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Domestic Violence and Family Law in India

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ABSTRACT

Domestic violence is a major legal issue that comprises physical, psychological, sexual and economic elements causing injury to the body and mind of the victim. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a significant law that contains provisions for various civil remedies in cases of domestic violence. As distinct from criminal law remedies, the Act provides various reliefs to a woman facing domestic violence, such as orders for protection, orders relating to residence, financial assistance, custody of children and compensation to the victim. It also provides for the right of residence of a woman in the shared household. The key aim of this paper is to carry out a critical examination of the statutory provisions of the PWDVA, with emphasis on Sections 2, 3, 12, 17, 18, 19, 20, 21, 22 and 23. Domestic violence law under the Act has been shaped by rulings of the Supreme Court in cases such as D. Velusamy v. D. Patchaiammal*,* Indra Sarma v. V.K.V. Sarma*,* Hiral P. Harsora v. Kusum Narottamdas Harsora *and* Satish Chander Ahuja v. Sneha Ahuja*. The paper argues that judicial interpretation significantly complements legislative intent, particularly in relation to domestic relationships, respondents and shared households.*

Keywords: *Domestic Violence, Family Law, PWDVA, Protection Orders, Shared Household, Residence Rights, Women's Rights*

I. INTRODUCTION: THE PWDVA, 2005 AS A MODERN DIMENSION OF FAMILY JURISPRUDENCE

Domestic violence can never be considered merely an issue between spouses or adult individuals within the family. It takes many forms, since the abuse may cause physical, emotional or financial harm to the victim. Realising the necessity for more protective measures, Parliament passed the Protection of Women from Domestic Violence Act, 2005 (PWDVA). The Act came into force on 26 October 2006.[1]

A key feature of the PWDVA is that it provides a comprehensive set of civil law remedies. Section 3 lists physical, sexual, verbal, emotional and economic abuse, while Sections 17 to 23 offer residence, protection, financial, custody and compensation-related relief.[2] Thus, the

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[1] The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005) [hereinafter PWDVA]; Notification S.O. 1776(E), Gazette of India, Extraordinary, pt. II sec. 3(ii) (Oct. 17, 2006).
[2] PWDVA §§ 3, 17–23.

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PWDVA goes beyond the concept of physical injury and addresses a wide range of coercive acts.

Furthermore, the importance of the PWDVA is enhanced by the case law on it. Supreme Court decisions have interpreted the terms "domestic relationship", "respondent" and "shared household" and clarified the scope of the protection available to victims of domestic violence.[3] This paper examines the statutory framework of the Act, the remedies it offers an aggrieved woman and the judicial interpretation of its key provisions, and suggests measures for strengthening legal protection against domestic violence.

II. Redefining family and matrimonial concepts under the PWDVA, 2005

A. Aggrieved person – Section 2(a)

Section 2(a) provides that an "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges that she has been subjected to an act of domestic violence by the respondent.[4]

It is therefore clear from Section 2(a) that an aggrieved person is a woman who is in, or was in, a domestic relationship with the respondent.

B. Domestic relationship – Section 2(f)

Section 2(f) defines a domestic relationship as a relationship between two persons who live, or have at any point of time lived, together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family.[5]

This definition extends beyond marriage to relationships in the nature of marriage.

C. Shared household – Section 2(s)

Section 2(s) provides that a shared household means a household where the aggrieved person lives or at any stage has lived in a domestic relationship, either singly or along with the respondent, whether it is owned or tenanted by either or both of them, and includes a household

[3] *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469 (India); *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 (India); *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165 (India); *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414 (India).
[4] PWDVA § 2(a).
[5] PWDVA § 2(f).

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belonging to the joint family of which the respondent is a member, irrespective of whether either of them has any right, title or interest in it.[6]

This definition is important because it underlies the woman's right to reside in a shared household under Section 17.[7]

D. Domestic violence – Section 3

Under Section 3, any act, omission, commission or conduct of the respondent constitutes domestic violence if it harms, 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 this includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. The section also covers conduct that threatens the aggrieved person or otherwise injures or causes her harm, whether physical or mental.[8]

Notably, Section 3 indicates that domestic violence includes various forms of abuse beyond physical injury, and it directs courts to take the overall facts and circumstances of the case into consideration.[9]

