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DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA: A SOCIO-LEGAL APPROACH

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ABSTRACT

Domestic violence against women is a pervasive issue rooted in deep-seated patriarchal structures and cultural norms that reinforce gender inequality. This paper presents a socio-legal analysis of domestic violence in India, highlighting its multifaceted nature and the systemic barriers that hinder effective prevention and redress. The study traces the historical evolution of domestic violence legislation, from constitutional and civil protections to the criminalization of abuse through provisions like Sections 498A and 304B of the Indian Penal Code. Special emphasis is placed on the Protection of Women from Domestic Violence Act, 2005, which marked a significant shift by recognizing multiple forms of abuse—physical, sexual, emotional, verbal, and economic—within domestic settings.

The paper examines the role of legal institutions, protection officers, service providers, and shelter homes, while also reviewing landmark judicial decisions that have shaped the interpretation of the Act. It delves into societal factors such as gender roles, dowry practices, and early marriage, identifying them as key contributors to the perpetuation of violence. Comparative references to international legal frameworks, including CEDAW, provide broader context and underline the gaps in Indian law and implementation.

Ultimately, the paper underscores that while legal reforms have strengthened women's rights on paper, practical challenges—such as poor enforcement, social stigma, and inadequate institutional support—continue to limit justice. A multidimensional approach involving legal reform, education, awareness, and institutional accountability is essential for transforming domestic spaces into secure and equitable environments for women.

Keywords: Domestic Violence in India, CEDAW, Patriarchy and Gender-Based Violence, PWDV Act 2005, Domestic Abuse

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1. INTRODUCTION

“Women are deities of prosperity. By cherishing women, one cherishes the goddess of prosperity herself and by afflicting her, one is said to pain the goddess of prosperity.”

(Anusasana Parva, Mahabharata)

Why is the victim often a woman? O' cruelty. Does she have weak physical characteristics? Is it because she is accustomed to suffering without complaining and is a living example of tolerance and patience? Even if this is the case, the legally binding principles of social justice and human rights require that people be treated with dignity and respect. Numerous laws were passed, but they ultimately proved to be pointless.

The prevalence of violence against women is widespread, regardless of location, religion, or social status. Women are treated no better than slaves in a patriarchal culture. In addition, women are viewed as second-class citizens. Women make up 70% of the world's impoverished and 66% of its illiterate population. Thus, the issue calls for the creation of a fair and just social structure in which no one may be treated unfairly or taken advantage of by another. India is one of 166 nations that have ratified the Convention on the Elimination of All Forms of Discrimination Against Women, which serves as the primary basis for women's rights. Among other things, the Convention acknowledged that discrimination against women hinders economic development and negatively impacts society as a whole.

Sections 498A and 304-B of the Indian Penal Code and the Dowry Prohibition Act of 1961 are fundamental measures that address torture, cruelty, and harassment, while previous laws in India have granted women authority in their respective sectors.

Though not entirely, the statute itself fails, necessitating the passage of supplemental legislation. These factors may have forced the Indian government to pass the Protection of Women from Domestic abuse Act of 2005, which forbade harassment and other forms of abuse against women and included stricter penalties for negligent family members.

2. DOMESTIC VIOLENCE : CONCEPT, FEATURES, FORMS AND CAUSES

2.1. Concept

Domestic violence refers to patterns of abuse inflicted by one family or household member upon another, often involving physical, sexual, emotional, or economic harm. Although Indian law lacks a formal definition, various acts falling under domestic violence are punishable. The issue transcends class, caste, education, or religion, and is prevalent globally. Victims often suffer from long-term psychological, reproductive, and mental health issues, and violations of their fundamental rights.

The United Nations and legal dictionaries define domestic violence as encompassing not only physical harm but also psychological and economic abuse, often committed within intimate or family relationships. It commonly affects women and occurs in private, where abuse is normalized or hidden, making detection and intervention more difficult. Despite its normalization in many communities, it represents a serious human rights violation that contributes to women's social subordination.

