



Beyond The Statute: A Critical Examination of Domestic Violence Act in India

Mufti Nahida¹

Saqib Ayoub²

Dr. Iftikhar Hussain Bhat³

Abstract

Domestic violence has been a problem for a long time in societies all around the world. It can happen to anyone, regardless of their age, race, gender, or status. Both men and women can be victims, but women are often hurt the most. These cases are serious because they violate people's rights, but they're hard to notice because victims often keep quiet out of fear or because they're in a close relationship with their abuser. There are several international and municipal laws that address the issue of domestic violence. In India, one of the primary legislations addressing domestic violence is the Domestic Violence Act of 2005. The Protection of Women from Domestic Violence Act (PWDVA), instituted in 2005, is a legislation aimed at protecting women from violence in domestic relationship. The Act provides for the first time in Indian Law a definition of "domestic violence". It is a civil law meant primarily for protection orders and not meant to be enforced criminally (also termed as quasi-criminal in nature). Even after passing such a law women are still facing abuse at ground level, as the cases regarding it seems no reduction. In reality what needs to be emphasized is that mere creation of rights can never be the anthemia for social evils. Legal reforms are meaningless unless they are preceded by social reforms. This Acts fails to deliver on different fronts which the legislature could have taken care of through subsequent legislations. These flaws are mentioned in this paper.

Keywords: Domestic Violence, Social reforms, Gender justice, Victim

I. Introduction

¹ Research Scholar, School of Law, University of Kashmir Id. Najarsaqibayoub@gmail.com.

² Research Scholar, School of Law, University of Kashmir Id. drsaqibayoub@gmail.com

³ Assistant Professor, School of Law, University of Kashmir. Id. Iftikharhussain@uok.edu.in

Domestic violence is violence committed by someone in the victim's domestic circle. This includes partners and ex-partners, immediate family members, other relatives and family friends. The term domestic violence is used when there is a close relationship between the offender and the victim. It represents one of the most pervasive and insidious violations of human rights, a global epidemic that transcends culture, class, and creed.⁴ It is a complex phenomenon rooted in power imbalances and gender inequality, manifesting not only in physical brutality but also in psychological, economic, and sexual abuse that erodes the very fabric of a victim's autonomy and dignity. For centuries, the private sphere of the home was deemed beyond the reach of the law, allowing such violence to flourish in silence and impunity. The advent of specific domestic violence legislation, therefore, marked a revolutionary shift, signaling the state's commitment to breaking this silence and offering protection and justice to survivors.⁵

Section 3, of Protection of Women from Domestic Violence Act, 2005 defines "domestic violence" as- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes-

⁴ Stark, E. (2007). *Coercive control: How men entrap women in personal life*. Oxford University Press.

⁵ Goodman, L., & Epstein, D. (2008). *Listening to battered women: A survivor-centered approach to advocacy, mental health, and justice*. American Psychological Association. <https://doi.org/10.1037/11652-000>

- a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
- b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

- a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
- c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

On the analysis of above definition it can be concluded Domestic Violence include physical abuse, sexual abuse, verbal abuse, economic abuse, or abuse in relation with dowry/other property/valuable security.

II.Salient Features of the Act

The Domestic Violence Act stands as a critical legislative framework, enacted to confront the pervasive and complex issue of violence within the home. Moving beyond a narrow focus on physical abuse, this landmark legislation provides a comprehensive and nuanced legal definition of domestic violence, establishing a robust system of protections and remedies for survivors. The following discussion will elucidate the salient features of this pivotal Act, which collectively aim to empower victims, hold perpetrators accountable, and fundamentally shift the legal and societal response to this deeply entrenched problem.

- i.The definition of aggrieved person was widened, now it covered 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. To understand it better we have to understand what is meant by domestic relationship, according to this act it means a relationship between two persons who live or have, at any point of time, lived together in a shared

household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. In short it recognized live in relationship. 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 by the Act⁶.

