
COMPARATIVE ANALYSIS OF THE DOMESTIC VIOLENCE ACT IN THE UNITED STATES AND INDIA

Navadha Akant, Christ University

ABSTRACT

Violence towards women is a worldwide issue; women's lives are endangered not only in public but also in private. No society can claim to be free of such violence; the only variance is in the trends and patterns that exist between countries and areas. Women confront discrimination, extortion, and violence. Domestic violence is an ongoing phenomenon. It is an ancient practice which is still followed today. Domestic violence perpetrators are frequently discovered to be male victims of their sexual partners. Domestic violence against women is defined as a scenario that is encouraged and maintained by gender norms and attitudes that place women in a subservient role with respect to men. Domestic abuse is now widely acknowledged as a phenomenon that violates human rights. Domestic abuse, with its repercussions on one's physical, mental, psychological, and physical health, is frequently acknowledged as a significant impediment to women's emancipation. It is one of the most ubiquitous breaches of human rights, depriving women and girls of equality, safety, dignity, and self-worth as well as their right to exercise fundamental liberties on an equal footing with men. The Domestic Violence Act, which was passed, has shown to be effective in some ways in defending the victim and their rights. However, this is not the end of the matter; further research and development are required to completely eradicate this behaviour from contemporary culture. The examination of domestic violence laws in India and the USA, as well as the initiatives launched by governmental and non-governmental organizations to publicize this practise are covered in the current paper. The study provides a multifaceted view of domestic violence's prevalence in women's lives. The report conducts a critical analysis of the act's contents, identifies key implementation tools, and examines whether or not adequate implementation is occurring. The paper also addresses the legal gap that allowed victims' rights to go unprotected.

Keywords: Domestic Violence, Violence against Women, Men Perpetrator, Human Rights

INTRODUCTION

The problem of violence against women is widespread. Domestic violence is a pattern of abusive and threatening actions that might involve coercion, isolation, intimidation, and any of the following: physical, emotional, economic, and sexual violence. This study will focus on the distinctive features of violence against women in their intimate relationships, also known as intimate partner violence (IPV). While other types of family violence are also grave, IPV describes physical, sexual, or psychological harm caused by a current or former partner or spouse. Nearly 30% of all women who have been in a relationship have been the victim of physical or sexual abuse by an intimate partner. Up to 38% of all female homicides worldwide are the result of romantic relationships. Aside from intimate partner violence, 7% of women worldwide report being sexually assaulted by an individual other than a partner, while data on non-partner sexual violence is very limited. Men are more likely than women to commit intimate partner and sexual abuse. The current research examines domestic violence laws in India and the United States, as well as the efforts of governmental and non-governmental organizations to bring this practice to light. The study exposes the occurrence of Domestic Violence in the lives of women from multiple perspectives. The study critically examines the contents of the legislation, what the key implementation machinery is, and whether or not proper implementation occurs.

DV is a cross-national phenomenon that affects all cultures, classes, ethnic groupings, education levels, economic levels, and different ages (Romito, 2000). What is the true motivation for any action? It is to provide legislation that helps to create a general public that does not segregate among themselves; it provides a remedy against illegal or common behaviours that violate any law. On a comparative basis, the "Protection of Women from Domestic Abuse Act, 2005" was approved, which protects women from violence perpetrated by their male accomplices or relatives.

¹*"For the reasons for this Act, any act, exclusion or commission or direct of the respondent might constitute domestic violence in the event that it*

(a) hurts or harms or imperils the wellbeing, security, life, appendage or prosperity, regardless of whether mental or physical, of the oppressed individual or has a tendency to do as such and

¹ Sec. 3 of PWDVA (Protection of Women Against Domestic Violence Act 2005)

incorporates causing physical abuse, sexual abuse, verbal and psychological mistreatment and financial abuse; or

(b) bugs, hurts, harms or imperils the bothered individual with a view to constrain her or some other individual identified with her to take care of any unlawful demand for any endowment or other property or significant security; or

(c) has the impact of debilitating the distressed individual or any individual identified with her by any direct said in condition (a) or provision (b); or (d) generally harms or causes hurt, regardless of whether physical or mental, to the oppressed person.”