2.2. Features

The following are the characteristics of domestic violence:

- (a) It typically occurs within the family and affects women of all ages.
- (b) It involves multiple forms of injury, including emotional and financial harm.
- (c) Rooted in patriarchal structures, it reinforces gender inequality.
- (d) The abuse usually takes place in private, often denied by victims due to social conditioning.
- (e) It reflects societal stereotypes that uphold male dominance and female submission.
- (f) It's both a personal and institutional form of violence—entrenched in power hierarchies.
- (g) Forms include marital, sibling, and intergenerational violence within domestic settings.
- (h) Feminist movements have brought attention to its global and systemic nature.
- (i) It manifests through both direct acts and the institutional systems that support them.

There are two ways that violence of any kind might appear: directly and through

institutionalisation. The first kind of violence exists in the political, economic, and social structures by targeting the weak. Because institutional violence affects the socialisation pattern, it provides a foundation for direct violence.³ It helps individuals who suffer accept it in accordance with their societal function. Domestic violence is a combination of direct and systemic violence against women, who are a vulnerable segment of society. The hierarchy created for sexes in power interactions, where women are positioned in lower positions, is the fundamental cause of violence against women in many contexts.⁴ Since ancient time's domestic violence against women is introduced with in predetermined form of power relations in which; violence is used as a weapon of control.

2.3. Forms

It is thought that the majority of the statistics on violence against women is not just conservative but also untrustworthy. The number of women selected for each study varies, as do the questions that have been asked. The definition of domestic violence and the criteria utilised, which can vary from physical abuse alone to physical, sexual, and psychological assault, make it challenging to compare these research.

(i) **Physical Abuse:** Common worldwide, it includes assault, often underreported due to societal and systemic barriers.

(ii) **Sexual Abuse and Marital Rape:** Often unrecognized legally; many cultures assume a husband's sexual access to his wife is automatic. Some countries have criminalized marital rape, but enforcement remains challenging.

(iii) **Psychological and Emotional Abuse:** Harder to quantify but often more traumatic than physical violence. It has a high correlation with suicidal tendencies among survivors.

2.4. Causes

Violence committed against women cannot be explained by a single reason. Research has increasingly concentrated on how different aspects are connected to one another, which should help us better comprehend the issue in many cultural contexts. Women have been more vulnerable to violence because of a number of intricate and interrelated institutionalised social and cultural elements, many of which are expressions of historically uneven power relations between men and women. Socioeconomic forces, the institution of

³ Violence Against Women a Literature Review Available, http://ihro.org.in/women_violence.html.

⁴ Suranjita Ray , 'Understanding Patriarchy : Foundation Course Human Rights, Gender & Environment' Delhi University available at http://www.du.ac.in/fileadmin/DU/Academics/course_material/hrge_06.pdf

the family, which upholds power relations, fear and control over female sexuality, the idea that men are inherently superior, and laws and cultural norms that have historically denied women and children an independent legal and social status are some of the factors that contribute to these unequal power relations.

(i) Patriarchy and Masculinity- Male dominance in society and marriage promotes control over women, often expressed through violence.

(ii) Gender Roles- Rigid expectations lead to abuse when women resist or deviate from traditional roles.

(iii) Family Environment & Prevailing Dynamics- Hostile dynamics and communication patterns reinforce abuse, especially in homes with strict gender norms.

(iv) The Existing Power Relations in the Family- Women's exclusion from decision-making and autonomy perpetuates their vulnerability to violence.

(v) Dowry- Dowry demands often escalate into domestic abuse and even death.

(vi) Early Marriage- Leads to premature responsibilities, health risks, and higher vulnerability to abuse.

(vii) Other Factors- Lack of education, financial dependence, societal acceptance of abuse, and urban stress all contribute to violence. In some cases, even women's empowerment triggers backlash in patriarchal households.

Consequently, a number of societal, cultural, family, personal, economic, and other factors continue to operate, leading to the phenomenon of violence in married relationships.

