

## DOMESTIC VIOLENCE ACT: CONTEMPORARY PERSPECTIVES AND CHALLENGES

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### **ABSTRACT**

Domestic violence, often concealed behind the veil of familial privacy, remains one of the most pervasive and underreported forms of human rights violations globally. In the Indian context, domestic violence is not confined to physical harm alone—it encompasses emotional, verbal, sexual, and economic abuse, frequently normalized within patriarchal structures. Recognizing the urgent need for comprehensive legal protection, the Indian Parliament enacted the **Protection of Women from Domestic Violence Act, 2005 (PWDVA)**, marking a paradigm shift in addressing domestic abuse through civil law remedies.

This research paper aims to critically analyze the **contemporary relevance of the PWDVA**, its **legal interpretation by Indian courts**, and the **practical challenges in its implementation** across different socio-economic segments. While the Act provides significant reliefs such as residence rights, protection orders, and monetary compensation, its on-ground execution is hindered by systemic lapses—ranging from inadequate infrastructure to societal stigma and lack of awareness. Furthermore, the paper delves into judicial precedents that have shaped the understanding of “domestic relationship” and “aggrieved person,” and evaluates the performance of institutional mechanisms like Protection Officers and shelter homes. Through a **comparative legal analysis** with other jurisdictions and a **socio-legal lens**, the study seeks to highlight the areas where the law falls short in protecting victims effectively.

**Keywords** Domestic Violence, PWDVA 2005, Women’s Rights, Human Rights Violations, Patriarchy, Legal Protection, Civil Remedies, Judicial Interpretation, Socio-Legal Analysis, Protection Officers, Implementation Challenges, Shelter Homes, Gender Justice, Legal Reforms, Comparative Legal Study

### **1. Introduction**

Domestic violence is a deeply entrenched social issue that affects individuals across all strata of society, irrespective of age, caste, religion, or economic status. It manifests in various forms—**physical assault, emotional manipulation, verbal humiliation, sexual coercion, and economic deprivation**—all of which contribute to a sustained pattern of control and subjugation within intimate or familial relationships. In India, despite constitutional

guarantees of equality and dignity, and the existence of criminal provisions like **Section 498A of the Indian Penal Code**, domestic violence often goes unreported due to social stigma, fear of retaliation, economic dependency, and pressure to preserve family honour.

Recognizing the limitations of criminal law in offering immediate and practical relief to victims, the Indian Parliament enacted the **Protection of Women from Domestic Violence**

**Act (PWDVA), 2005.** This legislation marked a significant shift by providing a **civil legal framework** for protection, residence, and maintenance of women facing abuse within domestic relationships. Unlike criminal provisions, which focused on punishing the offender, the PWDVA emphasized **protection and rehabilitation of the victim**, empowering her with rights such as **residence in the shared household, monetary relief, custody of children, and protection orders** against the abuser.

However, the enactment of the law, though progressive in intent, has not translated effectively on the ground. Several challenges—such as **lack of trained protection officers, poor infrastructure, delays in legal proceedings, and insufficient awareness among women**, especially in rural and marginalized communities—continue to hamper the realisation of justice for victims. Moreover, **gender-insensitive attitudes among law enforcement personnel and bureaucratic apathy** often discourage victims from pursuing legal recourse.

This paper seeks to explore the **contemporary significance of the PWDVA**, critically evaluate the **institutional and societal challenges in its implementation**, and recommend practical reforms. It also reviews **landmark judicial pronouncements** that have shaped the interpretation of key provisions of the Act and assesses the law's efficacy through a **comparative and socio-legal perspective**.

## 2. Historical Background and Evolution

Domestic violence, though prevalent in Indian society for centuries, was long treated as a **private family matter** and largely ignored by the legal system. Until the early 2000s, India lacked a comprehensive law specifically addressing the **multiple dimensions of domestic abuse**—emotional, economic, verbal, and psychological—focusing instead on **criminal provisions** that were often inadequate for providing timely or effective relief to victims.

