Chapter-IV

Domestic Violence: Critical Study of the Act and Institutional Mechanism

The Protection of women from Domestic Violence Act came into effect on 26 October 2006. The stated objective of the act is to provide “for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family”.

This Act is an outcome of the women’s movement in India. Although the constitution of India guarantees equal rights to women as individuals, the state has hardly perceived them as such. Citizenship has for long been exclusively viewed as the domain of men. (Sawmya Ray\textsuperscript{1}, 2006). Women’s issues have always been dealt within the context of family and are, therefore, considered private (Sunder Rajan\textsuperscript{2} 2003). The Indian women’s movement has consistently strived to bring women’s issues out of the so-called private sphere. They declared “private is political” and state a party to the suppression of women under the garb of “private” affairs. The formation of this Act was celebrated by women groups as bringing women’s grievances out from “private” to public” from gender suppression to gender justice. Therefore, the contents of this Act need to be understood in the Light of its evolutionary process.

Certain forms of physical violence and some forms of emotional abuse fall within the definition of criminal conduct and are covered under
section 323 to 326 and section 352 of the IPC. All these Sections except section 326 IPC deal with offences that are bail able, Section 323, which a victim wife most commonly invokes against her husband, is a non-cognizable offence i.e. the offender can not be arrested without a warrant, and thus the wife will not be entitled to any immediate relief. Section 324 IPC deals with cases which are graver than simple hurt and are liable to more severe punishment. The courts, in quarrels between the husband and the wife, which result in wife battering, convict the husband under section 324 if the hurt is grave but there is no injury on any vital part of the victim. The husband who beats his wife for extracting more property or for getting dowry item can be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable for fine (Section 327 IPC). The offence under Section 327 IPC treated as an aggravated form of offence of hurt and a husband can be punished more severely for the avarice which makes him beat his wife brutally in order to extract property.

In P.P. Vs .N.S. Murthy the accused a shopkeeper, in a sudden fit of anger hit his wife on the head with an iron weight. It resulted in her death. The medical evidence showed that the injury was of a simple nature and should not have been normally resulted in death. The husband was held guilty only under Section 323 and not for causing the death under Section 304.

In Rukmani Vs Fakirchand\(^3\) the wife was administered very severe beating by her husband but the court did not agree that it was a case of criminal cruelty the judge held the husband guilty of matrimonial cruelty and punished him for that offence. In Kaushalya V. Baisakhi
Ram also, the guilty husband was able to escape punishment for criminal cruelty as the judge did not consider wife battering to be a crime.

Ninety eights marked the second phase of the women’s movement in India. It was at this juncture that a large number of dowry murders came to the public view in the guise of accidents or suicides. Dowry harassment was always considered to be a family problem and the state did not think it right to intervene in family matters, and so dowry torture and death always went unaccounted for. As the Delhi High Court stated in Harvinder Kaur Vs Harmandir Singh “introduction of Constitutional law in the home is the most inappropriate. It is like introducing a bull in a china shop. In the privacy of the home and the married life neither Art 21 nor Art 14 has any place”. In response along with awareness campaigns, women’s groups took up legal campaigns to address this issue.

During this struggle against dowry women groups related all forms of violence within the home to dowry demands. As the women’s movement gained momentum, many issues that were once considered taboo came to the fare and were discussed. This led to a revelation that violence against women/wives also occurred independent of dowry demands. The outcome was the construction of “wife battering”. It was also recognized that to large extent violence also prevail against other female members in the family. The term “domestic violence” was coined to address these varied ways of violence upon various members within the domestic sphere (Agnes 1998). Women’s groups restored to legal campaigns, dharnas, social boycotting, sensitizing through awareness etc. (Gandhi & Shah 1993). “Police apathy towards the victims of domestic violence, their dismissal of it as a private matter, lack of legal provisions,
their own inadequacy to provide support......made feminists rethink their stand on legal campaigns and seeking support of the state. The tendency towards demanding proper legislation re-emerged.

