
BRIDGING THE GAP: AN ANALYSIS OF IMPLEMENTATION FROM STATUTE TO SHELTER IN INDIA'S DOMESTIC VIOLENCE LAWS (A CRITICAL STUDY ON LEGISLATIVE, JUDICIAL AND COMPARATIVE PERSPECTIVES)

Anushka Tiwari, ICFAI Law School (IFHE), Hyderabad

ABSTRACT

Domestic violence is defined as any abusive behaviour or act of violence perpetrated by one spouse against the other within the context of a marital relationship. This phenomenon encompasses various forms of abuse, including sexual, emotional, psychological, and physical maltreatment. Notwithstanding the establishment of significant legal provisions such as Section 498A of the Indian Penal Code (1983) and the Protection of Women from Domestic Violence Act (PWDVA) (2005), domestic violence continues to be deeply rooted within Indian society. These statutes, which respectively aim to criminalize cruelty inflicted by marital relatives and to offer civil remedies to victims, represent a progressive legislative framework. However, their efficacy is substantially impeded by on going challenges in implementation. For instance, the notably low conviction rates under Section 498A—approximately 1% in Bengaluru during the period from 2017 to 2022—underscore systemic inefficiencies within the judicial process. (Domestic Violence: low rates of conviction flag systemic gaps, 2025) Simultaneously, although the PWDVA encompasses a comprehensive definition of domestic abuse, including emotional, verbal, and economic forms of violence, its effectiveness is compromised by ambiguities concerning the rights associated with “shared households,” a limited interpretation of economic abuse, and insufficient resources allocated for enforcement.

These deficiencies are further intensified by underreporting, which is influenced by stigma, fear, and limited legal awareness, as well as by systemic biases embedded within law enforcement and judicial procedures. (Srivastava, 2024) Socio-cultural factors, such as dowry customs and patriarchal norms, compound the issue by normalizing abuse and discouraging survivors from pursuing justice.

This paper provides a critical analysis of the divergence between the intended legal objectives and their actual effects within constitutional, legislative, and institutional frameworks. Employing a comparative approach that incorporates international best practices and judicial precedents, the paper advocates for specific reforms, including the clarification of statutory definitions, the enhancement of institutional capacities, the improvement of data transparency, and the implementation of gender-neutral legal protections. These measures aim to realign the administration of justice and reinforce safeguards for survivors of domestic violence in India.

I. INTRODUCTION

Domestic violence in India continues to represent a pervasive yet under acknowledged crisis, notwithstanding several decades of legislative efforts designed to combat it. Statutory measures such as Section 85 of the Bharatiya Nyaya Sanhita (2023), Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023), and the Protection of Women from Domestic Violence Act (PWDVA, 2005) constitute significant legal advancements aimed at safeguarding women from abuse. However, a substantial gap remains between the intended objectives of these laws and their practical implementation, underscoring the imperative for a critical examination of their efficacy in real-world contexts.

However, these clauses have also come under fire—Section 125 of the Criminal Procedure Code of 1973 for its weak enforcement procedures and Section 498A of the Indian Penal Code of 1860, respectively¹ for its alleged abuse and perceived gender prejudice. A significant topic of discussion among academics and judges is the conflict between protection and possible abuse.

The extension of protection under domestic violence laws has also been significantly influenced by judicial interpretation.. Notable decisions such as *Indra Sarma v. V.K.V. Sarma*² and *Hiral P. Harsora v. Kusum Narottamdas Harsora*³ have removed the statute's patriarchal restrictions and expanded protection to live-in partnerships, respectively. Though progressive, judicial interventions cannot replace systemic strengthening and legislative reform. There are gaps in legal inclusivity since non-female victims of

¹ Indian Penal Code, 1860, S. 498A; now BNS, 2023, S.85.

² *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

³ *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165.

domestic abuse, such as men, transgender people, and elderly people, are still not recognized by the current legal framework.

