



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Women and Domestic Violence: An Analysis of effective Implementation of Domestic Violence Act 2005/2010 in Jammu District

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Abstract

Today domestic violence against women has become a rampant phenomenon. It is a critical social and legal problem in India as the cases of domestic violence cut across all cultural, socio-economic, educational, religious, and ethnic boundaries. The cases of domestic violence are occurring in severe forms resulting in the oppression of women. The rates too are increasing at an alarming rate in India. The universality of the problem of domestic violence against women and its severe repercussion, necessitates the intervention of the state, civil society, and legal mechanisms for resolving the problem. Law plays a significant role in eradicating violence against women; questioning the subordinate status of women and reconstructing their identities as persons, human beings, entitled to equal rights. Though some laws were formulated to prevent violence like dowry and rape, but the legal redressal to the victims of domestic violence has been a great challenge for women in India. There was no adequate law to protect the victims facing domestic violence inflicted on them in various forms, till the Domestic Violence Act was passed in 2005. This paper will highlight the constitution and salient features of this Act. It will mainly focus on the barriers to the effective implementation of the Act in the context of Jammu District while suggesting some of the remedial measures in combating the problem of domestic violence. The analysis regarding the ineffective implementation was derived from the data collected through interviews with various stakeholders.

Keywords: *Violence; Domestic Violence; Intimate Partner Violence (IPV); Domestic Abuse*

Introduction

Domestic violence though means violence in the family refers to violence against women in particular, as almost always the victims are women. Domestic Violence also known as domestic abuse, spousal abuse, or intimate partner violence (IPV) can be broadly defined as a pattern of abusive behavior by one or both partners in an intimate relationship such as marriage, dating, family, friends, or cohabitation. Domestic violence against women is a universal phenomenon. In India, it is also a great social and legal problem. Every day we hear news of women burnt alive, beaten to death, and forced to commit suicide. The cases of domestic violence cut across all cultural, socio-economic, educational, religious, and ethnic boundaries in India irrespective of caste, class, age, income, and educational levels. They are prevalent in rural as well as urban areas, among educated, and uneducated women, and in all sectors of the society. The practices related to domestic violence against women

in Jammu have prevailed in the past and continue to occur at present as well. Law plays a significant role in eradicating violence against women; questioning the subordinate status of women and reconstructing their identities as persons, and as human beings entitled to equal rights. As Martin Luther King observed, “Law cannot change hearts, but can restrain heartless” (Kaur, Sultana and Goel, 2006:24).

In the 1990s, several factors contributed to significant changes in domestic violence legislation in many countries. Women’s successful complaining raised the profile of the issue of violence against women and several United Nation’s Conferences (Vienna 1993; Cairo 1994; Beijing 1995) recognized women’s rights as an inalienable part of universal human rights. As a result, laws on domestic violence were adopted in many countries, India being one of them. If we go back to the earlier time, the patriarchal principle of women’s subordination within the family formed the principle of family law. Various components of the customary laws treat women as the property of their husbands. These customs embedded in customary law are now a conduit for rampant violence against women. Thus, it was the duty and responsibility of the government who ratified the international conventions and human rights instruments to harmonize their national laws in tune with these instruments so that the victims-survivors may not be left without adequate protection and are not re-victimized.

Objectives of the Study

- To know the awareness level of the respondents about ‘The Protection of Women against Domestic Violence Act, 2005/2010’ and its usage.
- To access the implementation level of PWDV Act 2005/2010 in Jammu district.
- To suggest suitable remedial measures to curb the problem of domestic violence.

Jammu is one of the three administrative divisions within Jammu and Kashmir and is the winter capital of the state. The area chosen for the study was the Jammu city and adjoining rural areas falling within the limit of 10 to 15 km from the central city in the Jammu district. Both rural and urban areas were taken for the study in order to have a comparative analysis of the phenomenon of domestic violence. For a holistic picture of the phenomenon, perceptions and problem cases of both the areas were considered important.

