
DOMESTIC VIOLENCE IN CONTEMPORARY INDIA: CONSTITUTIONALITY, LEGAL CHALLENGES, AND REFORMS

Kumar Nitish, LL.M., Jharkhand Rai University, Ranchi, Jharkhand

ABSTRACT

This article examines DV in contemporary India through the lens of constitutionality, legal frameworks, implementation challenges, and potential reforms. Despite significant legislative progress, particularly with the Protection of Women from Domestic Violence Act (PWDVA), 20 of 2005, the phenomenon remains persistently widespread across Indian society. This research critically analyzes the constitutional underpinnings of anti-DV legislation, evaluates the effectiveness of current legal protections, and identifies systemic barriers impeding access to justice. Through comparative analysis with international legal frameworks and best practices, the article proposes comprehensive reforms addressing procedural, substantive, and institutional dimensions. By synthesizing legal scholarship, empirical data, and judicial precedents, this study contributes to the discourse on enhancing protections for DV survivors while addressing the complex socio-legal challenges that persist in contemporary India.

I. Introduction

DV is one of the most widespread but also sometimes hidden human rights abuses in modern India. Although legally established as a criminal activity through a series of legislative documents, violence in domestic relations still impacts millions of women throughout the nation. The NFHS-5 report of 2019-21 established that nearly 30% of ever-married women aged 15-49 had at some point in their lives experienced any type of DV, indicating the sheer scale of the issue (IIPS, 2022). Though considerable progress has been achieved in legal recognition and protection frameworks, the distance between legislative intention and implementation reality remains painfully broad.

The PWDVA 2005, effective from 2006, was a landmark in Indian legal history since it went on record to acknowledge DV as a legal wrong that requires legal redressal. Stepping out of the limited paradigm of criminal provisions of the IPC, this act developed a wider conceptualization of DV that included physical, sexual, verbal, emotional, and economic abuse. However, nearly seventeen years since its enactment, fundamental questions continue to be raised regarding its effectiveness, issues of implementation, and compatibility with constitutional values.

This paper questions the constitutional underpinnings of anti-DV laws in India, examining how guarantees of fundamental rights under Articles 14, 15, and 21 of the Indian Constitution have influenced and continue to shape legal safeguards against DV. This constitutional perspective offers a lens through which to analyze not just the substantive content of existing laws but also their procedural and institutional dimensions.

The analysis then moves to a discussion of recurring challenges in implementation, such as resource limitations, procedural logjams, and sociocultural impediments that hinder efficient delivery of justice. By contrasting India's practice with global best practices and standards, the article identifies innovative reform strategies that may have the potential to bridge the gap between legislative promise and lived experience for survivors of DV.

The timing of this evaluation is particularly important in light of recent judicial understandings which have enlarged the scope of protection, continued controversies surrounding the gendered character of DV laws, and renewed demands for holistic scrutiny of India's response to gender-based violence. Through this critical evaluation, the article hopes to contribute to intellectual

and policy discussion on the enforcement of legal protections against DV in India.

II. Constitutional Framework and DV Legislation

A. Constitutional Underpinnings

The Indian Constitution itself gives the basic framework to which all DV legislation has to fit. Three constitutional provisions are of special importance: Articles 14 and 15 guarantee equality before the law and prohibit treatment based on encompassing sex, and Article 21 safeguarding the right to life and personal liberty. These provisions collectively form the constitutional basis for legislation dealing with gender-based violence, including DV.

The Supreme Court has continuously interpreted "right to life" under Article 21 as going beyond mere physical existence, to the right to live with human dignity. The Court held that any action which "damages or assaults or conflicts with the use any given limb or intellect of a person, whether eternally or even momentarily" falls within the purview of Article 21's prohibitions in *Francis Coralie Mullin v. Union Territory Delhi, Administrator* (1981). This view directly impacts the PWDVA's definition of physical abuse as being tantamount to DV.

Article 14's assurance of equality has been read by the Supreme Court not just as formal equality but as substantive equality, acknowledging that different treatment for different groups could be required in order to establish real equality. Such an interpretation legitimates special safeguards for women who have been traditionally disadvantaged within patriarchal social arrangements. In the same way, the state is specifically empowered to enact particular provisions for women and children under Article 15(3). offering constitutional validation for gendered protections in DV law.