Furthermore, modern innovations like financial control, coercive control, digital surveillance, and cyberstalking illustrate how domestic violence is changing and are not yet fully covered by Indian law. Comparative legal systems in nations like the UK, Canada, and Australia offer forward-thinking illustrations of how to include gender-neutral safeguards, trauma-informed justice delivery, and contemporary definitions of abuse. These models provide insightful information for changing India's legal system.

In order to reorient the legal system toward more protection, inclusivity, and responsiveness, this research study aims to provide a critical legal analysis of India's domestic violence laws. This paper examines the disconnect between progressive legislation and practical justice. It first explores the performance of legal instruments both criminal and civil and the systemic barriers that blunt their effectiveness, and review both the substance and procedural features of the law. The overarching goal is to add to the conversation about legislative change that is sensitive to current events, consistent with constitutional protections, and representative of India's international human rights obligations.

In conclusion, recalibrating justice in the context of domestic abuse is a societal and institutional obligation rather than just a legal task. The current study takes a comparative and multidisciplinary approach to highlight the shortcomings of the current legal system and suggest a rights-based, survivor-centered course of action.

II. UNDERSTANDING DOMESTIC VIOLENCE

Defining Domestic Violence

Scholars Radford and Heister articulated domestic violence as:

“The coercive control of an adult by an intimate partner, involving physical, sexual, emotional, psychological or financial abuse.”⁴

⁴ Radford & Hester (2006), "Mothering through domestic violence," discuss coercive control in the context of domestic violence, especially related to how violence can be used to undermine relationships with children.

Domestic violence denotes a consistent pattern of detrimental conduct occurring within intimate relationships—such as those between spouses, partners, family members, or cohabitants—aimed at establishing or preserving dominance over another individual. This phenomenon encompasses a wide spectrum of behaviors, extending beyond physical violence to include emotional, sexual, financial, verbal, and psychological forms of abuse.

Major Causes of Domestic Violence

Domestic violence in India originates from a deeply rooted system characterized by gender inequality embedded within cultural norms and familial structures. Historically, women have frequently been regarded as subordinate, with societal conventions reinforcing male dominance within the domestic sphere. This disparity is exacerbated by practices such as the dowry system, which imposes financial and social pressures on the bride's family and can precipitate abuse when expectations are unmet; in severe instances, this may escalate to fatal violence. Furthermore, substance abuse, particularly alcohol consumption, functions as a significant catalyst by diminishing inhibitions, increasing aggression, and thereby elevating the risk of domestic altercations. Economic hardship further intensifies these stressors, transforming financial strain into recurrent episodes of abuse.

In addition to these immediate triggers, psychological and social dynamics contribute to the persistence and perpetuation of domestic violence. Many individuals carry unresolved trauma or aggressive tendencies from their formative experiences, and in the absence of effective coping strategies, these behaviors manifest within intimate relationships. Emotional dependency also plays a critical role; survivors, conditioned to tolerate abuse, often feel entrapped by fear, economic dependence, or diminished self-esteem, even when support services are accessible. These factors are compounded by a pervasive culture of silence, wherein stigma, shame, and limited awareness inhibit survivors from seeking assistance. The apprehension of social judgment, retaliation, or disruption of familial cohesion frequently compels victims to remain in abusive environments, thereby sustaining a concealed and unresolved cycle of violence.

III. LEGAL FRAMEWORK CONCERNING DOMESTIC VIOLENCE LAWS IN INDIA

India's legal framework for addressing domestic violence is primarily structured around two

