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PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: FEATURES, CHALLENGES AND THE NEED FOR GENDER NEUTRAL PROTECTION LAWS

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ABSTRACT

Domestic violence remains a serious social and legal issue which is still stigmatised in the Indian society. It is when a woman is physically, mentally, emotionally, verbally or economically abused in a domestic household setting by an intimate partner or his relatives. It affects the physical, emotional, psychological, and economic well-being of a woman. India has had a long journey of struggle against domestic violence where it is deeply rooted into gender inequality, patriarchal mindset of society and expectation to follow traditional gender roles, putting women in a vulnerable position and limiting them as mere nurturers. To fight against this struggle and provide rightful justice to women, the Indian Parliament enacted the Protection of Women from Domestic Violence Act, 2005 (PWDVA) which is marked as a legal milestone and a significant development in Indian law by recognizing domestic violence not only as physical abuse but also as emotional, verbal, sexual, and economic abuse. This research paper examines the salient features and legal framework of PWDVA, the social causes of domestic violence, the emergence of PWDVA its criticisms and reformative suggestions along with its relationship with Section 498A of the Indian Penal Code (IPC). The paper emphasizes the importance of strengthening legal awareness, institutional support, and social reforms to ensure better protection of women against domestic violence. The study adopts a doctrinal research methodology based on statutory analysis and secondary sources such as legal journals, articles, reports and case laws. The paper concludes that although the PWDVA is a legal milestone aiming at safeguarding women's rights and dignity, its effectiveness largely depends upon proper implementation, public awareness, infrastructural changes and societal change toward gender equality.

INTRODUCTION

The struggle of domestic violence has been one of the longest running struggles that this world has seen specially in the third world countries. It is one of the most under-reported human rights violations in the world and has remained as one of the most serious social and legal concerns in countries like India and has affected women from all sections as a social issue rooted deep into discrimination against women and patriarchy. Even though today dedicated constitutional provisions like the PWDVA are available women still don't speak up due to lack of awareness of their rights, social stigma, financial insecurity, societal and family pressure or for the last glimmer of hope that things will get better and the abuse will stop. The abuse is not always from the partner in many cases the in-laws are involved as well. According to section 1 of the PWDVA, it is 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.¹

PWDVA came into force in October 2006, it is considered as a constitutional milestone in India which has broadened the concept of domestic violence by including emotional, verbal, economic, sexual abuse along with physical abuse under its scope. It has made civil remedies available to women, encouraging more women to step up. This act also extends to other females under a domestic setting including mothers, sisters, widows and other female relatives, this is a crucial feature due to the joint family setup in India. The rights of women in live-in relationships which had nature like marriage against domestic violence are also included in this act, acting as a symbol of modernity and advancement in the Indian law.

This act provides immediate civil remedies like protection orders, residence orders, custody orders, and monetary relief and roles like protection officers and service providers for rightful and fast justice to the victims. Before the enactment PWDVA, issues of domestic violence were majorly dealt through Section 498A of the Indian Penal Code, which dealt with cruelty by husbands or relatives but these provisions had a lot of limitations like lack of immediate civil remedies, only focused on physical abuse, limited to abuse against wives and focused on criminal punishments.²

The ineffectiveness of Section 498A in such a sensitive matter and India being one of the signatories of the United Nations committee of CEDAW (convention of the elimination of

¹ Protection of Women from Domestic Violence Act, 2005, s.3.

² Indian Penal Code, 1860, s.498A

discrimination against women) were the reasons for emergence of this constitutional milestone.³

Although its enactment marked a major step toward women's empowerment and legal protection in India's history there are challenges like social stigma, lack of awareness, patriarchal attitudes, gender gaps, procedural delays, and inadequate institutional support which make its effectiveness difficult.

OBJECTIVES

- To examine the scope and salient features of PWDVA
- To study the difference and shift between PWDVA and Section 498A of IPC.
- To justify how the need of protection of women from domestic violence act couldn't have been fulfilled by amendments in Section 498A
- To explore the social causes of domestic violence and the deep-rooted patriarchal mindset.
- To examine the need of gender neutrality in domestic violence laws
- To identify the challenges and criticisms of PWDVA.
- To give suggestions and reforms for its improvement.