The Domestic Violence Act of the United States, also known as the Violence Against Women Act of 1994 (VAWA), has measures aimed at improving both victim services and the arrest and conviction of batterers.

The following are the key provisions of the Violence against Women Act:

1. Complete funding for rape kits as well as legal/court fees for domestic abuse protection orders
2. All state, tribal, and territorial governments in the United States accept and enforce victim protection orders.
3. Local community implementation and funding of dedicated domestic violence crime units.
4. Law enforcement officers receive specialized domestic violence and sexual violence training.
5. Tribal courts' ability to prosecute non-Indian spouses or domestic partners of Indian women in domestic or dating abuse instances.
6. A provision that allows undocumented immigrants who really are victims of domestic abuse to petition for green cards in exchange for assisting law enforcement officers in prosecuting their abusers.

The purpose of this thesis would be to compare the domestic violence acts in India and the United States, as well as to look into the flaws in the domestic violence statute against me. The purpose of this thesis is to research and analyze domestic violence laws in India and the United States.

DOMESTIC VIOLENCE ACT IN U.S.A

Federal Law

The Violence Against Women Act (VAWA) is a significant piece of legislation that aimed to enhance the criminal justice system's and communities' responses to sexual assault, stalking, domestic violence, and dating violence in the United States.

Definition - The U.S. Office on Violence against women (OVW) defined the word 'domestic violence' as an *"example of damaging conduct in any relationship that is utilized by one accomplice to pick up or keep up power and control over the other's personal accomplice. Domestic violence can take numerous structures, including physical abuse, sexual abuse, enthusiastic, financial, or as well as mental abuse"*

Since it was passed in 1994, the Violence against Women Act (VAWA) has drawn the attention of Congress on a regular basis. The original act aimed to alter perceptions of domestic abuse, raise awareness of it, enhance services and support for victims, and update how the criminal justice system handles cases of domestic violence and sex crimes. The law established new initiatives within the Departments of Justice (DOJ) and Health and Human Services (HHS) with the goal of lessening domestic violence and enhancing both the response to and the healing process following domestic violence events.

Through funding programmes to state, tribal, and local governments, nonprofit groups, and colleges, VAWA primarily combats several forms of violent crime. The crimes of intimate partner violence, dating violence, sexual assault, and stalking are the focus of VAWA initiatives.² This Act was updated and reauthorized numerous times after it was passed, first in 2000, then subsequently in 2005, and most recently in 2013. The following is a brief summary of the features in each year of reauthorization:

³The Abuse against Women Act was initially passed by Congress

1994: The goal of creating a country with an active criminal justice system and coordinated neighbourhood responses to domestic violence. VAWA in 1994 allocated funds for fostering:

- Community-coordinated responses to domestic abuse and sexual assault that, for the first time, brought together representatives from the criminal justice system, the social

² <https://www.everycrsreport.com/reports/R42499.html>

³ National Domestic Violence Hotline

services sector, and private non-profit organisations.

- Recognizing and assisting domestic abuse shelters, rape crisis centres, and other local groups striving to end domestic violence around the country.
- Federal prosecution of crimes involving sexual assault and domestic abuse over state lines.
- Federal guarantees for protection orders' interstate enforcement.
- Protections for women who have been abused who do not have citizenship.
- A renewed emphasis on marginalised groups including Native American victims of sexual and domestic abuse.

2000: When Congress renewed VAWA in 2000, it strengthened the framework started in 1994 by adding to:

- Identify stalking and dating violence as connected crimes.
- Establish a much-needed programme for legal aid for victims of sexual and domestic assault.
- Encourage the use of supervised visiting programmes for abused families.
- Through the creation of U and T visas and a focus on victims of trafficking, immigrants who are victims of domestic abuse, dating violence, sexual assault, or stalking will be further protected.

