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## **PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: AN EFFECTIVE STATUTE IN TODAY'S INDIAN SOCIETAL SCENARIO**

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### **ABSTRACT**

As it is true that the women have been exploited and deprived away from their rights over many years by the Indian male-dominated society. Due to the social, economical, political changing scenario in India, Indian government thought of changing the condition of women and providing them the protection from the varieties of violence at different levels. Hence after independence, many significant laws were enacted by the Indian parliament. Many provisions in such laws were made for the protection of the rights of women and offering justice to them. Indian constitution has conferred many fundamental rights to the women as equally to men. But the patriarchal society affected to those rights of women and forced them to live under its domain. Though there have been some sections like 498A of IPC & 304B for the protection of women but the proportion of the women's problems remained unsolved. They are still being bullied in family and other places. So the extreme need of the effective statute was created. Indian parliament resolved and enacted for the protection of women from the PWDVA in 2005 and brought into force from 26<sup>th</sup> October 2006.

**Keywords:** Domestic Violence, The nature of PWDVA, Scope and Significance of PWDVA, Need of Awareness of PWDVA.

### **Introduction**

The present research paper is a sincere effort to bring out the scope and significance of PWDVA in today's Indian societal scenario. The researcher intends to reveal the executive and evaluative nature of PWDVA as the effective statute for the protection of rights of women. This act is being effectively implemented in many states in India. The act is made of certain significant provisions that provide the women speedy reliefs from the domestic violence. The researcher wants to bring out the plight of the Indian women who being loyal and responsible as mother, wife, sister and so on roles, yet they become the victim of domestic violence. She is not equally treated as men. India is the land of mother where woman's place is supposed to be the highest yet she is neglected for everything and exploited at different levels especially at domestic household. So the PWDVA has been the most effective statute for the protection of women and most of the women have been seeking the protection under this act. The researcher intends that this act will enable the women by protecting their rights and make them aware about their place in the society and live free from the bondage of patriarchal society.

### **What is PWDVA, 2005? -**

PWDVA means Protection of Women from the Domestic Violence Act. It's very necessary to

make the concept of Domestic Violence clear for the proper clarification of the act. It has been a big question of the legal discussion that which kinds of offences can be entitled as domestic violence. Here is an appropriate and legal definition of domestic violence in article of 03 of PWDVA as following-

- 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 persons related to her to meet any unlawful demand for any dowry or other property or valuable security; or*
- c. *Has the effect of threatening the aggrieved person or any persons related to her by any conduct mentioned in clause (a) or clause (b); or*
- d. *Otherwise injures or causes harm, whether physical or mental, to the aggrieved person, (Lawyers Collective, 04).*

Thus, under the article of 03 of PWDVA, the concept of domestic violence is defined in such ways. In the above definition, there are certain words like physical abuse and sexual abuse, verbal and emotional abuse and economic abuse are also explained in the clear and ample words. Physical abuse refers to the any act or conduct of causing badly pain, harm, danger of life, limb, and health of the aggrieved person. Sexual abuse refers to any conduct of that causes to the abuses, humiliates, dignity of women. Verbal and emotional abuse refers to the insults, humiliation, ridicule and name calling. It also refers to harm pain to the aggrieved person. Economic abuse refers to the deprivation of the property or economic resource which belongs to the aggrieved person and he/she is entitled under any law or custom.

#### **The nature of PWDVA, 2005**

It always seems to be fair to know the nature of any law which is enacted for the people in any country in the world. Here it would be very important to know and understand the nature of PWDVA in India. It can be generally admitted that all laws in the world are emerged and enacted as the best statutory solutions to the variety of problems faced by the people. So it is true that laws are enacted for providing solutions and reliefs to the problems of people, bringing out the disciplines, punishing the criminals and finishing offences. In India, PWDVA is enacted and brought into force in all over the states in order to protect the women from the domestic violence and provide her the speedy reliefs. But one must know the background that compelled to the country like India to enact such statute for women. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination in its General Discrimination has recommended that state parties should act to protect woman against violence of any kind, especially that occurring within the family. Domestic violence is the prevalent issue in India. Hence PWDVA is enacted by the Indian government following the views of the above committees.

This act is enacted with many significant motives. It is necessary to know the nature of this act. The act includes five chapters and 37 articles. Any aggrieved woman is entitled to apply for her protection from domestic violence. There are many suitable and significant provisions stated for the speedy relief to the aggrieved woman. She can apply to the different persons such as the police officers, service providers, the protection officers and the magistrate who will assist her as per the provisions under the PWDVA as soon as the application is filed before any one of them. The aforesaid persons are entrusted certain duties and powers in the direction of the protection of women. Article 05 of PWDVA consists of the duties of the police officer, service providers and magistrate. Article 08 and 09 of PWDVA are consisted of the appointment of the protection officers and his duties and functions. He has been entrusted the duties to get filed the application of the aggrieved woman and

submit Domestic Violence Report (DVR) before the magistrate. The significant aspect of this statute is that the magistrate has been conferred an authority of issuing six important orders in the direction of the protection of the women.

