

Everything You Need To Know About The Domestic Violence Act (PWDVA), 2005

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September 13, 2016

6 mins read

The **Protection of Women from Domestic Violence Act (PWDVA)**, instituted in 2005, is a legislation aimed at protecting women from violence in domestic relationships.

What are the most important definitions under the PWDVA?

1. **The definition of domestic violence** is well written and wide-ranging and holistic. It covers, mental as well as physical abuse, and also *threats* to do the same. Any form of harassment, coercion, harm to health, safety, limb or well-being is covered. Additionally, there are specific definitions for the following:
 - Physical abuse: Defined as act or conduct that is of such a nature as to *cause bodily pain, harm, or danger to life, limb or health or impair the health or development of the aggrieved person*. Physical abuse also includes assault, criminal intimidation and criminal force.
 - Sexual abuse: The legislation defines this as conduct of “sexual nature” that *‘abuses, humiliates, degrades or otherwise violates the dignity of a woman.’*
 - Verbal and emotional abuse: Insults/ ridicule of any form, including those with regard to inability to have a male child, as well as repeated threats
 - Economic abuse: Categorized as including deprivation of financial resources required for survival of the victim and her children, the disposing of any assets which the victim has an interest/stake in and prohibition/restriction of financial resources which the victim is used to while in the domestic relationship.
2. **The definition of “aggrieved person”** includes any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to domestic violence by them. (See Section 2(a) of the PWDVA)
3. **The definition of “respondent”** includes any adult male who has been or is in a domestic relationship with the aggrieved woman, and against whom the woman has sought a relief or any male or female relative of the husband or male partner of a married woman or a woman in a relationship in the nature of marriage.
4. **The definition of “domestic relationship”** is any relationship 2 persons have lived together in a shared household and these people are:
 - related by consanguinity (blood relations)
 - related by marriage.
 - Though a relationship in the nature of marriage (which would include live-in relationships)

- Through adoption
- Are family members living in a joint family.

5. **The definition of “child”** is any person below the age of eighteen years, and also includes foster, adopted, or step child.

This poster series is a bird’s-eye view of the Act (full Act **here**). The information contained in it, is for awareness building purposes, and should not be taken as legal advice.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE Act, 2005

“Domestic violence” includes

Harming or injuring a woman in a domestic relationship; be it

1. Physical abuse,
2. Sexual abuse,
3. Verbal and emotional abuse
4. Economic abuse

Therefore, what do we read between the lines?

1. Only a female can be a victim
2. Adult males who have been in a domestic relationship with the aggrieved woman, and male and female relatives of the husband/male partner can be made the respondent
3. Live-in relationships are also protected
4. There are specific definitions of physical, sexual, verbal and emotional, and economic abuse as well, which you can find in the Act

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE Act, 2005

What remedies can you avail of?

1. Inform the Protection Officer
2. File an application and make use of government official's duties towards her
3. Make use of shelter homes, medical facilities and counselling if necessary

Rights to the aggrieved under the Act:

1. Right to reside in the shared household
2. Protection orders issued to the respondent, for the victim's safety
3. Residence orders be issued against the respondent as to whether or not he may stay
4. Monetary relief
5. Full custody of children may be given to the victim, with visiting hours for the respondent
6. Penalty to respondent for not following orders
7. Penalty to Protection Officer for not taking action

What are other relevant features of the PWDVA?

Apart from the above definitions, the following are some other important aspects that the Act covers.

1. Victim resources

Under the Act, victims should be provided with adequate medical facilities, counselling and shelter homes as well as legal aid when required.

2. Counselling: Section 14

Counselling, as directed by the magistrate, should be provided to both the parties involved, or whichever party requires it, as ordered.

3. Protection Officers: Section 9

Under the Act, Protection Officers should be appointed by the government in every district, who preferably should be women, and should be qualified. The duties of the Protection Officer include filing a domestic incidence report, providing shelter homes, medical facilities and legal aid for the victims, and ensuring that protection orders issued against the respondents are carried out.

4. Protection orders: Section 18

Protection orders for the victim's safety can be issued against the respondent, and includes for when he commits violence, aid or abets it, enters any place which the victim frequents or attempts to communicate with her, restricts any form of assets of the victim or causes violence to people of interest to the victim.