2005: In 2005, Congress adopted a more comprehensive strategy to fight violence against women. The VAWA was renewed in 2005, which resulted in some important new focus areas in addition to improving criminal, civil, and community-based responses to violence.

- Specifically designed protections for immigrants who have been the victims of domestic abuse, as well as measures to lessen violence against immigrants' women.
- Ways for preventing violence before it occurs.
- Protections against being unfairly evicted because you're a domestic violence or stalking victim.
- The initial federal source of funding for rape crisis centres.
- Services tailored to different groups' cultures and languages.
- Programs and assistance for victims with impairments have been improved.
- VAWA service provisions are being expanded to encompass young children and adolescents.

2013: In 2013, President Barack Obama extended protections for LGBTQ+ individuals and Native Americans when he reauthorized the Violence against Women Act. Among these provisions were resources allotted for:

- Aid the police in their investigation of rape cases.
- Give universities greater resources to teach students about sex assault and relationship violence.
- Give tribal courts the authority to bring charges against anyone found guilty of domestic abuse on tribal property, regardless of whether the offender belongs to the tribe.
- Permit domestic abuse victims who are immigrants to continue receiving aid.
- Give LGBTQ+ survivors additional care and support.

State Laws:

In the USA, numerous states have created laws to prevent domestic abuse, but each state has its own unique process for resolving the cases, unlike federal law, which is designed to do so. The following are a few examples of domestic violence laws that are currently in effect throughout several states:

- Minnesota's Domestic Abuse Act
- New York State's Domestic Violence Prevention Act
- Domestic violence offender Gun Ban
- California Passes Tough New Domestic Violence Law

DOMESTIC VIOLENCE ACT IN INDIA

A. The Protection of Women from Domestic Violence Act (PWDVA),2005:⁴

The Protection of Women from Domestic Violence Act (PWDVA) was enacted in 2005 to protect women from the violence which they face in domestic partnerships. This is the very first in the series on Domestic Violence, and it discusses the lawful definition of "Domestic Violence" and how it applies to women living in "shared houses." Except for the state of Jammu and Kashmir, the DV Act applies across India. It is a civil law that concentrates on the reliefs provided to the injured woman, such as compensation, protection, and the right to reside in the "shared family," as opposed to criminal law, which focuses on punishing the accused. It addresses all forms of abuse which are experienced by a woman in her "shared household."

⁴ Act 43 of 2005

Domestic violence encompasses the causing of any damage or harm to the aggrieved woman's safety, life, health, or well-being by physical, sexual, verbal, or economic abuse. Furthermore, it covers any injury or harm done to the aggrieved woman or her kin in order to persuade her or anyone to satisfy an illegal dowry demand. This definition also includes threats to commit violence. The DV Act applies to all women, irrespective of marital status, age, or religious views. The DV Act's broad definition of "domestic violence" safeguards women's rights provided by the Indian Constitution to live in a violence-free home.

1. Section 3 proposes defining domestic violence. —For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—
 - 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 person 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 person 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

Explanation I to the concept classified abuse into four categories, which are as follows: Physical abuse is defined as "any act or behaviour that causes bodily discomfort, harm, or risk to life, limb, or health, or impairs the health or the development of an injured individual." Assault, criminal intimidation, and criminal force are all examples of physical abuse.

Sexual abuse is defined in the law as "sexual conduct" that "abuses, humiliates, degrades, or otherwise breaches the dignity of a woman."

Emotional and verbal abuse: Insults and humiliation of any kind, including those based on failure to conceive a male kid, as well as repeated threats

Economic abuse is defined as the deprivation of financial resources necessary for the victim's and her children's survival, the disposal of any assets in which the victim has an interest/stake, and the prohibition/restriction of financial resources that the victim is accustomed to while in a domestic relationship.

