

## A SOCIO-LEGAL STUDY OF DOMESTIC VIOLENCE ACT, 2005 IN PRAGMATIC APPROACH

**Amrita Singh\***

Assistant Professor, Shri Vaishnav Institute of Law, SVVV, Indore. Email:

[amritlaw8@gmail.com](mailto:amritlaw8@gmail.com)

**Dr. Varsha Upadhyay\*\***

Associate Professor, Shri Vaishnav Institute of Social Sciences, Humanities and Arts

Email: [varshasharmaupadhyay@gmail.com](mailto:varshasharmaupadhyay@gmail.com)

### **Abstract**

*Worldwide violence was highlighted as a revealing issue of human rights and public health issues as opposed to women. The judiciary has played a key role in tackling household abuse and has given a number of rulings for women that are a hallmark of the Indian Court records.*

*The Domestic Violence Act, 2005 has been mentioned in the remarking element that, the Supreme Court judgment in ‘V.D. Bhanot V/s Savita Bhanot (2012)’ wherein the provisions of Articles 14, 15 and 21 of the Constitution of India that the Parliament adopted under the PWDV Act of 2005 converted into women's rights determination However, the lack of a distinct rule to deal with domestic violence has altered and it has been discovered that the provisions that have been declared exclusively target the 'male' and the 'law.' Even violence was overlooked and lacked in the IPC and many laws in hostility to sisters, mothesr, and all women. Therefore, on October 26, 2006, after the ratification of CEDAW, the central government notified PWDVA, which was a main triumph for women's rights in India, of the legitimate gazette. The secular approach of the Domestic Violence Act guarantees women's rights regardless of faith.<sup>1</sup>*

**Key-Words- Domestic Violence, Women’s Status, Societal Attitude, Legal Provisions etc.**

### **Introduction**

As we know Domestic Violence is a frequent talk of matter which highlights the sufferings of a woman being a victim of most of her own family members. Violence done upon her can be in any way i.e. harming any person physically, mentally, emotionally, sexually and

---

<sup>1</sup> <http://14.139.58.147:8080/jspui/bitstream/123456789/253/1/14LLM%2016.PDF>

economically as all these are interconnected and lead to another violence. As violence is most commonly seen upon the women section of the society as they are easy targets to achieve.<sup>2</sup>

More often women are observed as a victim of domestic violence so to combat this govt. has taken an initial action by making an act to protect them and their rights i.e. “**The Protection of Women from Domestic Violence Act, 2005**”.

### **Factors relating to Domestic Violence in India:**

#### **i. Dowry**

In Indian marriages, the dowry is paid by the bride’s family in cash or in kind together with the bride’s gift (called kanyadaan) to the groom's or husband’s family member. India has literacy rate of 74.04% (2011 census), and it's far pretty rational to keep in mind literacy because the number one motive for certain social diseases. A negative farmer murdered his daughter in the case study of Lakshipur reported by Daily Prothom Alo in April 2008 because he didn't pay the pledge of his son-in-law.<sup>3</sup>

#### **ii. Lack of Education**

Although schooling does now no longer offer the strength to alternate the conventional belief of labor inside the household, however, it's far visible that nicely knowledgeable girls nonetheless same power comes from courting their husbands, and they are much less structured and need to be recognized by their husbands. In the event that women's torture, harassment, suicide abetting and dowry deaths are losing education and economic reliance, the S.C. has been placing alarming growth. Consequently, education has a key role in increasing the power and independence of women.<sup>4</sup>

#### **iii. Share in the ancestral property or father’s property**

Widows were also tortured in accordance with their laws and threatened to reduce their quotas. She was forced to wear ragged clothes for the property that she legally enjoyed after her husband via way of means of adopting wrongful methods leaving at the back of no choice but her to guide a dignified life. As due this it results in domestic violence since then if women

---

<sup>2</sup> [http://studentsrepo.um.edu.my/5660/3/chapter\\_1\\_5\\_2013\\_Viva.pdf](http://studentsrepo.um.edu.my/5660/3/chapter_1_5_2013_Viva.pdf)