It is the interaction of various variable which is responsible for occurrence of domestic strife. Increasing urban density and stress as well as intra family stresses also contribute to the situation.

3. LEGAL FRAMEWORK ON DOMESTIC VIOLENCE BEFORE 2005

The Protection of Women from Domestic Violence Act, 2005, is a law in India that aims to protect and provide appropriate redress to victims of domestic abuse. Before the Act, there were several laws protecting women's rights and eradicating violence against them.

3.1. Domestic Violence Under Indian Constitution

The Indian Constitution, ratified in 1950, safeguards basic rights, including equality, which is protected by Articles 14-18. It mandates the state to provide general and specific measures for women's welfare, granting them the same rights and benefits as men.

Article 21 guarantees the right to life and liberty, which includes the right to human dignity. The Indian Parliament often invokes Article 15 to pass special legislative or executive measures to protect women, which have generally been upheld by the courts. Article 38 requires the state to work to reduce disparities in opportunities, resources, and position, and to uphold social, economic, and political justice in all facets of national life.

Article 39 outlines guidelines that the state must adhere to, such as protecting citizens' rights to equal pay for equal effort and a sufficient standard of living. The state must also ensure that working women's strength and health are not misused. Article 46 requires the state to safeguard weaker segments of society from social injustice and exploitation, as well as advance their economic and educational interests.

3.2. Domestic Violence Under Civil Law

Under civil law, immediate relief for victims of domestic violence was not available, and it was only recognized in matrimonial proceedings where cruelty is a valid ground for divorce or judicial separation.

Code of Civil Procedure, 1908 and Specific Relief Act, 1963

Injunctions available in the Code of Civil Procedure, 1908 and Specific Relief Act, 1963 can be sought in matrimonial cases, allowing victims of domestic violence to seek injunctions to restrain the abuser from treating them with cruelty or violence, whether physically or mentally.

Law of Tort

Domestic abuse victims can seek remedies under tort law, which includes actions that harm or damage another person. These actions are considered civil wrongs and can be penalized through tort grounds such as assault, battery, and false imprisonment. Victims may also file a lawsuit against the abuser using other tort grounds, such as negligence and purposeful infliction of emotional distress.

Battery occurs when a defendant makes harmful bodily contact with a victim without their consent, including sexual battery. Indian law has outdated views towards married couples,

but the Supreme Court has held that sexual intercourse by a man with his wife is not rape. The wife may sue him for battery when the interference is accompanied by extreme violence.

Assault is any behavior that makes someone fear they may be the victim of battery. False imprisonment requires complete restriction of a person's freedom without a valid reason, such as restraint from leaving the husband's house. Injunctions and monetary compensation are remedies available under tort law, providing compensation for physical pain, suffering, and medical costs. However, it becomes challenging for victims to apply these remedies against the abuser who continues to live with them. If a civil injunction is broken, the offender may face a fine or jail time as punishment.

The Indian judicial system has no history of compensating women for trespassing against their abusers, offering little protection for women who have experienced violence. Additional common law countries have adopted the practice of awarding damages, which could help address this issue.

3.3. Domestic Violence Under Criminal Law

The Criminal law in India is contained primarily in the Indian Penal Code, 1860 (IPC). The IPC is supplemented by special laws, which define and punish specific offences.

The Indian Penal Code, 1860

Under the IPC, 'culpable homicide' is defined as causing death by doing an act:

- With the intention of causing death.
- With the intention of causing such bodily injury as is likely to cause death.
- With the knowledge that it is likely to cause death.⁵

Culpable homicide is considered murder if it occurs without premeditation or in the heat of passion, without undue advantage or cruel behavior. A "dowry death" occurs when a woman dies within seven years of marriage from burns or other physical harm, and it is proven that she was cruelly treated by her husband or family. Other types of domestic abuse recognized as crimes under the IPC include pressuring a wife to end her pregnancy or female infanticide.