Till 1983, there was no specific provision pertaining to violence within family or home. With the women's group's demand for laws against domestic violence, the Government of India was content to amend provisions of criminal acts in 1983 and again in 1986. A new chapter X X A was inserted vide Criminal Law (Amendment) Act, 1983 (Act 46 of 1983) and cruelty against wife was made a crime. Section 113-A was added in the Indian Evidence Act. As a consequence of these additions domestic violence against a woman has become a non-bail able and a cognizable offence. This Section can be invoked not only against a husband but against any of his relatives as well. This Section covers not only harassment for dowry, but also any willful conduct of the husband or the relative of the husband which will drive any women to commit suicide or cause grave injury to her, whether physical or mental.

**Section 498-A and 304-B of the IPC:**

Section 498A declares that cruelty by husband or his family against his wife is an offence, and the person (s) found guilty of this “shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Cruelty is defined broadly to mean: any willful conduct of a nature to drive a woman to commit suicide or cause grave injury or danger to her life, whether mental or physical. It includes harassment with a view of coercing her or her relatives to meet any unlawful demand for property or on account of failure by her to meet such a demand.
Positively, this Section does not use the term dowry to define cruelty, and includes mental cruelty. Hence, it is broad enough to be used in situations of domestic violence where the cause of violence may or may not be dowry. On the other hand, the use of the term “grave injury” gives space for subjective interpretation of the gravity of violence. As it does not specify the standards on which the gravity is measured, it ignored the everyday violence suffered by women. Section 304B focuses on dowry deaths. According to this section:

“Where the death of the women is caused by any burns or bodily injury, or occurs otherwise than under normal circumstances within seven years of her marriage and if it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any other relatives of her husband for or in connection with any demand for dowry, such death shall be called “dowry death” and such husband or relatives shall be deemed to have caused her death.”

The offence is punishable with a minimum of seven years and a maximum of life imprisonment. Once dowry harassment is proved, the presumption of guilt lies on the accused, and he has to prove it that he is innocent.

This section, unlike Section 498A, can be used only for cases related to dowry. Since no record is maintained and no complaints made at the time of meeting dowry demands while the girl is still alive, it is extremely difficult to prove dowry death under this section. This section also presumes that women are harassed for dowry only within the first seven years of marriage. Overall, this section is not likely to benefit women to deal with domestic violence, as violence is not always related to dowry. From the words “soon before her death” one can infer that it
does not take into account the violence committed earlier or the violence committed on a routine basis from day one, as a valid cause that may lead someone to commit suicide. Thus, abetment to suicide does not come under the purview of this Section. Proof of dowry harassment by the husband or his family is a must for conviction under this section. Whereas, Section 498A has fewer requirements, since the seven-year marriage period is removed and the harassment extended to mental cruelty leading to suicide is not confined to the period immediately prior to the death.

Despite their loopholes, Section 498A and 304B of the IPC, which were introduced to deal with dowry violence and dowry death, are widely extended to deal with violence against wives. These sections can not deal with other forms of violence among other members of the domestic sphere. Thus, they have their own limits in defining the scope of domestic violence.

The operation of the above said Acts is problematic, studies show that when women approach the police station they are met with indifference and hostility. Their cases are not taken up seriously and they are discouraged from filing complaints. Police officers, quite often, are reluctant to intervene in cases of domestic violence and they insist that they have no legal authority to register the case. In cases where the complaint insists on registering a case, she is treated with indifferences. The tendency is to restrict the registration of domestic violence cases under the two Sections, that is 498A and 304B of the IPC and active manipulation is done to conceal the crime and protect the offender.

The loopholes in the definition of domestic violence make it open to subjective interpretation leading to irregularities in registration and in
judgment. There is no standard set; the patriarchal mindset of the judges makes them give primary importance to the cases of violence, rather than to the act of violence itself. The judges also demand for evidence, but on the question of violence within the home, no outsider is interested or permitted to interfere and talk about it. The only concrete proof is the women herself who has suffered the violence, but her words are not taken into consideration as proof, even her dying declarations are manipulated.

The legal procedure is lengthy one. The long and dragging procedure along with the monetary strain add to the misery of the women. Most of the victims do not have any economic resources of their own and this deters them away from filing a case.

