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ENACTMENT OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

~ *Riddhiman Chandra Agarwal*

INTRODUCTION

“तेजोमण्डिता उज्वला भवाम्यहं शक्तिः शिवालिका।“(tejomaṇḍitā ujjvalā bhavāmyahaṃ śaktiḥ śivālikā) Adorned with lustre and brilliance, I become Shakti (divine feminine)

“यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः।

यत्रैतास्तु न पूज्यन्ते सर्वास्तत्राफला क्रियाः ॥“ (yatra nāryastu pūjyante ramante tatra devatāḥ | yatraitāstu na pūjyante sarvāstrāphalā: kriyā: ||)

(yatraitāstu na pūjyante sarvāstrāphalā: kriyā: ||) Where women are honoured, divinity blossoms there. And where they are dishonoured, all actions remain unfruitful. (Manusmriti 3.56)

The Indian sacred and ancient literature is replete with injunctions extolling divinity of women and their exalted social position, (as is evident from the above two quotes.) With the advent of the barbaric foreign invaders, the social position of women declined and reached its lowest pedestal due to the environment being rendered unimaginably unsafe for women. The corruption of morals of the Indian society is apparent in atrocities against women and the solidification of social evils like sati, female infanticide and child marriage as religiously sanctioned practices, although they emerged as panic reactions to safeguard women’s dignity during troubled times.

“Crimes against women” have been defined to be crimes specifically directed against in order to inflict mental or physical cruelty. The victims of such crimes are necessarily women.¹

Misbehaviour or any form of physical aggressiveness is referred to as violence, sometimes called abuse. Domestic violence is defined as violence committed against family members, including parents, spouses, children, and servants. Various techniques, including biting, shoving, kicking, striking, restraining, and hurling things, can be used in domestic violence. Broadly speaking, it involves intimidation, emotional and sexual assault, being in charge or overbearing, threats, scheming, covertly abusive behaviour, economic hardship, rape, kidnapping, abduction, murder (all instances of criminal violence), beating of a wife, sexual abuse, mistreatment of an old woman, widow, and dowry death (all instances of domestic violence)

concerns that impact a significant portion of society, such as eve-teasing, pressuring a young widow to perform sati, pressuring a wife or daughter-in-law to commit foeticide, etc.²

In their 1993 Declaration on the Elimination of Violence Against Women³, the United Nations defined “Violence against Women.” According to its definition, it is any act of gender-based violence that causes, or is likely to cause, suffering or physical, sexual, or mental injury to women, including coercion, threats of such behaviour, or willful restriction of liberty, whether in public or private.⁴

The Constitution of India gives the right to equality to both men and women⁵ and also gives the right to non-discrimination on grounds of gender⁶, while allowing the State to take special affirmative action for the welfare of women and children.⁷

The social evil of domestic violence against women has been a consistent phenomenon, which also signifies the corruption of morals of a people who used to regard women sacred, to her sheer objectification. Domestic violence against women primarily occurs on account of dowry related harassment or harassment of wives for money by alcoholic husbands.

¹AWADHESH KUMAR SINGH & JAYANTA CHOUDHURY, VIOLENCE AGAINST WOMEN AND CHILDREN -ISSUES AND CONCERNS 1-2 (Serials Publications, New Delhi) 2012.

² *Id.* at 2,3.

³ DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN : UNITED NATIONS DIGITAL LIBRARY, <https://digitallibrary.un.org/record/179739?ln=en> (last visited Apr 15, 2024)

⁴ VIOLENCE AGAINST WOMEN IN INDIA, GURUAPPA NAIDU 23 (Serials Publications, New Delhi) 2011.

⁵ INDIA CONST. art 14

⁶ INDIA CONST. art 15(1)

⁷ INDIA CONST. art 15(3)

Prior to the enactment of the Protection of Women from Domestic Violence Act, 2015⁸ (hereafter “PWDVA”), dowry related harassment was criminalised by the insertion of Section 498A in the Indian Penal Code, 1860⁹, (through the Criminal Law (Amendment) Act, 1983¹⁰.) It criminalised “cruelty” by a husband or his relatives, against the wife, a cognisable and non-bailable offence punishable by up to 3 years of imprisonment.

