



## COMPARATIVE ANALYSIS OF DOMESTIC VIOLENCE LAWS IN INDIA & US

*By Divyansh Bhargava & Bharti Khara  
LL.M. in Criminal Law, SLS Noida.*

### ABSTRACT

When the perpetrator and victim have a close personal relationship, the crime is referred to as “domestic violence.” In addition to family members and friends, this covers ex-partners, spouses, live-in relationships and children. In India a law which deals with domestic violence is Prohibition of Domestic Violence Act, 2005” which is providing civil remedy. Under this law, the defendant is punished only if he does not execute the order of the court, remedies which are given under this act like protection orders, residence orders, etc. Further, our Indian law is not gender neutral and therefore, to combat such problems we need to understand the laws of other countries like Violence against Women Act, 1994 of US, understand criminals perception through Social learning theory and how by working on loopholes in Indian legislation will help in decreasing the domestic violence cases.

**Keywords:** Domestic Violence Act, 2005; Violence against Women Act, 1994; Social Learning Theory, Gender-neutral, loopholes.

### INTRODUCTION

Domestic Violence is a worldwide problem that is reaching across social, economic, cultural, racial & class differences across national boundaries. Domestic violence can be called the abused power of an adult person in a relationship to control another person. In

relationship by violence & other forms of abuse it is the creation of abstinence and dread. This violence may include a physical attack, mental abuse, social abuse, abuse or sexual assault. The violence can be on and off, occasionally or chronically frequent.

For domestic abuse victims, Protection of Women Domestic Violence Act (PWDVA) came into effect in 2005. To understand the character of domestic violence, the mixture of civil & criminal remedies has been done by the 2005 Act. In India there are an increasing number of cases of domestic violence. This can also be attributed to increased reports of domestic violence. Domestic violence was declared a federal crime by the Violence against Women Act (VAWA) in 1994. Violent crime against women had been declared violations of women’s civil rights and women get right to sue. What strikes the most positive is that ‘spousal immunity’ traditional privilege has been removed. The Public Prosecutors can now encourage abused women to witness against the violent husbands. In 2005, Violence against Women Act again authorized and define domestic violence as it includes “felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or



family violence laws of the jurisdiction”.<sup>1</sup> In 2021 again VAWA was passed by the House of Parliament which named as “Violence against Women Reauthorization Act, 2021.”(H.R. 1620)

PWDVA, 2005 states that any act, conduct, omission or commission which causes harm or injures or is likely to cause harm or injury, shall be deemed to be domestic violence by law. Domestic violence can constitute an act of omission or commission. In other words, before women resort to the law, they do not have to face abuse for long. The legislation also applies to children.<sup>2</sup> Domestic violence is committed by both men and women. But women, especially in our country, are most often the victims. In India, domestic violence generally refers to domestic violence against women.

### CRIMINOLOGY THEORY

Crimes perpetrated in a private space, for example domestic violence, are regarded less troublesome than offenses perpetrated in the communal area & are frequently overlooked & rejected by public interest. In the late 19th century, domestic violence was first acknowledged and was identified as a social problem and related to child cruelty & marital violence. But it wasn't before the middle of the 20th century that various forms of domestic violence were emphasised & made able to be seen in society during the course of the five decades.

The causal theories of domestic violence include the “intergenerational theory.” This is frequently called the “cycle of abuse” founded on a premise, “violence begets violence,” and it originates from the “theory

of social learning”. This indicates that young men who have seen or experienced domestic abuse have become more likely to commit such violence in adulthood, and that young women who have also been observers to domestic abuse or experienced domestic abuse are likely to stay as adults in abusive relations.

Theory of Social learning is the theory which excellently clarify domestic violence. According to the ‘theory of social learning’, violence is a learned behaviour & may be started by alcohol, stress, abuse & money. From our parents we learn behaviour at an early age. In fact, on our behavior, attitude, and relationship our parents & guardians have the maximum effect. “Sociologists state that men batter because they learned violence in their families as children and that women seek out abusive men because they see their mothers being abused”.

‘Theory of social learning’ maintains that individuals learn social conducts by viewing and imitating other person. The most significant factor in the learning of children is imitation model. The growth of language, violence and moral decision-making can be seen in this process. ‘Theory of social learning’ suggests that person become aggressive towards members of the family since their aggressive behaviour is learned by operant circumstances and by observing conduct in role models. ‘Operant conditioning’ means enhancing behaviors by reinforcing positive and negative behaviors, and also in suppressing them by punishments. Actually, corporal punishment can be chosen as a technique of discipline merely because children typically accomplish their parental

<sup>1</sup> 34 U.S.C. §12291(a)(8).

