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## ARTÍCULO DE INVESTIGACIÓN

# Asegurando la igualdad: un enfoque de género neutro para la Ley de Violencia Doméstica en India

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**Resumen.** La Ley de Protección de las Mujeres contra la Violencia Doméstica de 2005 (LPMVD), proporciona medidas legales para abordar la Violencia Doméstica (VD) en India. El objetivo de esta Ley es empoderar a las mujeres y garantizar la igualdad de género en India. Sin embargo, han surgido muchas preocupaciones respecto a denuncias falsas y la falta de atención al abuso doméstico que sufren los hombres. Los críticos han argumentado que las definiciones amplias de VD, que incluyen actos como “insultos” y “burlas”, tienden a interpretar disputas triviales como si fueran casos de VD. También se ha argumentado que la Ley se está utilizando para atacar a otras mujeres en las familias, incluyendo a las suegras y cuñadas. Las dificultades en la implementación de la legislación provienen de la insuficiencia de Oficiales de Protección y una falta de respuesta por parte de la policía, lo que lleva a investigaciones y documentaciones inadecuadas. Esto facilita acusaciones frívolas, fomentando la explotación de las disposiciones legales, perpetuando así disparidades de género e injusticias en los procesos legales. Es imperativo revisar las cláusulas de la Ley existente para mejorar su efectividad y mitigar el daño. Ignorar este asunto podría resultar en un aumento injustificado de los casos de violencia doméstica y sobrecargar el sistema judicial con casos que se desvían del objetivo legislativo.

**Palabras clave.** violencia doméstica, investigación, género, igualdad, justicia.

## Ensuring equality: a gender-neutral approach to Domestic Violence Law in India

**Abstract.** The Protection of Women from Domestic Violence Act, 2005 (PWDVA), provides legal measures to address Domestic Violence (DV) in India. To empower women and ensure gender equality in India is the aim of this Act. However, many concerns have come to light regarding false complaints and the failure to address the domestic abuse experienced by men. It has been argued by critics that the broad definitions of DV, which include acts like “insults” and “ridicule,” have a tendency to interpret trivial disputes being reported as DV. Critics have also argued that the Act is being utilized to target other women in the families, including mothers-in-law and sisters-in-law. Difficulties in implementing the legislation stem from insufficient numbers of Protection Officers and a lack of responsiveness from the police, leading to inadequate investigation and documentation. This facilitates frivolous allegations, encouraging the exploitation of the legal provisions, thereby perpetuating gender disparities and injustices in legal proceedings. It is imperative to revise the clauses of the existing Act to enhance its effectiveness and mitigate harm. Overlooking this matter may result in an unwarranted rise in the cases of domestic violence and overload the judicial system with cases that deviate from the legislative objective.

**Keywords.** domestic violence, investigation, gender, equality, justice.

### INTRODUCTION

The Protection of Women from Domestic Violence Act (‘Act’) was enacted to address the inefficiency and misapplication of existing laws pertaining to violence against women. The Act aims to empower female victims of DV by providing legal avenues for redress in civil and criminal contexts. It allows women to seek injunctions and protective orders and includes criminal provisions for non-compliance with orders (Goonesekere, S. 14). It seeks to uplift the status of women to ensure gender equality. However, concerns have been raised about the potential for false complaints and the lack of attention given to domestic abuse experienced by men. Organizations like ‘Save Indian Family Foundation’ report receiving complaints from men regarding harassment and violence by women. According to the 2004 National Family Health Survey<sup>1</sup> (NFHS), approximately 1.8%, or an estimated six million women, were reported to have engaged in unprovoked physical violence against their husbands. However, it is more common for men to experience threats and attacks from the male relatives of their wives rather than from their wives directly (Rajesh Vakharia n.d.). The misuse of DV laws by both victims and law enforcement has been acknowledged as the absence of gender equality (Ghosh, B., & Choudhuri, T. 323).

