



CHAPTER

5

Prevention of Violence against Women

Contents

- I. What is Domestic abuse/violence?
- II. International Legal Framework
- III. Laws in India on Prevention of Violence against Women
- IV. Exercises

Learning Outcomes

After the completion of this chapter, the students will be able to:

- Understand the concept of violence against women
- Trace the evolution of laws on violence against women in India
- Critically evaluate the laws for protection of women in India

I. What is domestic abuse/violence?

Domestic abuse, also called 'domestic violence', can be defined as a pattern of behavior in any domestic relationship that is used to gain or maintain power and control over another.

Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behavior that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socio economic background and education level.

Domestic violence is largely forbidden in the Western countries. However, in many countries domestic violence is either legally recognized or socially acceptable. For example, the United Arab Emirates' laws allow the man the use of limited physical means to discipline his wife and children. Domestic violence is also a socially acceptable practice, including by women themselves, in many developing countries like Jordan, Guinea, Zambia, Sierra Leone, Laos, and Ethiopia.

II. International Legal Framework

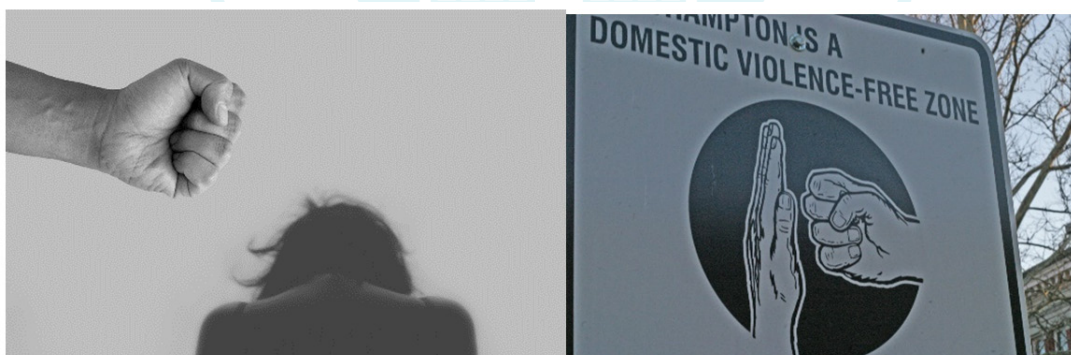
The concern for 'violence against women' including violence in intimate relationships, has significantly existed in international discourses and legal frameworks. The Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) is a United Nations treaty that defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. CEDAW is often referred to as the international bill of rights for women and has 99 countries, including India, as signatories who have committed themselves to undertake

various measures to end discrimination against women in all forms. In 1992, the CEDAW Committee recommended that any form of discrimination or violation of women's rights amounts to violence and that the State is responsible for such violence committed both by state as well as private individuals.

The UN Declaration on Elimination of Violence against Women was adopted in 1993 and defines 'violence against women'. It is defined as *any gender-based violence acts that result in, or are likely to result in, physical, sexual or psychological harm or suffering to women*. The violence acts include threats of such actions as well as coercion or arbitrary deprivation of liberty. These acts may occur either in public or in private life. Such violence might happen within the family and includes battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation. They may also occur outside the family in the general community and such violence may include rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, and forced prostitution.

When violence is committed or overlooked by the state it also amounts to 'violence against women'. India is a party to the Declaration on Elimination of Violence against Women. In 1996, the UN Commission on Human Rights created the UN Model Legislation on Domestic Violence with the objective of serving as a drafting guide for comprehensive legislation on domestic violence at States levels.

It defines **domestic violence** as: *all acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts.*



III. Laws in India on Prevention of Violence against Women

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

- Prior to 2005, the concept of 'domestic violence' was not recognized under the Indian law as a special category.
- In 2005, the Indian Parliament adopted the Protection of Women from Domestic Violence Act (PWDVA) with the objective of providing effective protection to the women who are victims of violence occurring within the family or anyway connected with the family sphere.
- The idea of 'domestic violence' was borrowed mostly from the international legal framework. India is party to both the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) as well as the UN Declaration on Elimination of Violence



against Women, 1993, and the PWDVA conforms with the UN Model Legislation on Domestic Violence.

- The adoption of PWDVA addresses two important concerns;

Firstly, the family law reforms of the 1980s like the Family Courts Act, focus more on the need to 'preserve the family' at all costs. Hence, it does not emphasize on ending violence against women in the private sphere. PWDVA helps to address violence occurring in the private sphere.

Secondly, before 2005, domestic violence against women was considered 'cruelty' and was punishable under the criminal law and they formed grounds for divorce under the family laws. However, there was no comprehensive law providing civil remedies for domestic violence for women, like, monetary reliefs or compensation as well as other services that aid women who are sufferers of domestic violence.

- PWDVA adopts a comprehensive definition of domestic violence and includes physical abuse as well as other forms of violence within the family that is manifested and affects the woman. The definition is provided in Section 3 of the Act and reads as: *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.
- PWDVA recognizes how domestic violence affects women at multiple levels and provides various support services to women to help deal with the situation. They are:
 - ❖ Mandatory assistance by medical facilities and shelter homes
 - ❖ Provision for legal aid
 - ❖ Counseling on the direction of the court
 - ❖ Protection Officers and Service Providers to maintain a list and facilitate access

The salient features of **PWDVA** are as follows:

- a) The PWDVA is a civil law except Sec-31 & 33 where criminal proceedings are involved. Its primary objective is to provide compensation as well as support to the woman. This is contrary to criminal law, which intends to primarily punish the perpetrators. Enforcing criminal laws depend on the State, the police, and the prosecution lawyer. As a civil law, PWDVA is victim- driven; she has direct access to the court. The rights and reliefs under PWDVA can only be initiated with the consent of the woman.
- b) PWDVA describes 'domestic relationships' broadly to include, wives, mothers, sisters, daughters, and live in partners. All of these are provided protection by the PWDVA.
- c) The protection under the PWDVA is not limited to the matrimonial home but covers 'shared householder' to include mothers, sisters and daughters as well.



