

A Critical Analysis of Domestic Violence against Women in India

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Abstract

This study examines domestic violence against women in India. Domestic violence is when family members hurt women. Violence includes physical, psychological, and emotional damage. Domestic violence is discussed here. This research report provides solid evidence that domestic violence is still a problem. This article discusses Section 498A and PWDVA 2005, which punish domestic abusers. The author also expressed concern that numerous women are using these rules to seek revenge on their husbands and in-laws for reasons unknown to them. The author supports his claims with various case laws on each statute. The author briefly discusses domestic violence against men to show that it affects all genders.

Keywords: Domestic, violence, cruelty, physical, psychological, PWDVA, 498A

Introduction

The culture of India is indeed distinctive, as it reveres women and holds them in high esteem, considering them to be on par with deities. It is to be duly noted that women in India hold a position of high regard and reverence within various societal factions, thereby indicating the esteemed status that women enjoy in accordance with prevailing religious and cultural norms in India. Notwithstanding, in the present day and age, instead of observing the advancement and emancipation of women, there has been a notable increase in the occurrence of offenses perpetrated against women. The alleged prevalence of rape, molestation, and violence is purportedly at its peak. It is evident that women are exposed to substantial risks even within the confines of their own residences, as exemplified by the escalating instances of domestic violence in India. According to legal precedent, the concept of

"home" refers to the physical location where an individual typically resides and experiences an elevated sense of safety and security. Regrettably, some individuals see their own homes as a domain of oppressive and violent behaviour perpetrated by their own family members. Gender-based violence is prevalent and regular in India, particularly against women. Domestic violence is a societal problem rooted in conventional gender roles and patriarchy, where women are considered submissive and inferior to males. There are many factors contributing to the persistence of domestic violence in India. They exist:¹

1. Patriarchal culture: Despite women achieving equal levels of incomes and job success as men, India remains a patriarchal culture where some biases against women persist.
2. Limited knowledge of legal rights: Frequently, victims of domestic abuse lack sufficient understanding or awareness of the laws that safeguard them against domestic violence or hold the perpetrators accountable in such instances. This lack of empowerment prevents victims from sharing their traumatic experiences, which is why perpetrators of domestic abuse have no fear of consequences.
3. Bureaucracy and Fear: When a third party reports an instance of domestic abuse, they are often seen as a disruptor or invader in the household. Therefore, individuals abstain from reporting such issues to the police and relevant authorities.

Several theories offer varying explanations for the genesis of domestic violence. The aforementioned theories encompass both psychological and social facets. Some theories, in their adoption, espouse a perpetrator-centric approach, whereas others place emphasis on the external or societal elements that contribute to the occurrence of domestic violence. However, it is important to note that at present, there exists no legal theory that offers a coherent or comprehensive resolution to the aforementioned quandary. Domestic violence, a grave matter, entails numerous repercussions, which shall be duly expounded upon in the subsequent sections:

¹Sunil S kadam and Vinod A chaudhari, *Domestic Violence against Woman: Past, Present, Future* , 33 JIAF 261 , 261-266 (2011)

1. **Health Effects:** The primary cause of any act of violence, including domestic violence, is the negative effect on health. Both physical and psychological aggression has a detrimental influence on a woman's health.
2. **Injuries:** It is well known that domestic violence is often accompanied by severe physical violence, often including sexual assault. Numerous individuals who have experienced domestic abuse have endured both physical and sexual violence, as shown by the apparent body damage they have sustained.
3. **Fatality:** In few instances, women have also perished either via natural causes or through non-natural means as a consequence of domestic abuse. Acts of domestic violence, including as physical assault by the husband, cases of dowry abuse, forced miscarriages, and bride burning, sometimes lead to fatalities. Instances of suicide have also risen among married women who have endured severe psychological abuse from their spouses and other family members.
4. **Sexual and reproductive harm:** The occurrence of violence against women often exhibits a correlation with sexually transmitted diseases (STDs), including but not limited to HIV/AIDS, unintended pregnancies, gynaecological complications, coerced abortions, and adverse pregnancy outcomes such as miscarriage, low birth weight, and fatal demise.
5. **Risky behaviours:** Individuals who have experienced long-term domestic abuse often display aggressive and harmful conduct themselves, since violence becomes a habitual pattern for them.
6. **Poor mental health:** It is a well-established fact that women who have been subjected to domestic abuse often endure various mental health challenges, including but not limited to depression, anxiety disorders, post-traumatic syndrome, stress disorders, eating disorders, and insomnia.
7. **Physical Health:** It is important to note that instances of domestic abuse not only give rise to immediate physical ailments, but frequently give way to long-lasting health complications. It is a well-established fact that women who are subjected to acts of violence often endure a multitude of health-related consequences, including but not limited to headaches, back