5. Residence: Section 19

The magistrate may choose to restrict the respondent from the place of residence of both the parties if they feel that it is for the safety of the victim. Additionally, the respondent cannot evict the victim from the place of residence.

6. Monetary relief: Section 20

The respondent has to provide relief to the victim to compensate for loss, including loss of earnings, medical expenses, any expenses incurred due to loss of property by destruction, damage or removal, and maintenance of the victim and her children.

7. Custody of children: Section 21

Custody of children should be granted to the victim as required, with visiting rights to the respondent if necessary.

What are the benefits of the PWDVA?

This legislation was enacted after a ratification of the CEDAW (Convention on the Elimination of All forms of Discrimination Against Women)

The definition of ‘domestic relationship’ is broad enough to cover all sorts of household arrangements; for example, live-in relationships when the couple is not married. The inclusion of this, as well as relationships which fall under categories of fraudulent or bigamous, was a pioneering step. With regard to live-in relationships itself, in a distinctive judgement passed in the case of ***Bharata Matha & Ors v. R. Vijaya Renganathan & Ors***, it was decided that a child born out of a live-in relationship is entitled to property (the property owned by the parents, but not ancestral property). This means that a woman and her child in a live-in relationship cannot be threatened with economic abuse. Of course, although this has more relevance to property ownership and the Hindu Marriage Act, it is gratifying to know that children born out relationships which are not akin to marriage can also have property rights.

Furthermore, the Act also provides relief to domestic violence committed by both male and female relatives of the husband or male partner (which would aid in situations where family members harass the wife etc.). Additionally, the definition of “child” is also inclusive of foster, adopted and stepchildren.

The respondent has a duty to pay the victim compensation and not cut off financial resources, and this protects the victim from not only violence but also protects her interests. The definition of “shared household” specifies that regardless of whether or not the victim has legal rights/equity over the household; if she has inhabited the house with the respondent, and he has been violent with her, then the respondent is liable under the Act. This means that even if she does not have legal or financial stake in the house, the respondent cannot evict her.

The protection orders are inclusive of most instances where the respondent could have possibly taken advantage of the victim, and again is not limited to that definition alone. Finally, the orders issued by the law should be given free of cost to the victim as proof.

What can be improved?

One of the most contested points of the Act is very obviously the definitions of “aggrieved person” and “respondent”; and how only women’s rights against domestic violence are covered in the Act. It is also important to understand that the act provides quasi-criminal or civil remedies to women given that need there is a particular social context in which domestic violence takes place in India. Not only do women form a higher proportion of domestic violence victims, but combined with lower political-social and economic decision-making power it is harder from them to exit the abusive domestic relationships.

One issue which seems to have been ignored entirely are queer relationships. Even though there is no specific statement of the same in the Act, in the judgement of ***S. Khushboo Vs. Kanniammal & Anr.***, the Supreme Court specified that a live-in relationship is permissible only in unmarried persons of major age in *heterogenous* relationships.

Implementation hurdles

There seem to be problems with the actual implementation of the regulations. In many districts, instead of employing Protection Officers, existing government officials are given this responsibility as well; and are not equipped to deal with the same (refer link below). Therefore they do not fulfil most of the duties specified in the Act, and because of this victims are not able to make full use of the law for their benefit. Similarly, with regard to shelter homes, the Act specified that there should be as many as deemed enough. However, **research into actual implementation** has shown that many districts do not have even *one* shelter home.

Though the Act does have a few defects, and the implementation leaves a lot to be desired; the policy by itself seems to be quite practical. Yes, it is important to understand that men too face violence. Yes, it is important to implement the Act better and keep the Government accountable for why they have not instituted better reformation measures with regard to the same. However, it is also crucial to recognize that during the time of the Act (and even now), it was extremely vital to initiate a law that provided ease of access to justice to women. This is because of the dowry deaths on a high and domestic and sexual violence against women being rampant. The Act aimed at providing a simplified procedure to women who faces domestic violence access to civil and quasi criminal remedies, and it has succeeded in doing so, to a large extent.