



# SAFEGUARDING OF WOMEN THROUGH THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AND OTHER RELEVANT LAWS

**RITIKA YADAV**

**LL.M**

**Arihant Law College Haridwar**

**Affiliated To**

**Uttarakhand Technical University, Dehradun (U.K.)**

## **ABSTRACT:**

Women all over the world are subjected to many kinds of abuses and tortures and there are several international documents guaranteeing them basic rights of equality, dignity etc. Though almost all the nations of the world have drafted various state legislations in consonance with these international documents for ensuring the rights of women, the fact is that violences in various forms against women is not getting reduced. Domestic violence means the violence that is happening inside the home, or in a marital relation or cohabitation and this offence has become a global phenomenon. In this paper, the author has analysed the Protection of Women from Domestic Violence Act 2005 in India which deals with various types of abuses, the relief available to the aggrieved, the procedure for availing the relief etc. It is sure that the Act is an effective safeguard for the women. But at the same time, there are many cases of misuse of the Act. The paper is prepared by referring the Act, related articles and cases. The author attempts to point out the lacunae of the legislation and provides some suggestions for the proper implementation of the Act.

**Key Words** - Domestic Violence, Abuse, Equality, Article 21, Judicial approach.

## **INTRODUCTION**

Domestic Violence, a form of Social Evil that has been prevalent in our society for ages. As a social construct, it is the ill-treatment (mostly focused on physical abuse) of the wife by the husband. In a much broader sense, it is any physical, sexual, mental, emotional, or financial abuse of the woman by the partner or any of his family members. Domestic violence is a worldwide phenomenon that spreads across all boundaries of, race, caste, culture, ethnicity, etc. It is not just a form of abuse but a pattern of coercive control that one tries to maintain over their intimate partner, it is the use of power to maintain authority. This practice is passed down in our society by generations as the practice of one man reverberates through a family into the future. In modern times though the increase in awareness amongst the masses and the strict legislation for the same has led to a slight improvement in the condition of women. Over the last decade, the deep study on this topic has led to the recognition of this issue as a public health problem. However, the problem of domestic violence is very much prevalent in our country irrespective of rural-urban differentials. Women made 1,477 complaints of domestic abuse between March 25 and May 31, 2020, which was greater than the amount of complaints reported in the previous ten years for the same time period. This is after considering that 86% of women who experience domestic abuse do not seek any professional help, and 77% of the victims did not even mention the incidents to anyone<sup>1</sup>. While the demand for Dowry remains as the source of the problem, factors such as order, income, illiteracy, and having a partner who drinks are also major contributors.

Section 498A Of the Indian Penal Code(IPC) is the Criminal Law that deals with the abuse of a married woman. Introduced in the Criminal Law Amendment Act 1983, Section 498A was inserted in the provisions of the IPC to safeguard women against abuse and empower them. According to a 2019 report by The National Crime Records Bureau (NCRB), Almost 30.9% cases of all the cases of crimes against women were registered under Section 498A of the IPC<sup>2</sup>. Many provisions for women's welfare have been established since then, one such provision is the Protection Of Women From Domestic Violence Act 2005.

## **HISTORY & BACKGROUND**

### **I. Domestic Violence in India: What does it constitute**

In the context of violence against women, 2 terms are constantly used: Domestic Violence (DV) or more specifically intimate partner violence (IPV). Domestic violence can be described as the power misused by one adult in a relationship to control another. It is the establishment of control and fear in a relationship through violence and other forms of abuse. It is a wider term that includes all physical abuse within a house, not limited to abuse to a woman from her partner, but could include abuse from in-laws, abuse of the elderly or children in the house. Intimate Partner Violence is what the man unleashes on the woman. Such DV or IPV violence

<sup>1</sup> Domestic violence complaints at a 10-year high during COVID-19 lockdown". The Hindu, E-paper, available at <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>