RESEARCH METHODOLOGY

This research is based on doctrinal method of research analysing the PWDVA through statutes, journals, research papers, articles, reports and online sources. The research also examines a comparative approach to examine the shift from Section 498A to the enactment of PWDVA.

SAILENT FEATURES AND LEGAL FRAMEWORK

This act aims towards protection of women from domestic violence and to provide quick relief and support to the victims. It also includes provisions to ensure that women can live with dignity and safety.

It also recognizes domestic violence as not just physical abuse, but also emotional, sexual, verbal, and economic abuse increasing the scope of the types of violence that occur so that every violent act is legally enforceable as defined under section 3 of the PWDVA. The physical abuse includes bodily injury, assault, hitting and beating. The emotional and verbal abuse includes threats, insults, humiliation and many other things like constant criticism. The sexual

³ thelaw.institute- understanding the foundation: objectives and reasons behind the domestic violence act.

abuse includes forced sexual acts or abusive sexual conduct. The economic abuse includes stopping access to food or medicines, taking away earnings, or preventing use of household resources.⁴

The women protected under this act aren't just married women but a variety of female members in a domestic setting specially because of the joint family system of India. Thus, this act covers the domestic abuse suffered by wives, mothers, sisters, widows, female relatives, and women in live-in relationships which had the nature of marriage. The only key requirement is that the woman must be in a domestic relationship with the respondent and must have lived in a shared household.

According to section 5 of the PWDVA, police officers, service providers and magistrates are responsible to immediately assist to complaint starting with making sure that the complaint is registered and processed.⁵ It also includes their coordination with protection officers to assist the victim. According to section 9 of the PWDVA, the protection officer assists in filling of complaints and ensuring the safety of the victim.⁶ The section 12 of the PWDVA, allows victims to directly file an application to the magistrate either themselves or through a protection officer for various orders under the act.⁷

The section 18 of PWDVA, provides the protection orders which are crucial for the immediate security of the victim by preventing the respondent from committing any further acts of violence.⁸ The section 19 of the PWDVA, aims to protect the victim's right to a safe environment by providing a right to shared household and alternative accommodation if found necessary by the victim.⁹ The act also provides monetary relief to the victims under section 20 for medical expenses, loss of income and other financial needs that might arise due to the abuse.

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In the landmark judgement of *Indra Sarva v. V.K.M Sarma* (2013) the Supreme Court held that women in live-in relationships which had the nature of marriage can seek protection under

⁴ Protection of Women from Domestic Violence Act, 2005, s.3

⁵ Protection of Women from Domestic Violence Act, 2005, s.5

⁶ Protection of Women from Domestic Violence Act, 2005, s.9

⁷ Protection of Women from Domestic Violence Act, 2005, s.12

⁸ Protection of Women from Domestic Violence Act, 2005, s.18

⁹ Protection of Women from Domestic Violence Act, 2005, s.19

¹⁰ Protection of Women from Domestic Violence Act, 2005, s.20

¹¹ Legalserviceindia.com- salient features of the Protection of Women from Domestic Violence Act, 2005 by Anushri Joshi

PWDVA extending its scope for women who aren't married.¹² Further the judgement of Lalita Toppo v. State of Jharkhand (2018) recognised the maintenance rights of women in live-in relationships.¹³

THE SHIFT TO PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 FROM THE SECTION 498A OF INDIAN PENAL CODE.

The PWDVA came into force in October of 2006. It was marked as one of the most crucial legal milestones in the Indian legislation, finally addressing a social evil like domestic violence with much more care and sensitivity and not treating it as just a personal family matter. One of the major reasons behind its emergence was the recognition of domestic violence as a violation of human rights internationally in CEDAW (convention of the elimination of discrimination against women). India was one of the signatories of the United Nations committee of CEDAW and was therefore under an obligation to match the standards of its domestic laws framework which was at that time rather a tapestry of fragmented criminal provisions.