<sup>3</sup> <http://14.139.58.147:8080/jspui/bitstream/123456789/253/1/14LLM%2016.PDF>

<sup>4</sup> Ibid

don't follow the instruction, then it ultimately leads to that wife-beating, harassment, and other rest tortures.<sup>5</sup>

#### **iv. Expecting male child mostly and repetitively giving birth to a female child**

Female feticides, amniocentesis (sex determination test), leaving behind ladies due to giving start to female infants repetitively sex-selective abortion exercises are not unusual to place incidences going on in households developing pressure within side the lifestyles of ladies. Infant killing or female infanticide is also a vicious ideology that devalues little girls. The birth of a girl by a wife or a mother suggests that the impeding social and economic load of a woman (for training and weddings) in recent years is an emotional maltreatment of a girl, for both of the mother and the kid, through the father and relatives or family members.<sup>6</sup>

#### **v. Talking to Friends, Relatives, Parents, and Neighbours**

Husband or mother and father-in-law uses swear and abusive words and various restraint measures, including confiscating mobile phones or other communication items, imprisoning women, beating her, prohibiting girls from using phones, visiting her mother and the girl's parent father at her matrimonial location etc. As this is also a major factor resulting in domestic violence by a means of restricting women at her husband's or in-laws house and seeking for all kinds of permission now and then as its mostly seen in rural or narrow-minded person house.<sup>7</sup>

#### **vi. Extra-Marital Relationship**

The uncertainty about extramarital relations are one of the reasons for disagreements between associations that also lead to physical violence, beatings, verbal abuse, woman restrictions, smartphone seizure and various ways of communicating. An out of wedlock business distracts human beings from pleasing their obligations in the direction of their family members which emerges in fights among the spouses from time to time the level of divorce arises and these kids go through the maximum tug of conflict among parents. Due to this reason, mental health also damages to a great extent not only the spouses but also the child living with them and the

---

<sup>5</sup> Supra note 13

<sup>6</sup> Supra note 13

<sup>7</sup> Supra note 13

rest of other family members if any. This results in lack of concentration, depression, anxiety, stress etc. other mental health problems.<sup>8</sup>

#### **vii. Drug and alcohol addiction**

A drug addicted or alcoholic man or woman has much less in all likelihood to manage they take excessive measures towards their spouse, which leads to injury or threat to her over his sentiments and movements and in the form of anger. Alcohol and various chemical chemicals contribute to aggressive behavior and further destroy houses. Dependence on alcohol and a couple of intercourse companion of the husband are the main reasons at the back of home violence. It's mainly seen in rural areas and also can be categorized as the door offense or intimate partner offense.<sup>9</sup>

#### **viii. Economic Stress**

Economic hardship, and extended unemployment additionally end in violence in opposition to partner as the husband's joblessness and lack of ability to earn everyday bread for lifestyles creates strain among companions growing quarrelsome environment at home from each of the hustle and bustle perimeters and sometimes out of irritation blame the wife for not finding a job This is one of the main and leading among all factor's which automatically has arisen other factor of domestic violence between the spouses.<sup>10</sup>

### **Classification of Domestic Violence**

It includes physical violence, emotional violence, verbal violence, psychological violence, sexual violence, economic or financial violence, family dysfunctionality violence, intimate partner violence and post-traumatic syndrome.

#### **i. Physical Violence**

Under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) physical violence has been named "*physical abuse*" which 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*

---

<sup>8</sup> Supra note 13

<sup>9</sup> Supra note 13

<sup>10</sup> Supra note 13

or development of the aggrieved person and includes assault, criminal intimidation and criminal force".<sup>11</sup>

## ii. Sexual Violence

Under the Protection of Women from Domestic Violence Act, 2005, "Sexual abuse" includes "any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman".<sup>12</sup> Sexual violence includes inconsistent vaginal, anal, or oral intercourse with a woman across the body and object; different acts of non-concern sexual nature performed with an individual; or interactions with a non-consensual sexual entity during non-consensual activities. sexual abuse and attempted rape of martial rape abuse.