pain, stomach pain, fibromyalgia, gastrointestinal disorders, diminished physical mobility, and a general decline in overall health.

8. Socioeconomic Costs: The social and economic ramifications of domestic abuse are often overlooked due to their long-term effects. Women who are experiencing significant physical, emotional, or psychological distress would naturally be unable and reluctant to leave their homes and engage in labour to establish an acceptable social position for themselves. Frequently, these women are frequently prohibited by their husbands and in-laws from venturing outside and pursuing employment, even if they want to do so.

Important Statistics on Domestic Violence in India

Domestic violence is not limited to India; it is prevalent in almost all countries globally, particularly in underdeveloped and disadvantaged nations. Approximately 1.3 million women endure domestic abuse annually, as reported by the National Coalition against Domestic abuse. Approximately 85% of those who experience domestic violence are female. The majority of domestic abuse occurrences are unreported to law enforcement. Annually, there are around 16,800 homicides or deaths resulting from physical violence. Around 40 to 45% of families marked by violence also include occurrences of rape as a manifestation of domestic abuse.²In India, no one is more susceptible than women to physical or sexual violence at the hands of their spouses. Approximately 27% of married women experience physical or sexual abuse at the hands of their companions; this figure represents nearly every fifth woman. A quarter of married women have been subjected to sexual or physical abuse at the hands of their partner. The prevalence of physical violence and sexual assault against married women from lower socioeconomic origins is significantly higher (49%), in contrast to married women from higher socioeconomic households (18%). Married women whose fathers physically abused their mothers experienced domestic violence had an approximately 60% increased likelihood of experiencing domestic violence themselves; compared to 30% for such women whose fathers did not physically abuse their mothers. Unmarried women are frequently subjected to sexual and

² Ibid.

physical assault. A considerable sixteen percent of unmarried women have experienced some form of physical assault since the age of fifteen; such assaults have occasionally been committed by a sibling, parent, or even an instructor. A mere 1% of unmarried women have expressed that they have never experienced any form of sexual assault. On the contrary, a considerable 27% of unmarried women have experienced physical or sexual violence at the hands of close relatives. Physical violence exhibits regional disparities in prevalence; Bihar has an alarming 59%, while Himachal Pradesh and the Union territory of Jammu and Kashmir and Meghalaya have 13%; Madhya Pradesh and Rajasthan have 46%; and Madhya Pradesh and Meghalaya have 13%. Further states that exhibit a significant incidence of domestic violence are Assam, Tripura, Manipur, Uttar Pradesh, Tamil Nadu, and West Bengal.³

Laws and Provisions with respect to Domestic Violence against Women in India

In 1983, domestic abuse was officially acknowledged as a separate offense with the introduction of Sec 498-A in IPC. This section pertains to the act of husband or his family members inflicting cruelty onto a married lady. Sec 498A⁴ deals categorizesthe concept of cruelty into 4 types which are hereby discussed:

1. Such behaviour by a spouse and in-laws that may lead a woman to commit suicide.
2. Any behaviour shown by the spouse or in-laws, or both, that poses a threat to the physical well-being or bodily integrity of the married woman.
3. The act of subjecting women to harassment by their husbands and in-laws in order to compel them or their relatives to transfer property to them, and
4. The act of harassing women because they or their relatives are unable to meet their demands for money, property, etc.