There was no act dedicated solely towards domestic violence. The ground reality of India was that women faced a lot of problems due to the bluntness of the available remedy; Section 498A of IPC and lack of civil remedies available against domestic violence. The Section 498A of IPC which was introduced in the year 1983 against the rise in violence against women by dowry harassment and bride burning, made cruelty by a husband or his relatives a criminal offence with up to 3 years of imprisonment as a punishment. The scope of Section 498A of IPC was limited to married women it left out other female family members and relatives. This system worked on the extremities; a woman could either keep suffering or leave everything that she has without any monetary relief or housing security. Thus, the enactment of PWDVA with a much broader approach became a crucial step.¹⁴

WAS A NEW ACT REQUIRED OR NECESSARY AMMENDMENTS IN SECTION 498A OF THE INDIAN PENAL CODE BEEN A BETTER CHOICE?

There has been a long debate between scholars on this topic where a few argue that the government didn't need to bring a new statute but rather amendments in the existing legal provision Section 498A would have been enough which already criminalised cruelty by husband or his relatives as an offence with up to 3 years of imprisonment. It is argued that the

¹² Indra Sarma v. V.K.M Sarma, (2013) 15 SCC 755

¹³ Lalita Toppo v. State of Jharkhand, (2019) 13 SCC 796

¹⁴ The Indian Penal Code, 1983, s.498A

features of PWDVA like expansion of scope, protection officers, residence rights, speedy justice etc could have been just amended into the Section 498A. The co-existence of both has increased procedural complexity and has also created confusions and delays in enforcements.

While some strongly argue that due to the punitive nature of Section 498A in its contrast with PWDVA is a rights and welfare-oriented act which focuses on maintenance of the rights, dignity and respect of women along with giving them rightful justice. The amendments in Section 498A couldn't have managed the rehabilitation and urgent civil protection needs and given the nature of domestic violence limiting it as a criminal issue is unfair. Thus, the need of a new act altogether is justified.

SOCIAL CAUSES OF DOMESTIC VIOLENCE

Domestic violence is a social evil. It is a seed sown by patriarchy and discrimination deep into the grounds of society. Patriarchy is the social belief and construct of putting men in a dominant position in political, economic, social and familial structures while keeping women at rather subordinate positions. The decision making in a patriarchal family is done by the male head. It promotes the traditional gender roles limiting women's roles as mere nurturers.

Children are exposed to this evil mindset at a very young age where sons in a family are valued more than the daughters. Even though the practice of sex determination of foetus has been banned in India, it still runs illegally in many parts of the country specially in the remote rural areas where people don't want to 'invest' in birthing a female child and bare the weight of her expenses, thus supporting practices like female foeticide. Boys are taught to be masculine, powerful and act like a 'man' whereas girls are taught to be polite and submissive. Women are taught from an early age that to make a marriage work they have to be adjusting and sometimes bare the anger and frustration of their husband. This practice puts children into different moulds constructed by the society's beliefs and expectations of traditional gender norms from an early age.

Dowry practices in India are legally prohibited under the Dowry Prohibition Act, 1961.

¹⁵Marriages in India involve many formal obligations and in many marriages the groom's family is given dowry under the name of gifts. Even after its prohibition it is a commonly expected obligation in marriages. When these dowry demands aren't met women often face harassment which can be physical, emotional, sexual and verbal. This harassment doesn't

¹⁵ Dowry Protection Act, 1961

always come from the husband it often comes from the in-laws. According to the data released by NCRB, India recorded 5737 deaths due to dowry in the year 2024.¹⁶

Another reason for women bearing domestic violence is economic dependence on their husbands. Even today in most of the middle-class households, in a marriage the man is the breadwinner and the woman remains dependent on him for the economic expenses. Women in these types of marital settings lack financial stability and economic independence preventing them from leaving an abusive marriage. Economic abuse is one of the ways of domestic violence where a woman is deprived of control over finances.¹⁷

NEED OF GENDER NEUTRALITY IN DOMESTIC VIOLENCE LAWS

Traditionally masculinity is associated with being strong and having emotional resilience and in the cases of domestic violence men are automatically assumed as the abusers but they can sometimes be the one who is being abused. Men choose silence over legal actions because of fear of social humiliation and the biasness of Indian law system towards only perceiving women as victims and making laws for their protection only.

The legal framework in India like PWDVA is gender specific made for the abuse against women. The lack of institutional support mechanisms promotes a biased understanding of abuse. The violence against men is highly unrecognised they can face emotional, psychological, financial and sexual abuse it is not commonly talked about but that doesn't mean that it doesn't exist. The National Family Health Survey (NFHS) does not even collect data on male victims of domestic abuse, making their victimhood statistically invisible.