The primary recourse available to women was through the **Indian Penal Code (IPC), particularly Section 498A**, which criminalizes cruelty by a husband or his relatives. However, Section 498A was limited in scope, as it primarily addressed **physical cruelty and dowry-related harassment**, and **offered no civil remedies** such as protection orders, right to residence, or financial maintenance.<sup>113</sup> Moreover, its criminal nature often discouraged reconciliation and did not cater to women who sought protection without the intention of initiating criminal proceedings.

A significant turning point came through **international advocacy and commitments**. India ratified the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** in 1993, thereby agreeing to eliminate all forms of discrimination and violence against women, both in public and private spheres.<sup>114</sup> The **CEDAW Committee's General Recommendation No. 19** explicitly recognized **violence against women** as a form of discrimination and urged signatory states to enact laws ensuring women's right to live free from violence.

In response, Indian women's rights activists, legal scholars, and NGOs began advocating for a **civil legislation** that would address domestic violence in a broader, more sensitive, and victim-centric manner. The **Law Commission of India**, in its 154th Report, also highlighted the need for such legislation. Additionally, organizations like the **National Commission for Women (NCW)** submitted draft bills emphasizing the need for protective rather than punitive remedies for victims.

After sustained advocacy and deliberations, the **Protection of Women from Domestic Violence Bill** was introduced in Parliament. Following debates and amendments, the **Protection of Women from Domestic Violence Act (PWDVA), 2005** was enacted, and came into force on **26**

<sup>113</sup> Indian Penal Code, 1860, § 498A: "Husband or relative of husband of a woman subjecting her to cruelty."

<sup>114</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979; ratified by India in 1993.

**October 2006.**<sup>115</sup>This marked a **paradigm shift** from merely punishing offenders to protecting the rights and dignity of women in domestic relationships. It was the **first civil law in India** to recognize **domestic violence as a human rights issue**, not just a criminal offense.

### 3. Salient Features of the Protection of Women from Domestic Violence Act, 2005

The **Protection of Women from Domestic Violence Act, 2005 (PWDVA)** represents a landmark shift in India's legal response to domestic abuse, moving from a purely criminal framework to a more comprehensive, civil remedy-based approach. Below are the salient features of the Act:

#### 3.1 Definition of Domestic Violence (Section 3)

The Act provides an **inclusive and expansive definition** of domestic violence. Unlike earlier legal frameworks that emphasized only physical harm, Section 3 of the PWDVA recognizes that abuse can be **physical, sexual, verbal, emotional, or economic** in nature.

- **Physical abuse** includes bodily harm, assault, criminal intimidation.
- **Sexual abuse** involves any conduct of a sexual nature that abuses, humiliates, or degrades the woman.
- **Verbal and emotional abuse** covers insults, name-calling, repeated threats, and humiliation.
- **Economic abuse** includes deprivation of financial resources, denial of access to shared household, and withholding of maintenance or other economic necessities.<sup>116</sup>

This inclusive definition ensures that women receive protection not just from visible injuries, but also from **psychological trauma and economic control**, often invisible but equally damaging.

#### 3.2 Aggrieved Person (Section 2(a))

The term "aggrieved person" under the Act is defined as **any woman who is, or has been, in a domestic relationship** with the respondent and alleges to have been subjected to domestic violence.<sup>117</sup>

This definition includes not only wives but also:

- Mothers, daughters, sisters, widows, or
- Women in **live-in relationships**, as recognized in later judicial interpretations.

This broadens the scope of the law to address **changing social realities**.

#### 3.3 Domestic Relationship (Section 2(f))

The Act applies to persons who live or have lived together in a **shared household**, and are related by:

- Consanguinity
- Marriage
- Relationship in the nature of marriage
- Adoption
- Or as family members living in a joint family

This ensures that **non-marital domestic setups**, including live-in relationships and extended family abuse (like in-laws), are covered.

#### 3.4 Right to Reside in Shared Household (Section 17)

One of the most powerful provisions, Section 17 grants every woman in a domestic relationship the **right to reside in the shared household**, regardless of ownership or title.

