

# Protective legislations for women in India and PWDVA, 2005 – An analysis of Guwahati city

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**Abstract:** This research paper will try to highlight the loopholes in the legislative provisions for women in the Indian constitution. Legislations for women have been there since the British rule. Independent India is not an exception. But some Indian customs and traditions set restrictions towards women ignoring them to be an individual. Social construct is such that women do not come out to speak about their plight in the public. Since independence, Indian women has got the right to vote and many rights enshrined in the constitution, but the violence against women in the private domain remained unseen in the legal provisions of the country. Many movements took place to make the violence against women in the private domain to get legal sanction. Anyways, women get much legislation under the Indian constitution for their protection yet none of these legislations have clearly considered domestic violence as a crime till 2005. The failure of the existing provisions to address the domestic violence as a crime has led to the implementation of the Protection of Women from Domestic Violence Act in 2005. This study is an attempt to analyse the awareness level about the act. This study will deal extensively with the legal provisions for women in the Indian constitution. Further these legislations especially PWDVA, 2005 has been studied to analyse the effectiveness in the real sense. The researcher tries to study the legislative provisions made for women especially PWDVA in order to look into the social reactions among women towards such provisions

**Key Words:** Domestic Violence, Legislation, Private domain, PWDVA, Women.

## Introduction:

The Indian constitution has provisions regarding equality among all irrespective of caste, creed, religion, sex etc. It has legislative provisions for women and men to have equality in all aspects. Women specially enjoy some legal provisions for their protection. These protective legislations aim in bringing women close to the justice delivery system. As it is quiet relevant that women is a vulnerable group and so they needs special care.

## International and national provisions for women- A review:

Different groups of women in different levels have been trying hard to uplift the vulnerable conditions of women in both international and national level. Internationally, this effort for women got organised with the calling of Convention of Elimination and Discrimination Against Women (CEDAW) in 1979. CEDAW is a special Convention in focusing on the discrimination of various types on women. It should also be mentioned that the Universal Declaration of Human Rights (UDHR), 1948 has made the rights of human beings legalised and also compelled the international community to come under one umbrella. In 1992, gender-based violence has been regarded as a form of discrimination. This came as a relief to the human society and also to women. The United Nations conference on Human Rights in

Vienna, 1993, took this issue of discrimination against women as an important issue and recommended the formulation of an international instrument on violence against women. Consecutively, in 1994 and 1995; United Nations General Assembly adopted and appointed a special rapporteur on the violence against women. Another landmark is the Beijing Declaration of 1995 which further strengthened the legalisation process of women rights. Thus discrimination of women got into the claws of legislation.

In India too, there are lots of legislative provisions for women since the days of British rule. The Britishers during their rule tried hard to uplift the status of women in the Indian society. From the beginning, the Indian Constitution is also taking measures to protect women. In the Indian legal framework, specific laws for women can be broadly categorised as constitutional laws, labour laws, criminal laws, family laws, and other civil laws.

In the Indian Constitution, Art.14 guarantees equality before law or equal treatment of the laws. Art.15 (1) mentions there should be no discrimination against any citizen. Art.15 (3) provides special provision for women and children. Art.16 (1) & (2) prohibits discrimination in general and in offices. Art.39 (a) of the constitution mentions that state shall in particular direct its policy towards securing that all citizens have the right to have adequate means of livelihood which is also a directive principle. Art.39(c) provides that state should secure the health and strength of the citizens and are not forced to enter into paid work unsuited to their age and strength. Art. 51(A) (e) guarantees duty of the citizen to renounce practices derogatory to the dignity of women (Reddy, 1999). All these provisions for women are not enough for the protection of women. It is seen that women are facing lots of insecurity in the Indian society. It is seen that women are victimised in every spheres of the society and domestic sphere is no different. The Indian constitution has made legal provisions for women in all possible way. An in-depth study of the legislations for women leads to the following segregation- (a) women specific legislations such as, The Immoral Traffic (Prevention) Act, 1956, The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986), The Indecent Representation of Women (Prohibition) Act, 1986, The Commission of Sati (Prevention) Act, 1987 (3 of 1988), Protection of Women from Domestic Violence Act, 2005, The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013 and (b) women related legislations such as, The Indian Penal Code, 1860, The Indian Evidence Act, 1872, The Indian Christian Marriage Act, 1872 (15 of 1872), The Married Womens Property Act, 1874 (3 of 1874), The Special Marriage Act, 1954, The Protection of Civil Rights Act 1955, The Hindu Marriage Act, 1955 (28 of 1955), National Commission for Women Act, 1990 (20 of 1990)etc.(i.e.[1]).

Besides, the Protection of Women from Domestic Violence Act (PWDVA) has been passed in 2005 which is a great relief to the women suffering in the private domain. As the Indian society is a patriarchal society, women suffers a lot in the private domain and that too un-noticed and un-documented. This Act has tried to make the sufferers come for legal help. Before this act, women suffering from domestic violence get only been recognised when women dies. To state it more clearly, women suffering from domestic violence cannot be registered under any of the previous legislations before the implementation of PWDVA. Research articles in various journals have clearly analysed the need of act like PWDVA and its pros and cons. Massive demonstrations have lead to the implementation of this legal provision i.e. PWDVA, 2005 in the Indian law. Some of the provisions of the act include, Protection officers (PO), Service Providers (SP), police, magistrate, and shelter homes. An aggrieved person can inform the police, PO, SP or Magistrate. In favour of the victim, anyone can give complaint to the concerned authorities. Under the Legal Services Authorities Act, 1987 there is the provision for free legal service. Thus the act has laid down provisions to trap the domestic violence cases in all possible ways. But the NCBR has given a disturbed picture of the crimes against women. CAW has been recorded by NCRB in India from 1995 only (i.e. [2]).