“Domestic Violence”, Wikipedia (24th December 25, 2020 , 03:00 pm)
http://en.wikipedia.org/wiki/Domestic_violence

⁴The IPC,1860

The guilty u/s 498A⁵ can be imprisoned for maximum of 3 years along with fine. There is no legal obligation for the victim to personally submit the First Information Report (F.I.R) in such circumstances. Any individual who is related to her may also present the inquiry on her behalf .Sec 498A describes a more serious crime but however, more flexible solutions were needed within the larger criminal law system. The rights guaranteed by Art 14, 15, and 21 of the Constitution of India, 1950 were used to pass a legislation to protect women from domestic abuse and prevent violent conduct in the public.

On October 26, 2006, the PWDVA 2005 took effect. This legislation combats domestic violence in society. The Act comprises 37 Sections.

According to Section 3 of the Act, domestic violence is defined in a comprehensive manner. It encompasses a wide range of forms of abuse, including physical, sexual, verbal, psychological, and financial abuse that may be committed by a spouse or his family and have the potential to cause damage to the victim's well-being, life, or prosperity. This section also contains actions that pose a danger to the victim or people who are linked to her, as well as behaviours that undermine her. In the explanation to Section 3, it is further explained that actions that cause bodily injury are considered to be physical abuse, while sexual abuse refers to sexually improper conduct, such as using explicit words to insult or threaten physical harm. The act of denying the victim of access to property or financial resources comes under the category of economic abuse.

An emphasis is placed in Sec 4 which places an the obligation of the community to report incidences of domestic abuse to the authorities in order to provide assistance to the victims. In Section 5, legal and support procedures are established for victims. These mechanisms include the right to submit complaints in accordance with applicable laws, access to protection officers, and free legal services. Domestic violence victims are required to be provided with a safe haven by shelter houses, as mandated by Section 6, and medical institutions are required to give assistance to victims of domestic abuse. Sec 8 supports the selection of women to the position of protection officer, and Section 9 outlines the responsibilities that they entail. The obligations of

⁵ibid.

service providers are outlined in Section 10, while the responsibilities of the government are outlined in Section 11. These tasks include coordinating amongst ministries, training officials, and conducting awareness campaigns. Within the context of a domestic partnership, Section 17 provides every woman with the right to live in the shared home and safeguards her from being evicted, with the exception of situations in which judicial proceedings are involved. In accordance with Section 19, the respondent is prohibited from disrupting the victim's home inside the shared household. Additionally, the court is granted the authority to make orders for protection, alternative housing, and financial assistance. Through the provision of legal remedies like as injunctions, the Act seeks to protect women from becoming victims of domestic abuse and to prevent instances of this kind from occurring in society. On the other hand, the Act does not permit arrests to be made simply on the basis of complaints that have been filed under it, which restricts the Act's ability to discourage those who commit crimes.

Procedure for Filing of Complaint under the PWDVA, 2005

The procedure for requesting assistance under PWDVA 2005 starts by lodging a complaint with the police, a service provider, or directly with the protection officer, who serves as an intermediary with the court. The security officer generates a Domestic Incident Report (DIR) and devises a safety plan tailored to the victim's requirements in order to avert future acts of violence. They coordinate the provision of legal help, medical assistance, housing, and transportation, and ensure that the list of service providers is regularly updated. Subsequently, the protection officer transmits the DIR to the Magistrate. The Magistrate has the authority to provide relief upon receiving an application from the victim, a representative acting on her behalf, or the protection officer. The first hearing often takes place within a span of three days after the application has been submitted. In situations requiring immediate attention, the court has the authority to provide temporary orders in support of the victim

prior to hearing the opposing party. The Magistrate's objective is to decide every application within a period of sixty days.⁶

The opposing party is informed of the hearing date by the protection officer and is required to be there. The Magistrate has the option to request aid from welfare specialists or propose therapy for both parties. Ex parte orders may be granted upon consideration of the victim's affidavit, if considered suitable, and procedures may be handled in a confidential manner if asked.

The orders made by the Magistrate, such as those pertaining to housing, protection, or financial assistance, retain their validity until the victim requests their revocation. Both parties have the right to file an appeal against the decision made by the Magistrate within a period of thirty days. Noncompliance with the instructions of a Magistrate may result in a maximum jail sentence of one year or a fine of up to Rs. 20,000, or both. The purpose of this procedure is to give priority to the interests of the victim and ensure that criminals are held responsible, with the goal of discouraging future acts of violence.

