

Domestic Violence Against Women: A Critical Study Of The Effectiveness Of Legal Protection

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Abstract

Domestic violence against women is a widespread issue of human rights violation, and a major barrier to gender equality in India. The legal framework has changed a great deal since the first constitutional guarantees and through statutory laws and judicial decisions, but there is a lingering concern about how well it is implemented. This paper critically discusses the legal safeguards related to domestic violence against women with special reference to Protection of Women from Domestic Violence Act, 2005. The study employs a doctrinal research approach, examining the constitutional provisions, pertinent legislation, significant judicial rulings and international human rights instruments to determine the effectiveness of the current legal framework. The paper concludes that the Act has significantly expanded the notion of domestic violence by not only acknowledging physical, emotional, verbal, sexual and economic abuse, but also providing extensive civil remedies, including protection orders, rights to residence, monetary damages, custody and compensation. The realization of these legal opportunities is, however, hindered by ongoing problems such as underreporting, patriarchal social norms, lack of institutional support, low number of Protection Officers, judicial delays and lack of awareness of the law by the victims. The study concludes that India's legal framework is comprehensive and progressive, but it needs to be effectively implemented, institutionalized, coordinated and socialized for its success. Effective implementation mechanisms and socio-economic empowerment of women are crucial for meaningful access to justice and building on the constitutional mandate of equality, dignity and a life free from domestic violence.

Keywords: Domestic Violence; Protection of Women from Domestic Violence Act, 2005; Women's Rights; Gender Justice; Legal Protection.

1. Introduction

1.1 Background of Domestic Violence

Violence against women is one of the most widespread forms of human rights violation in the world today. It crosses all cultural, geographical, religious and socio-economic barriers and impacts upon women, regardless of their age, education, or occupation. Domestic violence has been generally considered a private family problem and now is seen as a serious public problem with important legal, social and psychological implications. It includes physical abuse, as well as emotional, verbal, sexual, and economic violence which threatens the dignity, autonomy, and safety of living in equality of women. Domestic violence has become a fundamental part of the right to

life, equality and human dignity, as enshrined in progressively in the international instruments on human rights.¹

Domestic violence against women has been embedded in the social norms of patriarchy, which uphold unequal gender norms and attitudes in India and have become normal in India. There was no comprehensive civil protection mechanism, although there were limited remedies in criminal law with provisions for cruelty and assault, a lack of which could leave victims without immediate relief. To tackle this, Parliament passed the Protection of Women from Domestic Violence Act 2005 which expanded the definition of domestic violence and added remedies for protection, residence, monetary relief, custody and compensation. The law is a reflection of India's commitment towards the constitutional provision of equality and protection of the fundamental rights of women.²

2. Understanding Domestic Violence against Women

2.1 Meaning and Definition of Domestic Violence

Domestic violence is a pattern of abuse by one person of another person in a family relationship as a way to gain or keep power and control. It does not just involve physical violence, but also emotional, verbal, sexual, and economic abuse which impairs a woman's dignity, freedom and basic rights. The Protection of Women from Domestic Violence Act, 2005 has a broad definition of domestic violence which includes not just actual acts of violence but also threats of violence in a domestic context. The Act is different from the criminal law, which was predominantly concerned with physical violence, because it takes a rights-based approach, for instance recognising non-physical types of violence and offering civil remedies for immediate protection. Domestic violence is recognised internationally as a symptom of historically unequal power differentials between men and women and a violation of human rights that is limiting women's ability to participate in society.³

2.2 Forms of Domestic Violence

Domestic violence manifests in various forms, many of which occur simultaneously.

Physical violence - Physical violence is when someone is physically harmed or put at risk of harm such as in the form of assault, beating, slapping, kicking, burning or any act that results in physical harm or endangers life and health.

Emotional or psychological abuse - Emotional/psychological abuse refers to intimidation, humiliation, isolation, repeated insults, threats, coercive control and behaviour which has a negative impact on the mental health and self-esteem of a woman.

Sexual violence - Sexual violence encompasses forced sexual intercourse, coerced sexual acts, marital sexual abuse, and any act that infringes upon the woman's bodily autonomy and/or sexual dignity.

