

CRITICAL ANALYSIS: DOMESTIC VIOLENCE AN ITS LEGAL PROTECTION IN INDIA

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ABSTRACT

Domestic violence is one of the most serious social and legal issues affecting individuals worldwide, particularly women. It includes physical, emotional, sexual, psychological, and economic abuse within domestic relationships. In India, domestic violence was historically treated as a private family matter, but growing awareness and activism have led to stronger legal protections. The enactment of the **Protection of Women from Domestic Violence Act, 2005 (PWDVA)** marked a significant milestone in addressing violence against women within households. The Act provides civil remedies such as protection orders, residence orders, custody orders, and compensation to victims.

Despite the existence of various laws and legal frameworks, domestic violence continues to remain widespread due to social stigma, lack of awareness, and weaknesses in implementation. This research paper examines the concept of domestic violence, the legal framework for protection, the role of courts, and the challenges faced in enforcing laws. It also evaluates the effectiveness of legal remedies and suggests reforms to improve protection for victims.

Women form the largest group of victims of domestic violence since time immemorial and violence against women still continue even in the 21st century. Women from every social background irrespective of their age, religion, caste, or class fall victim to domestic violence. However domestic violence is not just limited to women; men, children and elderly people can also be victims of it.

Domestic violence occurs at all levels of society and in all population groups.

In India, 30% women have experienced domestic violence at least once from the age of 15, and around 4 percent of pregnant women have even experienced spousal violence during pregnancy.

Key Words: Domestic violence, Legal issues, civil remedies, victims, Awareness, Women, Society etc.,,

Introduction

Domestic violence refers to abusive behavior in a domestic relationship where one person seeks to dominate or control another. It includes violence between spouses, partners, family members, or individuals living in a shared household. Domestic violence may take various forms such as physical assault, emotional abuse, sexual violence, verbal harassment, and economic deprivation.

Historically, domestic violence was considered a private matter in many societies, including India. Women were often discouraged from reporting abuse due to social norms, fear of stigma, economic dependence, and lack of legal awareness. Over time, women's rights movements and international human rights standards pushed governments to recognize domestic violence as a violation of fundamental rights. In India, the legal framework evolved

gradually through criminal laws and special legislation. The **Protection of Women from Domestic Violence Act, 2005** was enacted to provide effective legal protection to women against violence occurring within families. The law expanded the definition of domestic violence to include not only physical harm but also emotional, sexual, verbal, and psychological abuse.

This research paper focuses on understanding domestic violence, analysing existing legal protections, examining judicial responses, and identifying gaps in implementation. Domestic violence: a social evil The offence of domestic violence is committed by someone in the victim's domestic circle. It includes family members, relatives, etc. The term domestic violence is often used when there is a close cohabiting relationship between the offender and the victim. The various forms of domestic violence include senior abuse, child abuse, honour-based abuse such as honour killing, female genital mutilation, and all forms of abuse by an intimate partner. In the 21st century, various steps are incorporated to address the social issue of domestic violence. Governments all across the globe have taken proactive measures to eradicate domestic violence. Furthermore, the media, politicians and campaigning groups have aided people to acknowledge domestic violence as a social evil.

In India domestic violence is governed by the Protection of Women from Domestic Violence Act, 2005 and it is defined under Section 3, which states that any act, commission, omission or conduct of a person harm or injures or endangers the health or safety of an individual whether mentally or physically it¹⁰⁶⁸ amounts to domestic violence. It further includes any harm, harassment or injury caused to an

Objectives of the Study

1. To examine the concept and forms of domestic violence.

2. To analyze the legal framework addressing domestic violence in India.
3. To study the provisions of the Protection of Women from Domestic Violence Act, 2005.
4. To evaluate the role of courts and legal institutions in protecting victims.
5. To identify challenges and suggest reforms to improve legal protection.

Research Methodology

This research paper is based on **doctrinal research methodology**. The study relies on secondary sources such as:

- Legal statutes
- Law journals and articles
- Court judgments
- Government reports
- Academic books and research papers

The analysis focuses primarily on the Indian legal system and relevant case law.

Meaning and Concept of Domestic Violence

Domestic violence refers to any act of abuse committed within a family or¹⁰⁶⁹ domestic relationship. It includes behavior intended to intimidate, control, harm, or dominate another person.

Forms of Domestic Violence

1. **Physical Abuse**
 - Hitting, slapping, kicking, or causing bodily injury.
2. **Emotional or Psychological Abuse**
 - Insults, humiliation, threats, intimidation, and controlling behavior.
3. **Sexual Abuse**
 - Forced sexual acts or coercion within a relationship.
4. **Economic Abuse**

¹⁰⁶⁸ Protection of Women Domestic Violence Act, 2005

¹⁰⁶⁹ <https://www.sconline.com>

- Controlling access to financial resources or denying basic needs.

5. Verbal Abuse

- Constant criticism, abusive language, or degrading remarks.

Domestic violence can affect individuals regardless of age, gender, or social status, though women are the most frequent victims.

Causes of Domestic Violence

Domestic violence arises due to several social, psychological, and economic factors.

Major Causes

1. Patriarchal social structure
2. Dowry-related harassment
3. Alcohol or substance abuse
4. Economic stress and unemployment
5. Lack of education and awareness
6. Cultural acceptance of male dominance
7. Weak law enforcement mechanisms

These factors contribute to the persistence of domestic violence in society.

Constitutional Provisions

The Indian Constitution provides fundamental rights that indirectly protect individuals from domestic violence.

Important Articles

Article 14
Guarantees equality before the law and equal protection of laws.

Article 15
Prohibits discrimination on the basis of sex and allows special provisions for women.