key mechanisms: criminal prosecution under Section 85 of the Bharatiya Nyaya Sanhita (BNS) of 2023⁵ and civil remedies provided by the Protection of Women from Domestic Violence Act (PWDVA) of 2005. Enacted in 1983, Section 85 criminalizes “cruelty” inflicted by a husband or his relatives upon a married woman, categorizing it as a cognizable and non-bailable offense. Judicial examination, particularly subsequent to the Supreme Court’s decision in the landmark case of *Arnesh Kumar v. State of Bihar* (2014)⁶, the Honourable Court critically examined the misuse of Section 498A of the Indian Penal Code, which pertains to cruelty against married women and is characterized as both cognizable and non-bailable. (Law Advice, 2024) The Court highlighted that this statutory provision frequently resulted in automatic and indiscriminate arrests, often executed without adequate preliminary inquiry into the veracity of the allegations. Such practices were identified as posing significant risks to individuals’ reputations and infringing upon the fundamental right to personal liberty. The judgment underscored that the mere authority to effect an arrest does not warrant its routine application; rather, arrests should be predicated upon reasonable satisfaction following a preliminary investigation.

The PWDVA is important because it introduces procedural advances in addition to its substantive content. It makes it possible to file complaints with "Magistrate's Courts," which are empowered by Sections 18 to 22 to grant "Protection Orders," "Residence Orders," "Monetary Reliefs," and "Custody Orders." Enshrined in Sections 8 and 11 of the Act, the Act also requires the creation of "Shelter Homes," "Medical Facilities," "Protection Officers," and "free legal aid." The objective of these provisions is to establish an extensive support system for victims. But in spite of its forward-thinking perspective, the PWDVA has faced a number of implementation issues, including as a lack of infrastructure, inadequate coordination among parties, a postponement in the recruitment of protection officers, coupled with insufficient awareness among victims and law enforcement personnel. Furthermore, the Act has a quasi-criminal edge under Section 31 since, despite its civil nature, it permits "criminal consequences" in the event that court orders are not followed.

In addition to these clauses, Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS,

⁵Bharatiya Nyaya Sanhita, 2023, § 85 (Act No. 45 of 2023) (India), effective July 1, 2024 (replacing the Indian Penal Code) (penalizing cruelty by husband or his relatives with up to three years’ imprisonment and a fine)

⁶*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, AIR 2014 SC 2756 (S.C.) (establishing that in cases punishable by less than seven years, arrests should be exceptions—requiring adherence to CrPC § 41 guidelines, including checklist, preliminary notice, and magistrate oversight)

2023) provides a vital form of assistance to parents, spouses, and children who are unable to support themselves in the form of "maintenance." This clause, which is secular in nature, is essential in helping women who have been left behind or ignored by their husbands by giving them with financial support. Despite not being a domestic violence statute specifically, Section 125 often works in conjunction with the PWDVA to strengthen the protective legal framework. Furthermore, instances involving domestic abuse frequently involve "personal laws," such as the Muslim Women (Protection of Rights on Divorce) Act of 1986, the Hindu Marriage Act of 1955, and other community-specific rules, particularly when it comes to divorce, child custody, and matrimonial remedies.

While maintaining the substantive continuity of India's domestic abuse criminal law, the BNS and BNSS have made significant structural and terminological changes from the pre-existing laws under Indian Penal Code, 1860 and Criminal Procedure Code, 1973, respectively that are intended to modernize and simplify the system. Crucially, a complete strategy that provides both protection and accountability is made possible by the coexistence of criminal penalties under BNS/BNSS and civil remedies under PWDVA.

The BNS and BNSS's incorporation into Indian law provide a significant chance to update, streamline, and strengthen criminal law safeguards against domestic abuse.

IV. IMPLEMENTATION AND ENFORCEMENT DRAWBACKS

India's legal framework for addressing domestic violence, primarily constituted by Section 85 of the Bharatiya Nyaya Sanhita (BNS) and the Protection of Women from Domestic Violence Act (PWDVA) of 2005, is notably progressive in its legislative intent. However, the practical enforcement of these laws is often inconsistent and ineffective, largely attributable to constrained institutional capacity, procedural inefficiencies, and prevailing social resistance.

A significant challenge is the under-resourced and overburdened implementation apparatus. Protection Officers, designated as pivotal frontline advocates for survivors, frequently manage multiple roles without adequate training or manageable caseloads. This imbalance compromises the quality of support provided, including assistance with legal procedures and coordination of critical services such as counseling and medical care. Furthermore, although shelter homes and legal aid services exist in principle, their availability is sporadic and their outreach limited, particularly in rural and economically disadvantaged areas, thereby

undermining timely access to protection for those in urgent need.