<sup>2</sup> Indra Sarma vs V.K.V. Sarma on 26 November, 2013, Indiankanoon.org, available at <https://indiankanoon.org/doc/192421140/>

can take the form of physical assault, psychological abuse, social abuse, financial abuse, or sexual assault. The frequency of the violence can be on and off, occasional or chronic. Like other countries such forms of violence exist in India. However as per crime reports, forms of violence such as forced abortion, widow burning, rape, dowry deaths are highly prevalent in India. Moreover, domestic violence in India is traditionally seen in the context of marriage. The National Family Health Survey-2005, indicated that 37.2% of women “experienced either physical or sexual violence” after marriage. However, the usual context in which such violence occurs also needs to be explored. Most cases of domestic violence in India have seen to exhibit the theme of ‘patriarchal ideology’. The patriarchal structure of the Indian household is seen to affect the women’s agency either through marriage, active discrimination by means of abuse and diminished women’s agency through limited economic opportunity. Most violence in the patriarchal Indian home is attributed to patriarchal beliefs and the manifestations of a culture that is tolerant of violence. Bhatti 1990 study, reported that most of the respondents agreed that men beat women because they have to be controlled and kept in their place. As per a recent report by UNICEF, 57% of boys and 53% of girls in India think a husband is justified in hitting or beating his wife. This portrays that not only adults but also adolescents harbor patriarchal beliefs. The problem with violence within the Indian home is also the consideration that it is a ‘private matter’.

In India, domestic violence often happens as a result of dowry demands. Dowry can be seen as a manifestation of the patriarchal structure in India. Dowry is exchanged in a majority of Indian weddings. Although its practice became illegal post Dowry Prohibition Act 1961, dowry flourishes among most social classes. Families of the bride and groom negotiate transfer of assets to the groom and his family in exchange for marrying the bride, often within the context of an arranged marriage. Dissatisfaction with the amount of dowry may result in abuse of the bride. Researchers have also documented this link. A 2005 study by Srinivasan published in World Development, found that domestic violence is lower among women who bring larger dowries. A study by Mahek Singh in Family Counseling Centers (FCCs) in Chandigarh showed that dowry is a significant factor for marital discord, where around 36.2% of the married women who approached the FCCs complained of dowry-related violence. In extreme cases "dowry deaths" or the murder of the bride by her husband and his family takes place. Numerous incidents of bride burning, harassment and physical torture of newly-wed women and various kinds of pressure tactics are adopted by the husbands/in-laws pressurizing them for more dowry. In 2011 alone, the National Crime Records Bureau reported 8,618 dowry harassment deaths.

Another common factor associated with the high prevalence of domestic in India relates to socio-economic status of women. The lack of financial independence and the stigma associated with divorce acts as a deterrent to women in India and forces them to stay with their husbands. Research in India has documented that woman from lower socio-economic status experience more physical violence than women from higher economic status (Bhatti 1990; Visaria 1999). While non physical forms of abuse are prevalent in higher socio-economic categories, reports of physical assault are substantially higher in the lower classes.

## II. The need for legislation on domestic violence: Lacunae in Previous Provisions

Of all forms of criminal behaviour, domestic violence is among the most prevalent and among the least reported. One reason for this anomaly is that till DV Act 2005, remedies available to a victim of domestic violence in the civil courts (divorce) and criminal courts (vide Sections in Indian Penal Code) were limited. Few provisions existed for the married woman to address issues of domestic violence. The existing personal laws (Hindu, Christian, Muslim) and few secular ones like the Special marriage Act deal only with marriage and the breakdown of marriage. None of these offered any safeguard or right for the woman to live in peace in the matrimonial home. This omission makes it easy to throw a woman out on the street with or without the dowry she brought with her and to coerce her into divorce or a maintenance settlement. Also, to continue receiving such settlement, the divorcee has to remain chaste and not remarry. In many cases, a woman does not opt for a divorce, as she fears losing custody of her children considering the fact that the father is considered the natural guardian of the child. Though the Dowry Prohibition Act was introduced in 1961, it did not bring much succor. Initially, the offences under the Act were made non cognizable, bailable and non compoundable. The Act has failed in its operation because of this.