Suicide is a common outcome for victims of domestic abuse, particularly brides who are

⁵ Section 299, IPC

pressured over their dowry. Helping someone commit suicide is a crime that carries a death sentence or life in jail, and abetment of suicide is also an offence punishable with 10 years imprisonment.

Domestic abuse often takes the form of physical harm, defined as any person's bodily pain, disease, pain, or infirmity. The IPC makes it an offence to voluntarily cause hurt and grievous hurt, as well as voluntarily causing grievous hurt by dangerous weapons and voluntarily causing hurt to export property.

Marital rape is another prevalent type of domestic abuse, but evidence and the law are ambiguous. In many violent marriages, the spouse subjects the wife to acts of sexual humiliation. The IPC even addresses such forms of violence with the provision for 'unnatural offences', but this provision has rarely been used in the matrimonial context.

The theft of the spouse's assets is a frequent corollary of domestic abuse, and the husband is accountable for criminal breach of trust if he or a family member dishonestly takes or uses any property that the wife has entrusted to him. In 1983, matrimonial cruelty was introduced as an offense in the IPC, defining cruelty as any wilful conduct likely to drive the woman to commit suicide or cause grave injury or danger to her life or limb or health.

The Code of Criminal Procedure, 1973

Domestic violence victims often face financial difficulties due to their inability to support themselves and their children. The Criminal Procedure Code (Cr.P.C.) provides a suitable maintenance provision for these women, including housewives who are abandoned or live separately from their husbands. Section 125 of the Cr.P.C. allows magistrates to order a person with sufficient income to pay maintenance to their wives, children, and parents if there is evidence of neglect or reluctance to do so.

Wives who cannot support themselves may request maintenance, and those who file for divorce but do not remarry may also make a claim. If the individual disregards the order, the magistrate has the authority to issue a warrant for the collection of the amount owed and may sentence the individual to imprisonment for a maximum of one month or until payment is made sooner.

The magistrate may consider the reasons given by the wife for refusing to live with her husband and issue an order under this section if the husband promises to support her in exchange for her staying with him. This clause applies to all wives and husbands, regardless of their community or faith, but the legality of their marriage is decided by their own law.

The magistrate's decision issued under Section 125 is binding on the criminal court, and the magistrate should revoke its decision after a civil court has issued a maintenance decree. The authority to handle maintenance claims currently rests with the Family Courts following the passage of the Family Courts Act in 1984.

3.4. Domestic Violence Under Special Laws

The Dowry Prohibition Act, 1961

Domestic violence varies by civilisation. It is customary for the bride's family to provide the groom with presents, either in cash or in kind, at the moment of marriage. Deferred gifts are frequently committed to by the bride's side. If the gifts are not given as promised, the bride is frequently the victim of domestic abuse in these circumstances. The purpose of the Act was to outlaw dowry practices and other forms of harassment. It makes it illegal to offer or accept dowries or to aid and abet others in doing so.⁶ It applies to each and every citizens of India irrespective of the communities they belong to.

The Commission of Sati Prevention Act, 1987

Sati is another type of domestic violence that was common in the past but has decreased in the previous century. Sati is the practice of burning or burying a widow alive with the remains of her deceased spouse or other family members, as well as any items, items or anything connected to the spouse or family members.⁷ It is unlawful to attempt or assist in sati, as well as to praise it, according to the Commission of Sati Prevention Act, which was created in 1987 in reaction to a sad sati death in Rajasthan. Spread, justifications, encouragement, or observance can all serve to elevate Sati.

The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

In India, sex-selective abortion is a persistent problem. This Act acknowledges that coerced abortion of a female foetus is another type of domestic abuse. In addition to being discriminatory, this has a negative impact on women's standing and dignity. These tests are only allowed if they are used to identify certain anomalies and conditions.⁸ Present Act prohibits sex selection not only after conception but even before conception on any tissue,

⁶ Dowry Prohibition Act § 3 (1961)

⁷ Section 2(1)(c), The Commission of Sati Prevention Act, 1987

⁸ Section 4, The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

embryo, concepts, fluid or gametes destined from either man or women or from both of them.