Procedural delays within the legal system significantly compromise the efficacy of protective measures. Although the Protection of Women from Domestic Violence Act (PWDVA) was intended to facilitate prompt interventions, in practice, cases frequently prolong for several months or even years. Factors such as frequent adjournments, congested court schedules, and bureaucratic obstacles diminish both the confidence and safety of survivors. Furthermore, even when judicial orders such as protection or residence directives are issued, their enforcement remains inconsistent. Numerous violations of these orders go unpunished or are reclassified as routine civil matters, thereby enabling perpetrators to persist in abusive conduct with limited repercussions. Under Sections 18-22 of the PWDVA, magistrates have the power to issue protection, housing, monetary, and custody orders. However, they frequently handle these cases using a standard criminal law framework rather than one that is trauma-informed or gender-sensitive.

Public perception introduces an additional dimension of complexity to the issue. The notably low conviction rates under Section 498A of IPC -approximately 1% in Bengaluru over a five-year period have intensified discussions regarding potential misuse of the provision. However, empirical evidence suggests that false allegations constitute only a minor fraction of the overall domestic crime cases. This ongoing discourse has influenced the attitudes of law enforcement and judicial authorities, resulting in increased reluctance to respond swiftly to legitimate complaints due to concerns about provoking criticism related to politically charged accusations of misuse.

There are also serious issues with the police's enforcement function. The Police Officers usually insist on "reconciliation" or "family counseling" even in cases of severe abuse. The PWDVA's provisions are still unknown to many officers, who frequently disregard them in favor of criminal law.

The discrepancy between the written legislation and the actual situation has been brought up time and again by judicial observations. However, systemic change has not always resulted from such progressive jurisprudence. Standard operating procedures (SOPs) and plans for domestic abuse cases have not been consistently implemented by state governments. Even when there are policies in place, such the One Stop Center Scheme or Sakhi Centers, they are frequently underfunded and poorly regulated.

Amidst these challenges, certain initiatives emerge as exemplary models. Notably, the Bharosa Cell in Nagpur-a specialized support center operated by the police-has effectively managed thousands of domestic violence complaints, achieving a notably high resolution rate. In addition to offering legal assistance, counseling, and shelter services, the cell prioritizes prompt response and individualized intervention. This approach illustrates that the alignment of adequate resources and specialized training with a sensitivity-driven framework can yield significant and positive outcomes. To bridge the disparity between legal frameworks and lived experiences, it is imperative to strengthen institutional systems through the professionalization of Protection Officers, the establishment of efficient judicial response mechanisms, the enforcement of compliance protocols, and the replication of effective localized initiatives such as specialized domestic violence support centers. When combined with broader societal transformations and enhanced capacity-building within law enforcement agencies, these measures have the potential to convert symbolic legislation into concrete protection for survivors throughout India.

In summary, although the BNS and BNSS's PWDVA and related criminal provisions provide a strong theoretical foundation for combating domestic abuse, there are still significant issues with how they are being applied.

V. COMPARATIVE LEGAL FRAMEWORK: UNITED KINGDOM AND UNITED STATES

Examining international experiences provides important insights into how structural and legal innovations implemented in other countries may enhance domestic violence interventions within India. Specifically, the recently established protection frameworks in the United Kingdom, alongside the United States integrated funding approach, present complementary models that merit careful consideration for potential adaptation or as sources of inspiration.