<sup>2</sup> BBC NEWS,  
[http://news.bbc.co.uk/2/hi/south\\_asia/6086334.stm](http://news.bbc.co.uk/2/hi/south_asia/6086334.stm)  
 (last visited May 26, 2022).



demands. Though, study points to both short and long term negative impacts allied with physical punishment, like increasing physical attacks, anti social behaviour, poor parent relationships during childhood and assault, criminal behaviour, problem of mental health and spousal violence in adulthood.

The 'theory of social learning' seeks to explain intergenerational violence transmission. As children grow up, they are posited to obtain feedback from others on their own behaviors, from which they start to develop standards to assess their behaviour and to search for models that conform to them. Children growing up in abusive and violent families can learn violent and abusive behaviors. They can follow up on these behaviors and then continue to do so in the future. Various studies have shown that those who have been abused in their infancy are more likely in adulthood to abuse themselves children. Moreover the risk of abusing their wives increased for men who watched their fathers abused their mothers when they were children. At last, researchers discovered that young adults when they were children who sees & versed abuse are much more possibility, as either abuser or victim, to be in an abusive intimate relationship.

It is based on the theory that sexism and patriarchy produce violence against women. "Men's desire to keep women down" & the "sexes unequal social status". Due to several contextual and situational factors, domestic violence emerges. Contextual factors encompass features of individual or couples, stress, family violence or aggressive personality. Situational factors encompass drug abuse and financial problems. The 'theory of social learning' is also expanding these factors to the impact of children who grow up with these external forces.

In short, what a person has been seeing since childhood in his home, society etc., he does the same thing in his adult life, the same thing things says 'social learning theory'. Similarly, if a person sees domestic violence in his home or surroundings, then the likelihood of domestic violence by him increases in his adult life.

PWDVA is also based on the principle of social learning. In Section 3 of the Act, domestic violence is defined which states that domestic violence is causing hurt or oppression to the aggrieved person, whether physical or mental and commit physical, mental, verbal, emotional, or sexual abuse with the aggrieved person. So, all these things a person in India has been watching or learning from his childhood at home or around and he does this kind of violence in his adult life with his wife or any other and all this happens a lot in India.

## CONTRASTS

### 1. Investigation & Prosecutions

Violence against Women Act has affected investigations & prosecutions of Violent cases in a variety of ways against women, as originally declared. For example, it formed new offences and penalties for breaching a protection order or stalking where an abuser jumped the line of a State to injury, harassment or force the victim to pass the line of a State and then, during the violent crime, physically harms the victim. Violence against Women Act has also instructed the Attorney General to examine the actions of the States aimed at ensuring the confidentiality between victim and counsel for sexual assault or domestic violence. Many key decisions have forced police to take domestic violence seriously. In cases like this, the principle of equal protection has frequently been vital



with implications for taking domestic violence out of ‘family matters’. In *Thurman v. City of Torrington*<sup>3</sup> & in *Estate of Maria Teresa Macias v. Mark Ihde*<sup>4</sup>, court upheld the equal protection standard and established a significant example by setting that the police department is in charge of responding to calls for aid, enforcing probation & prosecuting offenders in domestic abuse conditions.

## 2. Mandatory Arrest

In VAWA, there is a provision for mandatory arrest of the person who commits violence. Mandatory arrest laws play a key role in the US government efforts to tackle the problem of domestic violence.<sup>5</sup> The essential intention of US Authorities was to improve the safety of victims of domestic violence. There is no provision for such compulsory arrest in the PWDVA, 2005 of India.

## 3. Duties

In PWDVA, 2005 the duties of Police Officers, Service Provider, Magistrate, and Shelter Home etc. have been defined. Same as in Violence against Women Act also defines the duties of some officers such as Associate Applicant, Director of OVW, Director of Prison Bureau, and Task Force etc. Provision has also been given to constitute a Joint Interagency Task Force, which will be named Task Force in Violence against Women Act. This Task Force will have to be formed by Secretary Education Department, Secretary of Health Department and Attorney General before 1st September 2022. The job of the Task Force is to provide

relevant information to the Secretary of Education, Attorney General, Congress and the public regarding the prevention, investigation and responses of sex education, etc.<sup>6</sup>

## 4. Immigrant Women

In the US has been the matter of worry domestic violence against immigrant women. Keeping this in mind, the US has also made provisions regarding domestic violence against migrant women in VAWA. VAWA has 3 provisions regarding atrocities against migrant women (i) filing of self petition by the migrant woman and her children. (ii) Suspension of deportation and cancellation of expulsion (iii) Evidence required demonstrating abuse. But if we look at the PWDVA of India, there is no provision regarding violence against migrant women.