For another twenty years, there was a hiatus. In the 1980s, two important provisions that brought domestic violence out of the private closet into the public domain were enacted. The first of these was the introduction of Section 498A of the Indian Penal Code brought in through Criminal Law (Amendment) Act, 1983, which criminalized violence in marriage, both physical and mental, inflicted on women. All violence faced by women within home was usually attributed to dowry. Section 498A, IPC was hence brought to address dowry related violence. Fortunately, although conceived as a protection against dowry harassment, the text of Sec 498A was wide enough to apply to other situations of domestic violence. Section 498A laid down that a *“husband or relative of husband of a woman subjecting a woman to cruelty”*. The second were the new provisions of Section 304B, Indian Penal Code and Dowry Prohibition (Amendment) Act, 1986 read with Section 113B of the Indian Evidence Act, 1872 creating a new offence of dowry death. Both the 1983 & 1986 amendments have amended the CRPC and Evidence Act., However, Section 498A, IPC had limitations as it did not take into account day to day violence in the household and delegitimized the violence faced by married women at the hands of other relatives. Also, mental harassment is open to subjective interpretation and as far as physical cruelty is concerned, visible evidence is preferred. Hence, in the absence of any bruising or marks, it became impossible to lodge a complaint. Also, this provision dealt with abuse of persons within the institution of marriage.

### III. Evolution of the Act: The Women's movement

Protection of Women from Domestic Violence Act (PWDVA) was a part of a longer history of feminist engagement with violence against women. It is hence imperative to explore the history of the campaign. Beginning in 1970's, feminists came together in what were later termed as 'autonomous woman organizations. These groups were independent of party affiliation although individual members often had party links. Between 1975 and 1980, the movement focused largely on economic and demographic issues. Issues of violence were given scant attention. However, in 1979-1980, the movement shifted gears. The women's movement led by autonomous women's organizations brought issues of sexual violence to the forefront of the feminist agenda. This broadening of feminist agenda was catalyzed by political mobilization around the

Mathura case. Women activists undertook to organize campaigns around other key issues of gender violence – dowry deaths, rape, wife beating, female foeticide & sati. The anti rape protests were followed by anti dowry campaigns. There were accounts of what the women's movement termed ' bride burning' or dowry deaths. The agitations by feminist groups across the country were able to attract the attention of the State to the growing incidents of the so-called death-by-fire. The campaign highlighted the difficulties in invoking the law in cases of dowry related violence, for a range of reasons. For instance, dying declarations by women were seldom treated as evidence against the husband and in-laws; and even cases that were registered on the basis of dying declarations were later dismissed by the courts on the ground of inadequacy of evidence. Thus, charges of murder, abetment to suicide could not be successfully invoked. Similarly, police would be reluctant to intervene, arguing that it was not the task of the police to intervene in “family quarrels”.

The women's movement campaign led to the reforms in rape law via the Criminal Law Amendment Act 1980, Criminal Law (Second Amendment) Act in 1983, which introduced Section 498A in the Indian Penal Code (IPC).

Many western countries passed laws against domestic violence in the 70s. Unfortunately, in India, the women's movement had not raised the demand for a similar law at that stage. However, it was only after the new provisions were sought to be activated in the courts, that the women's movement realized that the focus on dowry related violence and death had been rather narrow, for it ended up distracting attention from the other numerous instances of violence that women were faced with in the home, which were not necessarily dowry related. While it was still possible to bring cases of everyday violence against women in the home within the scope of Section 498A, it was not possible to use 304B, if the violence and the eventual death were not linked with dowry. There were other limitations noted in these provisions. There was also the notion that relying on criminal law remedies alone to address domestic violence does not fully recognize the responsibility of the State towards the victims of violence. On the other hand, existing civil law remedies were unable to provide effective and timely reliefs to women facing violence. A persistent problem in cases of domestic violence is that women are thrown out of their homes. Such considerations made it imperative to conceptualize a law on domestic violence that would be a combination of both civil and criminal law elements. The involvement of Lawyers Collective (LC) comprising a group of lawyers and activists, with the process of formulating a law on domestic violence began when the National Commission for Women (NCW) requested them to prepare a draft bill on domestic violence in 1993. The first draft for a civil law on domestic violence was prepared and presented to the NCW in 1994. But, amore focused campaign for the law began only in 1998. It was realized that the first step should be to give greater visibility to the issue of domestic violence and introduce the legal community to the issues at stake. This led to a national-level colloquium on domestic violence, involving lawyers, academics, activists, and most importantly, the appellate judges. The colloquium entitled “Empowerment through Law” was an important milestone. The bill drafted by LC was extensively discussed at the colloquium and given a more concrete shape. Between 1998 and 2001, LC began a dialogue within the women's movement on the draft proposal. In 2001, the Lawyers' Collective Woman Rights Initiative formulated the 'Domestic Violence against Women (Prevention) Bill'. It took into consideration several prevalent forms of violence against women (sexual, verbal, physical, mental, or