## iii. Verbal Violence

Most verbal abuse experienced by women due to being ladies is sexualized, and counts as sexual violence or body shaming ones. Verbal violence is totally a gender-based violence within side the public sphere is likewise in large part associated with gender roles: it can consist of remarks and female jokes or may even depict women as objects of intercourse (e.g. jokes approximately sexual availability, prostitution, rape).

## iv. Psychological/ Emotional Violence or Post Traumatic Syndrome

Psychological abuse may be described as the systematic use of malicious manipulation via no physical acts towards an intimate partner, child, or an established adult. Psychological abuse can arise prior to bodily, sexual, or different abuses. However, it is able to additionally take place at an identical time. Even whilst it happens through itself, it's far ideal to motive long-time period harm to the sufferer's intellectual fitness. Psychological abuse is emotionally destructive due to the fact it's far from a person manipulating your feelings in a psychological manner.

## v. Economic/Financial Violence

It does not include supporting wives with money for running the household or children; not allowing a woman to utilize her "stridhan;" selling or donating household items or any other goods of interest to her, and trying to manage the wife's money and not allowing her to live in

---

<sup>11</sup> <https://legislative.gov.in/sites/default/files/A2005-43.pdf>

<sup>12</sup> <https://legislative.gov.in/sites/default/files/A2005-43.pdf>

a shared household. But under section 3, Explanation I (iv), PWDVA 2005 economic misuse has been completely demystified.<sup>13</sup>

**vi. Intimate Partner Violence (IPV)**

The abuse or aggression that occurs in a romantic relationship is intimate partner violence (IPV). 'Intimate companion' refers to all spouses and dating partners, both modern and former. IPV can measure the frequency and intensity of its occurrence. IPV may include any activity of the following kind: physical abuse, sexual abuse, stalking and mental abuse.

**Laws relating to Domestic Violence in India**

• **Constitutional Provisions:**

“Equality before the law under Article 14” ensures women’s right to equality; Art. 15(1) The State enabling women to act affirmatively is permitted pursuant to “Article 15(3)” of the Convention forbids discrimination on the basis of sex; “Article 16” allows for equal employment or appointment. "No citizen will be unauthorized or discriminated against in any job or position under the State on grounds of religion, race, caste, sex, descent, birthplace, domicile or any one of the citizens" [Art.16 (2)].<sup>14</sup>

“Article 21” provides protection of the life and freedom of the individual for which the State should follow certain principles of policy- in the sense that both men and women have the same rights to a sufficient livelihood.

The Directive's non-justifiable principles of State policy also include several significant measures for the empowerment of women. For example: Article 39 directed its policies to ensure that both men and women have an equal means of living [Art. 39(a)]; equal pay for the equality of labor for men and women under Article 39(d), not the abuse of health and power by men and women employees [Art. 39(e)]. Art. 39A ensures "equal justice and free legal assistance for which the State should ensure that the judicial system works on an equal footing and shall offer, in particular, free legal assistance by appropriate law or plans or schemes".<sup>15</sup>

In accordance with Article 42, the State should provide for fair and humane working conditions, and for maternity assistance. "To foster unity and a sense of universal brotherhood

---

<sup>13</sup> <http://14.139.58.147:8080/jspui/bitstream/123456789/253/1/14LLM%2016.PDF>

<sup>14</sup> <http://14.139.58.147:8080/jspui/bitstream/123456789/253/1/14LLM%2016.PDF>

<sup>15</sup> Supra Note 28

in all peoples of India, which transcend religious, linguistic and regional or sectional diversity, is a fundamental task provided under Article 51A(e); to repudiate traditions that derogate from female dignity;”<sup>16</sup>

Through the constitutional amendment of the 1973 and 74th elections in 1993, women have received reservations of 33,33 percent at various local elections, i.e. at the Panchayat, the block and the municipal elections. It is therefore evident that constitutional provisions empower women and the State is obliged to apply them.