The Hindu Marriage Act, 1955 (HMA)⁹

Under the HMA, cruelty is a ground for divorce as well as judicial separation.¹⁰ However, the term 'cruelty' is not defined in HMA. It is through decided cases that the term has been understood to mean acts of physical as well as mental cruelty.

The Dissolution of Muslim Marriages Act, 1939 (DMMA)

The DMMA stipulates cruelty as a ground for divorce. Cruelty is defined to include-¹¹

- Consistently abusing the wife or causing her misery by nasty behaviour, even if it doesn't involve physical abuse.
- Living a notorious life or hanging out with ladies who have a bad reputation.
- Making an effort to make the wife live an immoral life.
- Disposing of the wife's belongings or stopping her from using them as she is legally entitled to.
- Interfering with the wife's religious practice.

Other Matrimonial Laws

"Cruelty" is a valid reason for divorce under the Parsi Marriage and Divorce Act (PMDA), the Indian Divorce Act (IDA), and the Special Marriage Act, 1954 (SMA). None of the acts, however, go into great depth or explain what cruelty is. Under these rules, domestic violence would undoubtedly be considered cruelty.

4. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005- AN ANALYSIS

Domestic abuse against women is often considered a private matter, with women often reluctant to report incidents due to cultural and religious norms. Current legislative remedies are insufficient due to this understanding of domestic abuse as an individual duty. Domestic abuse protection is only implicitly given by national legislation, which forbids

⁹ Section 13(1)(ia), HMA

¹⁰ Section 10, HMA

¹¹ Section 2(viii), DMMA

harassment linked to dowries, prohibits the practice of dowries by specific legislation, and acknowledges cruelty and dowry killings as distinct crimes.

International commissions and tools have been established to reduce the threat and defend women's human rights. The United Nations Commission on the Status of Women was founded to promote the principle that men and women shall have equal rights. The United Nations Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandates member states to enact laws to ensure the full development and advancement of women, guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

India's current legal system does not meet the standards of international conventions, as it does not define "violence against women" or even "domestic violence." To address these shortcomings, the Protection of Women Against Domestic Violence Act of 2005 was passed.

4.1.Evolution of PWDV Act, 2005

Domestic violence has been a significant issue in India since the 1990s, with women's rights being recognized as a human right at international conferences. However, the situation necessitated a comprehensive reformulation of the definition of violence against women in intimate relationships. In the early 1990s, feminist groups like the Lawyers Collective Women's Rights Initiative (LCWRI) pushed for a distinct civil legislation on domestic abuse. They drafted a bill in 1992 and distributed it to other women's organizations.

In 1994, the Domestic Violence to Women (Prevention) Bill was drafted by the National Commission for Women, but feminist forums objected and demanded policies to address domestic violence against women. In 1999, the Lawyers Collective created a new law and submitted it to the government, which was decided to be the basis for any future law on domestic violence.

The Ministry of Human Resources Development then submitted the "Differentiated Violence against Women (Prevention) Bill, 2001," which received negative publicity due to its flawed elements. On March 8, International Women's Day, the Union Ministry of Human Resource Development introduced the "Protection from Domestic Violence Bill, 2002," similar to the 2001 one. However, organizations and women's forums did not applaud this, demanding significant changes to the provisions.

A Standing Committee was established to review the bill and provide recommendations.

The bill was re-examined by the Department of Women and Child Development and presented to parliament with the required modifications. In September 2005, the president signed the bill into law, and by October 2006, it was officially known as "The Protection of Women from Domestic Violence Act, 2005."

4.2. Definition of Domestic Violence Under the Act

Section 3 of the Act defines **Domestic Violence** as any act, omission or commission or conduct of the respondent that-

- (a) harms, injures or endangers the health, safety, life, limb or well-being, of the aggrieved person whether mental or physical; or¹²
- (b) harasses with a view to coerce the aggrieved person or her relatives to meet any unlawful demand for dowry, property or valuable security; or¹³
- (c) threatens the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or¹⁴
- (d) causes physical or mental harm or injury to the aggrieved person¹⁵.

