of the view that not only wife beating is deeply entrenched, but also people justify it.⁶ Thus, domestic violence is simply not a personal abnormality but rather it has its roots in the cultural norms of the Indian society. Again, looking from another angle, it is found that many of the victims of domestic violence have either refused to name the perpetrator of the assault or attributed the injuries to other reasons.

¹ S.498-A of the IPC provides that "whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

² 'Cruelty' has been defined under S.498-A of the IPC as meaning "(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

³ S.304-B(1) of the IPC states that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death."

⁴ Report of United Nations Population Fund 2005, cited in <http://www.expressindia.com/>

⁵ Freedman in his book

⁶ Jejeebhoy in an article on status of women

In order to develop effective intervention programme and policy, it is vital to know the attitude and perception of women towards the issue.

International Developments

International efforts towards arriving at a legal framework for protection of women's rights commenced with the adoption of the Convention on the Elimination of all Forms of Discrimination against Women (hereinafter, "CEDAW") in 1979 by the United Nations General Assembly. Prior to the adoption of CEDAW, however, the calendar of legal flag-posts towards upliftment of status of women internationally is a story of small inroads and limited gains. In a nutshell, the endeavours taken by the United Nations towards crystallizing women's rights are tabulated below:

YEAR	CONVENTION/DECLARATION
1949	Convention for the Suppression of Traffic in Persons and of the exploitation of the Prostitution of Others
1951	ILO Convention on Equal Remuneration
1952	Convention on Political Rights of Women
1956	Supplementary Convention on the Abolition of Slavery
1957	Convention on the Nationality of Married Women
1962	Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriage
1974	Declaration on the Protection of Women and Children in Emergency and Armed Conflict
1981	CEDAW comes into force
2000	Optional Protocol to CEDAW

These international efforts and developments, it is stated, played a vital role in the enactment of the PWDV Act.

The Protection Of Women From Domestic Violence Act, 2005

The PWDV Act was intended and passed to address the gap between the guarantee of the Constitution of equal rights and the problems faced in existing laws.⁷ It provided comprehensive definitions and effective civil reliefs, while incorporating a criminal element which comes into play on the breach of civil order by a perpetrator, which leads to imprisonment and fine. It saw domestic violence as both a criminal and civil law issue.

The PWDV Act is an innovation over the conventional understanding of domestic violence as it does not limit the protection against violence solely to 'marital relationships'. It has introduced the concept of 'domestic relationship' which included all relationships based on consanguinity, marriage, adoption and even relationships which are 'in the nature of marriage'. The most important aspect of the Act is the concept of 'right to residence' thereby protecting women from being pushed out of the house. It also introduced the concept of 'shared household' which included women in non-matrimonial relationships within the scope of the PWDV Act.

⁷

The Statement of Objects & Reasons to the PWDV Act identifies it as "an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kin occurring within the family and for matters connected therewith or incidental thereto."

Main Features: The PWDV Act contains five (5) Chapters and 37 (thirty-seven) Sections. Its main features are listed below:

- The definition of an 'aggrieved person'⁸ is wide and covers not just the wife but a woman who is the sexual partner of the male irrespective of whether she is his legal wife or not. The daughter, mother, sister, child (male or female), widowed relative, in fact, any woman residing in the household who is related in some way to the respondent, is also covered.
- The definition of 'respondent' under the PWDV Act is wide enough to cover "any male, adult person who is, or has been, in a domestic relationship with the aggrieved person", including "the relative of the husband or the male partner", aiding the inclusion of the husband's mother, sister and other relatives.⁹
- The information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by "any person who has reason to believe that" such an act has been or is being committed, enabling the neighbours, social workers, relatives, etc. to take initiative on behalf of the victim.¹⁰
- The PWDV Act has not only facilitated a woman's right to reside in a 'shared household', but has also enforced the concept that a part of the house can be allotted to her for her personal use even if she has no legal claim or share in the property.¹¹
- Courts have been empowered to protect a woman from acts of violence or even "acts that are likely to take place" in the future by passing prohibitory and restraint orders against the respondent(s) from dispossessing the aggrieved person or in any other manner disturbing her possessions, entering the aggrieved person's place of work or, if the aggrieved person is a child, the school.¹²
- The respondent can also be restrained from attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral, written, electronic or telephonic contact. The respondent(s) can

⁸ S.2(a) of the PWDV Act defines an 'aggrieved person' 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 violence by the respondent."

⁹ S.2(q) of the PWDV Act defines 'respondent' 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. Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

¹⁰ S. 4 of the PWDV Act reads as under:
"Information to Protection Officer and exclusion of liability of informant.— (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.
 (2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1)."

¹¹ S.17 of the PWDV Act reads as under:
"Right to reside in a shared household.— (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
 (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

¹² See Ss.18 & 19 of the PWDV Act.

even be prohibited from entering the room/area/house that is allotted to her by the court.¹³

- Courts are empowered to order monetary relief and monthly payments as maintenance amount. The respondent(s) can also be made to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and can also cover loss of earnings, medical expenses, loss or damage to property and can also cover the maintenance of the victim and her children.¹⁴
- Courts are empowered to direct the respondent to pay compensation and damages for injuries including mental torture and emotional distress caused by acts of domestic violence.¹⁵
- A penalty of up to one (1) year imprisonment and/or fine up to Rs.20,000 (Rupees twenty thousand) has been prescribed for the offence of disobedience of a Court order/direction.¹⁶ The offence has been made cognizable and non-bailable.¹⁷ Further, “the sole testimony of the aggrieved person” could enable a Court to conclude that an offence has been committed by the accused.¹⁸
- The PWDV Act ensures speedy justice as Courts are required to have the first hearing within 3 days of the complaint being filed.¹⁹ Further, every case must be disposed of within a period of 60 (sixty) days from the first hearing.²⁰
- Proper machinery for implementation of the PWDV Act has been formulated in the legislation itself, such as, appointment of Protection Officers, duty of the Central and State Governments to make wide publicity, and organizing training programmes for police officers.

