

**NEW DIMENSIONS OF DOMESTIC VIOLENCE
ASSERTED AGAINST WOMEN IN DELHI: AN
ANALYTICAL STUDY FROM JUDICIAL
PERSPECTIVE**

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ABSTRACT

In today's era, the society is being evidencing the significant growth and development due to the sheer contribution made by the women in different fields. The women are no more dependent on men for their living rather they are excelling equally as to the men. But even then, also, many of the women who are living in any domestic relationship, have been witnessing the harassment in either physical, mental or economic form. If we compare the position of Indian women in relation to rights granted to them, even with other countries of lesser female population, it is really terrifying. Domestic Violence is the most common case of household offence. The violence in any domestic relationship effects not only the victim but also equally outrages the people surrounding her (children, parents, friends, brothers and sisters). In the last few years, Judiciary has been actively discussing over the scope of Domestic Violence in any relationship and has also extended the actual scope of Protection of Women from Domestic Violence Act, 2005. Through various leading judgements in recent past, Judiciary has tried to ensure the protection and empowerment of women as it is essential for upliftment of economic, social and political status of womens' in the Indian society. The present paper attempts to study the extent of enforcement of remedies ensured in

Protection of Women from Domestic Violence Act, 2005 and the predominance of women empowerment in the society through various judicial pronouncements.

Key Words: Women Empowerment, Domestic Violence, Judiciary, aggrieved, Socio-Economic etc.

INTRODUCTION:

"You can recognize survivors of abuse by their courage. When silence is so very inviting, they step forward and share their truth so others know they aren't alone."