The broad definition of DV under the ‘Act’, which includes acts like “insults” and “ridicule,” has drawn criticism for lacking explicit definitions. Critics argue that these broad definitions may lead to the reporting of trivial domestic disputes as instances of DV. They also contend that the law infringes upon men’s right to equality, as only women can file complaints under the ‘Act’. This conservative advocacy portrays accused men and their female relatives as vulnerable groups victimized by DV laws. Ironically, the ‘Act’, intended to protect women, has been misused to victimize other women, particularly mothers-in-law and sisters-in-law. Weak enforcement of DV laws at an insti-

<sup>1</sup> <https://rchiips.org/nfhs/pdf/nfhs4/india.pdf>



tutional level is observed, with widespread police apathy and corruption. This results in inadequate investigation and documentation, favouring wealthy or influential suspects while others evade prosecution through bribery (Kishwar, M. 42).

The Hon'ble Supreme Court of India, in the case of *Prabha Tyagi v. Kamlesh Devi*<sup>2</sup>, ruled that considering the Domestic Incident Report (DIR) before legal proceedings is not mandatory. The DIR becomes mandatory only if the aggrieved person approaches the Protection Officer; otherwise, it is not required. As per Section 2(e) of the Act, 2005, a DIR is required to be prepared by the Protection Officer in the prescribed format upon receiving a complaint of DV from the aggrieved person. Arrests under Section 498A of the Indian Penal Code can be made solely on the complaint of the woman, disregarding the requirement for a DIR, which can lead to prejudgment and arbitrary punishment without proper legal procedures.

The Men Welfare Trust (MWT), an organization advocating for men's welfare, has submitted a Letter/Petition to the Chief Justice of India and other judges. They urge them to take Suo-motu action to amend the judgment of *Prabha Tyagi v. Kamlesh Devi* in accordance with the current laws in India, namely the PWDVA, and Protection of Women from Domestic Violence Rules, 2006 (PWDVR) (2022 SCC Online SC 607). The purpose of this request is to protect the interests of families in the country and promote true gender equality.

In the petition, the MWT has provided reasons and legal references to support their plea, emphasizing that failure to take action may result in irreparable harm and an increase in cases of DV filed by lawyers. This could burden the Magistrate courts with cases that do not align with the existing legislative framework (Lakhani, A. 2022). The 'Act' is vulnerable to abuse, as it assumes the guilt of the accused solely based on the testimony of the woman alleging DV, even before the trial begins (Saxena, T. 64). The intervention of the Protection Officer is not mandatory in cases where the complainant approaches the Magistrate directly or through an advocate, compromising the effectiveness of the 'Act'.

## METHOD

The study applies the content analysis method for collecting data and conducting research. The primary sources which the authors have relied on, include the Constitution of India, the Protection of Women from Domestic Violence Act, 2005, and the Protection of Women from Domestic Violence Rules, 2006, while the secondary sources are legal journal articles, case precedents, and academic research papers. The study assesses the efficacy and misuse of the 'Act' based on relevant data. The objectives of the study can be summarised as follows:

- 1) To explore the theoretical structure of the 'Act,' with particular focus on the handling of investigation of cases of domestic violence.
- 2) To scrutinize the practical application of the regulations outlined in the 'Act' by Protection Officers.
- 3) To identify the obstacles encountered by men who are victimized due to the misapplication of the 'Act'.
- 4) To suggest remedies for enhancing gender equality and the more effective execution of the 'Act'.

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<sup>2</sup> 2022 SCC Online SC 607.

## RESULTS AND DISCUSSIONS

Although the current legislation in India offers recourse for women facing domestic violence, there's a notable absence of similar provisions for men, underscoring a gender imbalance. The study has found that amending the provisions of the current Act is essential to enhance its effectiveness and to mitigate harm; failure to address this matter could result in a rise in cases of domestic violence and overload the courts with matters not aligned with the legislative intent.

### Handling of Investigation of cases of Domestic Violence

Rule 5 of the PWDVR mandates the Protection Officer (PO) to conduct a thorough investigation upon receiving a complaint, resulting in the preparation of a DIR. The DIR is sent to both the local police officer and the designated Service Provider. Nevertheless, according to the Supreme Court decision in the case of *Prabha Tyagi vs. Kamlesh Devi*, it's not mandatory to consider the DIR before initiating any legal proceedings, except when the Protection Officer or Service Provider brings it to the Magistrate's attention (2022 SCC Online SC 607). If the aggrieved person lodges a complaint directly with the Magistrate, the DIR isn't required.