- ii. According to this Act, "respondent" means 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 live in relationship may also file complaint against the relatives of husband or male partner⁷.
- iii. It is not necessary that information against Domestic Violence will be lodged by aggrieved party but can be done by any person who has reason to believe that such acts has been or is being committed. That means neighbours, social workers, relatives etc. can initiate on behalf of the victim⁸.
- iv. The court, by this new Act, can now order that she (victim) not only reside in the same house but that a part of the house can even be allotted to her for her personal use even if she has no legal claim or share in the property. The fear of being driven out of house has been taken away by this section⁹.
- v. Under this Act Magistrate has the power to protect the woman from acts of violence or even "acts that are likely to take place" in future and can prohibit the respondent from dispossessing the aggrieved persons or in any other matter disturbing her possessions, entering aggrieved person's place of work or if the aggrieved person is a child, the school. 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. Even he can be prohibited from entering the room/area/house that is allotted to her by the court¹⁰.
- vi. The Act allows magistrates to impose monetary relief and monthly payments of maintenance. The respondent can be made to meet the expenses incurred and losses suffered by the aggrieved person or any child or result of Domestic violence and can also cover loss of earnings, medical expenses, and loss of damage to property and can also cover the maintenance of victim and her children if any. Magistrate can also make the respondent pay compensation and damage for injuries including mental torture and emotional distress caused by acts of Domestic violence¹¹.
- vii. Sec.31 gives a penalty up to one year imprisonment and/or a fine up to Rs. 20,000/- for an offence. The offence is also considered cognisable and non-bailable.
- viii. The Act further says "under the sole testimony of the aggrieved person, the court may conclude that an offence has been committed by accused"¹².

⁶ Section 2(a) and Section 2(f) of The Protection of Women from Domestic Violence Act, 2005.

⁷ Section 2(q)

⁸ Section 4

⁹ Section 17

¹⁰ Section 18

¹¹ Section 22

¹² Section 32(2)

- ix. The Act also ensures speedy justice as the court has to start proceedings and have the first hearing within 3 days of the complaint being filed in the court and every case must be disposed of within a period of sixty days of first hearing¹³.
- x. It makes provisions for the state to provide for protection officers and the whole machinery by which to implement the Act. It also imposes certain duties to central and state governments to make wide publicity and training programs for the police officers¹⁴.
- xi. Act also provides that Magistrate can use the expertise of welfare experts if found necessary¹⁵.

III. Critical Analysis of the Act

While the Domestic Violence Act represents a significant legislative milestone, its true value is measured not by its intent but by its real-world impact. A critical analysis is therefore essential to move from applause for its existence to a clear-eyed assessment of its functionality. This discussion will scrutinize the law's strengths and weaknesses, questioning whether its theoretical safeguards translate into tangible protection and whether its framework is equipped to address the complex realities faced by those it is designed to serve

- i. The lack of training of police officers and magistrates regarding the acts requirement and its purposes has led to the re-victimization of women within the justice system, either through non response of call by police, or sending victims back to homes to their abusers by terming it a mere domestic dispute or magistrates allowing for numerous continuances of cases, prolonging the court process and forcing victims to come to court to face their trauma time and again.
- ii. There are two legal recourses available to women who suffers domestic violence, one filling divorce application in the family court and other is filling application to Magistrate according to this Act, which might go through criminal legal system. The dual system sometimes makes the legal system more complex or even tedious for them.
- iii. The act is deeply controversial due its insistence that firstly, the person who commits domestic violence is always a male, and secondly, that on being accused, the onus is on the man to prove his innocence. Therefore there are a lot of chances of the act being misused by unscrupulous women.
- iv. This law makes mockery of itself, as the framers of the law have put their faith in all women being essentially honest victims without worrying about proof of claims.
- v. There are major disparities in implementation of the law in various states. For instance, while Maharashtra appointed 3,687 protection officers, Assam had only 27 on its rolls, and Gujarat 25. Andhra Pradesh had an allocation of Rs 100 million for implementation of the PWDVA, while other states like Orissa lagged far behind. Not surprisingly, states that invested in implementation of the Act in terms of funds and personnel also reported the highest number

¹³ Section 25

¹⁴ Section 8 and Section 9

¹⁵ Section 15

of cases filed. Maharashtra filed 2,751 cases between July 2007 and August 2008 while Orissa could only manage 64 cases between October 2006 and August 2008¹⁶.