- **Protection of Women from Domestic Violence Act, 2005**

This act (PWDVA, 2005) seeks to protect those women who are or have been into any kind of relationship with the abuser, i.e. where both parties are living in the same and shared household and are so connected by a way of marriage, consanguinity or any kind of relationship in addition to the relationship with family members. Even those women are also given the protection of who are single women the status of widows, sisters, mothers, or living with the abuser.

This act restores, rehabilitate and protect women who are abused and are a victim of violence. There are various laws under this act that perform their duty towards protecting women and providing them with various kinds of relief.

- **Indian Penal Code, 1860<sup>17</sup>**

“U/S 498 (A) Whoever submits such a woman to cruelty by a married or related of the married woman is punished with jail for a time that may extend to a maximum of 3 years and is also liable to fine, as a husband or relative of a woman who submits her to cruelty.

Explanation — "cruelty" includes, for the purposes of this section —

(a) any willing behaviour which may lead a woman to suicide or inflict a serious injury or threat (whether the woman's mental or physical) life, limb or health; or

(b) harassment of the woman, if such harassment is to coerce her or any person associated with her in order to satisfy any illegal request for property or valuable security, or if she or any person linked to her failure to comply with such requirement.”

---

<sup>16</sup> Supra Note 28

<sup>17</sup> <https://indiankanoon.org/doc/538436/>

**“U/S 304 (B) Dowry death<sup>18</sup> —** (1) If, within seven years of marriage, a woman's death is caused by burns or physical harm and is shown to be subjected, shortly before her death, to cruel or harsh harassment on or by her husband's part, for or as regards the requests for dowry, such death shall be known as "Dowry death", and that husband or shall be called "Dowry's Death"

Explanation —For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Anyone committing dowry death shall be punished for a sentence of imprisonment not less than seven years but that might escalate to life imprisonment.”

**“U/S 354 Assault or criminal force to woman with intent to outrage her modesty<sup>19</sup> —** Anyone who attacks or uses criminal force against any woman who wants to outrage or knows that she is likely to be outraged by her modesty shall be punished either with imprisonment of sentence for a two-year term or with a fine period, or both.

Sexual harassment, 354 (B) assaults on women with the intention of disrobing a woman, 354 (D) harassment, 375 and 376 violation and penalty, etc. are also available in IPC. There are also other laws under IPC.”

- **Criminal Procedure Code, 1973<sup>20</sup>**

“In case his wife cannot sustain itself and also offers protection for legitimate and illegitimize offspring, the U/S 125 gives an order for the maintenance of women, children and parents. The nature of u/s 125 Cr.Pc. is providing laws on social justice and are of civil nature but have a far broader reach than safeguarding women only by financial abuse.”

### **Suggestion to curb its Crime Rate**

- Improve the economic stability of women by introducing various schemes and programs although there is already a lot but most of them aren't aware of it.
- Providing education to women regarding this issue so that an increased literacy rate will automatically curb this domestic violence problem.
- Prohibition upon dowry and other malpractices relating to women.

<sup>18</sup> <https://indiankanoon.org/doc/653797/>

<sup>19</sup> <https://indiankanoon.org/doc/203036/>

<sup>20</sup> <http://14.139.58.147:8080/jspui/bitstream/123456789/253/1/14LLM%2016.PDF>



- Making people aware of human rights laws and their issues and concerns mostly in the BPL sectors.
- Letting people know about the consequences and after-effects of domestic violence act complaints.
- Adjudicate more speedy and fast trials and disposal of the cases recorded by introducing more fast-track courts and also by appointing various officials for each thing i.e. more judges and more protection officers etc.
- People who are helping this issue raise by creating awareness through media sensitization or from by other means should be recognised by various awards and monetary benefits so that more people will participate in this kind of scheme as money always attracts an individual and also curb somewhat employment crises.
- More online campaigns should also be encouraged along with some attraction-giving schemes like providing coupons or any giveaway of goodies or winning a product etc. so that more people will actively participate in these kinds of issues.

## **Conclusion**

In India marriage is the highest holy organization here, and when domestic abuse takes place against women this holiness of the marriage slips away and becomes a prison of regret.