So the research questions are- does the legislations under the Indian constitution successful in achieving justice in real sense? Is there any gap between legislations and justice delivered? The objectives of this study are: to study the loopholes in the legislative provisions for women in the Indian

Constitution in general and to analyse the incorporation of PWDVA in the Indian Constitution in the context of protection for women in the private domain. This study will be done on the women of the Guwahati city.

## Methodology:

The methodology undertaken is both qualitative and quantitative. It is based on secondary data and the interview method. In this research paper the researcher has analysed the various legislations of the Indian constitution which are especially for women. Further a survey has been done with a sample of 100 women through random sampling method.

## Survey undertaken

In order to analyse the research problem, the researcher has interviewed 100 women between the age group of 18years to 40years in the Guwahati city. The interviewed women are from different economic and educational background. The questions are put forwarded and the outcomes as under:

1. Do you consider women as a weaker gender?  
75% of women answered no. This reveals that 25% of women still consider themselves as weaker gender. The reason is that these women earn less than their male counterpart. But mention has to be made that they consider themselves as mentally stronger.
2. Are you aware of the legislations for women in India?  
Almost 85% of women answered yes. This reveals that women are aware of the legislations for women. They are educated in the context of legislative provisions in India.
3. Do you think that the legislations help in protecting women?  
Only 25% of women said yes. It shows that legislations do not help much in protecting women. The reason behind this is said to be the patriarchal social construct.
4. What is PWDVA?  
Most of the women are aware of this act. It is seen that almost 80% of women knows about this act. This shows that the publicity about the act is quite remarkable.
5. Do you consider PWDVA as a useful act to eradicate domestic violence?  
20% of women said yes. They belong to the elite category. 60% of women said that due to the social construct the PWDVA fails to eradicate domestic violence. Another 20% of women viewed the said act as far from reality.
6. Do you prefer legal help for domestic violence?  
35% of women said yes. The others consider that legal help will have bad effects in their family life. If no other way is there then only they will go to legal help. It is the last resort.
7. Is it possible to have legal interference in the private domain?  
50% of women said yes. According to them it is the victim who can allow the legislation to interfere the private domain. Legislations cannot interfere in the private domain till the victims goes for legal help.
8. Do you consider the social construct responsible for domestic violence?  
Almost 65% of women said yes. They said the patriarchal construct of the society is responsible for the domestic violence. 35% said that domestic violence is a common thing and part of life. These women think battering as a part of relationship between men and women.

## Recommendations

1. The sense of security in the legislations for women is to be publicised,
2. It should assure that it stands above the customs and traditions of the society,
3. Women should be encouraged to come forward for legal help,
4. Private domain is also under legal claws which is to be made accepted and realised by the vulnerable group through campaigns, advertisements, etc.,
5. Women should consider PWDVA as a first help in all cases of domestic violence.

## Conclusion:

This article shows the trend of legislative protection towards women in India. It is quite surprising that women are aware of the legislations yet they do not consider the PWDVA, 2005 as a first hand aid to eradicate violence in the private domain. Actually there should be high publicity of the provisions of the legislations so that people can avail those to the fullest. It is seen that making legislations is not enough to protect women. But the proper use of legislations will only help to protect women in the public as well as in the private domain.

It can be concluded that domestic violence in India can't be stopped in a short run. The victims should themselves come out for the help of legislation with the help of various stakeholders in order to report about the kind of violence meted out on them. Though the Indian legislative provisions take up legislations for violence against women it will be of no use and thus justice can't be availed of delivered.

Domestic violence against women will have to be taken as a serious crime not only by laws but also by the Indian social construction. Crime in any form cannot be considered to be right at the cost of customs and tradition.

## References and notes:

1. Ahuja, Ram, (1987): Crimes Against Women, Rawat Publications, Jaipur.
2. Aizer, Anna, (2010), The Gender Wage Gap and Domestic Violence: Economic and Political Weekly, Vol.100, No.4.
3. Atkins, Hogget and Bendra, (1984): Women and the Law, Blackwell Ltd., USA.
4. Chattopadhyayya, Kamaladevi and others, (1939): Everymans Press, Madras, The Awakening of Indian Women.
5. Edward, Gait, (1905): A History of Assam, Lbs Publications, Gauhati, Assam.
6. Gelles, K and D R Loseke, (1993): Feminist Controversies in Family Violence, Sage Publications, New Delhi.
7. Jhamb, Bhumika, (2011): The Missing Link in the Domestic Violence Act, Economic and Political Weekly, Vol. XLVI, No.33.
8. Protection of Women from Domestic Violence Act, 2005.
9. Reddy, Subhashan, (1999): The protection of the human rights act, 1993 and relating laws, Law Book Agency, Hyderabad.
10. Reichert, Elisabeth (ed.), (2008): Challenges in Human Rights –A social war perspective, Rawat Publication, Jaipur.
11. Seith, Patricia A, (1997), Escaping Domestic Violence: Asylum as a means of Protection for Battered Women, Economic and Political Weekly, Vol.97, No.6.
12. Sharma, Paribhasha; Gender-based Crime and Gender Inequality in India- A Subnational Analysis (November 7, 2015), Economic & Political Weekly (2).
13. Suneetha A, Vasudha Nagaraj: Adjudicating (Un) Democratic Battles, Economic and Political Weekly September 17, 2005.
14. <http://ncw.nic.in/acts/> retrieved on 22/6/2014 (1).
15. [www.Manushi.com](http://www.Manushi.com)