Thus, there is a rising need of gender neutrality in domestic violence laws so that justice is not gendered as its failure clearly undermines the spirit of law.¹⁸

CHALLENGES AND CRITICISMS

Even though the PWDVA is a legal milestone made for the protection of women's rights in India and their protection from abuse it has its own challenges and criticisms which make the act less efficient.

¹⁶ Indiatoday.in- India loses 16 women every day to dowry violence

¹⁷ Hubsociology.com- domestic violence in India: causes and social impact

¹⁸ Sidharth Singh, "domestic violence against men in India: legal gaps and the need of reforms", 5, Indian journal of integrated research in law, 1224

One of the most important parts of an Act and its successful usage is the institutional and infrastructural support, in case of the PWDVA the role of protection officers is often assigned to government officers without specialised training who already have duties often overburdening them. The act also lacks consistent implementation across all states. Moreover, the lack of proper shelter homes, legal aid facilities and inadequate funding of NGOs weakens the rights under this act.

The act has clearly mentioned the requirement of judiciary to give decisions of any case filed under it within 60 days for efficient and timely justice of such a sensitive issue but the disposal of cases often exceeds these 60 days limit due to these delays and factors like societal pressure, social stigma and economic dependence victims often withdraw complaints or don't file them in the first place.

The lack of awareness amongst victims for their rights, societal pressure to 'adjust' and reconcile to keep the family together, concern for the children, social stigma regarding the topic domestic violence and things like poor legal access for women in rural areas further make the act inefficient of its purpose.

The right to reside orders under PVDWA are very vague with no definite period mentioned on how long a woman can continue to stay there. This can also be claimed by women who were in live-in relationships which had marriage like nature, this right may create issues on the property rights for the victim, the accused and the entire family. The protection orders also include ex-parte orders which are orders given without hearing the other side, these can be often misused and can be unfair as it can stop a man from things like entering the household and accessing bank accounts without given a chance to present his side.

The act also only focuses on women facing domestic violence but in recent cases it has been only seen that men can also face domestic violence in a marriage, so the PWDVA lacks gender neutrality and is a narrower approach.¹⁹

REFORMS AND SUGGESTIONS

- The need of having full time dedicated protection officers with specialised training in victim assistance and PWDVA.
- Proper fundings to legal aid cells, and NGOs especially in rural areas.

¹⁹ Sakshi Godara "effectiveness of the Protection of Women from Domestic Violence Act,2005" 7 international journal of legal science and innovation 287 (2025)

- Accessible special awareness campaigns in collaboration with local bodies to increase awareness in remote and rural areas.
- Making the scope of protection from domestic violence gender-neutral by inclusion of men and LGBTQ+ members along with women.
- Making the rights and provisions under PWDVA clearer and more defined.²⁰

CONCLUSION

The issue of domestic violence is rooted deep into the Indian society and fuelled by social evils like gender inequality, patriarchy and discrimination against women. It is still stigmatised in the society and considered as a private matter. The PWDVA represents a crucial step towards addressing the issue of domestic violence in India through a more sensitive and victim-oriented approach. It has a widened scope of recognising not just physical abuse but also including emotional, verbal, economical and sexual abuse as domestic violence. In contrast to Section 498A of the IPC which was a staple for domestic violence before this act, it has enacted civil remedies such as protection orders, residence rights and maintenance for the victims.

The effectiveness of this act is compromised by challenges such as lack of awareness amongst women about their rights, social stigma, pressure on women to adjust and not break their family, procedural delays, lack of fundings, infrastructural challenges. The act is also criticised for having inconsistent judgements for live-in relationships and lacking gender neutrality in domestic violence by not including men and LGBTQ+ members as victims of domestic violence.

Therefore, stronger enforcement and institutions, proper funding, speedy justice, legal awareness and an even broader scope of violence is required for the adequate effectiveness of this act.

²⁰ Ms. Manjinder Kaur, "Domestic Violence Act, 2005: effectiveness, challenges and the need for reforms", 8, Indian journal of law and legal research, 4934.