A major cause for the withdrawal of cases is that the women has to fight two cases, one in the civil court for divorce, maintenance and child custody, and another in the criminal court to get the accused convicted for the violence perpetrated upon her (Agnes 1999). She wants to divorce to avoid torture. She does not have any economic support, but wants child custody. Her husband uses her predicament to his advantage; she is asked to withdraw the case in the criminal court, and in exchange, the husband agrees to grant her divorce, maintenance and child custody. There are also cases where victim’s parents go in for an out of court settlement with the accused and the case is withdrawn. As Kannabiran puts it-

“In India marriage for women is seen as the ultimate goal. Any women who decides to remain single, come out of a violent marriage or is a destitute, is looked down upon and the society is ever ready to exploit and harass her. Many times women find it easier to cope with a hostile home............than to cope with a hostile and misogynist public space of which the criminal justice system and legal profession is often a part”.

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Women groups in India have time and again appealed to the government to pass more pro-women laws and ensure their proper implementation and accessibility to women in quest for justice. In 2001 the then BJP- Led NDA coalition government finally responded to these pleas and protests by bringing up the Domestic Violence Bill 2001, which sought to fulfill the demands of the women’s groups and plug in the existing loopholes.

Prior to the Domestic Violence Bill 2001 two important events took place. These were the drafting of a Bill by National commission for women (NCW) in 1994. This NCW bill was severely criticized by other women’s groups. The other was a bill by Lawyers Collective in 1999. The main aim of this bill was that any law that address domestic violence must define it in terms of the internationally accepted definition, prevent it, protect the rights of the women to live in the shared households and make provisions for the maintenance of the women.

Nearly ten years after signing the UN General Assembly Resolution to adopt the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW, December 1993). The Government of India, through the Ministry of Human Resource Development, published and circulated the “Protection from Domestic Violence Bill 2001. (Bill No. 133 of 2002). This Bill failed to provide effective and meaningful steps to deal with domestic violence. Many positive provisions laid down in the draft bill submitted by the women’s groups had been completely omitted or modified to suit patriarchal interests. New anti-women clauses which were not there before, were added.
As a signatory to CEDAW and being Platform for Action, India has accepted violence against women to mean “any act of gender based violence that results in, or likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in Public or private. Instead of adopting this definition, the Government Bill preferred to define domestic violence as;

Habitual assaults or one that makes the life of the aggrieved person miserable by cruelty of conduct (a) even if such conduct does not amount to physical ill treatment; (b) forces the aggrieved person to lead an immoral life; (c) or, otherwise injures or harms the aggrieved person (section 4).

The very inclusion of the words like “habitual” and “miserable” made the definition unacceptable. A single instance of violence is not enough to be accepted as an act of cruelty. This definition did not use the language of rights but instead used the outdated concept of conduct. It did not define cruelty, and thus allowed a great deal of subjective interpretation as to what constitute domestic violence. Thus, too much is left to the mercy of the judge and too little to the rights of the person aggrieved. This definition was hardly a departure from the existing definition of cruelty in section 498A of the IPC. It adds to the victims problems by looking for habitual assault and life to be miserable, which was not required under Section 498A (Agnes 2002)\textsuperscript{8}.

Not only this, Section 4 (2) of the Bill introduced a new clause: plea of self defense, by the man. In simple words if an abusive husband can prove that he beat his wife to protect himself or his property, or the property of another person, he will not fall under the ambit of law.
The most important omission in this Bill, therefore, was that it did not recognize the woman’s right on the shared household and thus failed to address the root cause of the vulnerability of women.

Women were provided with a right to protection order in this bill, but to obtain this the victim has to go through complicated procedures. This order does not provide urgent relief, which the victim needs most.

The protection order does not restrain the accused from entering the place of employment or any other place frequented by the Victim. It also does not prevent the accused from attempting to communicate with the victim. This gives scope for harassment of the victim in various other ways.

The Bill made the provision for mandatory counseling. Mandatory counseling provides that the magistrate may at any stage direct the respondents or the aggrieved person, either singly or jointly to undergo mandatory counseling with any service provider. Women’s groups argue that counseling should be voluntary and certainly not in the presence of the abuser. According to Kaveri Sharma, “The Victim and the Abuser are in an unequal situation and no joint counseling is possible in that situation. Mandatory counseling cannot be imposed on the Victim. Most counselors take a “serve the family at any cost” approach. In the process they usually became insensitive to women’s predicaments. As Sheila Jayaprakash notes,

... Given the track record of the existing mandate of the family counseling courts, family courts and Lok adalats. Where reconciliation is treated as synonyms with preservation of the family unit at any cost and adjustment on the part of the women even if it means that she has to live with
violence, this will work against the women. Mandatory counseling is necessary for the abuser and not the victim.