The sample of this study comprised of two hundred (200) women respondents from rural and urban areas of the Jammu district. The purposive sampling method was used to select the cases from both rural and urban areas. Out of the two hundred respondents, 100 respondents from rural areas were selected and identified with the help of Anganwari workers and supervisors whereas 100 respondents from urban areas were selected through reported cases in the Women Cell, Family Courts, Police Stations, and NGOs. Out of the total respondents, few cases were identified through personal links.

The research study has been carried out by using Structure-Agency theoretical framework. It has focused on how women have used their agency in the given patriarchal setup - as most of the cases of Domestic Violence occur within the patriarchal ideology and practices. To understand how women experience such incidents, respond to the problem and evolve the mechanism to cope up with the crisis in a given situation, a phenomenological perspective has been used. Both primary and secondary sources were used to collect the data. The secondary sources for the study included documentary evidence from Books, Reports, Journals, Newspapers, and information from the internet. Primary data was collected through fieldwork from the respondents by applying ‘in-depth interview’ and ‘interview schedule’ qualitative methods. Quantitative methods were used for codifying and tabulating the data.

Law on Domestic Violence against Women

Jayna Kothari in her Article *Criminal Law on Domestic Violence* (2005) in Economic and Political Weekly (EPW) explains that domestic violence needs a coordinated and systematic response from the judicial system. Though Section 498-A of the Indian Penal Code is one of the most significant criminal laws protecting women's rights and the law may consider domestic violence against women an offence, the police may still not comply and implement it effectively. The author further asserts that in order to move towards an effective working of Section 498-A it is crucial to adopt a new empowerment model which will put in pro-arrest procedures and social service networks at the police station. Thus, it also stresses on having civil law remedies to provide protection to women victims of domestic violence.

Saroj Iyer in her work on *The struggle to be Human's: Women's Human Rights* (1999) opines that women who were worshipped as goddess and mother are now being battered into mental and physical submission at home and workplace: discriminated against and excluded from the field of self-expression other than those assigned to them by traditions and usage. Many girls and women die every day because of gender-related discrimination and violence than from any other type of human rights abuse. A significant number of women are routinely tortured, mutilated, battered to death, burnt alive, bought, and sold as sex slaves simply because they are women. The Indian Constitution as well the Universal Declaration of Human Rights guarantee to every person the right to liberty, life, security, dignity, and the right to freedom from slavery. However, the continual denial of gender justice is highly sensitive. The author examines how the rights of women in the Constitution and the Universal Declaration of Human Rights have remained only on paper.

Book by Padma Iyer, *Women's Human Rights and Violence* (2006) tries to examine two kinds of violence against women in relation to the human rights treaties and agreements to protect the women. It further focuses on issues surrounding government accountability to implement these agreements and present recommendations for government action. This book traces the development of the fight for their rights by women, their struggle, and the ups and downs of the movement that was sparked off spontaneously in different parts of the world. Various atrocities ranging from simple quarrel to rape, battering in an intimate relationship, torture, mutilation, etc. are discussed as a human rights violation in the book.

In the book *Women and Crime* (2006), M.U Qureshi asserts that crimes against women are a universal phenomenon. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual, and psychological abuse that cuts across the line of income, culture, caste, and class. The author further tries to encompass vital information on diverse aspects of crime against women and remedial steps. According to him various issues related to violence against women constitute battering, dowry-related issues, marital rape, sexual harassment, trafficking in women, and forced prostitution and has resulted in a more deplorable condition of women. These atrocities continue in the Indian society not because that legislation has lagged behind, but because the law has not succeeded in playing its role of social engineering and changing certain deeply rooted social attitudes.

In India prior to 1983; the issue of domestic violence was outside the domain of law. It was only recognized in different matrimonial laws where cruelty towards women was valid on the ground for divorce but there was no immediate way or provision to stop the violence in the family. In 1983, Domestic Violence was recognized as a specific criminal offence by the introduction of Section 498-A in the Indian Penal Code which deals with the cruelty by a husband or his family towards a married woman. Section 498A of the Indian Penal Code (IPC), which defines the offence of matrimonial cruelty, was inserted into the IPC by an amendment in 1983. Offenders are liable for imprisonment as well as a fine under the section and the offence is non-bailable, non-compoundable, and cognizable on a complaint made to the police officer by the victim or by designated

relatives. Article 498A was passed by the Indian Parliament in 1983. In Indian Penal Code, 498A is a criminal law (not a civil law) which is defined as follows, *“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is cognizable, non-compoundable, and non-bailable”*.