The provision in its explanation defines physical, sexual, verbal and emotional, and economic abuse. The kinds of abuse covered under the Act are-

Physical Abuse-

- (a) An act or conduct causing bodily pain, harm, or danger to life, limb, or health;
- (b) An act that impairs the health or development of the aggrieved person;
- (c) An act that amounts to assault, criminal intimidation and criminal force.

Sexual Abuse-

- (a) Any conduct of a sexual nature that abuses, humiliates, degrades, or violates the dignity of a women.

Verbal and Emotional Abuse-

- (a) Any insult, ridicule, humiliation, name-calling;

¹² PWDV Act § 3 (a) (2005).

¹³ PWDV Act § 3 (b) (2005).

¹⁴ PWDV Act § 3 (c) (2005).

¹⁵ PWDV Act § 3 (d) (2005).

- (b) Insults or ridicule for not having a child or a male child;
- (c) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Economic Abuse-

- (a) Depriving the aggrieved person of economic or financial resources to which she is entitled under any law or custom or which she acquires out of necessity such as household necessities, stridhan, her jointly or separately owned property, maintenance, and rental payments;
- (b) Disposing of household assets or alienation of movable or immovable assets
- (c) Restricting continued access to resources or facilities in which she has an interest or entitlement by virtue of the domestic relationship including access to the shared household.

4.3. Domestic Relationship

The Domestic Violence Act (PVDV) in India provides protection for women against mistreatment and harassment by members of their own family. Section 2(f) of the Act defines a domestic relationship as one where two persons live or have lived together in a shared household, whether related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family. The Supreme Court ruled that an order under the Act cannot be issued if both parties had not lived in a domestic relationship in the household.

The Act also recognizes live-in partnerships that were not socially acceptable in India, providing equal protections against domestic abuse to live-in women. The Supreme Court has established rules for determining whether a live-in relationship qualifies as a "relationship in the nature of marriage." However, same-sex partnerships are not recognized under the definition, and no one who feels wronged in such a relationship is eligible for remedy under the Act.

The Act's provisions can only be used in cases when the respondent and the injured party have a domestic connection. No one may submit a complaint under this Act once the relationship ends or terminates following the divorce decree. A judicially separated wife can file a complaint against her husband.

4.4.Shared Household

Section 2(s) of the Act defines a shared home as one where the person who has been wronged lives or has lived in a domestic relationship with the respondent, either alone or together. This definition is based on the Supreme Court's interpretation of the term, which clarified that not every home where the parties previously shared a residence qualifies as a shared household.

4.5.Machineries For Implementation

Protection Officers

The Act has developed tools to ensure efficient execution of domestic abuse, including Protection Officers and Service Providers as public servants. These officers are chosen by the State Government and prioritize women in their positions. They must have at least three years of experience in the social sector and serve for a minimum of three years.

Protection Officers perform various tasks, such as serving as a bridge between courts and the public, supporting magistrates, making domestic incident reports, and providing interim reliefs. They also assist the court and aggrieved party in various ways. The PWDV Rules of 2006 outline additional responsibilities and tasks for protection officers, including using police assistance in emergency situations, preparing and submitting domestic incident reports, conducting investigations, and reporting domestic abuse.

The Protection Officer can be notified by anyone suspected of domestic abuse, but they are not held accountable for any civil or criminal actions if they provide this information in good faith. The person who feels wronged can report it, submit an application for relief, and go directly before the magistrate.

Service Providers

The legal system recognizes the need for more than just legal tools to protect victims of domestic abuse. Service providers, such as non-profit organizations, are established to defend women's rights and interests through financial, medical, legal, and other forms of support. They must provide comparable services for a minimum of three years and must send medical reports to protection officers and police stations after the aggrieved person has been examined. If they operate a shelter home, counselling center, or medical facility, the State Government must approve that they meet the standards to operate such facilities.