## 5. Grants Programs

Violence against Women Act has created a various grant programs to support activities such as (1) programs aimed at preventing sexual assault & domestic violence, (2) prosecuting & investigating domestic violence & associated crimes, (3) for domestic violence and child abuse, promoting the investigation and prosecution of exploitation in rural states, (4) prevention of crime in public and national parks as well as in public transport, etc. Funding for the shelter of battered women was again authorized by VAWA. Under ‘Family Violence Prevention and Services Act (FVPSA)’, VAWA formed new & reauthorized grants.<sup>7</sup> The grant was

<sup>3</sup> 595 F. Supp. 1521 (D. Conn. 1984).

<sup>4</sup> 42 F. Supp. 2d 957 (N.D. Cal. 1999).

<sup>5</sup> Violence Against Women Act Reauthorization Act, 2021, §102 (28)(3)(A)(ii), No. 1643, H.R., 2021 (US).

<sup>6</sup> Violence Against Women Act Reauthorization Act, 2021, §1414, No. 1643, H.R., 2021 (US).

<sup>7</sup> 2 U.S.C. §10401.



authorized by VAWA for the “National Domestic Violence Hotline”.<sup>8</sup> Violence against Women Act also authorized funding for federal court justices and court personnel. For many other acts and programmes Violence against Women Act authorized the funds like for Youth Act<sup>9</sup>, etc. To include rape-prevention education in the “Public Health Service Act”<sup>10</sup>, grant expansion was authorized by VAWA.

In 1995, within the Department of Justice (DOJ) the Office on Violent Women was set up to manage fundings authorized in the VAWA. OVW initiative brings together under one roof NGOs, victim service providers, law enforcement agencies, forensic medical professionals, attorneys and local organisations, to enhance the justice efficiency and effectiveness for victims, administers government financing to the Family Justice Center initiative.<sup>11</sup> To enhance the monitoring and effectiveness of PWDVA, 2005 where service provider is defined.<sup>12</sup>

### 6. Offences Covered under Act

Violence against Women Act generally covers crimes like domestic violence, sexual assault, dating violence and stalking. Commonly domestic violence is interpreted as intimate partner violence. In VAWA, Sexual Assault is “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent”.<sup>13</sup> Dating Violence also mentioned in Violence against Women Act and it means that “violence committed by a person who is

or has been in a social relationship of a romantic or intimate nature with the victim”.<sup>14</sup> In India, PWDVA, 2005 only covers domestic violence against women but sexual assault & stalking is defined in IPC and in some special acts relating to women.

### CRITICAL ANALYSIS

If we critically analyze the US Violence against Women Act with the PWDVA of India, then the first important thing is that the US Violence against Women Act is a criminal law; whereas Indian PWDVA is a civil law because there is a provision of compulsory arrest in the US Act, in PWDVA the offender can be arrested and punished only if he violates the protection order or interim protection order which is given by the magistrate in this Act, only then there will be arrest otherwise no provision for arrest.<sup>15</sup> Since the purpose of PWDVA was to prevent domestic violence against women, unless a provision for the arrest of the perpetrator of violence is added to the Act, then there is no justification for this Act and also add a provision that who commits offence under this act that will be a non-Bailable offence, when the accused knows that the violence has been committed no criminal action will be taken against him, then he will continue to commit such violence, before committing such violence, fear will have to be brought in his mind that he may have to go to prison for committing violence, then only the purpose of this act will be fulfilled and women’s will be protected from domestic violence.

<sup>8</sup> 42 U.S.C. §10413.

<sup>9</sup> 42 U.S.C. §5711.

<sup>10</sup> 42 U.S.C. §280b-1b.

<sup>11</sup> 10 U.S.C. §1001.

<sup>12</sup> PWDVA, 2005, Sec. 10, No. 43, Acts of Parliament, 2005 (India).

<sup>13</sup> 34 U.S.C. §12291(a) (29).

<sup>14</sup> 34 U.S.C. §12291(a)(10).

<sup>15</sup> PWDVA, 2005, Sec.31, No. 43, Acts of Parliament, 2005 (India).