The passing of the Domestic Violence Act 2005 was an important marker in the history of the women’s movement in India. Prior to this Act, Domestic violence survivors were hampered by a reluctance to enforce domestic violence as a criminal offence. Although criminal proceedings and injunctions were available under the Indian Penal Code and existing legislation, Domestic Violence was registered as a private family matter and police and courts were generally unwilling to take action against the offenders.

The specific piece of legislation "Protection of Women from Domestic Violence Act 2005" was brought into force by the Indian Government on October 26, 2006. The Protection of Women from Domestic Violence Act, 2005 was extended to the whole of India except to the state of Jammu and Kashmir due to the prevalence of Article 370. It was on 28th April 2010 that it received the assent of the Governor and the ‘The Jammu and Kashmir Protection of Women from Domestic Violence Act-2010’ (PWDVA) was formed. This Act is in force in Jammu and Kashmir since 12 July 2011.

The main features of the PWDVA, 2005/2010 can be summarized as:

- The Act clearly states that its basic aim is to provide effective protection from domestic violence.
- It recognizes the right of women to be free from Domestic Violence.
- Domestic Violence has been explicitly recognized as a violation of Women’s rights.
- It defines the domestic violence concept which is broad and covers the various aspects of domestic violence which includes- physical, mental, emotional, sexual, and economic- based on women’s experience of such violence (Section 3 of PWDVA).
- It recognizes a woman’s right to reside in the matrimonial home i.e., shared household, and protection of her from being dispossessed and becoming destitute (Section 17 and 19 of PWDVA).
- It aims at providing quick response of law, through immediate order to prevent further acts of violence (Section 18).
- The Act provides the remedies for women’s multi needs which can be addressed through single litigation in one court therefore strongly reducing the time and money spent by aggrieved women on legal interventions.
- This Act recognizes that legal remedies would not be adequate to help the victim live her life with dignity, thus multiple support structures have been created to holistically address women’s needs for counseling, shelter, and medical support.
- The Act complements existing matrimonial and criminal laws on domestic violence which provide a wider option in legal provisions to effectively address the specific situations and needs.
- Provides the remedies for women’s multi needs which can be addressed through single litigation in one court therefore strongly reducing the time and money spent by aggrieved women on legal interventions.
- Multiple support structures have been created to holistically address women’s needs for counseling, shelter, and medical support and the appointment of a Protection Officer to assist the victim of domestic violence.

- Protects and provides remedies to the wife, ex-wife, widow, and women in a relationship or a nature of marriage. In addition, several other categories of women facing domestic violence that were not marital in nature are also covered by this law, such as mother, daughter, sister, joint family member, and children (male and female).
- In case of a complaint, it is not necessary that the women victim or survivor of domestic violence alone can file a complaint under it rather any Protection Officer or any other person who has the reason to believe that an act of domestic violence has been, is being, or is likely to be committed, can file a complaint which includes neighbors, relatives, social workers, or any other concerned citizen.

Implementation of Domestic Violence Act in Jammu District

The formulation of this comprehensive law was one of the important steps towards the recognition of women's rights, but many problems arise in the implementation of this law. The effective implementation of this legislation depends on many factors including the efficient role played by the support system like State as well as other implementing agencies. Further, effective implementation requires coordination among the various agencies like police (Women Cell), Social welfare department, health departments, judiciary, and NGO's.

Implementation of the laws related to women is a worldwide problem and the same situation was found while studying the prevalent trends of domestic violence in the Jammu district. It was found that there are inherent difficulties in the implementation of the Act though there are cases registered under this law in the Jammu district. Various problems which were encountered while studying the nature, forms, magnitude, and existing trend of domestic violence in the Jammu district were:

- a) Difficulty in identifying and obtaining accurate data as cases related to domestic violence were highest in number.
- b) The unavailability of an accurate number of domestic violence cases because of the inhibitions on the part of the victims to report the cases of domestic violence as they fear the possibility of more violence in the future.
- c) Due to the traditional value system because of which the victims, as well as the family members were found reluctant to register cases due to the reputation and honor of the family in the community and society at large.
- d) The lack of trust in the legal system, which was generally seen as a process of speedy justice but the respondents who have registered their cases in the court found them as a delayed process.
- e) The respondents also faced the invisible cost of securing justice in terms of tension, harassment, fear, and adjustments.