Economic abuse - Economic abuse is when someone deprives a woman of money, denies her maintenance, prevents her from using household goods, prevents her from working or steals her property or assets.

¹ Protection of Women from Domestic Violence Act, 2005, Statement of Objects and Reasons.

² Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 Dec. 1979, 1249 U.N.T.S. 13 (entered into force 3 Sept. 1981).

³ Protection of Women from Domestic Violence Act, 2005, s. 3.

Verbal abuse -Verbal abuse is characterized by repeated insults, name calling, character assassination, ridicule and abusive language that is intended to demean or cause emotional hurt to the person being abused. The protection of the women from domestic violence Act, 2005 explicitly acknowledges all these forms of abuse and thus widens the ambit of legal protection provided to the aggrieved women⁴

2.3 Causes and Social Factors

There are a number of structural, cultural and socio-economic factors that affect domestic violence. One of the main causes is still the patriarchal norms that maintains the superiority of men in the family. Other factors that encourage abusive behaviour include gender stereotyping, unequal power dynamics, dowry expectations, economic dependence, lack of education, substance abuse, joblessness and familial tolerance of violence. Social shame surrounding marital conflict can lead many victims of violence to stay in abusive relationships, and fear of social rejection, economic insecurity and worry over their children can deter women from reporting violence. Poor legal awareness and the lack of institutional support are also linked to lack of access to justice.

2.4 Impact on Women and Society

Domestic violence does not impact on a single person. Often, women suffer physical injuries, chronic health issues, anxiety, depression, post-traumatic stress disorder and a loss of self-confidence. They are further exposed because of economic dependence and absence at the workplace. Children exposed to domestic violence are more likely to suffer from emotional, behavioural and educational difficulties and to become the next generation of perpetrators of violence. Domestic violence, at a wider community level, has a negative impact on gender equality, family stability, the health and justice sectors and national social and economic development. Protecting the individual victim is not the only purpose for effective legal protection; the goal of protecting is to further the larger cause of justice, equality and human dignity.⁵

3. Legal Framework for Protection against Domestic Violence

3.1 Constitutional Protection

The Constitution of India sets a normative framework for protection of women from domestic violence by ensuring equality, dignity and personal liberty. Article 14 guarantees equality before the law and equality of the laws and bans any kind of discrimination against women.⁶ Article 15(1) bans any discrimination based on sex and Article 15(3) allows the State to make special provision for the protection of the women and children, which is constitutionally allowing protective legislation like Protection of Women from Domestic Violence Act, 2005.⁷ **Article 21** guarantees the right to live and personal liberty and the judiciaries have interpreted this right to include the right to live a life of dignity without violence and abuse.⁸

⁴ Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 Dec. 1979, 1249 U.N.T.S. 13 (entered into force 3 Sept. 1981).

⁵ Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India, pp. 184–205.

⁶ The Constitution of India, art. 14.

⁷ Id., art. 15.

⁸ Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

The constitutional protection is further strengthened by the Directive Principles of State Policy. Article 39(a) calls upon the State to ensure that there are enough means of livelihood for both men and women, Article 39(d) calls upon the State to make equal the pay for equal work, Article 39(e) calls upon the State to protect the health and strength of women from abuse and Article 42 is for humane conditions of work and maternity relief.⁹ These are principles that are not legally enforceable, but which inform legislative and executive decisions to promote gender justice.

3.2 Statutory Protection

Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a groundbreaking civil legislation that aims to offer prompt and effective relief to women who are victims of domestic violence. The Statement of Objects and Reasons acknowledges domestic violence as a serious violation of women's constitutional rights and that the current criminal laws were not sufficient to comprehensively address the issue.¹⁰

The Act is applicable to all women, whether married or unmarried, if they have been or are in a domestic relationship with the respondent by marriage, through adoption or consanguinity or in the nature of marriage. Section 3 offers a broad definition of domestic violence, which encompasses physical, sexual, verbal, emotional and economic abuse.¹¹

One of the unique aspects of the Act is that it recognizes the shared household, giving an aggrieved woman the right to live in the household regardless of who is the owner. The Act also establishes the role of Protection Officers, who are mandated to support victims when they file a Domestic Incident Report, ensure medical assistance is provided and make sure victims are put up in shelter and legal remedies are made available¹²

Further, the Magistrate can make Protection Orders which will bar further acts of violence, Residence Orders which will prevent anyone from being ejected from the shared household, Monetary Relief for expenses of living, medical expenses and loss of income, Custody Orders in relation to minor children and Compensation Orders in relation to injuries such as mental torture and emotional distress¹³ The above provisions all reflect the remedial and victim-centred nature of the legislation.