- d) PWDVA provides for 'Stop Violence' orders that offer emergency reliefs to stop violence immediately. PWDVA is an additional law and allows women to enforce other laws, such as the divorce laws as well.
- e) For the effective implementation of this law, PWDVA offers both access to justice as well as access to support systems. It provides for Protection Officers to operate as a nexus between the court and the woman to ensure accessibility to the justice system. These protection officers are usually women. Their role includes assisting women in filing for applications seeking various reliefs, assisting the magistrate in discharge of his functions, making women aware about their right to get free legal aid and providing women shelter homes, medical services etc.
- f) PWDVA also envisages Service Providers, i.e. non- governmental organizations who voluntarily register under the Act, to deliver her with essential support she might require, such as shelter and medical facilities. Service Providers are crucial, as women often would feel more comfortable approaching an NGO rather than the police or state authorities.
- g) PWDVA stipulates for the 'single window clearance system' to aid women in accessing the justice system. This allows woman to use PWDVA to enforce other civil reliefs under other laws as well, such as the criminal law. For example, she can use one PWDVA suit to enforce her right to not be dispossessed when a divorce petition is pending (Section 498 A of the Indian Penal Code). This helps her avoid filing of multiple of suits in various forums.
- h) PWDVA provides that the magistrate may, at any stage of the proceedings of the case, direct either one or both the parties to the suit to undertake counseling with any member of the service provider who holds the required qualification and experience of counseling. Women groups are critical to the counseling provision as it is often seen as a tool for preserving marriage and placing the woman back in the violent situation.
- i) PWDVA puts responsibility on the Central and State Governments for training and sensitization of the general public as well as the state authorities including the judiciary.

In the matters of violence against women, international legal standards, discussed in the earlier paragraphs, have played inspirational role for the Indian stakeholders including the judiciary, the lawmakers, as well as the numerous women groups. PWDVA itself has drawn heavily on those international legal standards. However, even prior to the enactment of the PWDVA, the Indian judiciary has relied on the international legal framework to draw inspiration in deciding and providing civil remedies to cases concerning violence against women.

B. Sexual Harassment of Women at Workplace : Prevention, Prohibition, and Redressal

Protection of Women from Sexual Harassment Act, 2013 (POSH Act)

POSH Act was enacted with the objective of making workplaces safer for women by preventing, prohibiting and redressing acts of sexual harassment against them in the workplace. The law was made effective in the whole of India on December 9, 2013, by the Ministry for Women and Child Development.

History of the POSH Act:

- Many women's rights groups and non-governmental organizations demanding action against sexual harassment towards women at the work place, filed a case, **Vishakha and others**



v. State of Rajasthan and others, in the Supreme Court in the interest of women's protection as a public interest litigation or social action litigation. The origin of this case dates back to 1992. Then, a low-caste woman in her 50s, Bhanwari Devi, who worked as a social or grass roots worker with the Rajasthan Government's women development project, was gang raped by a group of upper-caste men because she tried to stop the devious practice of child marriage. The trial court acquitted (set free of charge of offense) the accused offenders stating also that upper-caste men could not have raped a low-caste woman, and also because all, including the village authorities, doctors, and the police rejected her allegation. Then, in the absence of any Indian law dealing specifically with violence against women, the Supreme Court referred to the UN Convention on the Elimination of All forms of Discrimination against Women and delivered a set of standards, also called the **Vishakha guidelines**, which included the following:

- It is the onus of the employer to include a rule in the company code of conduct for preventing sexual harassment.
- Organizations must establish complaint committees that are headed by women.
- Initiate disciplinary actions against offenders and safeguard the interests of the victim.
- Female employees shall be made aware of their rights.

For the very first time, the Supreme Court recognized obvious legislative insufficiency and recognised sexual harassment at workplace as a violation of human rights. According to the Vishakha judgment, until a legal structure on the topic is formulated and adopted, the Vishakha Guidelines established by Article 32 of the Constitution will have the force of law and must be obeyed by organizations in both the commercial and public sectors.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 is based on Vishakha guidelines and aims to create a mechanism for redressal of Sexual Harassment complaints at workplace.

IV. Exercises

Based on your understanding, answer the following questions:

Q-1 Provide answers briefly for the following-

1. What is CEDAW?
2. What is PWDVA? State the support services provided to women under PWDVA.
3. What guidelines were issued by the Supreme Court in Vishakha & others v. State of Rajasthan?
4. Trace the evolution of POSH Act, 2013 in India.

Q-2 The concern for 'violence against women' including violence in intimate relationships has significantly existed in international discourse and legal frameworks.

1. Which United Nations treaty defines Violence against women?
2. How had Indian Parliament reacted to the rising cases of domestic violence?
3. State a few salient features of the Act.

Q-3 You are a legal studies teacher in a school. You have been asked to conduct a session relating to sexual harassment at workplace. In the session you have to make teachers and staff aware about the laws relating to sexual harassment and various guidelines passed by the Parliament to protect women against violence for prevention of the same citing relevant judgments and acts.

Write an article or create a presentation covering all the points/ issues in the session relating to sexual harassment at workplace.