Not only married women but also women likely to be someone's daughter, mother, and sister also many times have seen suffering and now domestic violence is a much wider concept rather than violence at home because violence is mostly everywhere. Along with the lockdown and Covid-19 crisis going on, this scenario just got bigger and now is a matter of concern to most people. As of now 1 in 3 women are suffering sexual and physical violence at home due to various reasons like lack of sex education, employment crises, financial crises etc. factors. About 86% of ladies who experienced violence by no means never sought help, and 77% of the sufferers did now no longer even point out or mention the incident(s) to anyone. During the primary 4 stages of the COVID-19-associated lockdown, Indian females filed greater domestic violence court cases than recorded in a comparable duration within side the remaining 10 years. But even this uncommon spurt is simplest the end of the iceberg as 86% of females who revel and experience in domestic violence do now no longer are looking for to assist and seek help in India. In 2020, between March 25 and May 31, 1,477 complaints of domestic violence have been made by females. This 68-day duration recorded greater complaints than the ones

acquired between March and May within side the preceding 10 years.<sup>21</sup> Most of the crimes which aren't reported go brushed off as they are committed under the roof of the 4 walls i.e. under the home privacy.

To finally conclude now I would say that women are mostly lacking due “Log Kya Kahenge ka Dar” i.e. the society's norms and traditions about whether the woman belongs to the upper class or from the lower class and fear of rumours by the societies and family members etc. but the more exposed and vulnerable women to this domestic violence are middle class and lower class women as they most likely to think about their family and children and of herself and her children financial stability and other various support. In all of these, the one driving factor which is common is their lack of education due to which they don't have a job i.e. any income or employment source.

### **REFERENCES:**

#### **Acts and Statutes/International Instruments:**

1. Criminal Procedure Code, 1973
2. Indian Evidence Act, 1872
3. Indian Penal Code, 1860
4. Protection of Women from Domestic Violence Act, 2005
5. The Criminal Law (Amendment) Act, 2013
6. The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)
7. The Immoral Traffic (Prevention) Act, 1956
8. The Indecent Representation of Women (Prohibition) Act, 1986
9. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013

#### **Books:**

1. Batra, M. (2018). Women and Law with Law relating to Children in India, Prayagraj: Allahabad Law Agency
2. Dewan, P. (1995). Dowry and Protection to Married Women, New Delhi: Deep and Deep Publications

---

<sup>21</sup> <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>

3. Jaising, I. (2009). Handbook on law of Domestic Violence, New Delhi: Lexis Nexis
4. Malik, K. (2009). Women & Law, New Delhi: Allahabad Law Agency
5. Mitter, D. N. (1984). Position of Women in Hindu Law, Stosius Inc/Advent Books Division
6. Nasir, S. (1992). Muslim Women and their Rights, New Delhi: Ashoka Law House.
7. Sagada, J. (1996). Law of Maintenance: An Empirical Study, N.M. Tripathi Pvt. Ltd.: Bombay
8. Sathe, S.P. (1993). Towards Gender Justice, Bombay: Research Centre for Women's Studies.
9. Singh, I. 1989. Women, Law and Social Change in India. New Delhi: Radiant Publication.
10. Sivaramayya, B. (1998). Matrimonial property Law in India. New D elhi: Oxford University Press.

#### Reports & Journals:

1. Alison Snow Jones, Jacqueline Dienemann, Joan Kub, Janet Schellenberger, Patricia O' Campo, Andrea Carlson Gielen, Clifford Wynne, Intimate Partner Violence and Physical Health Consequences, Baltimore, School of Nursing
2. Carolyn Hoyle And Andrew Sanders, Police Response to Domestic Violence, Volume 40, The British Journal of Criminology
3. David Gadd, Juliet Henderson, P. Radcliff, Danielle S. Lewis, A. Jhonson, G. Gilchrist, The Dynamics of Domestic Abuse and Drug and Alcohol Dependency, Volume 59, The British Journal of Criminology
4. Dr. Carolann Peterson, Domestic Violence Chaplaincy Manual, Sanctus Theological Institute
5. Melissa L. Anderson, Robert J. Reid, Frederick P. Rivara, David Carrell, Robert S. Thompson, Medical and psychosocial diagnoses in women with a history of intimate partner violence, Columbus, Department of Human Development and Family Science
6. Russell P. Dobash and R. Emerson Dobash, Women Violence to Men in Intimate Relationships: Working on A Puzzle, Volume 44, The British Journal of Criminology