In a majority of DV cases, there is a lack of investigation into the accused party. Relief Orders are passed solely based on a complaint made by a woman, even in the absence of a DIR. Furthermore, the absence of a mandatory DIR requirement makes it challenging to ascertain the merit of a complaint, thus creating uncertainty about its validity. The absence of investigation and DIR by the PO leaves the accused party with no means of redressal, as there are no measures in place for penalties or consequences in instances of baseless petitions (Banka, N. 2022).

The inability of law enforcement personnel to sufficiently investigate and record instances of DV poses a significant obstacle, arising from cultural reluctance to address and report such incidents as a private matter. This leads to a deficiency in holding the perpetrators accountable and ensuring justice for the victims. Addressing this problem requires a multifaceted strategy. It involves mandating the participation of POs, challenging cultural norms, offering training and awareness initiatives for law enforcement personnel, and implementing anti-corruption measures. These endeavours aim to enhance the investigation and reporting of domestic violence, safeguard victims, and promote a culture of gender equality and dignity (Abeyratne, R., & Jain, D. 371).

### Practical application of the provisions of the Act

As per Section 8 of the 'Act,' Protection Officers are mandated to be appointed as full-time employees by the State Governments, with a preference given to the selection of women for this position. Rule 3 of the PWDVR specifies the minimum tenure and qualifications for these officers (Aloria, R. n.d.). However, the implementation of this provision faces challenges. Some states have appointed only a limited number of POs, burdening them with additional responsibilities, while others have failed to appoint any at all. The failure to appoint dedicated POs responsible for receiving complaints, preparing the DIR, and assisting victims throughout the legal process is a significant concern. Instead, existing officials are assigned these tasks without being relieved of their current duties.

U/s 12 of the 'Act,' victims have the option to seek assistance from either the PO or the Magistrate. If the victim approaches the Magistrate directly, the DIR is not mandatory. The proviso to Section 12(1) states that the Magistrate should consider the DIR before granting any relief order. However, it has been stated in multiple judgments that the requirement to consider the DIR is not

compulsory, but instead obligatory only when the aggrieved person seeks assistance from a PO. If the aggrieved person goes directly to the court or seeks assistance from a lawyer, the involvement of the PO is bypassed. Consequently, in most DV cases, the accused respondents are not investigated by the POs, leaving room for potential misuse by the complainant. Additionally, the POs do not have the power to summon the accused respondents for inquiry under the Act.

According to Section 2(e) of the PWDVA, a DIR is a report prepared in the prescribed format by the PO upon receiving a complaint related to domestic violence from the aggrieved person. The DIR follows the format provided in Form I of the PWDVR and serves as an official written record of the complaint, similar to a First Information Report (FIR) in criminal law. It is a public document and which is required to be signed by both the PO and the aggrieved person. It is important to note that the DIR is not an investigation report; it only records the complaint in the prescribed form. The PO does not conduct any inquiries while preparing the DIR. The actual investigations and legal proceedings begin only upon filing of the application u/s 12 by the aggrieved person. The format for this application is provided in Form II of the PWDVR. The DIR is compulsory only when the application is submitted through the PO. It is not compulsory if the aggrieved person directly contacts the Magistrate or seeks assistance from a private lawyer.

The object of the Act is to offer prompt relief to the person aggrieved by domestic violence. In the case of *Rahul Soorma vs. State of Himachal Pradesh* ((2012) SCC Online HP 2574), the High Court of Himachal Pradesh elucidated that the Magistrate has the authority to acknowledge an application u/s 12 without necessarily receiving a DIR from the PO or Service Provider. Similarly, in the case of *Abhiram Gogoi vs. Rashmi Rekha Gogoi* ((2011) 4 Gauhati Law Reports 276), the Gauhati High Court emphasized that the PO has a duty to create a DIR and submit it to the Magistrate, local police officer, and Service Providers upon receiving a complaint of DV. However, in the case of *Narayanakumar v. State of Karnataka and Anr.* (2010 ALL MR (Cri) Journal 158), it was held that an aggrieved person is not necessarily required to approach the PO in every case, and therefore, the DIR is not mandatory for complaints that are directly made to the Magistrate.