economic) and proposed a mechanism for women to approach the court for a protection order to prevent further violence and to ensure that they do not have to leave their home. The Lawyers' Collective laid a lot of emphasis on the need to give women the right to a shared household and the appointment of Special Protection Officers to counsel women and to offer them necessary assistance in distress. After going through a series of consultations and meetings, the final version of the bill was submitted to the National Commission for Women, the department of women and child development and other government agencies for consideration. However, on March 8, 2002, the National Democratic Alliance (NDA) government, introduced a separate bill entitled, "Protection from Domestic Violence Bill, 2001" (hereinafter, GOI Bill) in the Lok Sabha.

The scope of the GOI Bill was much narrower than the LC Bill, in terms of categories of aggrieved persons and limited with respect to the nature of reliefs available. person. As per the Bill, the respondent was required to be a "relative" of the aggrieved person, the term "relative" defined as persons related by blood, marriage or adoption. The implication of this was that women who were in relationships other than legally valid marriage were excluded from the purview of the law. Section 4(2) of the GOI bill allowed the respondent to take the plea of self- defense in cases of domestic violence. The GOI Bill also had a provision requiring mandatory counseling for the aggrieved person and the alleged abuser. This was unacceptable as it put the abuser and the victim on the same plane. The definition of domestic violence in the GOI Bill, among other things required the conduct/assault of the respondent to be "habitual" or what made the "life of the aggrieved person miserable by cruelty".

Moreover, few other provisions were found to be vague. Hence, in terms of content, the GOI Bill not only fell short of what the women's movement had been asking for, but it was feared that if enacted, it might have dangerous implications for women facing domestic violence<sup>3</sup>. After having lobbied for a bill to check domestic violence, proponents felt cheated by the government. Government on the other hand argued that they cannot take an extreme feminist position and will have to keep in mind the social context of India.

#### **IV. Key Reports: Parliamentary Standing Committee**

In response to the outrage expressed by women's groups against the GOI Bill, it was referred to the Parliamentary Standing Committee on Human Resource Development to examine the provisions of the bill. Between May and December 2002, the committee heard the views of the department of women and child development, invited memoranda from individuals and organizations and also received oral evidence and presentations by different women's groups such as the Lawyer Collective Women Rights Initiative, NCW, Sankalp, etc. Key flaws and omissions in the GOI Bill were pointed out. It was impressed upon the committee that arriving at settlements and salvaging marriages should not be the function of a law on domestic violence. Comprehensive modifications were suggested therein to integrate various forms and manifestations of domestic violence and to enlarge the protection, reaffirming standards of the human rights of women, as defined by the international human rights instruments to provide effective protection to women from domestic violence in the national law as well as in the national practice.

The Report of the Committee was presented to both the Houses of the Parliament- Lok Sabha and Rajya Sabha on December 12th, 2002. The report reflected that most of the suggestions made by LC were accepted by the committee. On the issue of not including women falling outside the narrow scope of the term "relative" within

the ambit of the Act, the response of the State was that “such women as have been living in relationship akin to marriage without legal marriages were not included simply because the prevailing cultural ethos of the nation did not encourage such relationship”. The committee in its report stated that there were, in fact, numerous cases of men and women living together without valid marriages and yet having social sanction. Besides, the primary issue in providing relief to women faced with domestic violence was the recognition of the woman’s human right to a dignified life and not the propriety of the relationship she was in.