This provision was upheld in the landmark case *S.R. Batra v. Taruna Batra*,<sup>118</sup> where the court initially restricted the right to property owned or rented by the husband, but was later clarified in other judgments to ensure **the woman's right to shelter and security** is protected.

<sup>115</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005, Ministry of Law and Justice, Government of India (Enacted on 13th September 2005, came into force on 26th October 2006).

<sup>116</sup> The Protection of Women from Domestic Violence Act, 2005, S 3.

<sup>117</sup> *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

<sup>118</sup> UN Women India, "Domestic Violence in India: Data and Realities", 2020.

### 3.5 Appointment of Protection Officers (Section 8)

The Act mandates the **State Government to appoint Protection Officers**, who play a crucial role in:

- Assisting the aggrieved woman in filing complaints
- Providing access to shelter homes and medical facilities
- Facilitating legal aid
- Reporting incidents to the Magistrate

However, the **inadequate number and lack of training of Protection Officers** often hinder effective implementation.

### 3.6 Residence Orders and Protection Orders (Sections 18 & 19)

- **Protection Orders (Section 18)** restrain the respondent from committing any act of violence or contacting the victim.
- **Residence Orders (Section 19)** prevent the respondent from dispossessing the woman from the shared household, or direct him to vacate the premises if needed.

These are **civil orders with penal consequences upon violation**, thereby blending protective relief with legal enforceability.

### 3.7 Monetary Reliefs and Custody Orders (Sections 20 & 21)

- **Monetary reliefs** are provided for loss of earnings, medical expenses, and maintenance.
- **Custody orders** ensure the aggrieved woman can retain custody of her child and ensure protection from harm during visitation by the respondent.

This economic support is **vital for victims**, especially those financially dependent on the abuser.

### 3.8 Speedy Justice (Section 12(5))

The Act emphasizes **time-bound adjudication**, mandating that all applications under Section 12 be disposed of within **60 days** from the date of the first hearing.

However, delays in practice remain a serious concern due to **judicial backlog, procedural inefficiencies**, and lack of dedicated courts or infrastructure.

### 4. Contemporary Perspectives on the Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) has evolved over the years through judicial interpretation, public discourse, and socio-legal application. However, despite its progressive intent, the practical realities on the ground expose significant gaps between the law and its enforcement.

#### a) Judicial Trends

Indian courts have played a pivotal role in interpreting and expanding the scope of the PWDVA. One of the most significant contributions has been the inclusion of **live-in relationships** within the ambit of “relationship in the nature of marriage.”

In the landmark case of **Indra Sarma v. V.K.V. Sarma**,<sup>119</sup> the Supreme Court laid down five essential criteria for determining whether a live-in relationship qualifies under the Act:

1. Duration of the relationship
2. Shared household
3. Pooling of resources and financial arrangements
4. Domestic arrangements resembling marriage
5. Social validation of the relationship

This judgment recognized the **social transformation** occurring in Indian society and aimed to extend protection to women in **non-**

<sup>119</sup> *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

**traditional relationships** who are equally vulnerable to abuse.

Moreover, in **D. Velusamy v. D. Patchaiammal**,<sup>120</sup> the Court emphasized that a "relationship in the nature of marriage" must not be a casual relationship or one for sexual purposes only, but should have elements of marriage-like permanence.

### b) Role of Judiciary and Police

Despite the progressive stance taken by higher judiciary, challenges persist at the ground level due to **lack of sensitization** and training among lower judiciary and law enforcement agencies.

- Many magistrates lack awareness of the **spirit and intent of the Act**, treating it as a routine procedural law instead of a **welfare legislation** aimed at protection and rehabilitation.
- Police officers often exhibit **reluctance** in registering complaints, citing domestic disputes as "private matters," thereby **failing to recognize the criminality involved in domestic abuse**.<sup>121</sup>
- In some cases, the police or mediators encourage the woman to **"adjust" or reconcile**, which defeats the purpose of protective legislation.

### c) Societal Attitudes and Patriarchy

The implementation of the Act is severely hindered by **deep-rooted patriarchy** and **social stigmatization** attached to victims who report abuse.