III. Remedies available under the Act

A. Application to Magistrate – Section 12

Section 12 provides that the aggrieved person, a Protection Officer or any other person on behalf of the aggrieved person may apply to the Magistrate for relief under the Act.[10]

B. Right to residence – Section 17

Section 17 vests in every woman in a domestic relationship a right to reside in the shared household, whether or not she has any right, title or beneficial interest in it.[11]

C. Protection orders – Section 18

Section 18 provides that the Magistrate may, after giving the parties an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, pass a protection order prohibiting the respondent from committing any act of domestic violence, attempting to communicate with the aggrieved person, or entering her place of employment or any other place frequented by her.[12]

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[6] PWDVA § 2(s).
[7] *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District*, (2021) 15 SCC 730, ¶ 37 (India).
[8] PWDVA § 3(a), (c)–(d).
[9] PWDVA § 3 expl. II.
[10] PWDVA § 12(1).
[11] PWDVA § 17(1).
[12] PWDVA § 18.

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D. Residence orders – Section 19

Section 19 provides that the Magistrate may pass residence orders restraining the respondent from dispossessing the aggrieved person from the shared household or otherwise disturbing her possession of it.[13] The Magistrate may also direct the respondent to secure alternate accommodation for her or to pay rent for it.[14]

E. Monetary relief – Section 20

Section 20 provides that the Magistrate may grant monetary relief to meet the expenses incurred and the losses suffered by the aggrieved person and any child of hers as a result of the domestic violence.[15]

F. Custody orders – Section 21

Section 21 provides that, notwithstanding any other law for the time being in force, the Magistrate may grant temporary custody of any child or children to the aggrieved person or the person applying on her behalf and may, if necessary, specify the arrangements for visits by the respondent.[16]

G. Compensation orders – Section 22

Section 22 provides that the Magistrate may direct the respondent to pay the aggrieved person compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence.[17]

H. Interim and *ex parte* orders – Section 23

According to Section 23, the Magistrate may pass such interim order as he deems just and proper, and may grant an *ex parte* order against the respondent on the affidavit of the aggrieved person where the application *prima facie* discloses that the respondent is committing, has committed or is likely to commit an act of domestic violence.[18]

[13] PWDVA § 19(1)(a).
[14] PWDVA § 19(1)(f).
[15] PWDVA § 20(1).
[16] PWDVA § 21.
[17] PWDVA § 22.
[18] PWDVA § 23.

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IV. Judicial development of domestic violence law

A. *D. Velusamy v. D. Patchaiammal*

In *D. Velusamy v. D. Patchaiammal*, the Supreme Court interpreted the phrase "relationship in the nature of marriage" in Section 2(f). The Court proceeded to discuss the factors to be taken into account when determining whether two people are in such a relationship.[19]

B. *Indra Sarma v. V.K.V. Sarma*

In *Indra Sarma v. V.K.V. Sarma*, the Supreme Court re-examined the scope of a "relationship in the nature of marriage".[20]

C. *Hiral P. Harsora v. Kusum Narottamdas Harsora*

In *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Supreme Court considered the constitutional validity of Section 2(q) and declared that the words "adult male" in that section stand deleted, as inconsistent with Article 14 of the Constitution, together with the proviso to the section.[21]

D. *Satish Chander Ahuja v. Sneha Ahuja*

In *Satish Chander Ahuja v. Sneha Ahuja*, the Supreme Court examined the phrase "shared household" under Section 2(s) of the PWDVA and the implications of Sections 17, 19 and 26.[22]

V. Interplay between the PWDVA, personal laws and matrimonial remedies

Under Section 26, the reliefs available under Sections 18 to 22 of the PWDVA may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent.[23] Furthermore, Section 36 states that the provisions of the PWDVA shall be in addition to, and not in derogation of, the provisions of any other law.[24]

Thus, the PWDVA provides a wide spectrum of remedies, including various protection and compensation measures. At the same time, the victim of domestic violence may seek other remedies available under different personal laws, criminal law and procedural law.[25] In practice, this means that the aggrieved person can seek different kinds of relief at the same time, including

[19] *D. Velusamy*, *supra* note 3, ¶ 31.
[20] *Indra Sarma*, *supra* note 3, ¶ 56.
[21] *Hiral P. Harsora*, *supra* note 3, ¶ 50.
[22] *Satish Chander Ahuja*, *supra* note 3.
[23] PWDVA § 26(1).
[24] PWDVA § 36.
[25] *See Hiral P. Harsora*, *supra* note 3, ¶ 25; PWDVA § 26(2).