The information which was gathered through various sources like advocates, academicians, police officials especially the Station House Officer (SHO) Women Cell indicated that there are many serious problems in the implementation of the PWDV Act in the Jammu District. Various advocates who were interviewed were of the opinion that though they receive 8 to 10 cases of domestic violence every day, the proper usage of the Act as per the prescribed guidelines provided under the Act were not followed as well as provision of reliefs available under this law were actually not received by the victims of domestic violence. The first and the foremost lacuna in the implementation of the Act in the Jammu district is the lack of appointment of Protection Officers/ Service Providers, establishment of Shelters Homes, and availability of Medical Facility separately to be provided to the victims of domestic violence if required. As per the Act, the State government shall appoint Protection Officers, Service Providers

and establish Shelter homes with medical facility. The various agencies were delegated with some powers and duties as per the Act:

1) Protection Officer

Protection officers facilitate access to court and support systems and take action to prevent further domestic violence (Lawyer Collective 2009, 37). Protection Officer (P.O.) can also file a Domestic Incident Report (DIR) on behalf of the aggrieved woman with police and the concerned magistrate. Looking in the context of the Jammu district it has been found that to perform all the above-mentioned duties there are no Protection Officers appointed by the state government as yet. The reasons for the non-appointment of the P.O. were investigated but no satisfactory responses were received. As per the information collected through the ICDS office, it was revealed that CDPOs have been assigned the additional duty to act as Protection Officers. However, this was only a verbal communication as there was no written order that states or assigns duties to CDPOs to act as Protection Officers. They also revealed that they are not provided with any specific training as well as they are under-qualified and sometimes too overloaded with other works to effectively cater to their additional duties as P.O.'s. This kind of arrangement done by the State government is only an eyewash.

Another interesting fact that was revealed by the SHO Women Cell was that in the Jammu district the duty of the protection officers is discharged by the SHO Women Cell or the police officials of the concerned Police Station where the DIR is reported regarding the domestic violence. The various sections under PWDV Act explain the different provisions to be provided to the victim of domestic violence but in actuality very few of them like compensation or monetary relief, residence order were accessed by the victims in the case of the Jammu district. Moreover, the settlement of a large number of cases indicates that by and large SHO's who are acting as Protection Officers were into counseling, leading to under-utilization of the various provisions granted under the PWDV Act.

Another important factor that led to the under-utilization and implementation of the Act is the lack of awareness among the people. It was found during the research that the respondents were almost unaware of any such provision. They just know about the Women Cell where they approached through friends or relatives. Some of the respondents even quoted that it was only through the Women Cell they came to know that there is some Act for dealing with the cases of domestic violence.

The information collected by the personal interviews with some police officials, and advocates revealed that cases of domestic violence are filed and registered under 498- A first rather than under the Domestic Violence Act. This revealed that police officials were not aware of the procedures and benefits of the Act.

2) Service Providers

Service providers are the voluntary organization or companies registered under the Societies Registration Act, 1860, and companies registered under the Companies Act, 1956 to protect the rights and the interests of women. There are recognized women organizations and women's NGOs which played and are playing a pivotal role in providing services to women facing domestic violence. They provide facilities like counseling, shelter, medical aid, legal aid, financial support, etc. The service providers are required to provide assistance by recording the domestic incidence report and forward a copy of it to Magistrate and Protection Officer if the victim so desires; to facilitate victim to have access to other support services for example: get the aggrieved personal medically examined, ensure the provision of shelter in the shelter home etc. The PWDVA protects all the action taken in good faith by service providers towards the prevention of commission of domestic violence.

