

## **THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

*A Critical Appraisal of Its Efficacy and Constraints in the Indian Socio-legal Community.*

### **ABSTRACT**

Incorporating the provisions of the UN's Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) into the Indian legislation, the Protection of Women from Domestic Violence Act, 2005 is drafted to protect the rights of women and eradicate all sorts of violence that is happening to them in their domestic affairs. However, when it comes to its efficacy and implementation, the data and reports show otherwise. The paper is focused on understanding the multi-fold dimensions of the Act and what relief and facilities it aims to provide to the aggrieved women. Along with it, it strives to critically analyze the statutory provisions and procedural aspects envisaged in the act. The paper aims to identify loopholes and challenges that hinder its proper implementation and concludes by providing plausible solutions and recommendations for ensuring better recourse for the victims.

**Keywords:** #Women, #Domestic Violence, #Challenges, #Procedural aspect.

## INTRODUCTION

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*"Unpaid care work is the primary responsibility of the woman, and if she commits a 'mistake' by not performing her duties, she must be punished."*

~ **Reported by Oxfam India (2020)**<sup>1</sup>

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Domestic Violence is the worst of all crimes that happen against women, the reason being that it is carried out by People who are genuinely supposed to provide her with a sense of security and warmth in her own family, in which she places all of her faith and confidence.

In order to address the theoretical and practical concerns surrounding the crime of domestic abuse, the Domestic Violence Act is named as a crucial first step. The Act establishes a novel process that seeks to be victim-friendly, straightforward, and efficient. It envisions the involvement of a broad range of actors, including civil society and officials established under the act. It has the potential to be a tool that empowers women to leave situations that are harmful to their physical and mental health; a way to make an untouched social space more gender-sensitive and receptive to women's concerns; and a significant step in advancing the female emancipation agenda of the nation.

However, the ground reality gives us another picture when it comes to efficacy and credibility. A recent annual report published by the National Crime Records Bureau (NCRB) of India shows an upsurge in the number of crimes against Women by 15.3% in 2021 and 4% in 2022.<sup>2</sup> The data released by the National Family Health Survey (2019–21) also states the prevalence of domestic violence to be 29.3%<sup>3</sup>.

In addition to this, according to the Georgetown Institute for Women, Peace and Security's Women Peace and Security Index 2023, India is ranked 128th out of 177 nations in terms of women's security, justice, and inclusion.<sup>4</sup>

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<sup>1</sup> Das, Kumar & Bijeta Mohanty, "The Growing Concern Around Violence Against Women in India: Where Do We Stand?", IGC (Nov. 25, 2020).

<sup>2</sup>NCRB, \*Crime in India-2022 Snapshots (States & UTs)\*, (2023), available at <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/ciiyearwise2022/17016097489aCII2022Snapshots-StateandUTs.pdf>.

<sup>3</sup> National Family Health Survey (NFHS), \*India Fact Sheet\* (2021), available at [http://rchiips.org/nfhs/NFHS-5\\_FCTS/India.pdf](http://rchiips.org/nfhs/NFHS-5_FCTS/India.pdf).

<sup>4</sup> Bushra Ansari & Sowmya Rajaram, "It's Women's Day, but on the Ground, Little Has Changed", Indian Institute of Development Management. Apr. 15, 2024,

India has enacted strict legislation over the years, demonstrating its strong commitment to women's safety. Despite the enactment of the Protection of Women from Domestic Violence Act (2005), cruelty committed by a spouse or his family accounted for 31.4% of all offenses against women under the Indian Penal Code. Following this, according to NCRB statistics, women raped were 7.1%, assaulted to offend their modesty is 18.7%, and kidnapped and abducted were found to be 19.2%.<sup>5</sup>

During the COVID-19 epidemic, the situation deteriorated; the crime rate per 100,000 women increased from 56.5 in 2020 to 64.5 in 2021. This could have been caused by a variety of circumstances, such as economic distress, social isolation, and reverse migration. These elements have the potential to intensify already-existing domestic conflicts and generate new stressors, which might result in a rise in violence.