The second most important thing is that anyone can file a case in Violence against Women Act, means not only the aggrieved woman, but if the victim is a spouse or was a US citizen or permanent resident, then he/she can also file a case in Violence Against Women Act after the divorce also. In addition, aggrieved parents can also file cases against their children if they have been abused by a US citizen child and a child who is under the age of 21 and is unmarried then he has also a right to file a case against his parents who abused their child. The constitutionality of PWDVA was challenged in the Delhi High Court by the petitioner on the point of gender discrimination and in the petition it was alleged that PWDVA violates Article 14 as the Act does not cover men, it only talks about women. The Hon'ble High Court dismissed the petition by distinguishing class legislation and reasonable classification and declared the act constitutional.<sup>16</sup>

As there is a provision in VAWA regarding domestic violence against migrant women as such there is no provision in PWDVA for migrant women. In PWDVA, a provision has also been made for the victim woman to stay in a shelter home. The protection officer or service provider can also request for the victim woman to stay in the shelter home, if we look at the American Violence against Women Act, there has also been talk of a safe home for the victims of domestic violence, dating violence, sexual assault and stalking.

In US, many grant programs are run under Violence against Women Act, but in India, only compensation has been talked about in PWDVA, which is provided by the Magistrate from the defendant to the victim,

but in America, judges, victim's lawyer etc. can be trained, grants are given for this to understand the reality of domestic violence, similarly there is a great need for such training in India because such training helps a lot to know the crime, its causes, and of their result. As the objective of this act is to prevent domestic violence against women, then this is possible only when publicity is made about this act among the people, people especially women are made aware that domestic violence against them is done. When it happens, immediately complain to the police or any other special officer or number, for this an awareness campaign should be run by the government.

The function of OVW is to bring community organizations, NGOs, forensic medical professionals, lawyers etc. under one roof to make victim justice more efficient and effective. Whereas if we talk about PWDVA, then in section 10, the service provider has been defined the job of the service provider is to provide legal aid to the victim women, to safeguard the rights & interests of women etc. Apart from this, the service provider records domestic incident in the form prescribed and forwarded to the Magistrate and the Protection officer who have jurisdiction in which domestic violence has occurred etc., at the request of the aggrieved person.

Because of overdependence on civil remedies, women are not protected in their permanent relationships through lack of deterrence. It is ignored in PWDVA how psychologically the violence is perpetrated. The consequences of prohibitive orders are

<sup>16</sup> Aruna Pramod Shah v. Union of India, 2008(102) DRJ543.



minimal for a person who continues to have relations with the offender.

There are some inherent issues in PWDVA regarding the definitions of 'Domestic Violence' and 'Domestic Relation'. The term 'Domestic violence' has been defined very broadly so, in emotional abuse must also include humiliation and ridicule.<sup>17</sup> In 243th report Law Commission of India also has stated in this broad definition, inter alia has resulted in false cases being registered which is a major reason for defeating the purpose of PWDVA. Courts should use their power to provide the aggrieved person with alternative accommodations in their discretion.<sup>18</sup>

Different levels of violence need to be distinguished, like violence, which can put the victim in extreme vulnerability. The Act also takes all forms of violence into account in a consistent manner. No reference is made to second-instance offenders. In these cases, the approach of the law needs to be changed to protect the victim as the chances of the crime recurring are greater.

The PWDVA concentrates on reconciliation between the victim and the perpetrator.<sup>19</sup> The principle of protecting and preserving family ties forms the basis of this provision. In many cases, protection against the security of the victim is counterproductive, because a proceedings delay of up to two months is unreasonable. The law does not make it necessary to provide immediate protection with a strong dissuasive effect. These have all led to the machinery's failure to prevent fatal domestic violence cases.

<sup>17</sup> PWDVA, 2005, Sec.3(a), No. 43, Acts of Parliament, 2005 (India).

<sup>18</sup> PWDVA, 2005, Sec.19(1)(f), No. 43, Acts of Parliament, 2005 (India).

## CONCLUSION

We have to understand first that domestic violence is becoming a very big problem in today's time. Domestic abuse is neither recent nor developed with social change. This is present in every age, every age etc. moreover, as we develop, new forms, types, sizes etc. evolves. After making a comparative study of the laws of both the countries, it is understood that there is a need for a lot of improvement in PWDVA in India. First of all, the law should be changed from civil law to criminal law. After analyzing the laws, it is found that there is an inherent flaw in the system with respect to the rights and remedies of the victims. This can be reduced by educating people about their rights, by providing safe shelters, by detecting domestic violence in the community and by enacting strict laws then only domestic violence can be reduced. The first step towards a better society is to educate a young girl. Campaigns to raise awareness in society must be undertaken.