Thus, it was concluded that providing relief under the bill to a woman whose marriage is not legally valid will not be in conflict with the existing laws and will not give any legal sanction to illegal marriages.

### **V. Legislative Process: Introduction & Passage of the PWDVA 2005**

The NDA Government had introduced the first draft bill on domestic violence in the 13th Lok Sabha on 8th March 2002. The bill was referred by the 13th Lok Sabha to the Department Related Standing Committee on HRD. Thereafter the Standing Committee sought comments and suggestions from individuals and institutions and on the basis of these suggestions, the committee made several recommendations for modifications in the bill. The dissolution of the 13th Lok Sabha in February 2004 made an inroad for accepting the recommendations of the Standing Committee.

As soon as the UPA government assumed office, the Department of Women and Child Development reexamined the provisions of the said bill under the directions of the Minister of HRD and while drafting the bill, concerns of women right groups were taken into consideration. The Government of India introduced a new bill in the 14th Lok Sabha on 22 August 2005. The Bill was passed by Lok Sabha on 24th August and by Rajya Sabha on 29th August. It received the assent of the President on 13th September. However, it came into effect from October 26, 2006. The Act extends to whole of India except the State of Jammu & Kashmir. The new Act ensures that a hearing would be held within 3 days and the case would be disposed off within 60 days, The new Act contains five chapters and thirty-seven sections.

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

The Act was enacted by the parliament of India on 26 October 2006 to protect women from domestic abuse. Unlike the IPC (*Section 498A*) that focuses primarily on penalizing the accused this act provides for a protection order rather than a punishment order which means that the act focuses primarily on providing remedies to the victim. The act provides Civil remedies as well as comprehensive legislation for combining them with criminal procedures to provide immediate relief to the victim. Prior to the passing of the Act, there was no established definition of Domestic violence in the Indian Law therefore this act provided for the definition of Domestic violence. The act provides for the protection of women from their husband’s abuse and also extends to any female member of the victim’s family. It gives the Magistrate power to pass a protection order in favor of the victim to prevent the abuser from committing an act of domestic violence also establishes provisions for the appointment of Protection Officers.

### **Domestic Relationships and Violence**

Domestic relationship” is defined in *Section 2(f)* of the Act as a relationship between two people who live or have lived together in a shared household at any point in time, and are related by consanguinity, marriage, or through a relationship like marriage, adoption, or are family members living together as a joint family.

In other words, Domestic relationships are relationships between a man and a woman living in a shared household [defined under *Section 2(s)*]. Domestic relationships can be a marriage, a blood relationship, or any other form of relationship formed through adoption, or any ‘relationships like marriage’ like a live-in-relationship. The act recognizes the rights of women in various domestic relationships, including marriage, a relationship resembling marriage (like a live-in relationship), or a familial relationship. While the act does not explicitly mention live-in relationships, the definition of a “domestic relationship” can include relationships “in the nature of marriage.” This implies that the scope of the act can extend to provide protection to women in live-in relationships under certain circumstances. To avail the protections under the PWDV, a woman in a live-in relationship needs to establish that she was in a relationship with the abuser and that they lived together in a shared household. The concept of a shared household is significant here, as it refers to a household where the aggrieved woman and the respondent (the abuser) lived together or have at any time lived together in a domestic relationship. Therefore, if the couple lived together in a shared household, the woman can seek protection under the act. But not all live-in relationships are considered relationships like marriage. As found in the case of **INDIRA SARMA vs VKV SARMA (2013) (15 SCC755)**.<sup>3</sup> The Court in this case gave a list of guidelines that are required to test the concept of live-in-relationship which included duration of the relationship, domestic arrangements, sexual relationship, children, intention, and conduct of the parties, etc. Also, *Section 2(q)* defines the respondent as an adult male who has been in a relationship with the aggrieved person and against whom the complaint is filed. It also states that the woman can file a complaint against any relatives of the partner.