According to a BBC report, domestic violence is the most common violent crime against women in India and is typically registered under the legal heading of "cruelty by husband or his relatives." In 2021, Police received 137,956 complaints from women, or roughly one every four minutes. Compared with 2016, there was a 27% increase when 110,434 women sought police assistance.

According to a recent government survey, 38% of men and almost 40% of women said that a man may beat his wife if she disregarded her in-laws, neglected the house or the kids, went out without notifying him, rejected sex, or didn't cook well.<sup>6</sup>

It has been reported that despite a stringent legal framework, a lack of financial independence makes it much more difficult for women to defend themselves against harassment and abuse. Due to long-standing social standards, the majority of women did not have the right to a portion of their property. Furthermore, women are primarily employed in the unorganized sector, which limits their access to social safety nets.<sup>7</sup>

Although the Act was widely praised for being a positive step in the nation's women's empowerment movement, its success was called into doubt by a number of its provisions, which were viewed with doubt and even questioned by feminists. There

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<sup>5</sup> Ibid

<sup>6</sup> Geeta Pandey, "Rising Crimes Against Indian Women in Five Charts", BBC News, Sept. 13, 2022.

<sup>7</sup> Id at 4

were several problems with substantive, procedural, or conceptual flaws, obstacles that sparked concerns about successful execution.

The present paper will dive deep into the conceptual and procedural aspects of the protection and relief sought to be provided by the Act and try to identify the theoretical and practical gaps that exist in the provisions of the Act that are in dire need of being addressed for its effective implementation.

## **MULTI-FOLD FEATURES OF THE DOMESTIC VIOLENCE ACT, 2005**

The Domestic Violence Act, 2005, was enacted after addressing all sorts of loopholes that existed in the previous legislation about women's rights. The following features of the Act describe its multi-fold dimensions.

### **1. Civil & Secular Law**

The act is a civil law, it provides compensation and damages as a Remedy for the victim, in addition to penalizing the perpetrator. This law is said to be civilly backed by criminal sanctions. The Act is secular; it only focuses on the victim and not their religion, fulfilling the constitutional objectives too.

### **2. Ambit of Protection**

The ambit of the protection provided by the Act has been enlarged to include women in all domestic relationships and not only confined to women in matrimonial relationships. It now includes wives, mothers, sisters, and women in live-in relationships.

### **3. The Definition of Domestic Violence Widened**

The Act aims to ensure a comprehensive protection of women by broadening the definition of domestic violence to include every form of violence, be it physical, sexual, verbal, emotional, or economic.

It gives recognition and legal safeguards to women in informal relationships, like live-in and bigamous marriages.

The Act made provision for a "shared household" to prevent the eviction of women, even from joint families where the respondent has no ownership rights.

#### **4. A Robust Implementation Mechanism**

The Act has made provisions empowering Protection Officers, police officers, and NGOs as Service Providers, to help the victims, like NGOs registered under the Companies Act, can file reports, provide shelters, and facilitate medical relief, and thereby ensure effective implementation.

The Act has entrusted each of them with their functions to ensure immediate relief for the victims by making them accountable through their prescribed duties and penalties.

#### **5. Justice Made Accessible**

The Act has simplified the procedure wherein anyone, including doctors or Protection Officers, can report the horrendous act of domestic violence on behalf of the victim. The courts are mandated to complete the proceeding within 60 days, ensuring speedy justice. The provision has also been made for In-camera hearings and counselors facilitating reconciliation between the parties. The act by this framework strengthens the accessibility, efficiency, and victim-centric justice for women.

#### **6. Broad Scope of Reliefs**

Being a victim-driven legislation, the act entrusted the courts with wide discretion to grant quick and effective relief to the victim. The Courts, under this power, are authorized to grant a Protection Order to ensure a violence-free space to be granted to victim, or a Residence Order can be issued to protect the victim from getting evicted from her shared household, or the court can issue a Custody Order giving an additional safeguard to the children. Along with the above reliefs, A Compensation Order can be granted as damages for injuries incurred by the victim, and the court is also authorized to issue Monetary Relief, ensuring the financial condition is intact for the victim. These remedies are immediate emergency measures, and victims retain the right to seek justice in other civil or criminal courts.