With its roots in feminist movements of the 1970s, specifically focusing on violence related to dowries, the Protection of Women from Domestic Violence Act (PWDVA) originated from a ten-year fight against domestic abuse in India. Early legislative improvements were not enough to address the problems that remained: fire deaths were frequently written off as accidents, and Section 498A and other legal provisions were difficult to interpret and had high evidentiary requirements. Inadvertently, the 1986 adoption of Section 304B¹¹ restricted the focus on dowry-related violence, ignoring other forms of abuse and leaving gaps in legal protection, particularly for unmarried women, the elderly, and children.

Although the PWDVA was designed to protect women from domestic abuse, its effectiveness was constrained by its narrow scope and vague definitions. While leaving out other vulnerable groups and neglecting to address abuse in non-marital relationships, Section 498A largely protected married women. In order to ensure the safety and well-being of all women, regardless of their marital status or the type of violence they experience, more comprehensive legal reforms and societal interventions are required. The law's emphasis on dowry-related violence further obscured the wider spectrum of abuse faced by women in domestic settings.¹²

Although harmful practices against women were acknowledged by the existing legal frameworks, the primary focus of criminal law was on prevention and deterrent, which resulted in inadequate attention to the immediate needs of victims of domestic abuse. Although there were civil law remedies, they were frequently unsatisfactory and delayed, putting women at risk of being evicted and losing their property. Consequently, it was decided that a comprehensive legal strategy combining civil and criminal components was required to effectively enforce court orders, provide immediate support, and stop abusers. This seemed

⁸ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

⁹ Indian Penal Code, 1860, § 498A, No. 45, Acts of Parliament, 1860 (India).

¹⁰ Criminal Law (Amendment) Act, 1983, No. 46, Acts of Parliament, 1983 (India).

¹¹ Indian Penal Code, 1860, § 304B, No. 45, Acts of Parliament, 1860 (India).

¹² Indira Jaising, *Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence*, 44 EPW 44 50-57 < <https://www.jstor.org/stable/25663733> > accessed 15 April 2024

necessary to close the gap between temporary relief and long-term protection for women who were victims of domestic abuse.

The National Commission for Women (NCW) asked the Lawyers Collective Trust (LC) to formulate a draft law on domestic violence in 1993, which was presented in 1994. But it seemed that before legislative activity, there was a need to establish a consensus in the legal fraternity for a law against domestic violence, which continued in the want of any effective legal remedies. A national level colloquium called “Empowerment through Law” comprising advocates, academics, activists, judges etc. vociferously started campaigning for a law against domestic violence.

The draft bill proposed by Lawyers Collective aimed at the prevention of domestic violence and the protection of women from domestic violence. It incorporated provisions like a broad definition for domestic violence, it safeguarded women in all ‘domestic relationships’ and not only marital relationships from domestic violence and gave right to residence to women in shared households. It also had the provision for protection officers for women and also provided for various civil remedies in the form of orders from the court.¹³

A draft proposal for a domestic violence law was developed between 1998 and 2001 as a result of significant discussion within the women's movement and dialogues with various organisations and legal experts. These consultations led to changes that addressed concerns and clarified sections. Discussions focused on issues of gender specificity of the law, their inclusion as respondents and the representation of children. The final goal of the amendments was to emphasise the difficulties in handling domestic abuse while taking gender dynamics and the effectiveness of the law into account. They also aimed to protect against potential misuse, maintain compatibility with current legislation, and strike a balance between protective measures.

“Each time a woman stands up for herself, without knowing it possibly, without claiming it, she stands up for all women.” (Maya Angelou)

¹³ *Id.*

The National Democratic Alliance government's Protection from Domestic Violence Bill, 2001 did not meet the demands of the women's movement; it did not include provisions for instant relief, a statement of rights for the victim, or a precise description of domestic violence. Its emphasis on compulsory counselling for abuse victims and perpetrators was criticised for potentially prolonging abuse, and it left women vulnerable by not recognising their to residence in the shared household. Overall, the bill's ambiguous wording and restrictive application impeded legal recourse and emphasised the necessity of complete legal safeguards that are in line with the safety and rights of women.