2. The Act's provisions give a list of authorities to whom the victim or any other person acting in good faith can turn when they are subjected to an act of domestic abuse.
 - a. Protection officer: Section 4 of the Act gives the victim or any other person the right to approach protection officers established by the government to alert them about the act of violence and seek protection.
 - b. Service Provider: According to the Act, any organization or institution registered under the Societies Act or Companies Act with the intention of providing legal aid, medical facilities, financial support, or any other assistance must register with the State Authority. Section 10 of the Act provides for this type of registration and assistance to the victims of domestic violence and supports them in filing litigation or receiving any other necessary assistance.
 - c. Police: Anyone who is not aware of the foregoing regulations can approach the police directly to submit a complaint, for which the police authorities are responsible.
 - d. Magistrate: Similarly, the offended party can go straight to the Magistrate to file a complaint.
3. The authorities there have specific tasks to do in order to assist the victim of such acts of violence. The following are the responsibilities:⁵
 - a. The victim can apply for any of the reliefs perceived under this law i.e. an assurance arranges, fiscal help, authority arrange, habitation arrange or a pay arrange.
 - b. The victim can utilize the administrations of certain official Service Providers.
 - c. The victim can approach a Protection Officer and approach them for help.
 - d. The victim can request free legitimate guide.
 - e. The victim can likewise record a criminal protest under the general law on violations (the Indian Penal Code, 1860).
4. Victims of violence, after filing a complaint with the appropriate authorities, sought redress from the court against the perpetrator (offender).

The procedure must be followed in order to seek court redress and give protection to the victim. An application for relief from domestic violence can be presented to the officer by either the

⁵ Sec. 5 of PWDVA (Protection of Women Against Domestic Violence Act 2005)

disturbed individual, or an assurance officer in the interest of an oppressed individual, or some other individual in the favour of an oppressed individual.

5. The Magistrate then serves notice on the opposing party for a hearing; he may also recommend counselling and refer the case to experts in the field. After hearing all sides, the Magistrate may impose various remedies under this law with the specific objective of ensuring your security and prosperity. This includes: ⁶

- a. protection order
- b. residence order
- c. monetary relief
- d. Order of Compensation
- e. Order of Custody

6. Punishment for Domestic Violence Acts

a. Different regulations or mechanisms are in place under the statute to protect women from domestic violence, for example, Sec.304B of the IPC dealing to endowment transmission.

b. Female child murder has been made a crime under sections 313-316 of the IPC, which means that a lady's pregnancy must be terminated.

c. Different sections of the IPC dealing with similar issues include segments 305-306 dealing with suicide aid and 340,349 dealing with wrongful restriction and wrongful limitation.

d. An objection can also be filed under section 498A of the IPC for cruelty, which also falls under aggressive behaviour at home.

B. The Indian Penal Code Amendment in 1983

Domestic Violence was established a criminal offence under Section 498-A of the Indian Penal Code in 1983. This section of the legislation specifically addresses cruelty to women by their spouses or relatives. In this Section, an accommodating statement allows the woman's relatives to express the objection on their behalf. This is extremely useful in circumstances where the Woman is extremely anxious, making it impossible for her to speak up for herself, for reasons such as being captured by her significant other or just being unable to leave the house. Cruelty that causes a woman's death or serious harm, or forces her to commit suicide, is one type of

⁶ Sec. 17-22 of PWDVA (Protection of Women Against Domestic Violence Act 2005)

Cruelty that can be punished. Another type of provocation involves threatening the woman or her relatives with forfeiture of her property. Acts of cruelty under the law include, but are not limited to, the following:

- a. physical abuse;
- b. psychological torture by threatening her or her loved ones (such as children);
- c. refusing to feed the woman;
- d. locking her in and out of the house as punishment; and
- e. sexual assault against her will.

Those convicted of violating Section 498 A face imprisonment for up to three years, a fine, or both.