The bill did not recognize extramarital or other relationship and violence within Natal homes. Those women who live with a man without performing the socio-legal ceremony of marriage, and those who have married a man whose previous wife has not been divorced cannot take resource to this law for relief. According to the Bill Similarly in its stress on marriage the Bill excluded women who are victims of cruelty in their natal homes before marriage.

The Bill did not talk of sexual violence particularly marital rape, as violence, nevertheless a positive outcome of the debate on the Bill has been that the State has finally recognized that domestic violence exists and that women need to be protected against it by law. On 24 August 2005, Parliament passed the “Protection of women from Domestic Violence Bill”.

Some of the salient features of the law are (a) the recognition of the second wife and ‘other’ women’s rights, (b) the recognition that domestic violence can be physical, psychological sexual, verbal and economic (c) the enunciation of the rights of women to live in their marital homes, (d) the provision of ad-interim protection orders, (e) the creation of an official cadre called protection officers and recognition for NGOs as service providers, and (f) the provision of positive entitlements, maintenance, protection from future violence the rights to custody over children- as apposed to mere penalization of the husband (Suneetha and Nagaraj 2005).
Domestic Violence Act 2005

Indira Jaisingh\(^9\) (2007) rightly mentioned that “any discussion on women’s rights, particularly in the context of the Protection of Women from Domestic Violence Act, 2005 must begin with the international framework on violence against women”.

The need to respond to violence against women as the primary approach to ensure gender justice was recognized in 1992 by the CEDAW Committee through its General Recommendation 1992. The Recommendation takes an all encompassing approach to violence and also provides that any form of discrimination or violation of rights of women will be considered to be violence, and further that the state will be responsible not only for violation of the rights by public action but also private action. Also, para 8 of the Recommendations declares that the Act of violence enumerated will not only be violative of the CEDAW but also be considered to be in violation of a State’s obligations under general international law and other conventions.

The PWDVA is in conformity with the UN Model Legislation on Domestic Violence, which provides comprehensive guidelines for states in drafting Legislation on domestic violence. The Model Legislation provides guidelines on what constitutes domestic violence.

Various guiding features of the PWDVA are outlined by Indira Jaisingh (2007). These are as follows:

- A civil Law- the PWDVA is a civil Law directed towards providing compensation and support to the women and not intended to penalize the perpetrator in the first instance. In contrast
to existing criminal Law (Section 498 A, Indian Penal Code), which are dependent on the State, the police and the prosecution for their enforcement, a civil law is victim driven, it can be put into motion by the aggrieved women by direct access to court for relief and is a more democratic from of access to justice. It follows from this that the agency of the women victim is recognized and given primary considerations. The rights and relief under this law cannot be activated without the consent of the women.

- Recognizing that women’s rights are violated not only as wives, but also as mothers, sisters, daughters, live in partners, it covers all such relationship under the definition of “domestic relationship”. It makes a major breakthrough in recognizing the reality of violence, which occurs against women and seeks to provide remedies.

- Recognizing the most oppressive act of violence as dispossession from the shared household the expression “shared household” is used to indicate that it covers mothers, sisters and daughters as well and the protection is not confined to the matrimonial home.

- The civil relief under the Act is so designed as to end the violence immediately and they are in the nature of emergency relief- “Stop Violence” orders. The intention of the law is to give a women facing domestic violence a space from violence where she can evaluate her options and choose her future course of action. It is immediate and emergency law. What is important to note is that since the law is in addition to existing laws, a women can take recourse to the other provisions for seeking the appropriate remedy later (e.g. opting for divorce if she so desires).
A woman’s access to justice is a major impediment to effective implementation of any gender specific law. It is in this context that the law has in-built mechanism in place to ensure that a woman can have access to the justice system as well as access to support systems. Hence, the protection officers and the Service Providers have been envisaged to provide support to the women in using the provisions of this law while Protection Officer is to serve as the link between the woman and the court as well as enable her to access the support provided under the Act. The Service Providers (NGO’s working for women who choose to register under the Act) continues providing her with necessary support that she might require. The only difference between registered and unregistered NGO’s being that the former are then authorized to record DIR’s and forward them to the magistrate and district shelter and medical facilities to provide services. Their role is crucial in the pre-litigation stage. They are provided immunity for action taken in good faith under the law.