## CRITICAL ANALYSIS OF THE DOMESTIC VIOLENCE ACT, 2005

### *A boon or a failure to gain its fruit?*

*"The campaign for legal changes has resulted in cosmetic changes that are inadequate to provide relief or to act as a deterrent."*

~**Flavia Agne**<sup>8</sup>

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The effective implementation of any law requires strong public consensus and political will to ensure its success. The Act of 2005, while welcomed by many, was rushed into law without fully considering the ground realities, weakening its impact and leaving it open to criticism. The law's introduction was more of a response to international pressures, especially after India ratified the CEDAW, rather than a reflection of public demand.

Societal Acceptance rather than an imposition from external forces should be a prerequisite for a law to be truly effective, which is unlikely with this Act, as although it was designed to protect women but it often reflect male prejudices which ultimately hinders its intended purpose of giving a genuine and a peaceful survival to the victim.

## STATUTORY INFIRMITY OF THE ACT

### 1. Definition of Domestic Violence

Domestic violence<sup>9</sup> in the Domestic Violence Act, 2005, has been defined in a very inclusive and wide manner, which encompasses sexual, verbal, economic, and emotional abuses, along with physical abuse. The flexibility of the definition can be ascertained through the word 'includes,' which permits other future possible abuses. However, two issues are there with this definition, the first being the vagueness of the terms used like "verbal and emotional abuse," which tends to include insults, humiliations, or ridicule which further creates ambiguity as it shows over-inclusivity

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<sup>8</sup> Flavia Agnes, " My story...Our Story of Re-Building Broken Lives" MAJLIS Jan 2004 p 93

<sup>9</sup> The Protection of Women from Domestic Violence Act, 2005. S.3.

of the provision wherein even innocent remarks can be used to approach the court. It also creates subjective interpretations from the judges.

This over-inclusive definition of domestic violence opens the door for potential misuse and subjective manipulations in the hands of the women or any other aggrieved person, even based on mere suspicion or apprehension. There is a very thin difference between inclusivity and over-inclusivity, which needs to be addressed to give better access to victims of domestic Violence.

## **2. Definition of "Shared Household"**

Another fault line that occurs in the Act is in the term Shared Household, wherein the independent property of parents is not included if the husband does not hold a share in it. It has been made clear in *S.R. Batra v Tarun Batra*<sup>10</sup> that a Shared household would only mean the house that belongs to the husband or is taken up on rent by him, or which belongs to the joint family, but the husband is a member of it. Herein, there is a dire need for a more specific and limited definition.<sup>11</sup>

## **3. Definition of Aggrieved Person**

An "aggrieved person"<sup>12</sup> is defined by the Act as any woman who is or has been in a domestic relationship with the respondent and who claims to have been the victim of any act of domestic violence committed by the respondent. This definition applies to victims who can file a complaint under the Act.

The gender-specific aspect of this part, which permeates the entire act, is the primary issue. The statute's identification of women as prospective victims of domestic violence excludes a sizable portion of the population, including men and transgender people (those who identify as neither male nor female). On the surface, this is very problematic for the prejudices that give rise to this provision.

According to a PubMed Central study supported by the ICMR, out of 1000 males, 51.5% experienced violence at the hands of their wives/intimate partner at least once in their lifetime and 10.5% in the last 12 months, Emotional abuse accounted for 51.6% of all spousal violence, with physical abuse coming in second at 6%. Physical assaults were only severe in a tenth of the cases. The husband was the one who started the

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<sup>10</sup> 2006(13) SCLA 652

<sup>11</sup> <http://legalserviceindia.com/article/1150-Protection-of-Women-from-DomesticViolence-Act.html>

<sup>12</sup> Ibid at S.2(a)

mental and physical abuse in over half of the cases. In India, there is no gender parity when it comes to physical violence. Risk factors were lower family income, middle-class education, a nuclear family structure, and an alcoholic offender.<sup>13</sup>

The exclusion of transgender individuals has been a longstanding issue, with limited acceptance in law and society. However, the Indian judiciary has made significant progress with judgments recognizing the rights of the LGBT+ community. In 2020, the Supreme Court directed the government to amend laws to include LGBT+ members. Amending the PWDV Act to be gender-neutral is a crucial step toward inclusivity.