After doing a comparative analysis, it is understood that the VAWA of the US is much better than the Indian law. After reading various reports and articles, it is known that domestic violence has declined by 63% significantly in the US after the enactment in 1994; a significant reason behind this is because of programs like arrests and court interventions such as protection orders etc. There has been an effective mechanism in preventing this type of violence. In order to further strengthen the Violence against Women Act, amendments have been made in it at frequent intervals. According to the

<sup>19</sup> PWDVA, 2005, Sec.14, No. 43, Acts of Parliament, 2005 (India).



researchers, relying on shelter-based programs is more effective than relying only on the system of criminal justice.

\*\*\*\*\*

## REFERENCES

### ARTICLES REFERRED:

- AK Singh, Role of Judiciary in effective implementation of the Domestic Violence Act, 2005, <https://eds.s.ebscohost.com/eds/pdfviewer/pdfviewer?vid=1&sid=4c95d9fe-a505-412e-a13b-97401ca794d8%40redis>
- Banerjee Sayani, (2020) Top 10 Supreme Court cases on Misuse of Section 498A of the IPC, <https://lexforti.com/legal-news/top-10-supreme-court-cases-on-misuse-of-section-498a-of-the-ipc/#respond>
- G. Leonard, (2020), Domestic Violence: A Comparative Analysis of Legal Statues in the United States (New York) and the Republic of India (Mumbai), City University of New York, [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1165&context=jj\\_etds](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1165&context=jj_etds)
- Ghose Dipankar, (2020) NCRB data: 7% rise in crimes against women, <https://indianexpress.com/article/india/n-cr-b-data-7-rise-in-crimes-against-women-6636529/>
- Jain Mahima, (2021), The Silent Pandemic of violence against women in India, <https://article-14.com/post/the-silent-pandemic-of-violence-against-india-s-women--60e27646b30ae>
- Kalyani Vijaya, (2013) Protection of Women from Domestic Violence Act, 2005: A Critical Appraisal, The IUP Law Review, Vol. III, No. 2, April 2013, pp. 36-43  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2342113](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2342113)
- Kathale Renu (2021), Comparative analysis of domestic violence Act in India and USA, Lex Humanitariae: Journal for a change, vol. II, issue 1 , pp292-303, <https://drive.google.com/file/d/1Gq9W8QOc9KqGH9yYNe3WJQQoyzFAFYm2/view>
- Natha Akalya, Kannapan Arul (2018) , A comparative study on Domestic Violence Act in India and the USA, International Journal of pure and applied mathematics, Vol. 120 No. 5, pp. 3019-3037 <https://acadpubl.eu/hub/2018-120-5/3/252.pdf>
- National Coalition against domestic violence statistics <https://ncadv.org/STATISTICS>
- Pandey Anju,(2021) Legal Implications of domestic violence in Indian society, International Journal of law, management and humanities, Vol.4, Issue 6, pp. 1467-1480 <https://www.ijlmh.com/wp-content/uploads/Legal-Implications-of-the-Domestic-Violence-in-Indian-Society.pdf>
- Patnaik Anjali, Swain Snigdha, Women Education, APH Publishing Corporation [https://www.google.co.in/books/edition/Women\\_Education/BVBjJU1OI00C?hl=en&gbpv=1&dq=women+education+snigdharani+swain&pg=PP9&printsec=frontcover](https://www.google.co.in/books/edition/Women_Education/BVBjJU1OI00C?hl=en&gbpv=1&dq=women+education+snigdharani+swain&pg=PP9&printsec=frontcover)



- P. Rajesh, This is what Justice looks like, <https://www.onebillionrising.org/share/swamy-vivekananda-quote-women/>
- Seth Payal (2021), Decoding the extent to which domestic violence is under reported in India, <https://thewire.in/women/domestic-violence-india-underreported>
- Statements and Releases (2022) <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/09/statement-by-president-biden-on-the-introduction-of-the-violence-against-women-act-reauthorization-act-of-2022/>
- Upadhyay Rohan, (2018) Domestic violence laws in India and USA <https://www.latestlaws.com/wp-content/uploads/2018/06/Analysis-of-Domestic-Violence-Laws-in-India-and-USA-By-Rohan-Upadhyay.pdf>
- V.R.Choudhri (2018) Commentary on protection of women from domestic violence Act-2005 & Rules with allied laws, [https://shodhganga.inflibnet.ac.in/bitstream/10603/326578/4/04\\_chapter\\_1.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/326578/4/04_chapter_1.pdf)

BOOKS REFERRED:

- Family Law in India: Problems, Perspectives and Solutions, 1<sup>st</sup> Edition, 2022, Shree Ram Law House
- India Penal Code, 1860 (Bare Act)
- Code of Criminal Procedure, 1973 (Bare Act)
- The Protection of Women from Domestic Violence Act, 2005 (Bare Act)