Judiciary on Sec 498A

Sec 498A does not specifically include domestic violence, but it does address the act of cruelty, which is sometimes seen in similar circumstances. As a result, it is typical for cases falling under the Domestic Violence Act to include Section 498A. Nevertheless, the improper use of Section 498A has resulted in the mistreatment of husbands and their families, rather than effectively safeguarding women from domestic violence. This problem has been acknowledged by courts in several situations. In *Sushil Kumar Sharma v UOI*⁷, the Supreme Court observed that many complaints made under Section 498A were motivated by personal vendettas. In *Preeti Gupta v State of Jharkhand*⁸, the Court emphasized the need of rectifying the weaknesses in Section 498A, which are being taken advantage of to unjustly torment

⁶SRIRAKSHA V SRIVATSAV, "The Protection of Women from Domestic Violence Act, 2005- Civil or Criminal?" (MAY 2, 2022) <https://clpr.org.in/blog/the-protection-of-women-from-domestic-violence-act-2005-civil-or-criminal/> Last accessed on March 4, 2024

⁷AIR 2005 SC 3100.

⁸2010 (7) SCC 667.

innocent persons. The case of Savitri Devi v Ramesh Chandra⁹ highlighted the use of false accusations u/s 498A and Dowry Prohibition Act 1961 as a means to illicitly obtain money via coercion. In Jasbir Kaur v State of Haryana¹⁰, the Punjab and Haryana High Court noted that separated spouses may attempt to implicate as many of their husband's relatives as they can in order to salvage anything from a failed marriage. Courts have established norms to prohibit the abuse of anything. In Pushpender Singh v State¹¹, the Supreme Court established certain conditions for assuming a dowry death, which include the need for a direct connection between the woman's unnatural death and acts of abuse. The case of Ramesh Chandra v State of Delhi¹² highlighted that the assumption of dowry death may only occur if the requirements of Sec 304B are fulfilled. The SC in TR Ramaiya v State¹³, established directives for the police to prevent the abuse of the legislation. These directives include the need for obtaining prior authorization from higher-ranking personnel before initiating legal proceedings under Section 498A. In addition, the Supreme Court, in an SLP filed in 2013, suggested more stringent restrictions to protect the rights of the accused. The information provided included comprehensive justifications for apprehensions and the need to inform the judicial officer in cases when no arrests were executed. The Court proposed the addition of Sec 498B to alter Sec 498A, with the aim of penalizing those who file fraudulent complaints u/s 498A. Notwithstanding these suggestions, the implementation of the legislation to add Sec 498B and other proposed measures has not yet occurred.

Judiciary on the Domestic Violence Act, 2005

In *Batra v. Batra*¹⁴, the SC made it clear that, in accordance with Sec 17(1), a woman has the right to claim residency in a shared home. This includes a property that is owned or leased by her husband, as well as a house that is a part of the joint family of the husband. It is possible that the wife's claim will

⁹2003CRILJ2759.

¹⁰AIR1995P&H278.

¹¹2015 SCC Del 12748.

¹²2016 SCC Online Del 6473.

¹³MP No. 1 of 2008.

¹⁴Appeal (civil) 5837 of 2006.

not be relevant in the event that the property in question does not fit into any of these categories. In *D. Veluswamy v. D. Patchaiammal*¹⁵, the SC expanded the definition of "aggrieved person" u/s 2(a) to include couples who are living together as a married couple. In order to qualify for this definition, both parties must meet the following requirements: they must be of marriageable age, eligible for marriage, having lived together for a significant amount of time, and share a household.