Also, the Act keeps in mind the fact that often for women it might be easier to approach a NGO rather than the traditional implementing agencies like the police or the courts.

Single window clearance system in supporting women accessing the justice system, section 26 of the Act lays down that the civil relief can be claimed in any pending proceeding. What this means is that now a women can use the PW DVA to ask for an injunction restraining dispossession pending a divorce case or under section 498A. She does not need to file separate cases in different forums. This provision has been incorporated keeping in mind the problems
that women face in accessing the justice system. New multiplicity of proceedings can be avoided and the in-built implementation mechanism under this Act can make women's access easier.

- Counseling: Section 14 of the PWDVA states that the magistrate may, at any stage of the proceeding, direct the respondent or the aggrieved person, either singly or jointly, to undergo counseling with any member of service providers who possess such qualifications and experiences in counseling. This could be a problematic provision given that counseling is used as a tool for a woman to accept a violent situation and put back the marriage on the road. Counseling ought to be of the abuser and not the victim. Hence an attempt has been made to define the object of counseling in Rule 14 of the Act. We must understand that to begin with the women and the abuser are in an unequal situation and no joint counseling is possible in that situation. It can only lead to further disempowerment of the unequal party. In fact, mandatory counseling is one of the methods of correcting abusive behavior. Such counseling can only end up convincing her to accept her situation of disempowerment as being normal and to continue in a violent marriage. This is especially dangerous given the fact that even under existing dispersion judges and crime against women cells of the police constantly goal women into so-called reconciliation sessions where they are made to agree to settlements. Therefore, while directing and conducting counseling under the Act, adequate caution must be exercised to ensure that she is not further disempowerment and victimized”.

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The Protection of women from Domestic Violence Act (PWDVA) creates three basic rights for Victims of domestic violence: to be protected from violence, to reside in a shared household, and to seek and secure monetary relief. (Marie Louis 2010, Combat Law May-Aug. 2010; p.51)

**New Terminology in PWDVA**

The PWDVA define certain new terms such as “aggrieved person”, “domestic relationship” and “domestic violence”, and “Shared households”.

Section 2(f) define domestic relationship as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

Chapter II Section-3 of the Act defines domestic violence. It states “any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security: or
(c) has the effects of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) Otherwise injures or cause harm, whether physical or mental, to the aggrieved person.

The Act further provides explanations of some of the terms used in the definition of Domestic Violence.

(i) “Physical abuse” means –

Any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.

(ii) Sexual abuse includes –

Any conduct of a sexual nature that abuses, humiliates degrades or otherwise violates the dignity of women;

(iii) Verbal and emotional abuse includes -

(a) Insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) Repeated threats to cause physical pain to any person in whom the aggrieved person is interested,
(iv) Economic abuse includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to households necessities for the aggrieved person and her children, if any, stridhan property jointly or separately owned by the aggrieved person; payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her “stridhan” or any other property jointly or separately held by the aggrieved person; and

(c) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Section 4 (1) of the PWDVA states “any person who has reason to believe that an act of domestic violence has been, or is being or is likely to be committed may inform the “Protection officer”. It further specifies that there is no civil or criminal liability on the informant in good faith.
Section 4 therefore creates a social responsibility on members of the community at large who have knowledge of an already committed act or in case of any likelihood of commission of domestic violence in future, to come forward to file a complaint on behalf of the victim which also implies that all individuals have an obligation to react against violence.

**Law Enforcement Agencies**

Section 5 of PWDVA is a social enactment that creates various legal, social, judicial and administrative mechanisms to provide assistance to the victims of domestic violence. The provision creates a social-moral responsibility on judicial, law enforcement, legal medical and social institutions to provide assistance to victims and survivors, informing them of their rights and securing immediate relief. It specifies the duties of the police, service providers protection officers and magistrates emphasis that they shall inform the aggrieved person of her rights to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such orders under this Act; of the availability of services of the protection officers, of her rights to free legal services under the Legal Services Authorities Act 1987; of her rights to file a complaint under section 498 A of the Indian Penal Code (45 of 1860) wherever relevant.