The United Kingdom's Domestic Abuse Act of 2021 established two significant legal mechanisms: Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs)⁷. A DAPN functions as an immediate, short-term protective measure issued by law enforcement following an incident of abuse, allowing for rapid intervention without the need for judicial approval. In contrast, DAPOs represent longer-term, tailored orders that may

⁷ Domestic Abuse Protection Notice (DAPN) & Domestic Abuse Protection Order (DAPO). Domestic Abuse Protection Notices (DAPNs) and Domestic Abuse Protection Orders (DAPOs), GOV.UK (updated Apr. 28, 2025)

encompass prohibitions such as exclusion from the survivor's residence and restrictions on contact as well as positive obligations, including participation in behavior modification programs and substance abuse counseling. Additionally, DAPOs can require electronic monitoring. These provisions were introduced to address previously identified deficiencies in the effectiveness and accessibility of protection measures, supplanting earlier orders that were often underutilized or largely symbolic in nature.

Unlike some systems, the United States operates a federal model that combines consistent federal laws with decentralised implementation at the state level. A key piece of legislation in this framework is the Violence Against Women Act (VAWA), first passed in 1994 and reauthorized several times since. VAWA provides substantial federal funding for services like crisis support, training for judicial staff, and coordination between agencies. This legal foundation helps build a broad support network for survivors, including shelters and advocacy initiatives, with an emphasis on a community-based, holistic approach. While individual state laws vary, many include measures such as emergency protective orders, legal aid for victims, and standard procedures for police. Federal oversight ensures that core protections are in place across the diverse legal systems of each state.

Despite the PWDVA's intended simple civil procedure, Indian courts nonetheless frequently require police or medical investigations to support claims under the statute. On the other hand, trauma-informed strategies have lessened the burden on survivors in the US and the UK by enabling courts to accept victim testimonies, behavioral patterns, and psychological assessments as legitimate evidence of abuse. For example, courts can consider a wide range of evidence, such as digital records, past history, and expert opinion, under Section 12 of the UK's Domestic Abuse Act. Furthermore, digital safety measures that are widely accepted in Western jurisdictions like non-molestation orders against online stalking and surveillance remain undeveloped in India.

India can gain some significant insights from the United Kingdom's innovative legal mechanisms and the infrastructure-focused strategy employed by the United States. The UK's implementation of Domestic Abuse Protection Notices (DAPNs), which empower law enforcement to offer immediate, short-term protection following incidents of abuse, alongside Domestic Abuse Protection Orders (DAPOs), which authorize courts to enforce adaptable, long-term measures such as no-contact directives, behavior modification programs, and

electronic monitoring, exemplifies the efficacy of combining prompt intervention with systematic enforcement. Concurrently, the U.S. framework, anchored by the Violence Against Women Act (VAWA)⁸ and the Family Violence Prevention and Services Act (FVPSA), highlights the critical role of sustained, centrally coordinated funding for shelters, helplines, and legal assistance, as well as the synchronized collaboration among law enforcement agencies, judicial bodies, and support services. Collectively, these models advocate for a hybrid approach tailored to the Indian context: the integration of rapid-response protective mechanisms alongside comprehensive, scalable support infrastructures, thereby ensuring both immediate protection for survivors and the reinforcement of institutional capacity and accountability.

VI. RECOMMENDATIONS

India's domestic violence legislation is progressive in its formulation; however, the effective implementation of these laws necessitates substantial structural enhancements. Encouragingly, recent initiatives indicate potential for significant reform.

Strengthening frontline responses begins with the empowerment of Protection Officers. The establishment of a dedicated cadre of 390 full-time Protection Officers in Bihar, distributed across subdivisions, districts, and the state headquarters, constitutes a critical institutional advancement. To translate this development into tangible outcomes, it is imperative that these officers receive comprehensive training encompassing legal frameworks, trauma-informed care, and case management. Additionally, providing them with mobile technology or centralized case-tracking systems will facilitate the monitoring and enforcement of relief orders and follow-up actions, ensuring these measures extend beyond mere documentation. Implementing compulsory, certified training programs on domestic violence for law enforcement officers, magistrates, and judges, accompanied by mandatory periodic refresher courses in order to create more sympathetic jurisprudence. Integrate survivor safety indicators into performance evaluation criteria. Additionally, establish an autonomous oversight body tasked with examining systemic complaints related to enforcement deficiencies and proposing appropriate remedial measures to carry out studies and suggest policies.