*Section 3* of the act defines **Domestic violence** as the following:

- Any form of abuse in the form of physical, sexual, verbal, or emotional abuse and economic abuse that causes harm to the physical or mental health of the woman or endangers her life and safety or,
- Any harassment or injury to the woman to meet any unlawful demand such as Dowry from her or any person related to her or,
- Any threat of causing harm or injury

## **PROTECTION OFFICER**

<sup>3</sup> Indra Sarma vs V.K.V. Sarma on 26 November, 2013, Indiankanoon.org, available at <https://indiankanoon.org/doc/192421140/>,



Protection officer is defined under *Section 8* of the Act. A Protection Officer (PO) is an officer (preferably a woman) appointed by the Government in each district. The job of a protection officer is to help the aggrieved in making complaints, filing an application before the Magistrate for orders, helping her in getting support like medical aid, counseling, etc., as well as making sure that the orders passed by the court are enforced.

Duties of Protection Officer as per *Section 9* of the Act are as follows:

- To make a Domestic Incident Report and present it in front of the magistrate. A 'Domestic Incident Report, according to *Section 2(e)* is the report of the complaint made by the aggrieved woman which is then forwarded to the magistrate and a copy to the police station having the jurisdiction over the matter.
- To ensure that the aggrieved person is provided with the necessary legal aid and to make sure that the person is provided with shelter home if required.
- The protection officer is also required to get the aggrieved person medically examined in case of any bodily injury. He is required to forward the report of the same to the magistrate.
- The protection officer ensures that the orders passed by the Court are complied with and executed. He is also required to do anything prescribed by the Magistrate.

## **SERVICE PROVIDERS**

A Service Provider is a voluntary organization (usually an NGO) registered with state governments aimed at protecting the rights and interests of women. They help in providing assistance and support to the woman facing domestic violence. A woman can approach a registered Service Provider for making a complaint under this Act. They assist her by providing legal aid, medical care, counseling, or any other support as they have the power of making the Domestic Incident report which they can then forward to the Protection Officer and the Magistrate. Just like the Protection Officer they can also get the aggrieved person medically examined and also provide them with a shelter home. They are defined under *Section 10* of the Act.

## **APPLICATION TO MAGISTRATE**

An application seeking relief under this Act can be filed to the Magistrate by the woman, or the Protection Officer, or any other person on behalf of the aggrieved person (like Service providers). The Magistrate then takes into consideration the Domestic Incident Report filed by the Protection Officer or the Service Provider before passing on order. The Magistrate fixes the date of the first hearing within three days of the filing of the application. This notice is served to the respondent by the Protection Officer.

It is the duty of the Magistrate to dispose of any application within 60 days from the date of the first hearing. The Magistrate can at any stage of the proceeding consult both the parties to undergo counselling by someone who possesses such qualifications and experience in counselling.

## RELIEFS

Section 18-22 of the Act provides for various reliefs that can be granted under this Act. They are as follows:

- **Protection Order (Section 18):** If the Court is satisfied that Domestic violence has taken place, then the court can pass Protection Order. A protection order protects the aggrieved person and prohibits the respondent from committing any act of violence. This includes physical, sexual, verbal, emotional, or economic abuse, as well as any other forms of harassment or harm. Not only that the court also prohibit the respondent from:
  - Entering the place of employment of the woman and causing harm or harassment.
  - Attempting to contact the aggrieved in any form
  - Providing any financial hardship by tampering with any asset that it conjointly owned by the respondent and the aggrieved, or any other way
  - Causing harm to the dependencies or any relative of the aggrieved, etc.
- **Residence order (Section 19):** This relief aims to ensure that the aggrieved has a safe place to reside. Not only that but the respondent may be restrained from dispossessing or disturbing the woman from the shared household. Under this section, the court can pass a residence order:
  - To restrain the respondent from disposing of the aggrieved from the shared household or
  - To restrain the respondent or any of his relatives from entering any portion of the shared household where the aggrieved resides or
  - To Direct the respondent to leave the shared household himself
  - Direct the perpetrator to provide an alternate accommodation for the aggrieved person
  - The Magistrate can also order the officer in charge of the police station having jurisdiction to ensure the proper execution of the order and can also pass protection order for the safety of the victim.
- **Monetary reliefs (Section 20):** This order can be imposed by the Magistrate to meet any expenses the woman may have incurred as a result of the violence faced. This may include any loss of earnings, any medical expense as a result of an injury caused, any loss of belongings, or maintenance for the aggrieved and her children. This relief should be adequate, fair and should be enough to maintain the same standard of living as before. In case of failure of the payment or maintenance, the Magistrate can order the deduction of the same from the respondent's wages.
- **Custody Order (Section 21):** Under this Section, the Magistrate can grant an order directing the Custody of the children to the aggrieved person. This is done to prevent the woman from being separated from her children. The Magistrate if deems necessary may allow the respondent to pay visits to their children. It is to be noted that this is a temporary order and cannot affect the rights under any guardianship laws.
- **Compensation orders (Section 22):** Under this Section, an order can be passed by the Magistrate to compensate for any physical, mental, or emotional injuries sustained by the woman due to domestic violence. This compensation is granted on top of any other relief (such as Section 20) under this Act.