The word “Shall” in the introductory paragraph of this section is a mandatory command, not obligatory or aspiration the effect of using such strong language in the Act is to create social responsibility for the individual’s acts.
Section 7, 8 and 10 creates the responsibility on the government to provide institutional support for victims such as shelter homes, medical facilities and service providers. Section 6 clarifies that shelter homes are bound to provide shelter, section 7 clarifies that the person in charge of a medical facility shall provide medical aid to the aggrieved and section 10 lays down the duties of service providers, which include, the recording of Domestic Incidence Reports (DIR s) getting the Victim medical assistance, ensuring her with shelter and also ensures immunity from prosecution. These sections clarify that it is an institution’s legal responsibility to help Victims of domestic violence.

Section 11 lays down the various duties of the Government to give the Act wide publicity through the media, to conduct periodic sensitization and give awareness training to the state/central/police/judicial officers, to coordinate different ministries, departments, periodical review and to ensure that protocols for the various ministries concerned including courts are prepared and put in place.

**Role of the Protection Officer**

Section 9, 30, 33 read with rules 8, 9 and 10 outline the roles and responsibilities of the protection officer, who acts as a bridge between court and the victim of domestic violence. Section 8 of the Act specifies that, as far as possible, protection officer shall be woman and appointed as a full time positions. Section 30 of PWDVA clarifies that protection officers are public servants. Although they have some immunity such as through action taken in good faith (Section 35), the Act does provide for penalizing them for not discharging their duties under section 33.
Section 9 of the PWDVA defines the duties and functions of the protection officers which include:

(a) Assisting the magistrate;

(b) Making Domestic Incident Reports and forwarding copies to police and service providers;

(c) Making application for protection orders;

(d) Ensuring that legal aid provided to victims of domestic violence;

(e) Maintaining a list of service providers, shelter homes medical facilities and counselors;

(f) Making shelter home facilities available to the aggrieved and forwarding copies of the related reports to the magistrate and the police;

(g) Providing the aggrieved person with a medical examination and forwarding a copy of the medical report to the magistrate and police;

(h) Ensuring the compliance and execution of monetary relief under section 20 as per the code of Criminal Procedure and

(i) Performing any other prescribed duties.

Provisions for Relief

Section 18 to 22 lay down the different forms of relief that are available to victims of domestic violence, such as protection orders, monetary relief, custody order, residence order, compensation order.
While Section 23 provides for interim ex-parte orders, Section 26 and 28 are important provisions that could be put to use to the fullest extent, in getting to provide relief under the Act in any civil/criminal/family court and also to, lay their own procedures in disposing of applications under the PWDVA.

Section 12, 13, 14, 15 and 16 in the Act define some of the provisions and procedures for obtaining orders for relief. Some of the important points to be noted in these sections are that, applications to the magistrates under Section 12 can be made in form 11, the magistrate should fix the date of hearing not beyond three days of the receipt of the application, and the case should be disposed off within 60 days from the date of its first hearing. Section 13 specifies that the notice of hearing should be given to the protection officer to serve on the respondents within two days and that the official should file a declaration for the service of the notice. Section 14 states that the magistrate may direct either party to undergo counseling where as Section 15 clarifies that the magistrate may use the service of a welfare expert-preferably a female- to assist him/her, and section 16 specifies that proceedings may be held in camera.

**Right to Residence**

Section 17 laying out the right of a woman to reside in the shared household, is one of the most important and prominent concepts in PWDVA. The Section allows every woman in a domestic relationship to have the right to reside in the shared household whether or not she has any right, title or beneficial interest in it.... “The aggrieved person shall not be evicted or excluded from the shared household or part, save in accordance with the procedures established by law”.

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The most important essence of this enactment is Section 36 that the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

An analysis of the Domestic Violence Act: varied interpretation of the law through some precedent setting cases decided by the Indian judiciary.

**A Gender-specific Enactment**

One of the most significant features of the Domestic Violence Act is that it is a gender specific enactment; hence only women can avail of the provisions of this Act. The Act clearly defines an “aggrieved person as any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence....”

