

An Analysis of the Protection of Women from Domestic Violence Act, 2005 in India: A Legal Perspective

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ABSTRACT

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) constitutes a landmark reform in India's domestic violence jurisprudence. Unlike earlier legal mechanisms that relied predominantly on criminal prosecution under Section 498A of the Indian Penal Code, this legislation introduces a comprehensive civil law framework providing immediate, accessible, and victim-centric remedies. The Act recognizes domestic violence as a violation of fundamental rights, particularly the rights to equality, dignity, and life under Articles 14, 15, and 21 of the Constitution of India. This paper undertakes a doctrinal and analytical study of the Act, examining its legislative intent, statutory scheme, judicial interpretation, constitutional foundations, and implementation challenges. The research finds that while the Act is progressive in design and transformative in its scope, structural deficiencies, institutional constraints, and socio-cultural barriers continue to limit its full realization. The study concludes by recommending systemic reforms aimed at strengthening enforcement, institutional accountability, and gender-sensitive adjudication.

Keywords: Domestic Violence, Gender Justice, Civil Remedies, Constitutional Law, Women's Rights, India

INTRODUCTION

Domestic violence represents one of the most pervasive yet historically under-recognized forms of gender-based violence in India. Traditionally perceived as a private family matter, domestic abuse remained shielded from legal scrutiny for decades. Prior to 2005, legal remedies were primarily confined to criminal prosecution under Section 498A IPC and dowry-related provisions. These mechanisms, while important, were reactive and punitive rather than preventive or protective.

The enactment of the Protection of Women from Domestic Violence Act, 2005 marked a paradigm shift in India's legal approach. It reframed domestic violence as a civil wrong requiring immediate relief, protection, and rehabilitation rather than solely criminal punishment.

The Act also aligns with India's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), reinforcing the State's commitment to eliminate gender-based discrimination and violence.

OVERVIEW AND KEY PROVISIONS OF THE ACT

Broad Definition of Domestic Violence

Section 3 of the Act defines domestic violence expansively to include:

- Physical abuse
- Sexual abuse
- Verbal and emotional abuse
- Economic abuse

The Protection of Women from Domestic Violence Act, 2005 adopts a wide and inclusive definition of domestic violence. It covers not only physical abuse causing bodily harm but also sexual abuse, verbal and emotional abuse, and economic abuse. This includes acts such as assault, humiliation, threats, character assassination, deprivation of

financial resources, and denial of access to household necessities. By recognizing both physical and non-physical forms of harm, the Act acknowledges that violence within the home can take multiple forms. The broad definition ensures comprehensive protection and reflects a rights-based approach aimed at safeguarding women's dignity and well-being.

Scope of Domestic Relationship

The Act applies to women who are or have been in a domestic relationship with the respondent. A domestic relationship includes relationships through marriage, blood relations (consanguinity), adoption, joint family living, and relationships in the nature of marriage (such as live-in relationships). It covers women living or who have lived together in a shared household. This broad definition ensures protection to wives, mothers, daughters, sisters, widows, and women in live-in relationships. The inclusive scope recognizes changing family structures and ensures that legal protection is not restricted only to formally married women.

Civil Remedies Provided

Under the Protection of Women from Domestic Violence Act, 2005, Magistrates may grant the following civil remedies:

Protection Orders – Restraining the respondent from committing further acts of domestic violence or contacting the aggrieved woman.

Residence Orders – Securing the woman's right to reside in the shared household, irrespective of ownership or title, and preventing unlawful eviction.

Monetary Relief – Compensation for medical expenses, loss of earnings, maintenance, and other financial losses.

Custody Orders – Granting temporary custody of children to ensure their safety and welfare.

Compensation Orders – Awarding damages for mental torture, emotional distress, and physical injury.

A significant feature is the right to reside in the shared household, irrespective of ownership or title.

JUDICIAL INTERPRETATION AND DOCTRINAL DEVELOPMENTS

Indian courts have played a crucial role in expanding and clarifying the scope of the Act.

Live-in Relationships

In *D. Velusamy v. D. Patchaiammal*, the Supreme Court laid down criteria for determining relationships "in the nature of marriage."

Later, in *Indra Sarma v. V.K.V. Sarma*, the Court broadened interpretative principles, emphasizing social justice objectives and purposive construction.

Right to Residence

In *Satish Chander Ahuja v. Sneha Ahuja*, the Supreme Court overruled earlier restrictive interpretations and held that a woman's right to residence under the Act is not dependent on ownership rights in the shared household. This judgment strengthened the protective scope of the legislation.

Constitutional Interpretation

Courts have consistently held that the Protection of Women from Domestic Violence Act, 2005 must be interpreted in harmony with Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. Judicial interpretation has expanded Article 21 beyond mere physical survival to include the right to live with dignity, bodily integrity, mental well-being, and security. Domestic violence directly violates these constitutional protections by subjecting women to physical harm, emotional trauma, economic deprivation, and social isolation.