#### 4. Domestic Relationship

As per Section 2(f)<sup>14</sup>, domestic relationship means, “*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 like marriage, adoption or are family members living together as a joint family*”

Upon thorough deliberation, it becomes clear that there is uncertainty surrounding the inclusion of non-marital relationships such as cohabitation and live-ins. The main source of the uncertainty is the lack of definition for the phrase "relationship like marriage," even though concepts like consanguinity and marriage are quite evident.

The Supreme Court addressed this issue in *Velusamy vs. D. Patchaiammal*.<sup>15</sup> According to Justice Katju, "The Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. While this new relationship is extremely widespread in North America and Europe, it is still uncommon in our nation and occasionally occurs in large Indian cities."

#### 5. Nature of Punishments

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<sup>13</sup> A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India - PMC (nih.gov)

<sup>14</sup> The Protection of Women from Domestic Violence Act, 2005, s. 2(f).

<sup>15</sup> Criminal Appellate Jurisdiction, Criminal Appeal Nos. 2028-2029 of 2010



In punishment jurisprudence, deterrence is a key principle aimed at preventing repeat offenses and discouraging others through the threat of punishment. The redressal mechanism of the act, being in a civil nature, lacks the element of punishment, as it offers monetary reliefs, protection orders, custody arrangements, and compensation to the victims, which somehow limits the preventive object of the Act. This lacuna enables the perpetrator to escape from accountability by settling the matter in monetary terms.

Also, it makes it difficult for the victim to approach the other general laws like the Indian Penal Code, The Code of Criminal Procedure 1973, etc, to seek justice, where they face Bureaucratic hurdles and delayed justice, defeating the very purpose of the Act. A lack of severe punishment for the offenders and habitual offenders for their ill acts undermines the ability of the Act to ensure prompt and comprehensive justice. Hence, there must be an inclusion of criminal liability in the present Act.

## **6. Lack of Proper Action by the Government**

It is commendable to state that the Act has not only restricted the adjudication and redressal of domestic violence cases, but it also extends to include provisions for affirmative actions by the State, like preventive measures and non-legal assistance for the victims. The institutional setup of shelter homes under Section 6, 9(f), and 10(c)<sup>16</sup> is one such measure that is intended to give a refuge to the aggrieved women.

However, implementation faces significant challenges, including insufficient shelters, untrained staff, government neglect, and public unawareness. These issues, compounded by bureaucratic inefficiency, worsened during the pandemic when shelter homes demanded COVID-19 tests, making access far from hassle-free for victims.

In many states, women cannot directly access shelters voluntarily; instead, access is controlled through formal referrals by protection officers, service providers, or court orders. This system is inadequate and violates the PWDVA's provisions, further limiting its effectiveness in protecting victims.

## **7. Over-empowered the Authorities**

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<sup>16</sup> The Protection of Women from Domestic Violence Act, 2005., Section 6, 9(f), and 10(c)

The authority established for effective implementation of the Act is a Protection Officer,<sup>17</sup> who is identified by the State Government and is assigned the major role of assisting the court, initiating action on behalf of the aggrieved, and also looking after the services required for the victim like shelters, hospitals, counseling, legal aid and such other services in question. The appointments made under the Act are, in practice, not full-fledged, full-time working as Protection Officers, but it is given as an additional charge to those who are already in Government services. This additional burden of heavy duty is definitely to meet the desired ends of an insensitive attitude towards the victim. The officers do not have updated knowledge of the functions and powers, and they are not concerned with gender-sensitized approaches for the victim. The problem lies with the resources available in the name of such officers. The need for finance for setting up the office and infrastructure of the protection officer, the 'Gender budgeting' with the provision of separate budgetary allocation is needed, where the strong political will is reflected. The present statute requires this positive approach of the government.