This has been a controversial feature of the Act, subjecting it to legal challenges to its constitutional validity. For example, in the case of *Aruna Pramod Shah Vs Union of India*\(^1\) it was argued that the DVA offends Article 14 (equality before law) of the constitution of India because it provides protection only to women and not to men. In a strongly worded judgment the Delhi High Court rejected this argument. “There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against the exploitation of woman. The argument that the Act is ultra virus to the constitution of India because it accords protection only to women and not to men, therefore, wholly devoid of any merit-
In another case decided in the Madras High Court, Dennison Paulraj Vs. Mayavinola, the petitioner challenged the constitutional validity of the Act on the basis that it is discriminatory piece of legislation because it does not permit the husband to file a complaint under the Act and hence is in violation of Article 14 and 21 of the constitution and also affects the life and liberty of the husband and his relatives. Rejecting these arguments, the High Court of Madras concluded that, “the constitution itself provides special provision for women and children........... thus...the contention that there could be no special treatment for woman is totally untenable. In tune with Article 15(3) of the constitution of India, the state has thought it fit to frame a special legislation for women and thus the PWDVA 2005 came into force.

Unmarried Relationship

The most significant feature of this Act is that it has widened the scope of protection against violence beyond the category of women in married or consanguineous domestic relationships, to include women in informal or unmarried relationships. Section 2(f) of the Act clarifies this provision through its definition of a domestic relationship as “a relationship between two persons who live or have, at any point of time, lived together in shared households....by marriage, or through a relationship in the nature of marriage”. This provision addresses two primary concerns of women facing domestic violence. First, it award statutory recognition to informal or “live-in” relationships by securing the rights of women who have never been married but have been living in relationships in the nature of marriage”. This is best exemplified by the holding of the Madras High Court in case of M. Palani Vs Meenakshi, where the man challenged the award of interim maintenance to the
women on the grounds that they were not married and had not even lived together at any point. Rejecting his arguments the judge stated, “The averments made in the plaint as well as in the counter affidavit will make it very clear that the petitioner and the respondent had a close relationship and had sex. As stated already, the Act does not contemplate that the petitioner and the respondents should live or have lived together for a particular period or for few days.... one can infer that both of them seem to have shared household and lived together at least at the time of having sex by them.”

Despite the fact that the DVA recognizes the rights of women in informal or unmarried relationships, the validity of marriage continues to be raised as a delay or harassment tactic by many respondents under the DVA. A holding of the High Court of Kerala in the case of Tanseel vs Sini\(^{14}\) is an example of judiciary’s firm stance against using the issue of the validity of marriage as a delaying tactic in the proceedings. In this case, the man filed a Writ-Petition in the High Court at Ernakulam contending that there was no valid marriage subsisting between him and respondent and that this should be addressed as a preliminary issue in the proceedings. Rejecting the contentions, the judge ruled that, “the request to decide questions as preliminary issues based on disputed facts can not obviously by entertained........ (The magistrate) has to consider the entire question and give decision as mandated under Section 72(5) of the DVA ct., within a period of 60 days from the date of the first hearing”.

**Divorced Women:**

Another commonly raised question is whether a divorced woman is entitled to receive benefits under the provisions of the DVA. Although this question is largely examined on a case-by-case basis, a few High
Courts have in fact ruled that the divorced women are entitled to claim reliefs under the DVA. In the cases of **Razzak Khan Vs Shahnaj Khan**\(^{15}\) and **Priya Vs Shibu**,\(^{16}\) the High Courts of Madhya Pradesh and Kerala concluded that a divorced woman is entitled to relief under the Act. In the case of **Smt. Bharati Naik Vs. Ramnath Halarnkar**\(^{17}\) the High Court of Bombay and Goa concluded that a women who had been divorced for 12 years would be allowed to receive maintenance under the DVA stating, “in my view the relationship by consanguinity, marriage, etc. would be applicable to both the existing relationship as well as the past relationship and cannot be restricted to only the existing relationship as otherwise the very intent and purpose of enacting the said Act would be lost as it then would protect only an aggrieved person who is having an existing relationship.” The court thus ruled that even a divorced women can receive maintains under section 12 of the PW DVA.

**Women Vs Women**

While the DVA clearly states that only woman can petition for the remedies available under this Act, the question of whether women can be named as respondents continuous to be a contention one. Although Section 2(9) of the Act defines “Respondents as” any adult male person who is, or has been in a domestic relationship with the aggrieved person...” the proviso to this Section clarifies, “providing that an aggrieved wife female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner.