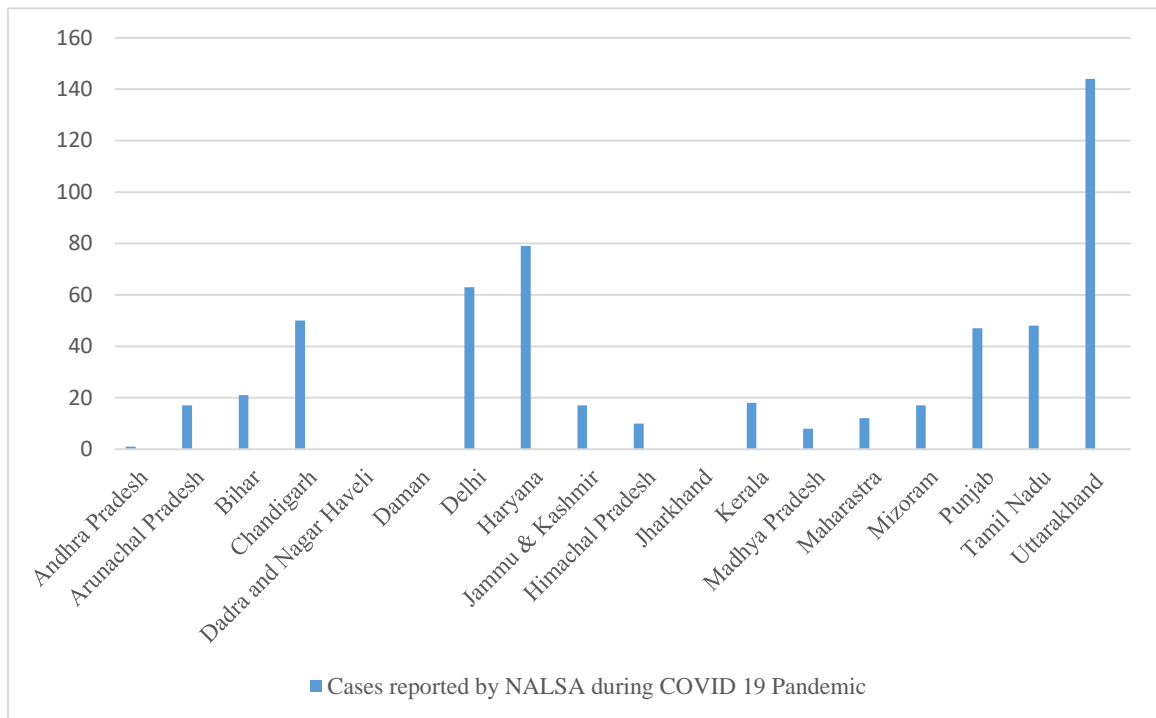
...Jeanne McElvaney

Domestic violence (DV), as been defined by the Protection of Women from Domestic Violence Act 2005 as *physical, sexual, verbal, emotional, and economic abuse* against any women by a partner or family member who is residing in a domestic relationship with her. This is a new form of cancer like disease which is destroying the families and the peace in the lives of women in Indian Society.

Today, in Indian society, the era has come when the women have to face violence from those who ought to be their supporters and protectors i. e. her family but ironically she has to suffer today maximum resistance from her loved ones only. Such resistance can be of any form like physical, mental, economic, sexual. The Protection of Women from Domestic Violence Act, 2005 (PWDV Act. 2005) has been drafted to implement the protection oif women from different kinds of violence as defined in PWDV Act, 2005 with the help of active role playing by Judiciary. According to National Commission of Women Data collected of 2021, around 41% of women reported experiencing Domestic Violence during their lifetime and 30% specifically during the early months of the year 2021. As informed by National Legal Services Authority (NALSA), a total of 727 cases relating to Domestic Violence were reported. The highest number of cases were reported in the State of Uttarakhand

(144) followed by Haryana (79), Delhi (63), Chandigarh (50). Nearly 31,000 complaints of crimes against women received by the National Commission for Women (NCW) in 2021, the highest since 2014, out of which over half of them are from Uttar Pradesh.⁸⁴