### **8. Inappropriate Response by the Police Personnel**

The police, though not directly responsible for implementing the Act, often exhibit a patriarchal mindset that hinders justice for victims. The Police officers were found to be advising the victims to reconcile with their husbands frequently instead of giving support to the victims reporting the domestic violence. This expresses an inculcated paternal bias having its root cause in traditional gender roles.

There is a need for sensitization, educational awareness, and proper training of the Police personnel on the protection of human rights and the dignity of Indian women. However, changing such a perspective remains a significant challenge, as merely holding them liable for not registering the complaints would not serve the purpose.

In a report published by the Lawyers group in Delhi and Rajasthan<sup>18</sup>, the mindset of the Police, who are found to be the first contact point for any victim reporting the crime, is toward preserving the family values, bonding, and well-being of children over protection of victim from the violence and punishing the perpetrator. This mindset creates a major hurdle when it comes to the effective implementation of the Act.

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<sup>17</sup> Ibid, s. 8(2).

<sup>18</sup> The Third Monitoring and Evaluation Report 2009

The Police need to be trained and made aware in every manner so that they can transform their attitude toward victims and society.

### **9. Questionable Provision of Counselling**

The Act envisages counseling measures for both the victim and the perpetrator under section 14,<sup>19</sup> which is outrightly criticized as they are forced to come to a mutual agreement with the person who has harmed her. The Counselling provision must be voluntary and not mandatory, as it persuades women to normalize the violence and remain in their marriages. This provision, though intended for the good purpose of saving the family, is going against its very objective.

In addition to this, there is no proper listing of service providers formed to give an organized shelter home to the victims, even there is no provision for listing the women in need of refuge and even if it gets listed, there is nothing for proper monitoring of their performance whether victims are getting the relief or not. There is a need for proper Listing and registration of service providers.

### **10. Delayed Justice**

Section 12(1) permits victims to approach the Magistrate for seeking one or more reliefs, wherein it is mandated for the Magistrate to dispose of the case within 60 days from the date of the first hearing. 12(5), this was aimed to ensure easy access to justice and quicker disposal of cases,<sup>20</sup> and hence, family courts<sup>21</sup> were not considered for this purpose. The Act provides for a comprehensive framework of magistrates' duty to grant Protection<sup>22</sup> and residence orders<sup>23</sup> over preserving family culture.

The Act, by clearly defining the reliefs that are to be granted, has reduced the discretionary power of the Magistrate.

However, provisions like Section 14<sup>24</sup> mandating magistrates to send the victim and perpetrator for counselling for a period of 2 months, which delays the proceedings and justice. It is the flawed presumption by the legislators to introduce such conciliation as a solution. A balanced approach is needed to address this issue.<sup>25</sup>

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<sup>19</sup> The Protection of Women from Domestic Violence Act, 2005., S. 14

<sup>20</sup> M.J. Rao, Towards a Law on Domestic Violence, in DOMESTIC VIOLENCE AND LAW 218.

<sup>21</sup> The Protection of Women from Domestic Violence Act, 2005.,s.12

<sup>22</sup> Ibid at S.18.

<sup>23</sup> Ibid at s. 19.

<sup>24</sup> Ibid at s.14

<sup>25</sup> S.B. Ghosh, Contextualizing Domestic Violence, BEHIND CLOSE DOORS: DOMESTIC VIOLENCE IN INDIA 54 (Rinki Bhattacharya ed., 2004)

## **PROCEDURAL INFIRMITY OF THE ACT**

### **1. Challenges in Conducting In-Camera Proceedings**

Under Section 16 of the Act, the Magistrate is empowered to hold in-camera proceedings if either party requests in the interest of the victim. However, the results of such proceedings are found to be unsatisfactory and prone to being misused for vested interests. It has been seen that fear of intimidation has been faced by the women in the closed walls, especially where they are alone female amongst all male magistrates, lawyers, protection officers, and Police.

Further, unfairness has also been seen under Section 23, which empowered Magistrates to pass ex parte orders solely based upon the testimony of the aggrieved person without following the established rules of evidence or procedure and thereby violating the “due process of law”.