#### Websites:

1. <https://www.merriam-webster.com/dictionary/domestic>
2. <https://www.merriam-webster.com/dictionary/violence>

3. <https://legislative.gov.in/actsofparliamentfromtheyear/protection-women-domestic-violence-act-2005>;
4. [http://gyan.iitg.ernet.in/bitstream/handle/123456789/1125/TH-1943\\_10614113.pdf?sequence=2&isAllowed=y](http://gyan.iitg.ernet.in/bitstream/handle/123456789/1125/TH-1943_10614113.pdf?sequence=2&isAllowed=y);
5. [http://elib.bvuict.in/moodle/pluginfile.php/180/mod\\_resource/content/0/Impact%20of%20the%20Protection%20of%20Women%20from%20Domestic%20Violence%20Act%202005%20and%20on%20other%20Legislation%20Concerning%20Protection%20of%20Women%20in%20India%20-%20Shilpa%20Singh.pdf](http://elib.bvuict.in/moodle/pluginfile.php/180/mod_resource/content/0/Impact%20of%20the%20Protection%20of%20Women%20from%20Domestic%20Violence%20Act%202005%20and%20on%20other%20Legislation%20Concerning%20Protection%20of%20Women%20in%20India%20-%20Shilpa%20Singh.pdf)
6. [https://www.unodc.org/pdf/youthnet/tools\\_strategy\\_english\\_domestic\\_violence.pdf](https://www.unodc.org/pdf/youthnet/tools_strategy_english_domestic_violence.pdf)
7. <http://www.inquiriesjournal.com/articles/1702/domestic-violence-and-the-indian-womens-movement-a-short-history>
8. <https://www.oxfordlearnersdictionaries.com/definition/english/dowry#:~:text=dowry-,noun,husband%20when%20they%20get%20married>
9. <http://14.139.58.147:8080/jspui/bitstream/123456789/253/1/14LLM%2016.PDF>
10. <https://www.coe.int/en/web/gender-matters/physical-violence>
11. <http://14.139.58.147:8080/jspui/bitstream/123456789/253/1/14LLM%2016.PDF>
12. <https://www.doorwaysva.org/our-work/education-advocacy/the-facts-about-domestic-violence/types-of-domestic-violence>
13. <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>

#### Case-Laws:

1. Alok Kumar v. State”, Justice Shiv Narayan Dhingra
2. Bharata Matha & Others v. R. Vijaya Renganathan & Others
3. Danial Latifi v. Union of India
4. Gajendra Singh v. Minakshi Yadav
5. Madhu Limaye V/S Maharashtra
6. Masood Khan Vs. Smt. Millie Hazarika
7. Nityananda Mishra V/S Pranati Mishra and Others
8. Shabana Bano v. Imran Khan
9. V.D. Bhanot v. Savita Bhanot

#### News – Papers:

1. The Hindu

2. Hindustan Times
3. Indian Express
4. The Times of India
5. The Tribune
6. Economic Times

**CASE STUDY: -**

1. V.D. Bhanot v. Savita Bhanot
2. Bharata Matha & Others v. R. Vijaya Renganathan & Others
3. Alok Kumar v. State”, Justice Shiv Narayan Dhingra
4. Gajendra Singh v. Minakshi Yadav
5. Shabana Bano v. Imran Khan
6. Danial Latifi v. Union of India
7. Madhu Limaye V/S Maharashtra
8. Masood Khan Vs. Smti. Millie Hazarika
9. Nityananda Mishra V/S Pranati Mishra And Others