- **Any Other Relief:** The protection order may include any other measures necessary to provide effective protection to the woman based on the specific circumstances of the case. The court has the authority to determine the appropriate relief based on the individual situation.

During the proceeding, the court can at any point of time pass an interim order to prevent the exploitation of the aggrieved during proceedings. This Act also provides punishment for the breach of Magistrate order by the respondent. According to **Section 31**, if the respondent violates a Protection Order or any interim order then he is liable for punishment with imprisonment for a term that may extend up to 1 year, or a fine which may extend up to 20,000 rupees, or both. And the court can also initiate proceeding under criminal law under Section 498A of IPC. This section ensures that the court has the power to intervene promptly and take necessary steps to protect the rights, safety, and well-being of the aggrieved woman, especially in situations where there is an urgent need for action. However, it is important to note that the punishment established by Section 31 of the Act would apply only to violations of protection orders issued under Section 18 of this Act and would not apply to maintenance orders issued under Section 20 of the Act.<sup>4</sup>

## **THE PROBLEM WITH LIVE-INS**

Although the act recognizes live-in relationships, the application of the Protection of Women from Domestic Violence Act (PWDV) of 2005 to live-in relationships in India has been marked by challenges and inconsistencies. Live-in relationships are legally not recognized as marriages in India. As a result, the interpretation and application of the PWDV to live-in relationships have been inconsistent across different courts. Some courts have recognized the rights of women in live-in relationships under the act, while others have taken a more restrictive approach. As found in the 2021 ruling of the Punjab and Haryana high court where they refused to grant protection to a young couple who moved to court fearing threat to life from the girl's family, stating that "the petitioners in the garb of filing the present petition are seeking seal of approval on their live-in-relationship, which is morally and socially not acceptable"<sup>5</sup>. Furthermore, the definition of a "shared household" under the PWDV has led to ambiguity in cases of live-in relationships. The act defines a shared household as a place where the aggrieved woman and the respondent live or have lived together in a domestic relationship. However, the lack of clarity on the criteria for determining the existence of a shared household in live-in relationships has caused challenges in applying the act to such situations. On top of that, Establishing the existence of a domestic relationship in a live-in arrangement can be challenging. Unlike marriages, which have legal documentation, live-in relationships often lack formal proof of the relationship. This can make it difficult for women in live-in relationships to provide evidence required to seek protection under the PWDV. One of the biggest problems is that the Live-in relationships still face social stigma and are

<sup>4</sup> Kerala High Court| Section 31 of Domestic Violence Act only applies to breach to protection orders; No penalty can be imposed for failure to pay maintenance, scconline.com, available at <https://www.scconline.com/blog/post/2022/12/15/legal-update-legal-news-no-penalty-under-section-31-domestic-violence-act-on-failure-to-pay-maintenance/>