To address the criticism of the Bill, the Parliamentary Standing Committee on Human Resource Development was tasked with reviewing it. The committee received inputs from a variety of sources between May and December 2002, including statements from LC and women's organisations pointing out the bill's shortcomings and arguing for more robust

protections. The committee's report¹⁴, which was published in December 2002, addressed issues such as women's participation in non-marital relationships and did away with responders' ability to claim self-defence. Overall, the report was in line with LC's recommendations. The bill lapsed in February 2004 when the Lok Sabha was dissolved, despite attempts to advance reforms based on the committee's recommendations failing to make significant headway in the next two years.

The topic of domestic abuse gained political significance when the United Progressive Alliance (UPA) government came to power in May 2004 and incorporated a civil law on the subject in their Common Minimum Programme. The final draft of the bill changed along its journey through government ministries from July 2004 to June 2005, despite significant discussions. Regretfully, crucial components like the definition of the "applicant" were foregone, creating doubts about the processes, and the inclusion of joint counselling rules sparked worries about possible coercion in the reconciliation processes. However, the bill was unanimously approved by both chambers of Parliament in August 2005 and became a law after Presidential assent on 13 September 2005¹⁵, despite objections from some lawmakers about the inclusion of "relationships in the nature of marriage" under the protected categories of women.

The definition of domestic violence given in Section 3 includes harm or injury to life and safety, limb or well-being, both physical and mental which may cause physical, sexual, verbal and emotional, and economic abuse.¹⁶ Domestic violence is also inclusive of coercion for unlawful transfer of dowry or other property.¹⁷ This expansive definition can also include instances of "marital rape" under "sexual abuse," and is not made exhaustive and can be interpreted according to the facts and circumstances of the case.

Another novel aspect is the expansion of the understanding of "domestic relationship", which is not limited to marital relations or relations of blood or adoption alone.

¹⁴ 121ST REPORT OF DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT (DIGITAL SANSAD), <https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/245_2023_9_12.pdf?source=rajyasabha> (last visited Apr 15, 2024)

¹⁵ ENGLISH RELEASES PRESS INFORMATION BUREAU, <<https://pib.gov.in/newsite/ereelcontent.aspx?relid=11687#:~:text=President%20for%20assent.,The%20Protection%20of%20Women%20from%20Domestic%20Violence%20Bill%2C%202005%20was,Sabha%20today%20and%20was%20passed.>>(last visited Apr 15, 2024)

¹⁶ *Supra* note 8, § 3.

¹⁷ *Id.*

The Act simplifies the complaint filing procedure, creates a cadre of protection officers who can assist the victim in the completion of the suit. The victim is also allowed to request medical facilities¹⁸, shelter homes¹⁹. The Act also empowers the victim to seek various reliefs from the magistrate mentioned in the Act.²⁰ The act also provides for the issuance of orders for protection from domestic violence,²¹ residence in shared household²² and monetary compensation for the abuse suffered.²³

Thus, the Act takes a praiseworthy initiative of enlisting State action for providing succour to private injuries as a matter of societal concern.

¹⁸*Supra* note 8, § 6.

¹⁹ *Supra* note 8, § 7.

²⁰*Supra* note 8, § 12(1).

²¹ *Supra* note 8, § 18.

²² *Supra* note 8, § 19.

²³ *Supra* note 8, § 20.

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The enactment of the PWDVA although a revolutionary step in the direction of securing women's rights, has been the subject of its share of controversies. They have been divided into two sub-sections:

I. ISSUES IN IMPLEMENTATION

- The interpretation by the courts, of various provisions have seemed contrary to the legislative intent behind the enactment of the Act.²⁴ The Supreme Court held in the case of SR Batra v. Taruna Batra that the right of residence²⁵ of women in the shared household²⁶ shall not extend to self-acquired properties of the in-laws, and such right shall only be limited to joint family properties in which the aggrieved's husband is subject to holding a share.²⁷ Such a ruling, although evidences judicial intent for checks and balances in implementing the act but can prove to be unjust in cases of grave abuse against the victims.
- In another case of D Veluswamy v D Patchaimal, the court has interpreted that not every live-in relationship shall qualify as "relationships in the nature of marriage" and laid a fourfold test for classification within the same. The couple must hold themselves out to the society akin to spouses, should be of the legal age to marry and be otherwise qualified to enter into a legal marriage, and should have voluntarily cohabited and imparted the impression of being spouses to the world.²⁸ This test imposes a considerably high *onus probandi* on the victim to proceed under the Act.
- The Act contains provisions for the requisitioning of medical facilities and shelter homes by the victims. Other schemes for the prevention of domestic violence include