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restitution of conjugal rights, alimony *pendente lite*, and protection against harassment and violence.

VI. Critical analysis

The main advantage of the PWDVA is that it recognises that domestic violence is a multidimensional problem. By listing verbal, emotional, sexual and economic abuse alongside physical abuse, Section 3 provides an extensive definition of domestic violence. Furthermore, since *Hiral P. Harsora*, protection, residence, monetary, custody and compensation orders may be granted against a respondent irrespective of gender, save that the proviso to Section 19(1) bars an order under clause (b), directing a respondent to leave the shared household, against a woman.[26] Such remedies are essential because they facilitate the aggrieved person's right to live in peace and, where applicable, to remain in the shared household. Finally, Section 12 shows that the victim may apply to the Magistrate directly, thus favouring quick judicial intervention.[27]

Domestic violence law is guided by several important Supreme Court decisions. This paper argues that judicial interpretation significantly complements legislative intent, particularly in relation to domestic relationships, respondents and shared households.

VII. Findings

- The PWDVA provides a comprehensive statutory framework for responding to domestic violence.
- Section 3 reflects a multidimensional understanding of domestic violence.
- Sections 17 and 19 provide important residence-related relief.
- Sections 18 to 23 list various protective and compensatory measures.
- Judicial decisions have enhanced the scope of legal protection under the PWDVA.
- The *Hiral P. Harsora* ruling removed the restrictive "adult male" qualification from Section 2(q).[28]
- *Satish Chander Ahuja* clarified the meaning of shared household under Section 2(s).[29]

[26] *Hiral P. Harsora*, *supra* note 3, ¶ 50; PWDVA § 19(1) proviso.
[27] PWDVA § 12(1).
[28] *Hiral P. Harsora*, *supra* note 3, ¶ 50.
[29] *Satish Chander Ahuja*, *supra* note 3, ¶ 91.

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- The courts have set out tests for a "relationship in the nature of marriage" within the definition of domestic relationship, and have held that not every live-in relationship qualifies.[30]

VIII. SUGGESTIONS

- Protection Officers should receive adequate training and institutional support.
- The public should be educated that domestic violence includes various forms of abuse.
- Effective legal-aid mechanisms should be available for victims of domestic violence.
- Urgent applications in domestic violence cases should be prioritised.
- Police, Protection Officers, courts, medical professionals and shelters should work in cooperation.
- Courts should apply the law consistently when determining residence, monetary relief and interim measures.

IX. CONCLUSION

The Protection of Women from Domestic Violence Act, 2005 provides an innovative approach to modern family law, since it goes beyond the narrow perspective of personal laws. The PWDVA allows a new paradigm of family law based on civil-law principles to emerge in India, by filling the gaps in legislation on domestic abuse and by providing a woman with a remedy in terms of maintenance and child custody without her having to go through the complex procedure of divorce. Statutory provisions such as Sections 3, 17, 18, 19, 20, 21, 22 and 23 contribute to the evolution of family law relations in India.

At the same time, the judiciary has played its part in helping the PWDVA overcome the shortcomings of the existing family law. For example, the judgments in *D. Velusamy* and *Indra Sarma* contributed to the development of family law by setting out when a live-in relationship qualifies as a relationship in the nature of marriage under Section 2(f), while holding that not every live-in relationship does.[31] The judgment in *Hiral P. Harsora* removed the gender and age limits on who may be a respondent under Section 2(q).[32] Moreover, *Satish Chander Ahuja* widened a woman's right of residence by holding that a shared household is not confined to a household of the joint family of which the husband is a member or in which he has a share, although the Court added that this right is not indefeasible, especially as against aged parents-

[30] *D. Velusamy*, *supra* note 3, ¶¶ 31–32; *Indra Sarma*, *supra* note 3, ¶ 56.
[31] *D. Velusamy*, *supra* note 3, ¶¶ 31–32; *Indra Sarma*, *supra* note 3, ¶ 56.
[32] *Hiral P. Harsora*, *supra* note 3, ¶ 50.

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in-law.[33] In this sense, the PWDVA is an integral part of family law, since it helps protect the rights of a woman in the marital home and thus promotes the sanctity of the family as an institution under Indian law.

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[33] *Satish Chander Ahuja*, *supra* note 3, ¶¶ 90–91.

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