3.3 Relevant Criminal Law Provisions

The civil remedies provided for in the PWDVA are complemented by provisions under the criminal law. The definition of cruelty, included in Section 498A of IPC, 1860, made it a criminal offence for the husband or his relatives to commit harassment in relation to unlawful dowry demands and acts that are likely to cause grave physical or mental injury.¹⁴ Under the new criminal code, the provisions relating to cruelty against married women continue after the introduction of the Bharatiya Nyaya Sanhita, 2023¹⁵

⁹ The Constitution of India, arts. 39 & 42.

¹⁰ Protection of Women from Domestic Violence Act, 2005, Statement of Objects and Reasons.

¹¹ Id., s. 3.

¹² Protection of Women from Domestic Violence Act, 2005, ss. 8–10.

¹³ Id., s. 22.

¹⁴ Indian Penal Code, 1860, s. 498A.

¹⁵ Indian Penal Code, 1860, ss. 319–326 & 503.

Acts of domestic violence may also constitute offences relating to voluntarily causing hurt, grievous hurt, criminal intimidation, wrongful confinement, and sexual offences under the applicable criminal law. The **Dowry Prohibition Act, 1961** criminalises the giving, taking, and demanding of dowry, addressing one of the significant causes of domestic violence¹⁶. Procedural safeguards such as the maintenance under section 125 of the Code of Criminal Procedure, 1973, serve to further ensure the protection of women who are neglected and abused.¹⁷

3.4 International Legal Framework

India's jurisprudence on domestic violence has been greatly shaped by International human rights law. The rights to equality, dignity, life, liberty and security of persons are recognised in the Universal Declaration of Human Rights in 1948¹⁸ Under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) State Parties are required to take measures to eliminate discrimination in all areas, and this has been understood to encompass gender-based violence.¹⁹ Domestic violence is specifically identified as a violation of women's human rights in the Declaration on the Elimination of Violence against Women, 1993 and States are urged to undertake due diligence in the prevention, investigation and punishment of domestic violence²⁰ Such international instruments have been invoked by Indian courts in interpreting guarantees for women's rights in the constitution²¹.

4. Critical Analysis of the Effectiveness of Legal Protection

4.1 Achievements of Existing Laws

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) marks a paradigm change in the approach of the Indian law towards domestic violence. The PWDVA also has a different approach from the traditional criminal law, which mainly aims at punishment for the perpetrator after the offence is committed, in that it treats domestic violence as a violation of women's rights, including violations of their constitutional rights. The Act acknowledges and covers all forms of abuse, including physical, emotional, verbal, sexual and economic abuse, encompassing the multidimensional aspect of domestic violence²²

The Act's most notable feature is the implementation of civil remedies. Protection orders, residence orders, monetary relief, custody orders and compensation can be used to provide victims with immediate protection, without the need to proceed with criminal charges.³ The law also protects a woman's right to live in the shared home regardless of who owns it, which helps to prevent homelessness after domestic abuse.

¹⁶ Dowry Prohibition Act, 1961.

¹⁷ Code of Criminal Procedure, 1973, s. 125.

¹⁸ Universal Declaration of Human Rights, 1948, arts. 1, 3, 5 & 7.

¹⁹ Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 Dec. 1979, 1249 U.N.T.S. 13 (entered into force 3 Sept. 1981); Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (1992).

²⁰ Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (20 Dec. 1993).

²¹ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

²² *Id.*, s. 3.