NALSA REPORT ON CASES OF DOMESTIC VIOLENCE REPORTED BY STATE LEGAL SERVICES AUTHORITIES DURING COVID 19 PANDEMIC

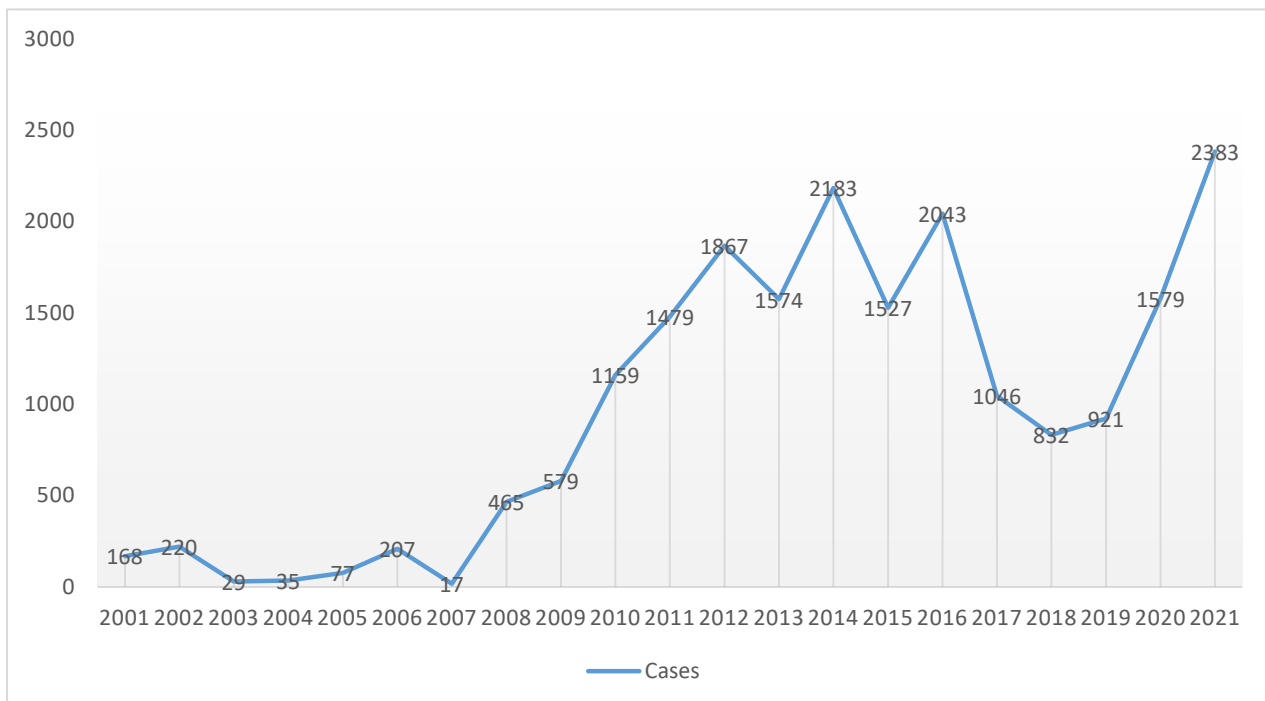


⁸⁴ Available at <https://www.thehindu.com/news/national/nearly-31k-complaints-of-crimes-against-women-received-in-2021-over-half-from-up-ncw/article38085679.ece> (last visited on 25 April 2022)

As per the data provided, a total of 727 cases relating to Domestic Violence were reported to the Legal Services Authorities in different states / UTs across the country for seeking legal aid and assistance. The highest number of cases were reported in the State of Uttarakhand (144) followed by Haryana (79), Delhi (63), Chandigarh (50), Tamil Nadu (48), Punjab and Uttar Pradesh (47 each) and West Bengal (46). Odisha reported 37 cases, Chhattisgarh reported 31 cases, Bihar reported 21 cases while, Kerala has 18 such cases, Jammu and Kashmir, Arunachal Pradesh and Mizoram reported 17 cases each, Maharashtra reported 12 cases, Himachal Pradesh had 10 cases while Madhya Pradesh, Tripura, Rajasthan, Manipur and Andhra Pradesh reported 8, 7, 4, 3, 1 respectively and the remaining States reported that no cases of Domestic Violence was reported during the pandemic.⁸⁵

IN THE PAST 21 YEARS⁸⁶

DOMESTIC VIOLENCE COMPLAINTS RECEIVED



⁸⁵ Available at https://www.livelaw.in/pdf_upload/pdf_upload-374882.pdf (Last visited on 21 April 2022)

⁸⁶ Available at <https://www.thehindu.com/data/data-domestic-violence-complaints-received-in-past-five-months-reach-a-21-year-high/article34877182.ece> (last visited on 21 April 2022).

As per the data provided, about 2,300 the complaints regarding domestic violence were filed with the National Commission for Women between January and May in 2021 which was surprisingly the highest in number for any year since 2000. According to the data provided, there is a great hike in the registration of complaints under the Protection of Women from Domestic Violence Act, 2005 since the last 21 years, The reasons can be the unemployment, scarcity of food and other essentialities or the mental distress caused due to COVID19 pandemic but the pandemic has for sure played a very a major role in the same. According to the data provided, about 70% of women in the major States who faced physical violence did not complain about rather they suffocate in themselves only. Even among those who sought help, very few can get the timely relief. So the data collected cannot be considered as exhaustive one as the majority of the cases cannot come in cognizance due to multiple reasons like scarcity of information, a hesitation to bring the issue in public, the male dominance and many more.