Promoting the vision of the PWDV Act: For the aims and objectives of the PWDV Act to be fulfilled, active participation of service providers, the legal services authority, police and medical facility is imperative. Presently on each count there is much work to be done including effective co-ordination between the different agencies. In July 2008, the Bihar High Court in *Shruti Singh, Advocate v. Press Council of India & Others*, a PIL filed for the effective implementation of PWDV Act observed, “we need not remind the State Government that talk of women development and empowerment may remain hollow unless there is sincere implementation of the Protection of Women from Domestic Violence Act, 2005.” The Court further directed the State Government to: (i) notify at least one Protection Officer and one shelter home with proper medical facility in each district of Bihar by November 30, 2008; (ii) register NGOs as service providers; (iii) organise sensitization and awareness trainings for police and judicial

officers; and (iv) ensure effective coordination with the relevant ministries and to periodically review the same. Regretfully, it appears that the Bihar Government is yet to fully comply with these directives. Clearly there is a need for State Governments to put their money where its mouth is. Perhaps what is required now is for the women’s movement and others engaged with the PWDV Act to set well defined milestones to be achieved by states within a stipulated time frame, and then diligently measure the performance of every state. This will enable the normative standard set by PWDV Act translate into judicial orders granting protection against domestic violence. Although the PWDV Act is still a nascent legislation, judgments from Courts are interpreting this law. The constitutional validity from the very beginning the working of the PWDV Act has been carefully scrutinized. According to the Monitoring & Evaluation Report by *The Lawyers’ Collective*, the implementation of the law has been uneven across the country and much remains to be done in this regard. While some states like Andhra Pradesh, Delhi, West Bengal, Haryana and Tamil Nadu have appointed full time Protection Officers, others like Uttar Pradesh, Jharkhand and Bihar have burdened their pre-existing cadres with the additional charge of Protection Officers. In Jharkhand, for instance, CDPOs (Child Development Project Officers) under the ICDS (Integrated Child Development Services) have been given additional charge of a Protection Officer. The absence of dedicated, well-trained cadre of Protection Officers endowed with funds and facilities is severely impinging on the redress women can secure under the PWDV Act.

Conclusion

Women, since time immemorial, have faced violence or harassment at home. Traditional societal roles deny the options of separation and divorce for abused women. Strong religious convictions and the stigma of welfare often effectively force the woman to remain or return to an abusive situation. Finally, in 2005, the PWDV Act came to their rescue and advantage. However, whether or not the PWDV Act has succeeded in adequately fulfilling the requirement of addressing all forms of domestic violence, providing redressal and protection to its victims, is an issue that needs to be tackled on conceptual and practical grounds.

While the PWDV Act is an important first step in terms of the concepts it has introduced in the Indian legal system, the viability of its implementation may be contested on certain grounds. In terms of concepts, the aim of the legislation, in addressing the problem of domestic violence inflicted on a woman by a man, has to a great extent been served. It may be concluded from an overall study of the PWDV Act that the range and detail in which various definitions and forms of reliefs have been drafted, show a clear effort on the part of the legislators to provide adequate redressal and protection to women. By a single window, women have been given varied rights, such as, the right to residence, maintenance, compensation, and temporary custody of the children. As such, women are saved from running from pillar to post, in situations of distress and violence.

However, insofar as the implementation of the PWDV Act is concerned, the major drawback is that its awareness within a large section of the society is negligible. Secondly, if we look into the legal provisions, the procedural setup is lacking

¹³ See Ss.18 & 19 of the PWDV Act.

¹⁴ See S.20(1) of the PWDV Act.

¹⁵ S.22 of the PWDV Act states that “in addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.”

¹⁶ See S. 31(1) of the PWDV Act.

¹⁷ See S. 32(1) of the PWDV Act.

¹⁸ See S. 32(2) of the PWDV Act.

¹⁹ See S.12(4) of the PWDV Act.

²⁰ See S.12(5) of the PWDV Act.

– the PWDV Act does not outline as to how evidence is to be appreciated, and whether or not the case is deduced on the basis of evidence recorded. It may be stated without any prescribed procedure for conducting the proceedings under the PWDV Act, situations could arise where cases may be decided without giving an opportunity of cross-examination to the opposite party. Further, the social stigma attached to the institution of marriage and family still prevails deep within us to let us stand firmly against those members who perpetrate violence against women. The woman often assumes the blame for the abuse and will expend energy uselessly trying to determine how to avoid provoking her batterer. Societal factors tend to hold women responsible for the well-being of the family members. Thus, she feels responsible for holding the family together in times of crisis. She believes her partner when he promises (over and over) that he will never do “it” again. She often still loves him and wants very badly for her relationship, marriage, life to be successful. If he will change, she does not have to face the responsibility to make a change. It might take some time to effectively implement the provisions of the PWDV Act since women need enormous amount of courage to come out of their psyche, so as to be able challenge those whom she has been taught throughout her life to love and respect. But as it always has been, a journey of a thousand miles begins with a single step.

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