<sup>5</sup> In Garb Of Protection Petition, Live-In Couple Seek Seal Of Approval On Socially And Morally Unacceptable Relationship: P&H High Court, livelaw.in, available at <https://www.livelaw.in/news-updates/punjab-and-haryana-high-court-denies-protection-live-in-couple-socially-morally-unacceptable-174285>

not widely accepted in traditional Indian society. Due to this stigma, women in live-in relationships may face reluctance or fear in seeking legal protection under the PWDV. Additionally, lack of awareness about legal rights and remedies available to women in live-in relationships further hampers their ability to access the provisions of the act. Additionally, PWDV acknowledges economic abuse as a form of domestic violence. However, in the context of live-in relationships, establishing economic dependence on the part of the woman can be challenging. The act's provisions for monetary relief and maintenance may not be easily applicable in cases where there is no formal legal or financial commitment between the partners.

## **SOME IMPORTANT JUDGEMENTS**

### **1. Sou. Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade and Ors. (2011) (SCC650)**

Any adult male who is or has been in a domestic relationship with the aggrieved woman and against whom the aggrieved woman has sought any remedies under this Act is referred to as a “respondent” under Section 2(q) of the Domestic Violence Act. but this case was the one that challenged the notion of excluding female relatives of the husband from coming under the ambit of this Act.

**FACTS:** Sandhya Manoj Wankhade after her marriage, moved in with Manoj Bhimrao Wankhade and his mother and sister in 2005. About a year later, she began experiencing abuses from the three of them therefore she filed complaints under several articles of the Protection of Women from Domestic Violence Act, 2005. The High Court however ruled in the favor of the in-laws and freed them of all charges. Therefore an appeal was filed in the Supreme Court for the same.

**JUDGEMENT:** The Apex Court held that Although Section 2(q) defines a ‘Respondent’ only as an adult male person, this provision widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved

wife or a female living in a relationship like marriage. Hence making, the complaints not just maintainable against the adult male person but also the female relative of such adult male.<sup>6</sup>

### **2. Binita Dass vs Uttam Kumar (2019) (262 DLT 368)**

Section 23 of the Act provides provisions for interim orders that can be passed by court for the welfare of the aggrieved woman; this can even extend to interim maintenance by the husband to the wife. This case argues if the wife's capability to earn a living on her own relieves the husband from paying maintenance.

<sup>6</sup> Sou. Sandhya Manoj Wankhade vs Manoj Bhimrao Wankhade & Ors on 31 January, 2011, Indiankanoon.org, available at <https://indiankanoon.org/doc/134989405/>

**FACTS:** The appellant had filed an application under the Protection of Women from Domestic Violence Act, 2005 along with this application she also had filed an interim application under Section 23 seeking interim maintenance.

The application was then rejected by the Magistrate on the ground that the petitioner was qualified and was previously employed nor did she have any disability that may disable her to earn her living. This decision was later challenged in the high court by the petitioner.

**JUDGEMENT:** The High Court held that the capacity to earn and actually earning are two different things. It is not the case of the respondent, that petitioner is employed or earning. Qualification and the capacity of the wife to earn cannot be a ground to deny interim maintenance to a wife who is dependent and has no source of income.<sup>7</sup>

## CONCLUSION

Domestic violence is one of the most widespread crimes against women. But until 2005, there was no legal definition for domestic violence. While provisions in Criminal Law did exist which dealt with similar offenses, the introduction of this Act led to the legal recognition of the crime. The PWDVA 2005 is a progressive legislation that seeks to protect women's rights and address the issue of domestic violence comprehensively. It aims to provide immediate protection, support services, and legal remedies to women facing violence within domestic relationships, promoting their empowerment and well-being. Though the act has progressed a lot and helped many aggrieved women, the sad reality is that in many parts of the country there exists no Protection Officer or any Service providers that can help women deal with such atrocities. There is also a lack of proper infrastructure facilities (shelter homes). Women also tend to remain in the abusive environment and not take any action, most of whom are unaware of the legal remedies available. If remedied, this can lead to the liberation of women from the bondage of abusive relationships.

<sup>7</sup> Binita Dass vs Uttam Kumar on 9 August, 2019, Indiankanoon.org, available at <https://indiankanoon.org/doc/92763076/>