Considering economic abuse to be a kind of domestic violence, the SC decided in *Lalita Toppo v. State of Jharkhand*¹⁶ that even non-legal spouses are able to demand maintenance. When compared to Section 125 of the Criminal Procedure Code of 1973, this enables victims to seek maintenance that is more comprehensive. In *Sandhya Wankhede vs. Manoj Bhimrao Wankhede*¹⁷, the SC made it clear that female relatives of the husband or male partner may be included in complaints filed under DV Act, 2005. In contrast, *Ashish Dixit v. State of UP*¹⁸ underlined that women are not permitted to incriminate random relatives without providing enough reason. In *Krishna Bhattacharjee v. Sarathi Choudhury*¹⁹, the Supreme Court emphasized the need of conducting a comprehensive investigation into every facet of a case prior to dismissing a petition. This was done to guarantee that the victim would get justice and to ensure that the Act's goals were met. It was made clear in *Vimla ben Ajitbhai Patel v. Vatsla ben Ashok bhai Patel*²⁰ that a husband is individually responsible for the maintenance of his wife, and that his mother's property cannot be seized for the purpose of providing for his wife's maintenance. Similarly, in *V. D. Bhanot v. Savita Bhanot*²¹, it was decided that the Domestic Violence Act of 2005 applies retroactively, which means that spouses who shared a home prior to the law's implementation are eligible to benefit from its provisions. The Bombay HC emphasized in *Roma Rajesh Tiwari vs Rajesh Dinanath Tiwari*²² that, "Statement of Objects and

¹⁵CRIMINAL APPEAL NOS. 2028-2029 __ OF 2010.

¹⁶2019 SCC 13 796.

¹⁷2011 AIR SCW 1327.

¹⁸2013 (4) SCC 176.

¹⁹2016 CriLJ 330 (SC).

²⁰AIR 2008 SUPREME COURT 2675.

²¹SPECIAL LEAVE PETITION (Cri.) NO. 3916 OF 2010.

²²WRIT PETITION NO.10696 OF 2017.

Reasons' of the Act elucidates the purpose of the PWDVA, 2005. The purpose of the Act is to safeguard the right of a woman to reside in her matrimonial home or shared household, irrespective of her legal ownership or entitlement to the property.”

The Bombay HC also said that:

“It is also irrelevant whether the Respondent has a legal or equitable interest in the shared household. The moment it is proved that it was a shared household, as both of them had, in their matrimonial relationship, i.e. domestic relationship, resided together there and in this case, upto the disputes arose, it follows that the Petitioner-wife gets right to reside therein and, therefore, to get the order of interim injunction, restraining Respondent-husband from dispossessing her, or, in any other manner, disturbing her possession from the said flat.”

In *Sabita Mark Burges v. Mark Lionel Burges*²³, the Bombay HC with respect to the reason behind enactment of Sec 19, said that -

“It is common observance that the applications for grant of injunction in respect of the residence and possession of the respondent are essentially seen by Courts upon the proprietary rights of the parties. Since in most cases wives do not own matrimonial homes, they are statutorily given rights therein which were not given to them by Courts under the principles of common law so that they have a right to peaceful enjoyment of their matrimonial home. Sec 19 of Domestic Violence Act came to be enacted in the first place granting essentially the wives /women peace against domestic violence in their residence, their title notwithstanding. This statutory grant is upon the sublime principle of human rights prevailing over proprietor rights. It may bear repetition to state that both are equally entitled to the said flat unless one of them is violent.”

In *Shachi Mahajan v. Santosh Mahajan*²⁴, the lady who was wronged was successful in obtaining a protection order of residence for a home that was held by her mother-in-law. This order was issued in accordance with Section

²³ 2013(4)ABR542

²⁴AIRONLINE 2019 DEL 26.

19 of the PWDVA 2005. Later on, the mother-in-law proceeded to sell the property to a different individual. Given that the property had been sold, the mother-in-law asserted that the daughter-in-law was not eligible to assert her right to remain in the joint home because it had been sold. Conversely, the Delhi HC issued an order requiring the mother-in-law to compensate the daughter-in-law for the damage she had incurred and to furnish the daughter-in-law with alternative accommodation. The court cited Sec 19(1) (f) of the DV Act, 2005, which mandates that the Magistrate must either ensure that the victimized woman obtains housing comparable to that which she had in the shared household, or, if necessary, provides rent payment for housing comparable to that which she had in the shared household.

According to the decision that was made by Karnataka HC in *Mohd. Shakir v. Shabana*²⁵, a petition that was submitted by a spouse or an adult male in accordance with the DV Act, 2005 remains maintainable. Specifically, the Court relied on the decision that was handed down by the SC in *Hiral P. Harsora v. Kusum Narottamdas Harsora*²⁶. In that case, the phrase "adult male" was removed from Section 2(a) of the Act because it was judged to be discriminatory. It is thus possible for any anyone, regardless of gender, who alleges that the Act has been violated to seek justice under it.