⁸ Violence Against Women Act of 1994, Pub. L. 103-322, 108 Stat. 1796 (Sept. 13, 1994); see historical overview and effects, Time (Mar. 2023)

Enhancing emergency response mechanisms is equally critical. Daily operations Dial-112 helpline has demonstrated its efficacy by managing hundreds of thousands of domestic violence-related calls while maintaining an average response time of approximately 15 minutes. This success highlights the effectiveness of a nationwide, round-the-clock system staffed by empathetic female responders. Expanding this model to other states or integrating existing helplines, such as 181, into the 112 framework could provide survivors with immediate and accessible support during critical moments.

The revitalization of One-Stop Centres (OSCs) also demands urgent attention. Intended to offer comprehensive medical, legal, psychological, and shelter services under one roof, many OSCs remain understaffed and underutilized, particularly in rural areas. Ensuring adequate staffing, strategic visibility, and effective publicity—especially in rural districts—can transform OSCs into essential hubs of support for survivors.

Furthermore, mobilizing local communities through grassroots initiatives proves to be a powerful strategy. Programs like Bihar's Durga Jattha, which involve adolescent girls forming peer groups to combat social evils and raise awareness, and campaigns such as "Bell Bajao" disrupt violence through collective actions and exemplify how meaningful change can originate at the community level. Supporting such locally driven efforts not only challenges prevailing social norms but also fosters trust in reporting mechanisms and intervention pathways.

The fundamental concept is straightforward legal frameworks lacking adequate capacity, efficiency, and coordination fail to sufficiently protect survivors. These proposals connect legal remedies with the necessary human resources, institutional systems, and financial support required to actualize effective protections. They integrate enhancements for immediate response (such as emergency helplines and enforceable protection orders), development of medium-term institutional capabilities (including professional Protection Officers and accredited Organizations for Survivors of Crime), and initiatives aimed at fostering long-term cultural transformation.

VII. Conclusion

India's legal framework addressing domestic violence signifies a substantial shift from traditional perspectives, reclassifying intimate partner abuse from a private "family matter" to a recognized violation necessitating state intervention. The introduction of civil protective

mechanisms under the Protection of Women from Domestic Violence Act (PWDVA), alongside criminal statutes such as Section 498A of the Indian Penal Code (IPC), constitutes significant theoretical advancement. However, a pronounced gap persists between these legal provisions and the lived experiences of survivors: low conviction rates, procedural delays, superficial enforcement, and prevailing social stigma continue to obstruct effective access to justice.

Empirical evidence-illustrated by Bengaluru's notably low conviction rates and the limited operational capacity of One-Stop Centers highlights a systemic disjunction wherein even well-conceived legislation falters in the absence of adequate institutional capacity, inter-agency coordination, and community trust. Judicial developments, including the expanded interpretation of "shared household" and the legal recognition of live-in relationships, provide important jurisprudential support; nevertheless, courts alone cannot compensate for infrastructural deficiencies or deeply ingrained gender biases.

Consequently, a comprehensive, multifaceted approach is imperative. This approach must encompass robust institutional infrastructure, featuring trained Protection Officers integrated within efficient digital monitoring systems, modernized and adequately resourced emergency response frameworks, fully operational One-Stop Centers, and law enforcement personnel equipped to differentiate between civil remedies and criminal procedures. Equally essential is cultural transformation achieved through sustained community engagement, public awareness initiatives aimed at shifting societal norms, and the empowerment of grassroots organizations. The convergence of these elements such as legal reform, service provision, and social change is critical to translating statutory protections into tangible outcomes of safety, dignity, and empowerment for survivors.

By harnessing legislative clarity, administrative support, judicial commitment, and societal solidarity, India can progress beyond the existence of protective laws in theory to the establishment of genuinely responsive systems that uphold justice for all survivors.