An important aspect is that there are interim and ex parte orders that can provide immediate relief in emergency situations. While there are still some delays in practice, the statutory reforms show that the legislature is setting itself a much faster pace of justice than previous to the establishment of conventional criminal systems²³

The Act has also contributed to the awareness of public rights of women. Raising awareness about the need to understand the law, greater judicial activism and initiatives by Legal Services Authorities (LSAs) and non-governmental organisations (NGOs) have helped to shift public perception that domestic violence is a private family matter.²⁴

4.2 Judicial Interpretation

Purposive interpretation has substantially enhanced the implementation of the PWDVA through judicial interpretation.

In **V.D. Bhanot v. Savita Bhanot**, the Supreme Court ruled that relief under the Act can be provided even when the domestic violence incidents had begun prior to the enforcement of the Act, if the acts of violence had an impact after the Act came into force²⁵ This understanding made it possible for victims to be deserving even if they had been abused before 2005.

In **Indra Sarma v. V.K.V. Sarma** too, the Court explained the definition of "relationship in the nature of marriage" and provided guidelines to be followed while deciding whether a live-in relationship would come under the ambit of the Act or not.²⁶ But even though relief was denied on the facts of that case, the judgment provided significant clarity on the scope of legal protection.

The most important growth in the case law has been in **Hiral P. Harsora v. Kusum Narottamdas Harsora**, the Supreme Court's decision that the phrase "adult male" in Section 2(q) of the ordinance was unconstitutional. The Court determined that domestic violence can be perpetrated by the women relatives also, thus allowing complaints against any adult person involved in domestic violence.

In the case of **Satish Chander Ahuja v. Sneha Ahuja**, the Supreme Court also gave a liberal interpretation to the term 'shared household', as per the intent of the Act²⁷

4.3 Practical Challenges

Although there have been legislative developments, the implementation of the domestic violence law is the weakest part. Many victims do not report abuse due to fear, family pressure, social stigma and economic dependence, and a concern about children²⁸

Political culture often promotes the idea of reconciling conflicts, rather than taking them to court, and police officers sometimes respond to domestic violence cases as private family problems, rather than crimes. The delays in court also diminish the effectiveness of the statutory remedies without which the legislators would have hardly focused on speedy relief.

Lack of Protection Officers, shelter homes, poor coordination of welfare agencies and low awareness about legal options for action are also obstacles to implementation. Geographical

²³ *Id.*, s. 23.

²⁴ National Legal Services Authority.

²⁵ **V.D. Bhanot v. Savita Bhanot** at 188–89.

²⁶ **Indra Sarma v. V.K.V. Sarma** at 786–800.

²⁷ **Satish Chander Ahuja v. Sneha Ahuja** at 456–62.

²⁸ National Family Health Survey, Vol. I, pp. 649–660.

distance, lack of law awareness and institutional infrastructure are other disadvantages for rural women²⁹

Economic dependence is further a large hurdle. Women who do not have their own financial means often do not seek legal recourse even if they continue to be abused due to issues of housing, maintenance and childcare.

4.4 Misuse Debate

The PWDVA has been subject to some criticism on allegations of misuse at times. Likewise, there has been some apprehension about criminal proceedings under Section 498A of the Indian Penal Code. The Supreme Court is concerned about the misuse of provisions of matrimonial cruelty in the case of *Rajesh Sharma v. State of Uttar Pradesh* and recommended procedural safeguards.

In the case of *Social Action Forum for Manav Adhikar v. Union of India*, however, the Court significantly changed this direction, saying that the safeguards should not curtail statutory protection meant for the victims of a religious miscreant³⁰

As such, courts have recognized that misuse is a possibility, but have consistently stated that isolated cases should not be used to dilute legislation aimed at combating gender-based violence that is pervasive.

4.5 Is the Existing Legal Framework Effective?

Its current legal framework is robust and comprehensive from a constitutional point of view. The PWDVA offers wide-sweeping civil remedies and the criminal law covers acts which are offences under the PWDVA, including acts of cruelty, assault, intimidation and acts of dowry-related violence. Judicial interpretation has always been a source of growth for women's rights under the Act, by adding new meaning³¹

However, the effectiveness will still rely on implementation. Similarly, the existing institutional bottlenecks (such as poor enforcement, judicial delays, limited Protection Officers, lack of awareness and socio-economic issues) still remain an impediment on access to justice. While India's legal framework is good, its implementation presents challenges, namely the need for improved institutional capacity, accountability, legal awareness and social change in order to achieve meaningful protection