The case of *Bhupender Singh Mehra vs. State of NCT of Delhi* had established that orders for relief should be reassessed if DIR is not taken into account (Cri. M.C. No. 1766 of 2010, Dt.8/10/2010). However, in *Prabha Tyagi vs. Kamlesh Devi* the Supreme Court reversed this judgment, asserting that the consideration of the DIR is not obligatory (2022 SCC Online SC 607). It is only required when the PO or Service Provider brings it to the Magistrate's attention. If the aggrieved person directly files a complaint with the Magistrate, the DIR is not necessary.

### **Obstacles due to misuse of the provisions of the Act**

The Act is vulnerable to substantial abuse as it presumes culpability solely on the basis of a woman's allegations of domestic violence, without proper legal proceedings. Arrests can be made solely on the complaint of a woman, even without a DIR, leading to arbitrary punishment. Some women exploit this law for personal gain, using it to facilitate divorce or extract large alimonies. Unfortunately, there are instances where women file frivolous cases against their husbands and relatives, leading to the victimization of innocent individuals without legal repercussions. Such instances do not portray an ideal for gender equality. Differentiating between genuine and false cases becomes challenging in such situations. A few instances of misuse dilute the effectiveness of the law. Without a mandatory DIR, it is challenging to discern the validity of complaints. The absence of compulsory inquiry by the POs leaves the accused party with no avenue for redressal, as there are no repercus-

sions for unfounded petitions. The magazine *Manushi*, which focuses on gender studies, has shed light on the abuse of the law related to domestic violence, particularly instances of false dowry accusations by women against their male partners' families. This manipulation is sometimes encouraged by lawyers and police officers, leading to legal cases against innocent family members (Manchandia, P.319). Madhu Kishwar in 2005 also drew attention to high-profile cases of false dowry allegations in the media. Research shows a rise in false complaints of DV under the 'Act', affecting men as well. The Act's focus on protecting women lacks provisions for proof, potentially undermining its credibility (Ramanathan, V.).

The importance of upholding fundamental rights and the principles of equality and natural justice has been stressed by the judiciary. However, in cases of DV, the respondent is often not given the opportunity to present their side of the story when preparing the DIR. The DIR serves as crucial evidence in the case, but its absence in certain cases can lead to a miscarriage of justice. Adjudicating a case without considering the DIR can be unjust and against equality, particularly if the wife is the instigator of the problem.

## CONCLUSION

Advocates of men's rights argue that false DV cases have led to instances of accused married men resorting to suicide. They claim that married women exploit DV provisions to blackmail their spouses and in-laws, using the threat of divorce as leverage, thereby compromising gender equality (Domestic Incident Report: A Legal View, 2020). The Malimath Committee Report of 2002 on the criminal justice system reveals that categorizing "cruelty" as a non-bailable and non-compoundable offense leads to the frequent arrest and imprisonment of innocent individuals, resulting in stigma and long-lasting mental and physical suffering. False allegations indicate an abuse of the legal process, as the provision was intended to protect women from violence and not to be used for manipulation. The current law in India provides remedies for women against DV, but there is a lack of similar provisions for men, highlighting gender disparity (Malimath Committee on Reforms of Criminal Justice System Government of India 2002: 38). While the 'Act' itself is effective, its utilization by women in genuine need may not be optimal, suggesting that it may not be as empowering for Indian women as initially believed (Ruby, T. T. 9).

The study highlights deficiencies in the provisions and execution of the 'Act' and provides recommendations to improve its implementation and administration of justice in addressing crimes against women and promoting gender equality. The following recommendations are proposed to ensure gender equality:

- Provision for penalizing false and frivolous cases.
- Provision for evidence to support claims stated in an application u/s 12.
- Mandatory reporting of domestic violence to a Protection Officer u/s 12.
- Mandatory submission of the Domestic Incident Report (DIR) to the Magistrate.
- Augmentation of the employment of full-time Protection Officers (POs), coupled with diligent supervision and sufficient funding to ensure the efficient execution of the 'Act.'
- Precisely outlined criteria and responsibilities of Protection Officers to maintain uniformity and professionalism in their performance.

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