Such orders are as following-

1. PROTECTION ORDER (ARTICLE 18)
2. RESIDENCE ORDER (ARTICLE 19)
3. MONETARY ORDER (ARTICLE 20)
4. CUSTODY ORDER (ARTICLE 21)
5. COMPENSATION ORDER (ARTICLE 22)
6. POWER TO GRANT INTERIM AND EX PARTE ORDER (ART. 23)

Thus, PWDVA is considered to be the significant statute due to the above aforesaid orders which assist the aggrieved woman to get the speedy relief from the domestic violence. Apart from the above aforesaid nature of PWDVA, the influence of the International Human Rights Treaties should also be taken into consideration because it always has the impact over the many laws in the different countries. In fact most of the laws are enacted by keeping the relevance of the International Human Rights Treaties. So there is also the influence of the International Human Rights Treaties on PWDVA. Here is a statement regarding it as following-

*In addition to using Case law and initiatives, ad the rights ad protection bestowed by the Indian constitution, Indian litigators, individuals and the Third parties can use International Human Rights Treaties of which India is a party in order to file Public Interest Litigation Petitions(PILS) in support of the PWDVA. These PILS can encourage the Indian central and state governments to enforce the provisions of the PWDVA, making them aware of the gaps between the Act and the reality on the ground. Enforcement measures can include greater budgetary allocations to service providers and domestic violence victim assistance programs, and recognition of monitoring systems already in place. Furthermore, individual complaints can use International treaties for litigating their claims after they have exhausted all their remedies under Indian domestic laws, like those under the PWDVA and the IPC (Lahiri Rakhi, 13)*

#### **The Scope of PWDVA:-**

So far as the international framework on violence against woman is concerned, there had been extreme need of articulating the most effective and strict statute for the protection of women from the domestic violence. Indian government enacted this act due to the influence of the policies and the declaration of many international committees. Though it was brought into force from 26<sup>th</sup> October 2006, yet it is not implemented in other states of India. Andhra Pradesh is the first state which implemented this statute significantly then it is extended to the many states like Maharashtra, Gujarat, Bihar, and Orissa and so on. The place of woman in the Indian society has been regarded as inferior to the man. She is always kept away from the different rights. She is the subject of exploitation for the patriarchal society. Though many years are passed to the independence but women are not still free from the bondage of the patriarchal society. Hence even in the modern and today's globalised world, she is still exploited in the family. The problems of women's suffering are not ended. But when PWDVA is enacted and brought into force, many women have sought the protection under this act. Therefore this act is being used mostly for the speedy protection of the women from the domestic violence. The scope of this act is extending in the every state in India and it is so strict and punishable if it is violated. Most of the people especially women have come to know the importance of this act, so they are seen seeking their protection from the domestic violence. So this statute seems to be an effective statute which assist the aggrieved woman and protect her. There is case based on the section 26 of PWDVA which refers in other suits and legal proceedings and extends to the scope of this act. Here is a statement-

*“To facilitate the process of obtaining urgent reliefs under the act, the jurisdiction is also given to other civil or criminal courts where other proceedings are pending or are initiated on behalf of the woman to avoid multiplicity of proceedings as mentioned under section 20 of the act.*

**Case-**

- AV Rajer v. J.Janet Sudha, MANO/TN/8493/2007, 12<sup>th</sup> April, 2007, mad

- JUDGE- Raja Suria

The wife had filed an application for maintenance in the magistrate's court for herself and her children. The husband also filed a case in the direct court for the custody of the minor children. Subsequently, the wife filed an application under PWDVA. The husband challenged the application before the Madras High Court in the ground that the magistrate's court has no jurisdiction to entertain in the application since reliefs were sought in cases already pending before other competent courts. Rejecting these contentions and dismissing the appeal filed by the husband. The High Court explained that PWDVA gives multiple options to women to facilitate speedy remedies. The court further explained that the provisions of the PWDVA are in addition to and not contrary to the provisions of any other law for the time being in force. The court held that the PWDVA provides the woman a choice to file either PWDVA or in any other civil (family) or criminal court. (Majlis, 68-69)

**Significance of PWDVA in Indian Societal Scenario: -**

From the enactment of the act to up to now, it has retained its more importance amongst the other laws in India. The act is more significant due to the provisions made under it. In compare to the other laws, this law has good merits and competency to assist the women to get speedy protection from the domestic violence. The law is made of easy and simple process of filing the complaint of domestic violence to the protection officer or service provider. There are many rules made for the better implementation and enhancing the effect of the law. Amongst such rules, here is a statement regarding rule no 09.