JUDICIAL INTERPRETATION IN EXPANDING THE SCOPE OF DOMESTIC VIOLENCE WITHIN THE RIGME OF DOMESTIC RELATIONSHIP

“Procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it.”⁸⁷

Today, Judiciary is playing the pivotal role in ensuring the enforcement of rights of a women provided by the Protection of Women from Domestic Violence Act, 2005. Some of the leading and crucial judgements which have

⁸⁷ *Kunapareddy @ Nookala Shanka Balaji Versus Kunapareddy Swarna Kumar* (2016 Supreme Court).

ensured the predominance of Natural Justice for a woman from Domestic Violence are as follows:

(a) In **SATISH CHANDER AHUJA VERSUS SNEHA AHUJA** ((2021) 1 SCC 414)⁸⁸, Hon’ble Supreme Court of India observed that:

“The progress of any society depends on its ability to protect and promote the rights of its women. Guaranteeing equal rights and privileges to women by the Constitution of India.⁸⁹ A woman resigns her fate to the never-ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male's relatives.” In **ANIKET SUBHASH TUPE VERSUS MRS. PIYUSHA ANIKET TUPE AND OTHERS** (2018 SCC ONLINE BOM 601) The Hon’ble Bombay High Court asserted that the trial court has discretion to allow evidence on affidavit and cross-examination to test of veracity of evidence under DV Act.⁹⁰

(b) In **MS. KANAKA KEDAR SAPRE (THROUGH GRANDMOTHER) VERSUS MR. KEDAR NARHAR SAPRE AND OTHERS** (2022 SCC Online Bom 1, decided on 4-1-2022), It was held that

“Legal Representative Cannot Seek Monetary Reliefs on Behalf of Deceased Woman under Protection of Women from Domestic Violence Act, 2005.”⁹¹

⁸⁸ Available at https://main.sci.gov.in/supremecourt/2020/689/689_2020_37_1501_24378_Judgement_15-Oct-2020.pdf (last visited on 21 April 2022).

⁸⁹ Available at <https://www.scconline.com/blog/post/2021/03/01/scc/> (last visited on 21 April 2022)

⁹⁰ Available at <https://www.scconline.com/blog/post/tag/affidavit/> (last visited on 21 April 2022).

⁹¹ Available at <https://www.scconline.com/blog/post/tag/stridhan/> (last visited on 23 April 2022).

(c) **SHILPI SINGH VERSUS VIKAS KHANNA** (C.R.P. 52/2022 & CM APPL. 18406/2022)

“Order of restraint against husband under Domestic Violence Act does not preclude Family Court from making arrangement for Child Visitation.”⁹²

(d) **KUNAPAREDDY @ NOOKALA SHANKA BALAJI VERSUS KUNAPAREDDY SWARNA KUMAR** (AIR 2016 SUPREME COURT 2519), also in **S. R. SUKUMAR VERSUS. S. SUNAAD RAGHURAM** (2015) 9 SCC 609)

“It cannot be said that the Court dealing with the application under DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events or to avoid multiplicity of litigation, Court will have power to allow the same.”⁹³

(e) In **OM PRAKASH GUPTA & ANR Versus ANJANI GUPTA & ANR** (CRL. M.A. 15072/2021, decided on 08.03.2022)

“Wife opposing Husband's Plea for Restitution of Conjugal Rights does not affect her Right Of Residence under Domestic Violence Act. The right of residence under the DV Act is exclusive to and isolated from any right that may arise under Section 9 of the Hindu Marriage Act, 1955.”⁹⁴

(f) In **MOHD. ZAKIR VERSUS SMT. SHABANA** (CRL. Petition No. 2351 of 2017), it was held that “Husband also can initiate Proceedings under DV Act Against Wife or her Relatives. If the definition of

⁹² Available at <https://www.livelaw.in/news-updates/delhi-high-court-domestic-violence-act-family-courts-act-harmonious-construction-197154> (last visited on 23 April 2022).

⁹³ Available at <https://familycourts.mphc.gov.in/PDF/WORKSHOP%20ON%20FAMILY%20LAWS%20AUGUST%202016/HOBLE%20JUSTICE%20DIPAK%20MISRA/Kunapareddy%20alias%20Nookala%20Shanka%20Balaji%20v.%20Kuapareddy%20Swarna%20Kumariand%20Anr.%20AIR%202016%20SC%202519.pdf> (last visited on 23 April 2022).