### **2. Lack of Time Limitation and Guidelines**

The Act lacks in specifying a particular time limit within which the aggrieved party files a complaint, as the offence of domestic violence is looked at as a ‘Continuing Offence’. This absence, however, tends to violate the basic norms of public policy. Similarly, there are no clear guidelines for the determination of the monetary relief sought by the victim.

### **3. Misuse and Consequences**

The lack of penalties for filing false cases has led to instances of abuse, with some women using the law to extort money, blackmail, or facilitate divorce. This misuse has negatively impacted innocent husbands and their families, victimizing women within the husband’s family. These unintended consequences undermine the law's original intent of protecting women from genuine abuse.

### **4. The Act is Silent on a Few Provisions**

Section 27<sup>26</sup> allows the magistrate to issue orders beyond their local jurisdiction, but the Act does not specify who is responsible for implementing such orders.

Section 26<sup>27</sup> allows relief under Sections 18-22 to be sought in any ongoing legal proceedings in civil, family, or criminal courts. The only appeal provision, Section 29, allows appeals from magistrate orders to the sessions court.

## **6. Accountability of the Protection Officer**

The Act lacks provisions detailing the procedure to be followed by protection officers and the evidentiary value of their reports. This omission is critical as judges rely on these reports to assess evidence and grant final relief. Clear statutory guidelines are essential to ensure fair and effective adjudication.

## **5. Counseling as a Matter of Concern**

There is no permanent system in place for counseling services or monitoring their impact, especially in cases where a woman reconciles with an abuser. It's crucial to track the progress of counseling and changes in behavior, but the Act lacks provisions for such infrastructure.

## **6. Implementation Issues**

Allegations of domestic violence based on verbal and emotional abuse pose challenges, particularly when a woman complains. It is unrealistic for the court to expect the Protection Officer to enforce a constant presence in the woman's matrimonial home, especially when the abuser is unwilling to live with her. Such unreasonable demands should be critically reconsidered.

## **7. Technicalities in Service**

This was the first law to offer relief to victims through support services such as shelter homes<sup>28</sup>, medical care, legal aid, vocational training, and financial assistance. The Rules also allow service providers (NGOs) to forward a victim's complaint to the magistrate as an alternative to protection officers. However, similar to protection officers, these service providers lack state government accreditation, though they are permitted to offer shelter and care to victims.

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<sup>26</sup> The Protection of Women from Domestic Violence Act, 2005, s. 27.

<sup>27</sup> Ibid, s.26.

<sup>28</sup> Ibid, s. 7.

## **8. Issues in a Medical Facility**

The Act stipulates that the victim must receive medical assistance and facilities, but due to the heavy burden and financial strain, the government hospital's current services are unable to offer the victim prompt relief. Then, who is responsible for providing the woman with medical care—a public or private facility? If the private establishments are permitted? Who is responsible for paying for the medical facility? There is a substantial question about the legislative intent.

## **9. Provision for Rights and Relief without Assessing Ground Realities**

The Act, while aiming to protect women in various relationships such as wife, mother, or sister, controversially extended its scope to include women in extra-marital or illegitimate relationships. This effort to legalize "live-in" relationships contradicts societal norms and existing laws, like Section 497 IPC, which criminalizes adultery. Such provisions risk undermining the sanctity of marriage and disrupting the social fabric.

While the Act was intended to provide relief to victims of domestic violence, it inadvertently granted maintenance and residency rights to women in illegitimate relationships, creating legal inconsistencies.

There is the failure of the legislature to balance societal norms and Western ideologies. Morally and culturally unacceptable relations cannot be legitimized by giving financial aid. The Act, instead of being tilted towards providing several reliefs and rights to women, lacked in their fulfillment as the Act had not paid much attention to the ground reality and implementation hurdles involved in it. Whether monetary or residential, there is nothing that can ensure accountability if the husband becomes incapable of providing the relief claimed.

The duty of service providers to provide shelter homes, legal aid, and medical relief often lagged behind the operational failures due to improper registration.