Shelter Homes and Medical Facilities

Shelter homes and medical facilities must be registered and meet all legal criteria. The Act requires the government to provide these services, as it is assumed that women experiencing agony will require them. Shelter houses and medical facilities must be notified by the state government. The individual in charge of a shelter house is legally required to give shelter to an aggrieved individual, a Protection Officer, or a service provider on her behalf. If a person who has been wronged, a Protection Officer, or a service provider asks the person in charge of a medical institution to give her any kind of medical assistance, that person shall grant the request. A copy of the medical examination report should be given free of cost to the aggrieved person.

Counseling

Counseling plays a crucial role in helping victims cope with the pain they have experienced. Only after issuing an order for temporary relief will the magistrate issue an order for counseling. The Rules include information about how to appoint a counsellor, and women are given preference when choosing the counsellors. The Protection Officer or court oversees their operations.

4.6.Reliefs Available under the Act

The PWDV Act provides women who feel wronged with various avenues for seeking redress. It enhances existing legislation and allows women to use other statutes after receiving relief under the Act. The Act recognizes tortious liability in cases of domestic violence, providing provisions for economic assistance through compensation, exemplary damages, and maintenance.

The Act's intended reliefs are covered in Sections 18-23, including protection orders, residence orders, monetary relief, custody orders, compensation orders, interim and ex parte orders, and other types of relief. These civil remedies are rehabilitative rather than punishing and are only available through the legal system.

Injured parties can get protection orders, residence orders, economic relief, custody orders, and compensation orders once the offense of domestic violence is prima facie established.

She can get the following orders issued in her favour through the courts once the offence of domestic violence is prima facie established-

- (i) Protection orders prevent the respondent from assisting or carrying out domestic violence.

- (ii) Residence orders ensure the aggrieved party is not evicted from their residence, the shared household is not disposed of, and the respondent is removed from the shared household.
- (iii) Economic relief may include lost wages, medical costs, property damage or loss, and maintenance payments for the harmed party and her children.
- (iv) Custody orders give temporary custody of a child or children, allowing the respondent to visit or forbid it if it would be detrimental to the child or children's best interests.
- (v) Compensation orders may be issued if the aggrieved party is injured due to the respondent's domestic violence, which may involve emotional suffering and mental torment.

5. JUDICIAL APPROACH TOWARDS THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

One of the first types of violence defined and acknowledged by lawmakers is domestic violence, which is violence against women. Nevertheless, even if there are a lot of incidents reported, the legislation pertaining to domestic violence is continually evolving. One recent element of this reality is that, despite the judiciary's issuance of numerous judgements in cases brought by women who have complained of domestic abuse, the legislation has not changed significantly—with the exception of one or two cases. Domestic violence takes on a very different level than violence against women. There was a lot of reluctance for a long time to go into people's homes in order to identify and address domestic abuse. It took a number of women in terrible situations and a lot of women's tenacious advocacy for lawmakers to acknowledge the existence of domestic abuse and the urgent need for statutory protection for women.

5.1. S. R. Batra v. Tarun Batra¹⁶

The High Court was asked to decide whether Smt. Taruna Batra's marital residence was on the second floor of her mother-in-law's home after their marriage. The Delhi High Court's

¹⁶ (2007) 3 SCC169; AIR 2007 SC 1118; (2007) 136 DLT 1; (2007) 2 Cr LR 1582

single judge ruled that it was the matrimonial residence and that she had the right to stay there. However, the Supreme Court ruled in the appeal that the aforementioned residence does not belong to the respondent's husband or the joint Hindu family in which her husband is a member, citing Sections 17 and 19(1)(f). The High Court's ruling in *Taruna Batra v. S.R. Batra* is overturned because the home belongs to appellant 2 and is not a "shared household."