⁹⁴ Available at <https://primelegal.in/2022/03/09/a-wife-has-the-right-to-live-at-her-husbands-co-owned-property-high-court-of-delhi/> (last visited on 23 April 2022).

‘aggrieved’ is read after deleting the expression ‘adult male’, it would appear that any person, whether male or female, aggrieved and alleging violation of the provisions of the Act could invoke the provisions under the Act.”⁹⁵

(g) **ARCHANA GOINDI KHANDELWAL Versus RAJESH BALKRISHNAN MENON & ORS.** (Special Leave to Appeal (C) No(s). 2939/2022, order dated 04.03.2022)

“In a dispute between the husband and wife under the Domestic Violence Act, the landlord, who otherwise is entitled to the decree of eviction should not be made to suffer.”⁹⁶

The Apex Court also said that “If the wife has any grievance against the husband, maybe in respect of the alternative accommodation, the same requires adjudicated in the Domestic Violence Act proceedings and/or any other remedy which may be available to her against the husband.”

(h) **JITENDRABHAI BHIKHABHAI BHAMBANIYA & ORS. Versus STATE OF GUJARAT** (2018 Gujrat High Court)

“The complainant wife can certainly be considered as a family member of the brother-in-law and sister-in-law of her. Therefore, the relationship would not come to an end only because of death of her husband and, therefore, she may be considered as an aggrieved person with reference to relationship.”

(i) **SATISH CHANDER AHUJA Versus SNEHA AHUJA** (2020 CIVIL APPEAL NO.2483 of 2020)

“Wife Entitled to Claim Right of Residence which belongs to Relatives Of Husband also. The Hon’ble Apex Court also observed that it is not requirement of law that aggrieved

⁹⁵ Available at <https://www.scconline.com/blog/post/2018/06/08/any-person-male-or-female-is-entitled-to-invoke-the-provisions-of-domestic-violence-act-2005/> (last visited on 23 April 2022).

⁹⁶ Available at <https://www.scconline.com/blog/post/2022/03/11/issue-of-accommodation-in-a-domestic-violence-dispute-between-husband-and-wife-shall-not-affect-landlords-right-to-get-possession-of-his-property-sc/> (last visited on 24 April 2022).

person (landlord) may either own the premises jointly or singly or by tenanting it jointly or singly, the household may belong to a joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”⁹⁷

(j) **PRAVEEN TONDON Versus TANIKA TONDON** (2021 SCC OnLine Del 3044)

Hon’ble High Court uphold the order Of Interim Maintenance U/S 23 PWDV Act, 2005 to the alleged Live-In Partner of Married Man under DV Act.⁹⁸

(k) In **WE THE WOMEN OF INDIA Versus UNION OF INDIA** (2021 Supreme Court of India)

1) The Central programme /Plans should outline assistances to the efforts under the PWDV Act by various States, including the extent of funding, conditions of financial support and the control mechanisms in place,

2) To collect State-wise relevant data of litigation under the DV Act with respect to the complaints made, number of Courts, and, the relative number of Protection Officers.⁹⁹

(l) In **KAMATCHI Versus LAKSHMI NARAYANAN** (Cr. A. 627 OF 2022)

The Hon’ble Apex Court held that limitation period U/S 468 CrPC not applicable to application U/S 12 Domestic Violence Act. The scope of notice under Section 12 of the Act is to call for a response from the respondent so that after considering defendant’s submissions, appropriate order can be issued.¹⁰⁰ **SHIVANAND Versus BASAVVA @ LAXMI** (Criminal Petition No.101378/2019, date of

judgement 17 February 2022) The Hon’ble Karnataka High Court held that Maintenance Awarded to Wife Under Domestic Violence Act Cannot Be Enhanced U/S 127 of Code of Criminal Procedure, 1973.¹⁰¹

CONCLUSION: THE JOURNEY AHEAD

“At any given moment you have the power to say this is not how the story is going to end.”