A shelter is a place that provides protection and basic needs to the individual. Shelter Home/Short stay home can be registered under PWDV Act. In the Jammu district, no separate shelter/short stay homes were available for the victims of domestic violence. The victims had managed on their own whenever they are evacuated from matrimonial homes due to domestic violence. It was also found in the study that many of the victims were either helped by parents, relatives, friends, and neighbors in the time of need when they were badly abused and thrown out of the matrimonial home. Thus, it can be said that the basic facilities through these agencies, which are required and recommended under PWDV Act were missing in the context of the Jammu district.

The data taken from various sources show that large numbers of cases of domestic violence have been registered under the available provision. However, a lot is required to be done on the part of the government for its effective implementation. Somewhere the effective implementation is hampered because of the financial constraint to appoint the Protection Officers and provision of service providers, shelter/short stay homes and medical facilities that ensure justice to the victims of domestic violence. But the proper implementation cannot be shrugged off by the State under the pretext of financial constraint. On the other hand, awareness of this Act among women is required both in rural and urban areas. When asked about the provision of “Protection of Women from Domestic Violence Act 2005/2010”, it was found that in the urban areas nearly 30 percent of the respondents were aware of the Act whereas 70 percent of them were unaware of such a provision. In the rural areas, 100 percent of the respondents were ignorant about the Act and few were of the view that if ever there is any such law it is not for people like them as they were totally illiterate and ignorant. Few of them were of the view that such type of law is not going to help in reducing the violence as they believed that it is the patriarchal mindset that needs to be changed first. Few of them even said that they are not even allowed to speak or retaliate against the pain or injury which was inflicted on them especially through battering: reaching out to police or taking help of the judicial system is out of question, it will not help even the coming generation of girls, they also have to live with the practice of discrimination, ignorance, and pain. These responses showed that there was a lack of awareness among the women regarding the Act as well as many barriers to accessing the available provisions.

This Act cannot be considered as a panacea of all gender-centric issues as societal mindset requires a rational makeover and it further necessitates some concrete efforts at various levels to eliminate this problem. Although this landmark legislation seeks to deter domestic violence in all forms against women including harassment due to dowry and causes like inability to bear a child or a male child, sexual harassment etc. but there is no honest implementation of the Domestic Violence Act in Jammu District. The information and the data collected from various sources show that a large number of cases are dealt with under the PWDV Act, hence signifying the proper usage and implementation but primary information gathered through personal interviews shows the signs of the dismal failure of the Act in Jammu District.

Suggestions

To curb the problem of Domestic Violence and proper implementation of the PWDV Act in the Jammu district various measures or remedial actions are required:

- It is important to generate awareness among women especially poor and illiterate regarding the provision of various rights and legal safeguard measures provided under this Act.
- There should be proper implementation of the Act in reality as mere enactment of the Act would not help to fight domestic violence.

- Appointment of Protection officers to be made (preferably women) as soon as possible so that the victims get the appropriate person (agency) to approach to lodge the complaint of domestic violence.
- Other facilities like shelter or short stay homes and separate medical facilities for the victim of domestic violence be provided as these agencies are totally missing in Jammu District.
- Social attitudinal changes are much required to consider both sexes as equals, and socialization right from the beginning be done so that both sexes grow as equals.
- Media, both print and electronic should play an important role in highlighting the issues pertaining to violence against women and also educate women regarding available provisions and their legal rights.
- In Jammu, there is the availability of just one Women Cell to report incidences of violence against women. Therefore, one more Women Cell along with women police stations to be established to cater to the needs of a large number of women facing domestic violence.
- Proper Counseling Centres should be established to lower down the rate of divorce. There should be a focus on counseling of men also. The centres should try to reconcile the spouses (in cases of minor issues) so that their homes can be protected which would reduce the number of broken families.
- The focus should not be on relief measures only but on structural changes which would empower women and help them to shun learned helplessness and hence make them less vulnerable to violence. These include education, a good job, and enough property in their name. This would generate self-confidence.
- The PWDV Act 2005/2010 should be centrally sponsored so that it can be implemented whole-heartedly by various States/UT's including Jammu and Kashmir.
- Proper training and appointment of various agencies provided under the Act should be done on priority for better results.
- Lastly, along with the stringent implementation of the Act rational makeover of the mindset and stereotypical thinking need to be changed to bring the actual visible change in the society.

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