LOOPHOLES:

India:

Our country's most common issue is one of proper implementation and enforcement. Many laws are enacted, but their failure to be properly implemented renders them ineffective; similarly, DV Acts provide women with legal protection, but only on paper.

b. Another issue is a lack of awareness, with many rural women unaware of their rights or the existence of any such Act that would safeguard their rights.

c. The government-established protection machinery is hesitant to take on such a case because, in most circumstances, the complaint is not registered in a single visit. Furthermore, victims are unable to contact authorities to file a complaint due to a variety of issues.

d. The government-appointed protection officers are unaware of their responsibilities because they must work for another charge as well, and this is the additional charge for which they work. Furthermore, the victim has never directly addressed the PO for justice.

e. According to the study, the victim should receive protection within 60 days of filing a case. Even though the first hearing will be held inside that 60-day period, it will take a lengthy time due to delays by officials. Due to a lack of awareness, most cases of domestic abuse reach the officials towards the end of the process.

f. The media plays an important role and should be used as a means to raise public knowledge about how important civil legislation is for women. However, the government and the

authorities are highly liberal in their job, as a result of which half of the cases are not reported and half are registered but still pending.

g. Women are the soft targets for domestic abuse, however 88% of Protection Officers are male and only 12% are female. Males make up 52% of domestic violence lawyers, while females make up 48%.

U.S.A

a. Because of the potential for immediate arrest, this Act of 1994 puts women at greater danger of abuse because they will be vulnerable to violence by their in-laws.

b. Half of the restraining orders are issued without even an allegation of physical abuse, making it impossible for the true victim to obtain the necessary assistance.

c. The Violence Against Women Act has encouraged states to pass laws that make restraining orders easier to obtain, promote arrest, and expedite prosecution efforts. However, many people consider that these rules go too far and victimise the innocent.

d. The Act encourages more breaking up rather than reconciliation between partners, as some issues are not as easily led into separation as others.

e. One of the most serious flaws of VAWA is the absence of any rigorous legislative evaluation.

COMPARISON

Domestic Violence legislation in both countries was enacted with the same goal in mind: to eliminate gender-based violence against women. The following is a comparison analysis of both acts:

i. In India, there is just one legislation, the Protection of Women from Domestic Violence Act (PWDVA), 2005, that governs both the Centre and the States for the abuse of Domestic Violence, however in the United States, there are different laws at the Federal and State levels to combat Domestic Violence.

ii. The Domestic Violence Act of India defines all of the essential terminology used in the act in various parts, but the Domestic Violence Act of the United States defines the categories of abuse and the term domestic violence in US Code.

iii. The Indian Act has established a procedure for women who have been subjected to such

violence, in which the protection machinery plays a different role in assisting the victim, which includes the assistance of a protection officer in filing a complaint, provisions of a shelter home for victims, and provisions of medical facilities, whereas the Act of the United States places more emphasis on improving the response of the criminal legal system by expanding funding for local groups working with underserved communities.

iv. The remedies available to victims under the Domestic Abuse Act of India include Protection Orders, Residence Orders, Monetary Relief, Compensation Orders, and Custody Orders, as well as remedies for child victims of violence, immigrant and minority groups, and men and boys. To assist break the generational cycle of abuse, the law focuses on education and prevention, developing training programmes for law enforcement, health care providers, housing providers, and men and boys.

CONCLUSION:

Domestic violence is one of the most difficult subjects to talk. Domestic violence includes not just torture of women, but also any physical, verbal, emotional, or any type of abuse by the partner or his relatives. The various causes that might start violence within the four walls of homes must be carefully investigated, and a sensible examination of the circumstances underlying the violence may avoid a family from suffering torture and threat of domestic violence. The laws controlling this Act are required to prevent abuse, but its scope should be expanded, and greater deterrent punishment should be awarded, coupled with victim protection. The current version of this act is completely biased against women and men who are discriminated against and have their fundamental and legal rights violated. Now, more people need to be aware of the need to repeal this discriminatory and biased law, and only then will society be able to overcome this evil.

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