While some High Courts initially ruled against naming the female relatives of the husband as respondents most note ably in the case of **Ajay Kant Vs. Alka Sharma**\(^{18}\) decided in 2007. Many subsequent judgments
have asserted that the above mentioned proviso to section 2(9) makes it clear that any relative of the husband, irrespective of gender can be named as a respondent. This is verified by the holdings of the Rajasthan High Court in the case of Sarita V s Umrao and Nand Kishor V s State of Rajasthan. In the first case, the court ruled that, “The term “relative” is quite broad and it includes all relations of the husband irrespective of gender or sex and in the second case, further clarified that “Section 2(9) of the Act and its proviso if read together nowhere suggest that relative of the husband or the male partner has to be a male. In proviso to Section 2(9) of the Act the word is ‘relative’ and not ‘male relative’ a female relative is not excluded from the definition of respondent....” This stance was reinforced in a number of rulings in the High Courts of Gujarat, Madras, Hyderabad and Bombay.

Other ‘respondent’ in the Act:

There has been some controversy related to Section 2(q), pertaining to the definition of “respondent” under the Act, is related to the rights of the aggrieved women to claim relief from consanguineous domestic relationships. The definition of “respondent” as any adult male person, who has been in a domestic relationship with the aggrieved women, is wide enough in its scope to implicate members of a woman’s natal family, or even her adopted family. A handful of rulings, particularly from the Lower courts confirm that DVA can be invoked in cases where a woman is facing violence in consanguineous domestic relationships. One of the first cases to be decided under the DVA in the country, in December 2006, was the case of Parigaya Vs. Bishnu, where the Magistrate of the Bandha district court in U.P. passed a protection order against a man who had thrown his 60 years old mother

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out of his home. Another two cases from the Bombay Sessions courts have been significant in this regard. The first, **Sana Sheikha Vs Ibrahim Sheikha**,\(^{20}\) is the case of a minor girl who, along with her mother was the victim of domestic violence at the hands of her father. The father challenged the maintainability of this petition on the basis that the petitioner was a minor who was initiating proceedings against her own natal family. The court, however, allowed the petition stating, “It does not mean that a child under 18 years of age is prevented to make any allegation of domestic violence when that child is related by the consanguinity for the purpose of domestic relationship.” The second case, **Nassem Bani Shaikh Mahmood Vs Naeem and Nadeem Shaikh Mahmood**,\(^{21}\) is the case of deserted women staying with her natal family, facing abuse at the hands of her brothers and being forced into prostitution. In this case the district court passed an interim residence order (that was later upheld by the Sessions Court) restraining the respondents from dislocating the petitioner from the household.

The judgment in the above mentioned cases suggest that the courts have begun to develop a more nuanced understanding of the domestic violence, recognizing that women are not only abused in their roles as wives and daughter in-law, but can also face domestic abuse as daughters, sisters, mothers, grandmother etc.

**Protection:**

Part of the mandate of the DVA is to provide protection to victims of domestic violence. For this purpose, the Act outlines the duties and responsibilities of “Protection officers”, who are public servants whose duty is to ensure that victims have access to the Legal services authorities, public, courts, shelter homes, counseling center and hospitals.
“Moreover the courts are empowered to pass protection orders” where in a magistrate can prohibit the respondents from committing (by omission, aid or commission) any act of domestic violence against the woman or any of her dependents/relatives/friends. The court can forbid a respondent from entering any place frequented by the woman or even communicating with her. Most importantly, the court has the power to prohibit the respondent from alienating any assets or operating any bank accounts held separately or jointly by the two parties.

Protection Orders have been widely issued in courts across the country, but there have only been some points of contention pertaining to the passage of such orders, one such objection was raised in the case of Azimuddin Abdul Aziz Vs. State of U.P.,22 where the husband contended that the Act only provide protection to woman while she is living in her matrimonial home and is no longer applicable once she has moved to a different residence. The High Court at Allahabad rejected this line of argument, maintaining that since the respondents had committed acts of aggression even after the woman had left his residence, the Protection order would remain in effect.
Reference


3. AIR 1960 Punjab 493

4. AIR 1961 Punjab 520

5. AIR 1984 Del 66


12. MANU/TN/0525/08, MAD

13. AIR 2008 Mad. 162


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16.2008 (62) A CC (SOC 76) page 21
17.2011 Cr. L J . 3572 Bom.
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20. Bombay Session Court, 2006
22. M A N U /U P/0238/2008 All