5. Challenges and Recommendations

5.1 Institutional Reforms

The institutional reform should be targeted towards enhancing implementation of the Protection of Women from Domestic Violence Act 2005 by proper allocation of funds, strengthening monitoring system and increasing accountability of the authorities assigned domestic violence enforcement. Effortless supervision of Protection Officers and service providers accompanied with regular evaluation of implementation by State Governments, would substantially increase justice delivery. The development of digital case management systems and integrated victim-support services to minimize procedure delays and increase access should also be promoted.

5.2 Strengthening Protection Officers

²⁹ National Crime Records Bureau, Chapter 3.

³⁰ *Social Action Forum for Manav Adhikar v. Union of India*.

³¹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, New Delhi, 1999) 197–205.

Protection Officers are the mainstay of the statutory provisions in the Protection of Women from Domestic Violence Act, 2005. But there remain significant concerns of lack of training capacity, high workloads and weak support systems across many States. To be able to effectively execute their statutory protection roles, Protection Officers require good recruitment, training in gender-sensitive practices, appropriate office facilities and regular capacity-building sessions³²

5.3 Fast-track Courts

When domestic violence cases delay the judiciary, it is an important factor for the victim to suffer from subsequent abuse. It would be useful to have specialised courts or designated courts for domestic violence cases to expedite applications being made under the Act. Enhanced access to justice would be made easier through greater use of interim protection orders and through the streamlining of procedures³³

5.4 Legal Awareness Programmes

Numerous women are not aware of their legal rights and available remedies under the Act. The implementation of comprehensive legal literacy programmes should thus be done in educational institutions, Legal Services Authorities, local bodies and civil society organisations³⁴

5.5 Economic Empowerment of Women

Women still have to endure abusive relationships because of their economic dependence. Vocational training, skill development, financial inclusion and proper implementation of maintenance and monetary relief provisions under the Act should be the focus of government policies³⁵

5.6 Police and Judicial Training

Gender responsiveness is essential for effective implementation of the laws on domestic violence within the framework of good policing and judicial practice. Police officers, prosecutors, judicial officers and Protection Officers should receive regular training to update them on victim-centred approaches and changing judicial precedent³⁶

5.7 Better Coordination among Stakeholders

Its effective implementation must be done with close coordination between Judiciary, Police, Protection Officers, Legal Services Authorities, Medical institutions, Shelter homes, Counselling centres and non-governmental organisations³⁷ Improved victim protection and rehabilitation would be achieved through a multi-disciplinary response mechanism

6. Conclusion

Violence against women is one of the most entrenched issues of gender justice and human rights in India. This study shows that the legal dimension of domestic violence has changed considerably with the constitutional guarantees, the far-reaching protection under the Protection of Women from Domestic Violence Act, 2005 and the progressive judicial interpretation. The law has broadened the definition of domestic violence to include emotional, verbal, sexual and economic violence, and

³² Hiral P. Harsora v. Kusum Narottamdas Harsora.

³³ Satish Chander Ahuja v. Sneha Ahuja.

³⁴ National Legal Services Authority.

³⁵ Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India.

³⁶ Law Commission of India.

³⁷ National Crime Records Bureau.

offers civil remedies like protection orders, residence rights, monetary relief, custody and compensation to be easily available.

The scope of the research shows that while the current law is conceptually robust and generally in line with the international human rights framework and constitutional principles, it is scantily implemented in practice. However, under-reporting, patriarchal social norms, judicial delays, lack of Protection Officers, inadequacy of institutional coordination, lack of legal awareness and economic dependence remain major obstacles for meaningful access to justice for many women.

Thus, the study finds that the prime problem is not the lack of legislation but the lack of implementation. To make sure that statutory rights are implemented and women benefit from protection, significant institutional capacity enhancement and inter-agency co-ordination, legal awareness, gender-sensitive policing and judicial practices, and promotion of women's economic empowerment are needed. To move towards equality, dignity and a life free from violence for all women, a comprehensive approach, including the effective implementation of laws, is essential, which requires a wider social transformation.

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