...Christine Mason Miller

According to the Crime in India Report, a woman is subjected to Domestic Violence in every 4.4 minutes.¹⁰² The violence is changing from one form to another on regular basis. A woman has to suffer the pain, distress and helplessness from those whom who are responsible for her safety. When the things become unbearable, when she does not find any way out, she has to step ahead and bring her voice not only for herself but for her loved ones also, be it her children, her friends or any one else. The Higher Judiciary has from time to time tried to redefine the violence in any domestic relationship and make the ambit of PWDV Act,2005 widened in the lieu of the changing society.

Recently also on 28th April 2022, Hon’ble Supreme Court of India while hearing plea seeking appointment of protection officers and establishment of Shelter Homes and medical facilities, directed NALSA to provide the data of the pending cases qua PWDV Act 2005.¹⁰³

Apart from judiciary, the other state machineries should also coordinate for suppressing such evil from the households. The inexhaustive but substantive measures which can be taken to strengthen the war against domestic

⁹⁷ Available at https://main.sci.gov.in/supremecourt/2020/689/689_2020_37_1501_24378_Judgement_15-Oct-2020.pdf (last visited on 24 April 2022).

⁹⁸ Available at <https://www.sconline.com/blog/post/2021/06/09/adultery/> (last visited on 24 April 2022).

⁹⁹ Available at <https://theprint.in/india/sc-seeks-status-report-from-centre-on-implementation-of-mandatory-provisions-of-domestic-violence-act/905309/> (last visited on 24 April 2022).

¹⁰⁰ Available at <https://theprint.in/india/sc-seeks-status-report-from-centre-on-implementation-of-mandatory-provisions-of-domestic-violence-act/905309/> (last visited on 24 April 2022)

¹⁰¹ Available at <https://www.latestlaws.com/case-analysis/hc-maintenance-granted-u-s-12-of-dv-act-cannot-be-enhanced-u-s-127-cr-p-c-read-order> (last visited on 24 April 2022)

¹⁰² Available at <https://www.alliance.edu.in/ijls/ijls-2021/assets/documents/COVID19-Lockdown.pdf> (last visited on 24 April 2022)

¹⁰³ Available at <https://www.livelaw.in/top-stories/supreme-court-nalsa-domestic-violence-act-cases-protection-officers-service-providers-shelter-homes-197793> (last visited on 24 April 2022)

violence, which can play a detrimental role on the part of judiciary in future are suggested as follows:

1. There should be regular and adequate appointment of Protection Officers, as per their Jurisdictional area, so that an effective and timely Domestic Incident Report (D.I.R.) can be filed before the court and the various reliefs like Ad Interim Maintenance or Interim Maintenance can be awarded to the victim on the earliest.

2. For making the petition filing procedure smoother and more accessible, the digital world can play a crucial role. There should a simple mobile application bearing form like proforma (in English and Hindi both) which can be filled by any victim herself.

3. The ambit covered by Abuse in different forms like physical abuse, mental abuse, emotional abuse is pretty vast. There is a need from the Judiciary to strengthen the spirit of PWDV Act, 2005 by analysing abuses witnessing in the various Domestic Violence complaints with a broader spectrum.

6. The Law Colleges may play the crucial role in administrating justice to all the aggrieved persons of Domestic Violence as in every law college there is Legal Aid Committee which can work on ground root to make aware the women about their rights and remedies under PWDV Act, 2005.

7. The Legal Literacy Clubs should be established in each and every area, where the women should be informed the procedure to access the justice.

8. Since the nomenclature of PWDV Act, 2005 is Quasi Criminal, the defendant gets a privilege to escape the liability under the act. So, more Criminal Liability under PWDV Act should be invoked i.e., the criminal punishment should be included in the act in case of the violation thereof.

9. The Execution Petitions proceedings for Interim maintenance or final maintenance under PWDV Act, 2005 should be made more stringent.

10. More Specialised Courts (Mahila Courts) should be designated in every state to deal with the huge pendency of Domestic Violence Complaints so that speedy disposal of cases under PWDV Act, 2005 can be ensured.