The judiciary has therefore treated the Act as a rights-based legislation aimed at enforcing constitutional guarantees. In *Satish Chander Ahuja v. Sneha Ahuja*, the Supreme Court affirmed that a woman's right to reside in the shared household flows from her right to dignity and security under Article 21, irrespective of property ownership. Similarly, in *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Court broadened the scope of respondents to ensure substantive equality.

Thus, constitutional interpretation ensures that the Act is applied purposively, protecting women's fundamental rights and reinforcing the State's duty to safeguard their dignity and freedom from violence.

CONSTITUTIONAL FOUNDATIONS

The Act draws strength from key constitutional guarantees:

Article 14 – Equality Before Law

Article 14 guarantees equality before law and equal protection of laws. The Protection of Women from Domestic Violence Act, 2005 upholds this principle by ensuring substantive equality for women who face disproportionate domestic abuse. It provides specific legal remedies to address gender-based violence, thereby promoting real and effective equality under the law.

Article 15(3) – Protective Discrimination

Article 15(3) of the Constitution empowers the State to make special provisions for women and children. The Protection of Women from Domestic Violence Act, 2005 is enacted under this enabling power, as it provides specific protections and remedies to women against domestic violence. Thus, it is a constitutionally valid form of protective discrimination aimed at achieving substantive gender equality.

Article 21 – Right to Life and Dignity Article 21 guarantees the right to life and personal liberty, which includes the right to live with dignity and free from violence. The Protection of Women from Domestic Violence Act, 2005 enforces this guarantee by protecting women from physical, emotional, sexual, and economic abuse within the home, thereby safeguarding their dignity, security, and fundamental human rights.

IMPLEMENTATION CHALLENGES

Despite the progressive framework of the Protection of Women from Domestic Violence Act, 2005, its effective implementation continues to face significant structural and social obstacles.

One major challenge is the lack of adequately trained Protection Officers. The Act envisages Protection Officers as key functionaries responsible for assisting aggrieved women, preparing domestic incident reports, ensuring service of notices, and facilitating access to shelter and medical facilities. However, in many states, appointments are insufficient, officers are overburdened with additional responsibilities, and specialized training in gender-sensitive handling of cases is lacking. This weakens the institutional support system envisioned under the statute.

Another serious issue is judicial delay. Although the Act mandates expeditious disposal of cases—ideally within sixty days—overburdened magistrate courts and procedural adjournments often result in prolonged litigation. Delays defeat the purpose of providing immediate civil relief, particularly in urgent situations involving violence or eviction from the shared household.

The limited availability of shelter homes and support services further undermines the Act's objectives. Many districts lack functional shelter facilities, counseling centers, and rehabilitation mechanisms. Without safe housing and financial assistance, victims may be compelled to return to abusive environments.

Additionally, social stigma and economic dependency discourage women from reporting abuse. Deep-rooted patriarchal norms often pressure women to preserve

family honor or reconcile with the abuser. Financial dependence on the respondent further restricts their ability to seek legal remedies.

Finally, there is a significant lack of awareness, especially in rural and marginalized communities. Many women remain unaware of their rights and available remedies under the Act. Legal illiteracy, limited access to legal aid, and language barriers further impede access to justice.

These challenges highlight the gap between legislative intent and practical enforcement, necessitating institutional strengthening and societal reform.

CONCLUSION

The Protection of Women from Domestic Violence Act, 2005 stands as one of India's most progressive gender justice statutes. It redefines domestic violence as a public law issue rooted in constitutional morality and human rights principles.

Yet, the transformative promise of the Act depends not merely on statutory text but on institutional capacity, judicial sensitivity, and societal change. Strengthening enforcement, enhancing awareness, and ensuring procedural efficiency are critical for translating legislative intent into lived reality.

Only through sustained institutional reform and social transformation can the Act fulfill its objective of ensuring dignity, security, and substantive equality for women in India.

REFERENCES

- [1] The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).
- [2] The Indian Penal Code, 1860, § 498A.
- [3] The Protection of Women from Domestic Violence Rules, 2006.
- [4] The Dowry Prohibition Act, 1961.
- [5] The Constitution of India, Arts. 14, 15(3), 21.
- [6] D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469.
- [7] Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.
- [8] Satish Chander Ahuja v. Sneha Ahuja, (2020) 15 SCC 414.
- [9] Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165.
- [10] Convention on the Elimination of All Forms of Discrimination Against Women
- [11] (1979).
- [12] Agnes, Flavia. Law and Gender Inequality: The Politics of Women's Rights in India.
- [13] Diwan, Paras. Family Law in India.
- [14] Ratanlal & Dhirajlal. The Indian Penal Code.
- [15] Law Commission of India Reports (relevant reports).
- [16] National Crime Records Bureau, Crime in India (latest edition).