**Rule no.09- 'Action to be taken in case of emergency' which is the more significant aspect of PWDVA.-** *If the protection officer or a service provider receives reliable information through email or a telephone call or the like either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such an emergency situation, the protection officers or the service provider, as the case may be, shall seek immediate assistance of the police who shall accompany the protection officer or the service provider, as the case may be to the place of occurrence and record Domestic Incident Report and present the same to the Magistrate without any delay for seeking appropriate orders under the act. (Lawyers Collective, 18).*

PWDVA is consisted of many significant features which makes the act clearer and enhances its importance in the direction of the protection of the women from the domestic violence. Those significant features are as following-

- 1) This is a civil law directed towards issuing the preventive order such as residence order, protection orders, monetary orders, child custody and compensation order.
- 2) This act provides protection the aggrieved woman including mother, sister, and daughter and so on.
- 3) The Civil reliefs under the act so designed as to end the violence immediately and they are in the nature of emergency reliefs 'Stop Violence Orders'
- 4) The purpose of this law is to make woman free from domestic violence and provide equal opportunity to reside.
- 5) Any aggrieved woman can access the help from the police station, protection officer, service provider and the magistrate directly as per the provisions of this act.
- 6) The state government grants the NGO and stimulate in beginning the special cells department for women and children. Such special cells are working for the protection of the rights of women on a large scale.

7) This act includes single window clearance system in supporting women accessing the justice system. A woman can use the PWDVA to ask for an injunction restraining dispossession pending a divorce case or under section 498A IPC.

8) Section 14 of the PWDVA states that magistrate may recommend the aggrieved person and abuser the counseling which is the best means of better understand and immediate relief. This act has given directions to the special cells to counsel to any aggrieved person who filed a complaint of domestic violence in their special cells.

9) This act also states the punishment after the breach of the orders by abuser. The protection officer is also entitled to be punished if he/she disposed off duties towards the aggrieved person.

In this way, this act includes many significant provisions that can protect the rights of women from the domestic violence and enable them to be free and empower them to live happily. The act seems to be best remedy over the domestic problems faced by the women in Indian societal scenario. The aim of the act is to empower the women for getting their rights place and making free from the domain of the patriarchy in Indian societal scenario.

### **Extreme Need of more Awareness of PWDVA amongst Women:**

Indian government has enacted many significant laws for the sake of Indian people. But most of the people are not aware about the different laws. Especially it happens about the women who are socially, economically, and politically neglected by the Indian society time to time. Now due to the modernization and changing global scenario, the Indian women are also getting aware about their rights and seeking the help of the different laws in which certain provisions or sections are referred to provide the protection to the women. Yet their problems are not solved. They are the objects for the exploitations for the male dominated society. So one can see around that many matters regarding the rapes, murders and domestic violence of women take place by the cruelty of men. In compare to the place and rights of women in other developed countries like USA, UK and Canada, Indian women are not free to do as men can do. Through they have the equal rights as men given by the Indian constitution yet they cannot use of those rights. It is only due to the extreme impact of the patriarchal society so unless the women's place is not changed, they will be kept away from their rights.

Domestic violence of women is the dangerous crime that has been going on since many years in Indian society. Hence Indian government passed PWDVA for providing the speedy relief to the women. Because every woman plays very vital role as mother, sister, wife and so on. She is the most inseparable part of the world. She is as free as men. But she is kept away from her freedom and restricted for doing many things. So due to the domestic Violence, women fall victim to the suicides, loss of their identity, and so on. So PWDVA is enacted to relieve the women from the clutch of the domestic violence and enable them to live better life.

Though it is true that the act is the best remedy to the problems of domestic violence but there is also extreme need of awareness of the law. Actually many states in Indian have begun to implement this act and provided reliefs to the women from the domestic violence. Yet it needs to be spread everywhere so that every woman in the Indian society will get aware about this act and seek protection. Efforts of awareness of the act have to be begun at the different levels in all states and the central government should stimulate to its awareness on a great deal. Nowadays woman are really getting aware about PWDVA and seeking protection from the domestic violence under the act.

### **Conclusion:-**

In this way, the researcher has intended to reveal the nature, scope and the significance of PWDVA 2005 in Indian societal scenario for the rights of the women from the domestic violence. This act has been enacted to enable the women to reside free minded and empower with the security of their rights. The researcher clarified many references which indicate the significance of the act that makes it an effective statute. It can be used as a strong weapon by the woman for their protections

from the different kinds of violence at domestic level and other as well. Hence, the act is enacted with all the necessary and significant provisions which provide the speedy or urgent reliefs to enable them with proper justice. The act is effectively being implemented in many states in India and provided protection to the women. Through the executive and evaluative nature of PWDVA, it seems be extending to the extreme importance and has really been an effective statute, a gift for the women and relieve them from the domestic violence.

**Work Citations:-**

- [1]. Collective, Lawyers. *"The Protection of Women from Domestic Violence Act, 2005"*. New Delhi: Print Graphics. Print. 2007.
  - [2]. Lahiri, Rakhi. *"The Protection of Women from Domestic Violence Act: The Current Situation"*. Pub. By HRLV. Print. 2009.
  - [3]. D'mello, Audey. *"Defending Women against Domestic Violence"*. Pub. By MAJLIS. Print. 2012.
  - [4]. [https://en.m.wikipedia.org/wiki/protection\\_of\\_women\\_from\\_domestic\\_violence\\_act.2005](https://en.m.wikipedia.org/wiki/protection_of_women_from_domestic_violence_act.2005).
-