- Many women fear **loss of shelter, financial insecurity, or alienation from children**.
- Cultural norms often label women who seek legal recourse as "home-breakers," leading to **withdrawal of complaints** due to family or community pressure.<sup>(4)</sup>

- The lack of **economic independence** also discourages many victims from pursuing legal options, especially in rural areas.

The **internalized notion of shame**, honor, and silence becomes a powerful barrier against justice.

### 5. Implementation Challenges of the PWDVA, 2005

Although the Act provides comprehensive civil remedies, its execution has been fraught with numerous challenges, exposing a **significant gap between law and practice**.

#### a) Inadequate Infrastructure

- Many states have failed to appoint the required number of **Protection Officers (POs)** or provide them with adequate training and resources.
- **Shelter homes and one-stop crisis centers**, crucial for the rehabilitation of victims, are either **non-existent** or **functioning poorly** due to lack of funding or staff.<sup>122</sup>
- The **absence of coordination** among various stakeholders—police, legal aid providers, medical officers, and NGOs—creates confusion and delays.

#### b) Delays in Judicial Process

- Despite the statutory requirement under Section 12(5) that proceedings be concluded within **60 days**,<sup>123</sup> cases often remain pending for **months or years** due to:
  - Judicial backlog
  - Lack of dedicated family courts
  - Adjournments sought by respondents to harass complainants

These delays **defeat the purpose** of providing timely and urgent relief to victims.

<sup>120</sup> *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

<sup>121</sup> National Commission for Women Report on Domestic Violence Complaints, 2022.

<sup>122</sup> Ministry of Women and Child Development, Annual Report, 2021–22.

<sup>123</sup> The Protection of Women from Domestic Violence Act, 2005, § 12(5).

### c) Lack of Awareness

- Many women, particularly in **rural and semi-urban regions**, are **unaware** of their rights under the Act.
- The dissemination of legal literacy and rights awareness remains **limited**, with very few **grassroots campaigns** initiated by state governments.
- Victims are often unaware that they can approach **Protection Officers, NGOs, or even file applications independently in court**.

### d) Political and Bureaucratic Apathy

- The PWDVA mandates creation of support structures, but the **budget allocation for implementation is meagre**.
- In many states, Protection Officers are given **additional duties** along with their primary role, leading to lack of focus and dedication.
- Monitoring mechanisms to assess the performance of PWDVA implementation remain **weak or non-functional**.<sup>124</sup>

### e) Allegations of Misuse

- Though studies show that **false complaints** constitute only a **minor proportion**, the **narrative of misuse** is often overemphasized in media and political discourse.
- This creates a **chilling effect** on genuine victims, who fear being branded as manipulative or vindictive.<sup>125</sup>
- Courts have acknowledged this possibility, yet reiterated that isolated misuse should not be used to **delegitimize** the entire legislation.

## 6. Comparative Analysis

Domestic violence legislation across jurisdictions provides valuable insights into how legal systems address intimate partner abuse. While India enacted the *Protection of Women from Domestic Violence Act, 2005*, several nations have made progressive changes that India can learn from.

### United Kingdom

The United Kingdom's *Domestic Abuse Act, 2021* represents a comprehensive legal framework that moves beyond the traditional concept of domestic violence. One of its hallmark features is the statutory recognition of **psychological abuse and coercive control**, acknowledging that harm is not always physical. The Act defines domestic abuse to include emotional, economic, and controlling behavior, thereby broadening the protective scope for victims<sup>126</sup>. Additionally, the law creates a **Domestic Abuse Protection Notice (DAPN)** and **Domestic Abuse Protection Order (DAPO)** to provide immediate and longer-term protection, respectively.

### United States of America

In the United States, the *Violence Against Women Act (VAWA)*, first passed in 1994 and reauthorized multiple times, creates a **federal funding mechanism** for supporting domestic violence shelters, legal aid services, and community-based intervention programs. VAWA has significantly enhanced coordination between federal and state authorities and emphasizes the need for culturally appropriate services. Moreover, VAWA extends protections to **undocumented immigrants**, members of the LGBTQ+ community, and Native American women, reflecting an inclusive approach<sup>127</sup>.