- vi. Very few amount of NGO's have registered themselves as service providers under this Act. These service providers and protection officers lack experience with domestic violence work. There are too much case load on these protection officers to handle and the service provided by service providers are not up to the mark¹⁷.
- vii. Though the Act provides for state legal aid, the quality of services in such cases is really poor. The state has passed on all responsibility to the service providers. They have to provide medical aid to abused women, arrange for short stay homes and arrange for compensation. It becomes a burden on these providers who do not have the wherewithal.
- viii. The Act's failure to mandate criminal penalties for abuse along with its civil measures, its failure to explicitly provide a maximum duration of appellate hearings which delays women's grant of relief, the residency orders' failure to give women substantive property rights to the shared household (only giving them the right to reside there), and a basic lack of infrastructure linking law enforcement officials, officials under the act, and service providers together in order to best and most efficiently serve domestic violence victims.
- ix. The lack of follow up can endanger victim's safety as well as for the corruption and inefficiency within the organization intended to help them.

IV. Judicial Criticism: An overview

In the case of *Loha v. District Educational Officer*¹⁸ J. Vaidhynathan observed that "The notable flaw in this law is that it lends itself to such easy misuse that women will find it hard to resist the temptation to teach a lesson to their male relatives and will file frivolous and false cases."

In case of *Dr. N. G. Dastane v. Mrs. S. Dastane*¹⁹ the Hon'ble Supreme Court had held that the cruelty is of two type one is mental and other is physical. It might be true that physical is generally being perpetuated by the husband being a strong one but at the same time this can't be said to be universally true. It is also vice versa in the case of mental cruelty. But in the majority of cases of mental cruelty it is almost the wife who causes mental cruelty to the husband.

In the case of *Shushil Kumar Sharma v. Union of India*²⁰ has observed that by misuse of the provision a New Legal Terrorism can be unleashed. Now comes the question can laws made in context to protection of women be misused? To answer this question the Honorable Supreme Court in a case made an observation that "Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society". This observation was made by the Supreme Court in context to the

¹⁶ Lawyers Collective. (2009). *Staying alive: Fifth monitoring & evaluation report on the Protection of Women from Domestic Violence Act, 2005*. Retrieved from <http://www.lawyerscollective.org/wri/publications/stayingalive> Accessed on 20 June 2025.

¹⁷ Rakhi Lahiri, "The Protection of Women From Domestic Violence Act: The Current Situation", HRLN, 2009

¹⁸ Madras High Court, *Loha v. District Educational Officer*, W.P.(MD).No.8646 of 2015, Dt: 08.06.2015

¹⁹ AIR 1975 SC 1534

²⁰ AIR 2005 SC 3100

Domestic Violence Act. It is therefore important to note that the concept of cruelty cannot specify for females only. Men can also be a subject to this and cruelty or harassment need not be physical but also mental in certain cases. Also, Victimization of Male Partners and Police Harassment is a major issue in such cases.

In *Vijaylakshmi v. Panjab University*²¹ it was held that as a result of joint operation of Article 15(1) and (3), the State may discriminate in favour of women against men but it may not discriminate in favour of men against women. Wherein is known that protection against domestic violence is a civil right it cannot be forgotten that its misuse cannot be taken lightly. The other view on the other hand argues that social problems, if remedied by force may lead to stronger reactions from the respondents, which in the end may be detrimental to existence of society itself. There was a constant demand for flexibility of this provision from apex court in numerous cases.

V. Conclusion

This Act was passed to reduce the sufferings of women who faced Domestic abuse at the hands of Male counterparts or their relatives but the reality never changed. Still the cases of domestic violence continues to go rising and even in some cases it leads to their re-victimization at the hands of untrained Police officers/ Magistrates. The Act itself is civil or quasi-criminal law in nature as it allows punishment only when orders of courts are defied. Also the definition of aggrieved person and respondent is wide but it should have been wider to include men and women respectively, as women being always abused is not a universal truth. There should be much wider publicity of the rights that women have under this Act and this can be done by social agencies like NGO's, Legal service Authorities, Aganwadi's, also people should be made aware of their rights through Plays, Acts, or any other simplified manner so that they can reap the benefit in actuality.



²¹ AIR 2003 SC 3331