## **10. Possibility of Misuse**

There have been several instances wherein women have misused the provisions of this Act and provisions under other Acts. The Supreme Court, in the case of *Rajesh Sharma v State of UP*, had tried to address this concern cautiously, wherein it directed the Police to first introspect the genuineness of the complaint and then arrest the offender under Section 498A of IPC. The issue, however, created another hurdle for the victim from reporting as it added another burden of proving the allegations outside the court, which they are imposing. Years of trauma and intimidation often make women hesitant to approach a suitable forum. Therefore, this will discourage them from seeking justice and proper relief. There is a need for the creation of a conducive environment and incorporation of a balanced approach between curbing the misuse and protecting the victims through better implementation mechanisms and judicial scrutiny, strengthening enforcement, and creating deterrents for false accusations.

## CONCLUSION

*"The fight for gender equality is not a fight against men. It is a fight against traditions that have chained them- a fight against attitudes that are ingrained in the society—it is a fight against the system- a fight against the proverbial 'Taxman Rekha,' which is different for men and different for women."*

**~Justice A.S. Anand<sup>29</sup>**

It can be inferred from the above paper that the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) is a pivotal achievement in the movement of women, aiming to bridge the public-private division and curbing the continuing violence against women occurring within the four walls. The Act of 2005 is the culmination of the restless efforts of human rights activists struggling for justice and recognition of women's rights and addressing the deep-rooted issue of domestic violence in India. The Act is women-friendly and victim-centric; it aims to penetrate each part of society by providing effective legal recourse against domestic abuse. The act, being a

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<sup>29</sup> Justice A.S. Anand, "Justice for Women: Concerns and Expressions," Universal Law Pub. Co. Delhi (2004) p. VII



significant step toward women, was celebrated and welcomed by women's organizations and activists.

The Act, however, drew certain criticism despite its laudable objectives. The critical analysis of the Act states that the victim-centric nature empowers unscrupulous individuals to exploit the law by filing false cases, creating barriers for the genuine sufferers. The fake filing incidents show the 'alleged and get-relieved' mindset of the provision, which is again becoming biased against the persons who are on the other side of the complaints, as it results in unnecessary harassment of the husband and his family.

We have seen various kinds of substantive lacunas in the drafting of the act itself which includes the wide and vague definition of Domestic violence, the over inclusivity of the term 'Aggrieved person' 'Shared Household' and 'domestic relationship' which has been dealt with in various cases, need to be address reasonably.

The vague definition of 'shared household' under the Act, which meant to be the household where the couple has resided together, has often been misused by evicting the elders and in-laws from homes which they built with their own earnings.

Moreover, the provision permitting convictions solely relying on the testimony of the complainant is a threat and violates of fundamental right to equality under Article 14 of the Indian Constitution. These lacunas undermine the credibility and efficacy of legislation.

Therefore, it can be said that while the introduction of the Protection of Women from Domestic Violence Act, 2005, was done with the noble aim of eradicating domestic violence and empowering women, it's still in a struggling phase when it comes to its effective implementation.

There is an urgent need for law enforcement agencies, organizations, and other stakeholders to take gender-sensitive approaches for the prevention and protection of misuse and ensure justice to all the genuine victims.

A robust framework and clear awareness about the Act to all the women who genuinely need its protection is paramount for the Act to bear fruit. A change in societal attitudes, particularly among men, creating a conducive environment, is equally vital where such legislation becomes a progressive step, rather than a mode of contention.



## **RECOMMENDATIONS & SUGGESTIONS**

### **1. Change in Perspective of Men and Women**

The basic social structure of India has been patriarchal for time immemorial, featuring male dominance and the subjugation of women. This unequal and illogical power dynamic is the root cause of these violences, wherein domestic violence is both a gender-specific and culture-specific offense. These acts of violence are contradictory to the Constitutional mandate to uphold the dignity and equality of women, necessitating a paradigm shift in societal norms and attitudes.

Women must now understand the root causes of their Victimization and step out of the four walls, unfettering themselves from the fake family settlement. They must be made aware of the true meaning of family and that domestic violence is an evil and not an indispensable part of their life. With a multidimensional and integrated approach, and with greater awareness, coupled with comprehensive solutions, the cheap act of domestic violence can be addressed.