The subject of whether or not to dismiss an FIR or Complaint on the basis of limitation in marital crimes was discussed by the Delhi HC in *Anthony Jose v. State of NCT of Delhi*²⁷. When it comes to instances of marriage crimes, the court made the observation that the victim often confronts recurrent cruelty, which makes it a continuous offense. *Arun Vyas vs. Anita Vyas*²⁸ was the case in which the Supreme Court highlighted that cruelty, which is the core of Section 498-A, is a continuous violation, and that each act of cruelty begins the limitation period. This was done in reference to the Supreme Court's perspective. Due to the fact that the court was concerned with the interests of justice, it did not dismiss the FIR on the grounds that it was too late.

²⁵2022 LiveLaw (SC) 727.

²⁶AIR 2016 SC 4774.

²⁷W.P.(CRL) 2325/2017.

²⁸(1999) 4 SCC 690.

Conclusion

According to a well-known adage in Indian culture, matrimonial unions are believed to be divinely ordained. However, the unfortunate prevalence of domestic violence within society has the propensity to drastically alter this peaceful notion, resulting in a distressing and nightmarish existence. The aforementioned statement can be classified as a customary event. In the event that the alleged act is committed by an individual with a close relationship, such as a spouse or the parents of said spouse, it can result in a lasting and indelible mark, potentially manifesting physically, but invariably affecting the mental and psychological well-being of the injured party. Whilst it is undeniable that any act of violence perpetrated by an individual has detrimental effects on those who are subjected to mistreatment or injury, the gravity of such harm is particularly severe when it is inflicted by a person in close proximity to the victim. It is worth noting that domestic violence has garnered a degree of endorsement within the broader context of Indian culture, primarily attributable to the prevailing patriarchal nature of the country. According to prevailing societal beliefs in India, it is commonly asserted that women are considered to be of lesser status compared to men, which is the primary basis for such a perception. Given the deplorable circumstances faced by women in India, it is noteworthy that the laws in the nation have consistently afforded them with distinct legal safeguards throughout the course of time. As a preliminary matter, it is important to note that the Parliament of India duly enacted Section 498-A, notwithstanding whether the cruelty is of a mental or physical nature; it has established a legal basis for the imposition of penalties on husbands and in-laws in cases involving the infliction of cruelty upon women. Notwithstanding the nature, whether physical or mental, the aforementioned was the prevailing circumstance. Notwithstanding the fact that it was originally crafted with the purpose of protecting married women, this particular provision of the law expeditiously transformed into a mechanism of harassment. It is alleged that certain women, for reasons known only to them, hold the intention to harass their husbands and in-laws. In the year 2006, the implementation of the Prevention of

Women from Domestic Violence Act, which had been passed in the year 2005, took place. The aforementioned action was undertaken with the intention of furnishing a comprehensive and tailored body of laws pertaining to the matter of domestic violence. Notwithstanding the fact that individuals engaging in acts of domestic violence were being apprehended pursuant to provisions such as Section 498A, it is noteworthy that this marks the inaugural instance in which the term "domestic violence" has been formally incorporated within a legislative enactment. The aforementioned act represents a groundbreaking legislative measure that specifically targets the matter of rape occurring within the confines of a marital union, recognizing it as a distinct manifestation of violence. For all of the aforementioned individuals of the female gender who were experiencing a period of adversity, the aforementioned situation served as a small indication of optimism. However, it has become evident over the course of time that the aforementioned legislation was not enacted solely for the purpose of safeguarding female victims. Instead, it equally extends its protective measures to male victims in a similar fashion as it does for female victims. Based on the available evidence, it can be inferred that the current state of affairs indicates a significant increase in the incidence of domestic violence perpetrated against women in India. Notwithstanding the passage of time, it is worth noting that men, too, have been subjected to acts of domestic violence. Therefore, it is imperative for the society to emancipate itself from its constraints and diligently cultivate a heightened consciousness regarding the aforementioned matter.

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