Article 21
Protects the right to life and personal liberty, which includes the right to live with dignity.

These constitutional provisions form the foundation for laws protecting women from violence.

Legal Framework for Domestic Violence in India

India has several laws addressing domestic violence.

1. Protection of Women from Domestic Violence Act, 2005

This Act was enacted to provide effective protection for women facing violence within domestic relationships. It recognizes various forms of abuse and provides civil remedies such as protection orders and residence.

2. Section 498A of the Indian Penal Code

Section 498A criminalizes cruelty by a husband or his relatives toward a married woman, particularly in cases related to dowry harassment.

3. Dowry Prohibition Act, 1961

This law prohibits the giving and taking of dowry and punishes related harassment.

4. Family Courts Act, 1984

Family courts provide a platform for resolving family disputes and domestic violence issues through legal proceedings.

¹⁰⁷⁰Protection of Women from Domestic Violence Act, 2005

The **PWDVA, 2005** is the primary legislation addressing domestic violence in India.

Key Features of the Act

1. Broad definition of domestic violence
2. Protection for women in domestic relationships
3. Recognition of live-in relationships
4. Right to reside in a shared household
5. Appointment of Protection Officers
6. Provision for legal aid and counseling

The Act focuses on both protection and rehabilitation of victims.

¹⁰⁷⁰ <https://www.indiacode.nic>

OBJECTIVES OF THE DOMESTIC VIOLENCE ACT, 2005

The objectives of the Protection of Women from Domestic Violence Act, 2005 is to serve the following purposes:

1. To identify and determine that every act of domestic violence is unlawful and punishable by law.
2. To provide protection to victims of domestic violence in the cases such acts occur.
3. To serve justice in a timely, cost-effective, and convenient manner to the aggrieved person.
4. To prevent the commission of domestic violence and to take adequate steps if such violence occurs.
5. To implement sufficient programmes and agendas for the victims of domestic violence and to guarantee the recovery of such victims.
- ¹⁰⁷¹6. To create awareness among the people about domestic violence.
7. To enforce harsh punishment and must hold the culprits accountable for committing such heinous acts of violence.
8. To lay down the law and govern it in accordance with the international standards for the prevention of domestic violence.

Remedies Available under the Act

➤ Protection Orders

Courts can prohibit the abuser from committing acts of violence or contacting the victim.

➤ Residence Orders

The victim has the right to reside in the shared household.

➤ Monetary Relief

Courts may order financial compensation for medical expenses, loss of earnings, or damages.

➤ Custody Orders

Temporary custody of children may be granted to the victim.

➤ Compensation Orders

Victims may receive compensation for mental and physical injury.

Role of Protection Officers

Protection Officers play a crucial role in implementing the Domestic Violence Act.

Their duties include:

- Assisting victims in filing complaints
- Preparing domestic incident reports
- Providing access to medical facilities
- Helping victims obtain shelter homes
- Ensuring enforcement of court orders

Role of Judiciary

Indian courts have played an important role in interpreting domestic violence laws and protecting victims.

Judicial decisions have expanded the scope of protection, especially regarding live-in relationships and women's residence rights.

¹⁰⁷²Courts also ensure that victims receive timely relief and protection from further abuse.

Legislative intent of the Domestic Violence Act, 2005

The legislative intent of enacting the Protection of Women from Domestic Violence Act, 2005 has been meticulously discussed in the case ¹⁰⁷³Indra Sarma v. V.K.V.Sarma. It was stated that the reason for the legislation to enact such an Act is to provide protection of rights of women who are victims of violence of any type occurring in the family. This Act safeguards women from facing violence within the four walls of their home.

The Madras High Court in the case, Vandhana v. T. Srikanth further stated the Protection of Women from Domestic Violence Act, 2005 "is an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any

¹⁰⁷² <https://www.unacademy.com>

¹⁰⁷³ Indra sarma vs vk.v Sarma
Vandhana vs T. Srikanth

¹⁰⁷¹ <https://www.sunderlandsocialsciences>

kind occurring within the family and for matters connected therewith or incidental thereto".

Conclusion

Domestic violence is a serious violation of human rights and a major challenge in modern society. Although India has enacted several laws to protect victims, particularly women, the problem continues due to social, cultural, and institutional barriers. The Protection of Women from Domestic Violence Act, 2005 has significantly improved legal protection by recognizing various forms of abuse and providing civil remedies to victims.

However, effective implementation requires stronger enforcement mechanisms, greater awareness, and societal change. Combating domestic violence requires a combined effort from the government, judiciary, law enforcement agencies, and society. Only through sustained legal and social reforms can the goal of ensuring safety, dignity, and equality for all individuals be achieved.

The Act plays a critical role in the Indian legal system vis-a-vis protecting the rights of the women, so that they can feel protected and safe within the comfort of their own house. It is an exhaustive piece of legislation as it lays down the powers and duties of the various authorities, reliefs available to the victims, steps to filing a complaint regarding domestic violence, assistance provided to the victims of domestic violence, power and extent of the Indian Judiciary and the power of the Central Government to make rules. The Act provides civil remedies to the victims of domestic violence. And prior to the enactment of the Act, the victims of domestic violence sought civil remedies such as divorce, custody of children, injunctions in any form or maintenance only by taking recourse to civil courts. Therefore, the Act brought about necessary changes in the Indian legislature.

Although the Act has incorporated essential steps to safeguard women from domestic violence it fails to provide any remedies for the

male members of the family and it also fails to recognize the cohabiting and marital relationship between the members of the LGBTQ+ community. Hence, these must be included in the Act to totally eradicate domestic violence as a necessary evil from Indian society.

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