### **2. Vulnerable Condition of Women**

Examining the reason why women are in a vulnerable position and prone to exploitation will surely help in understanding domestic violence in India in its true scope, whether hidden or apparent, by examining why women become vulnerable and are positioned for exploitation.

The insensitive and materialistic attitude of society toward women requires significant change. Many women in India are illiterate and, therefore, often endure violence in silence. To overcome traditional oppression, they must be empowered with knowledge and the resolve to reject being victims of violence.

### **3. Internalization with Public Consensus**

Domestic violence is often regarded as an "interfamilial affair" in India, discouraging intervention by outsiders like relatives or the state. Now, this perception has been internalized as a social norm, ultimately diminishing the impact of legislative endeavors and institutionalization.

Legally codified laws lack value when they are inconsistent with the ingrained societal views, making them ineffective in fostering change. For social legislation to accomplish change, it must be supported by a shift in attitudes, fostering a positive and egalitarian perception toward women. Creating a conducive environment for her development and empowerment is essential. Effective implementation of laws requires strong public consensus, widespread acceptance, and unwavering political will to ensure their success in a democratic society.

#### **4. Effective Monitoring and Scrutinizing**

The Act of 2005 provides for a wide definition of domestic violence, significant rights for victims, and extensive powers to Protection Officers (POs) and Service Providers (SPs). However, it is unsuccessful in framing mechanisms to evaluate or prevent the misuse of these powers. It is crucial to establish an independent body to monitor the implementation and enforcement of victims' rights. A robust monitoring system can recommend measures for more effective execution of the law.

#### **5. No Male Bias**

The definition of "aggrieved persons," primarily covered under the Act, often limited to married women and widows, with very less applications from unmarried daughters and mothers letting it to remain largely as a 'matrimonial law', and the scope should be expanded to allow male members to file the complaint against women, acknowledging the fact that men can also be victims.

The strong legal mandate for officers and stakeholders requires a gender-sensitive approach to dismantle patriarchal attitudes and male dominance. Mere instructions to address victims' grievances and monitor implementation are insufficient. Clear court guidelines and updated training for stakeholders, including victims, are essential to ensure a comprehensive understanding of the Act's provisions and strict enforcement.

#### **6. Need for Proper Training**

Magistrates and officials handling cases under the Act often display insensitivity and ignorance regarding women's rights. Mandatory gender-sensitivity training is essential to address the patriarchal mindset prevalent among police, service providers, medical

practitioners, shelter coordinators, protection officers, and magistrates. Such training is crucial, as victims are frequently advised to endure violence rather than seek justice.

## **7. Changes needed in the working of the Institutions**

a) Full-time Protection Officers should be appointed exclusively to assist victims and courts, equipped with proper infrastructure and clear jurisdiction. This would prevent overburdening existing officers and enhance efficiency.

b) A robust network of Protection Officers, Service Providers, legal aid, short-stay homes, medical facilities, and counselors must be established to ensure victims receive timely support.

c) Judicial magistrates, already overburdened, cannot effectively meet the 60-day justice mandate. Separate domestic violence courts with specialized counselors should be established to address this issue.

d) The term "shared household" is misinterpreted. The Act grants victims the right to residence, not ownership, ensuring housing irrespective of property ownership or title.

## **8. Counseling by Expertise**

The objectives of the pre-litigation and litigation stages differ and must be understood by stakeholders to ensure effective remedies for victims. Pre-litigation counseling focuses on restoring the victim's self-esteem, providing emotional support, and guiding her decision on legal proceedings. During litigation, counseling for respondents should aim to help them acknowledge their violent behavior and prevent further abuse. Expert infrastructure is crucial for effective implementation. Additionally, the intent and purpose of counseling mandated by the law must be clearly understood.

## **9. Creating Awareness**

Despite the passage of five years, there is still a lack of awareness about the law, leading people to prefer criminal over civil remedies. Efforts are needed to make the legislation more accessible through media, public education, and collaboration with NGOs.

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