²⁴ Pooja Badarinath, *The Challenge of Subjectivity within Courts: Interpreting the Domestic Violence Act*, 46 EPW 15-18 <<https://www.jstor.org/stable/41151987>>

²⁵ *Supra* note 8, § 17.

²⁶ *Supra* note 8, § 2(s).

²⁷ S R Batra vs Taruna Batra; (2007) 1 DMC (SC) at para 22.

²⁸ D Veluswamy vs D Patchaimal, Criminal Appeal No 2028-29 of 2010 [Arising out of Special Leave Petition (Cri) Nos 2273-74/2010].

the appointment of Protection Officers, notification of service providers, training and capacity building of the police, judiciary, and widespread sensitisation. Research data shows that the state governments have designated the existing shelter houses under the Swadhar scheme and Nari Niketan. These homes are already overburdened beyond their capacities and the result of their designation is that there is an acute district wise shortage of such houses.²⁹

- The honorarium provided to service providers like medical practitioners and legal advisors is too abysmal for their sustenance, serving to discourage people from enlisting themselves under these avenues.³⁰

II. INSTANCES OF RECIPROCAL DISCRIMINATION

The PWDVA has been drafted to specifically include crimes of domestic violence only against women and it does not account for the eventualities of perpetration of domestic violence against males of the household. A gender binary of “resting on the essentialised notions of male aggressiveness and female submissiveness”³¹ is furthered by this act.

The Law Commission of India in its 243rd report noted the high number of complaints of misuse of the law³², which has also been recognised by the judiciary in individual cases, but a conclusion could not be reached in the absence of ground-level studies to gather the extent of such misuse.

Instances of combined harassment by the husband and wife of elderly male relatives of the family have gone unpunished and those of false and undue implication of the husband’s family in false or frivolous cases of rifts and feuds, have caused ignominious social humiliations and hardships due to undue incarcerations of innocent people.

The courts in various cases³³ have issued guidelines to provide for preliminary investigations to eliminate the possibility of harassment of innocents, and thus curb the misuse of the law.

²⁹ Bhumika Jhamb, *The Missing Link in the Domestic Violence Act*, 46 EPW 45- <<https://www.jstor.org/stable/23017848>> accessed 15 April, 2024.

³⁰ *Id.*

³¹ Mikkola Mari, ‘*Feminist Perspectives on Sex and Gender*’, The Stanford Encyclopedia of Philosophy (Edward N Zalta ed, Fall 2019 Edition) <<https://plato.stanford.edu/archives/fall2019/entries/feminism-gender/>> accessed 15 April, 2024.

³² Law Commission of India, s 498A IPC, Report No 243, 3 ¶ 1.3 (August 2012).

³³ *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667; *Chander Bhan v. State*, (2008) 151 DLT 691.

PWDVA has therefore been an impediment to gender neutrality in sexual and domestic violence laws in the above-mentioned respects.³⁴

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The PWDVA was a revolutionary development in its time and has served to considerably lower the instances of domestic violence against women. But, its scope being restricted to women only, gives rise to a travesty of males and transgender people within families having no remedy for being victimised of domestic violence. The concern of misuse of a gender-neutral law by domineering males can be addressed by the implementation of stringent investigative practices and prosecution procedures.

Moreover, the rehabilitative provisions of the Act need to be backed up with robust and routine allocation of funds in order to lend teeth to them.

Another significant aspect about the law is that it checkmates the clamour for the inclusion of marital rape within the definition of “rape” in the criminal law, since, the Act already includes sexual abuse within the ambit of the definition of domestic violence.

³⁴ Anupama Sharma, *Addressing the Roadblocks to Gender Neutrality in Sexual and Domestic Violence Laws : A South Asian Perspective*, 11.2 JILS (2020) 79