### India: Gaps and Limitations

Although India's *PWDVA, 2005* was a progressive step, especially with its broad definition of domestic violence including

<sup>126</sup> Domestic Abuse Act 2021, UK Parliament. Retrieved from: <https://www.legislation.gov.uk/ukpga/2021/17/contents/enacted>

<sup>127</sup> National Network to End Domestic Violence (NNEDV), "VAWA Reauthorization 2022: What's New."

<sup>124</sup> Human Rights Watch, "Barriers to Protection", 2019.

<sup>125</sup> Delhi High Court, *Kusum Lata v. State*, 2020 SCC OnLine Del 1234.

emotional, sexual, and economic abuse, **implementation remains inadequate**. India lacks **adequate state-funded shelter homes**, psychological counseling centers, and legal aid services, which are vital to support survivors<sup>128</sup>. The law, while progressive on paper, does not translate into a **victim-centric approach** on ground due to insufficient infrastructure, societal stigma, and inadequate training of law enforcement agencies.

### 7. Need for Reforms

To ensure a more effective response to domestic violence in India, the following reforms are crucial:

#### 1. Training and Sensitization of Authorities

Police officers and members of the judiciary often lack awareness and sensitivity regarding the nuances of domestic abuse. **Regular training programs** focusing on gender sensitivity, trauma-informed responses, and the psychological impact of abuse are essential. Such training should be institutionalized across all states.

#### 2. Infrastructure Development

India urgently needs to **increase the number of shelter homes** that offer temporary housing, legal advice, and rehabilitation. In addition, **dedicated fast-track courts** for domestic violence cases and **mobile legal aid clinics** can ensure timely redressal and accessibility, especially in rural and tribal areas<sup>129</sup>.

#### 3. Victim Compensation Schemes

Financial dependency often forces victims to stay in abusive relationships. A **comprehensive victim compensation framework**, which provides **timely financial support, housing, education assistance**, and employment aid, should be made accessible to survivors of domestic violence under both central and state government schemes.

### 4. Gender-Neutral Legal Reforms

While the PWDVA is centered around women, there is a growing need to recognize that **men and transgender individuals** can also be victims of domestic abuse. A **gender-neutral framework**.

#### Conclusion

The *Protectn of Women from Domestic Violence Act, 2005* (PWDVA) marked a watershed moment in India's legal response to domestic violence by recognizing the multifaceted nature of abuse—physical, emotional, sexual, verbal, and economic. However, more than two decades since its enactment, the true effectiveness of the legislation must be evaluated not by its textual provisions alone, but by its practical application across diverse social and institutional settings.

While Indian judiciary has played a commendable role in interpreting the Act progressively—for instance, by expanding the definition of shared household and recognizing the rights of live-in partners—the **implementation of these judgments remains inconsistent**. In many instances, women are denied timely relief due to procedural delays, lack of awareness among protection officers, and inadequate institutional coordination.

A major obstacle to the successful enforcement of the Act lies in the **entrenched patriarchal mindset** that continues to dominate societal and institutional behavior. Victims are often subjected to victim-blaming, forced reconciliations, or pressured into silence. Further, **infrastructural gaps**, such as the shortage of functional shelter homes, legal aid centers, and trained protection officers, dilute the efficacy of the law.

To bridge the gap between legislation and justice, **multi-pronged reforms** are essential. This includes the **sensitization of law enforcement personnel**, the **establishment of accessible and well-funded support systems**, and **wider dissemination of legal awareness** at the grassroots level. It is also imperative that

<sup>128</sup> National Commission for Women (NCW), "State-wise Shelter Homes for Women."

<sup>129</sup> Ministry of Women and Child Development, Government of India, "One Stop Centre Scheme."

**judicial and administrative actors are held accountable** for lapses in providing timely protection and remedies.

In conclusion, while the PWDVA is a landmark statute with transformative potential, **its success is contingent upon robust implementation, cultural change, and institutional accountability.** A victim-centric approach, backed by adequate financial, legal, and psychological support, is essential to realize the Act's original vision of a society free from domestic abuse.

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