5.2. Pragya vs. Vishnu¹⁷

The PWDVA provided relief to any woman, not just wives, but also to mothers, daughters, sisters, or live-in partners. The plaintiff appealed under the PWDVA since she was 60 years old and had no money of her own. The judge determined that this was a case of domestic abuse, ordered the respondent to let his mother live in the house, issued a protection order, and mandated that the respondent provide the complainant Rs. 10,000. The PWDVA provides relief to any woman, not just wives, but also to mothers, daughters, sisters, or live-in partners.

5.3. Karthibeyan v. Sheeja¹⁸

This case involved an ex parte order issued by the magistrate, which the petitioner submitted a request to have the aforementioned ex-partition order overturned. Since that petition was denied, new one is being filed under Article 227 of the Indian Constitution. The High Court clarified that the petitioner may file a Section 29 appeal against the ex-partition ruling or the judgement rejecting the restoration application, subject to the statute of limitations.

5.4. Vimla Ben Ajit Bhai Patel v. Vatslar Ben Ashokbhai Patel¹⁹

The Supreme Court discussed maintenance and related issues. The Supreme Court stated that the provisions of the Hindu Adoptions and Maintenance Act, 1956 currently regulate cases pertaining to maintenance grants. The court stated that the act grants women a greater right, including the right to maintenance, living there, and residency. The High Court order was set aside and various directions were issued.

5.5. Naseem Bano Shaikh Mahmood vs. Naeem and Nadeem Shaikh Mahmood²⁰

Naseem, a destitute mother, was coerced into prostitution by her brothers and sister-in-law,

¹⁷ 772/IX/2006

¹⁸ (2008) II DMC 92: (2008 Ker LT-1-75) (Ker)

¹⁹ (2008) 4 SCC 649: AIR 2008 SC 2675 : (2008) 65 AIC 38

²⁰ 2008 (1) UJ SC 0156

who verbally and physically abused her. The Human Rights Law Network filed a lawsuit under the PWDVA, seeking reparation, monetary, protection, and residence orders. Interim restraining orders were obtained, prohibiting respondents from interfering with Naseem's ability to live in her shared residence. Despite her brother's appeal, the session court affirmed the residence order and dismissed the case.

6. CONCLUSION

Domestic violence is a significant issue that hinders women's decision-making and affects their human rights. It erodes trust in the rule of law, which is the cornerstone of civil society. The Protection of Women from Domestic Violence Act of 2005 addresses this issue by prohibiting domestic violence against women and subjecting them to sanctions.

In traditional Indian society, men are seen as superior, particularly in marriage, and women's roles in the home are severely constrained. Patriarchal control within the family has been identified as the cause of gender-directed inequality, rather than behavioral issues, alcoholism, or drug addiction. The dominant man in the household controls their social mobility, strength, sexuality, productivity, and reproduction.

The Constitution of India emphasizes the general rights of women as people and citizens, including inherent basic human rights. However, prior to 2005, India's domestic violence laws were inadequate to address the problem. Victims had no other options except for civil law remedies like divorce or criminal law under Section 498A of the IPC. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandated States Parties to take necessary actions to end discrimination against women in all areas of marriage and family life.

India's domestic violence laws before 2005 were inadequate, with victims having no other options except for civil law remedies or criminal law remedies. The UN Framework for Model Legislation called for comprehensive domestic violence legislation. In 2005, the Act expanded and clarified the notion of "domestic violence" for the first time in Indian legal history, covering all forms of violence that persisted in a latent form.

The Uttar Pradesh State Government has worked to implement the PWDV Act effectively through the Department of Social Justice, establishing protection officers, service providers, family counseling centers, shelter homes, and other organizations. The State Women's Commission helps overcome constraints in implementing the Act.

However, some programs feel inconsistent, such as inadequate infrastructure amenities and

insufficient safe accommodations for victims. To fully implement an Act, it must be implemented with sincerity and take necessary actions to ensure the protection of women from domestic abuse.

“The stark reality is that the future of development and society lies in the future of women equally with men. Never has it been more apparent that women’s issue can not be compartmentalized and isolated as secondary issues in development.”

– Executive Secretary,

ESCAP, 1984