B. Evolution of DV Legislation in India

India's legal reaction to DV has undergone a dramatic change over the years, shifting from sparse criminal provisions to more elaborate civil remedies. The first such legislation was the Dowry Prohibition Act of 1961, which made giving and taking dowry an offense but did not specifically tackle violence arising out of dowry demands. Realizing this lacuna, the Criminal Law (Second Amendment) Act of 1983 brought Section 498A to the IPC, penalizing cruelty by a husband or his family members against a married woman.

Although Section 498A was a significant step forward, it had a narrow focus, being restricted to married women and dealing almost exclusively with physical cruelty and harassment on account of dowry demands. Further, as a criminal provision, it did not provide for immediate civil relief in the form of protection orders or residence rights that the survivors so badly need.

The PWDVA of 2005 created a paradigm shift by instituting a complete civil law regime for dealing with DV. The Act greatly widened the definition of DV from physical to include sexual, verbal, emotional, and economic abuse. Protection was also extended to women in other domestic relationships, not limited to marital relationships, by recognizing live-in relationships and other family settings where women are exposed to violence.

The Statement of Objects and Reasons of the PWDVA unambiguously recognizes its constitutional foundations, affirming that it was enacted "keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21" (PWDVA, 2005). This unambiguous constitutional basis is reflective of the legislature's purpose to implement constitutional compulsions of equality, non-discrimination, and dignity through expert law.

C. Judicial Interpretation Expanding Constitutional Protections

Judiciary has played a crucial role when it involves interpreting DV laws in the context of legitimate guarantees. *Indra Sarma v. V.K.V. Sarma* (2013) was decided by the country's highest court held that the term "relationship in the nature of marriage" in the Domestic Violence Act covers live-in relationships. The PWDVA's acceptance of partnerships "in the sense of marriage" was consistent with the right of a dignified life assured by the constitution. Just like this, the Court struck down the definition of "respondent" under Section 2(q) of the PWDVA with the word "adult male" as being arbitrary and contrary to the intent of the Act to provide protection to women from domestic violence from all sides in *Hiral P. Harsora v. Kusum Narottama Harsora* (2016).

These judicial constructions have increasingly broadened the protective scope of DV law, so that constitutional promises of equality and dignity are more completely achieved for survivors. Yet there are difficulties in ensuring that these expansive constructions find effective expression on the ground.

III. Critical Analysis of Current Legal Framework

A. Scope and Coverage of PWDVA

The PWDVA was a major improvement in responding to DV in India, especially through its broad definitions. Section 3 of the Act defines DV in an inclusive manner, encompassing physical, sexual, verbal, emotional, and economic abuse. This broad-based definition acknowledges the complex nature of DV and transcends the limited emphasis on physical harm that characterized previous legal responses.

The Act's definition of "domestic relationship" under Section 2(f) also shows a progressive approach, covering relationships "in the nature of marriage" and acknowledging other family situations where women are subjected to violence. The expanded definition recognizes that violence takes place in a variety of domestic settings beyond the formal marriage.

Yet, there are still limitations. Even with the intervention of the Supreme Court in *Hiral P. Harsora*, questions remain regarding gendered construction of the PWDVA and whether it is doing enough to tackle DV suffered by others, too, such as men, transgender, and non-binary persons. Although statistical data indicate women to be the overwhelming majority of DV victims, the constitutional principle of equality does cause genuine questions to arise regarding safeguarding all victims irrespective of gender.

B. Remedies and Relief Measures

The PWDVA introduced several crucial remedies previously unavailable under Indian law. These include protection orders (Section 18), residence orders (Section 19), monetary relief (Section 20), custody orders (Section 21), and compensation orders (Section 22). Collectively, these provisions aim to provide comprehensive relief addressing immediate safety concerns, economic needs, and longer-term welfare.

Particularly significant is the right to reside in the shared household under Section 17, which protects women from being evicted or excluded from their homes—a common tactic used by abusers. This provision directly addresses a critical gap in earlier legal frameworks and aligns with constitutional protections of dignified living.

Nevertheless, practical challenges limit the effectiveness of these remedies. Delays in court proceedings often mean that interim relief, which should be immediate, may take months to obtain. The lack of clear enforcement mechanisms for protection orders further undermines their effectiveness as deterrents against continued violence.

C. Procedural Framework and Implementation Mechanism

PWDVA created a multi-tiered implementation framework, comprising POs, service organizations, and the role of police and judiciary. Protection Officers are essential intermediaries, facilitating access of the survivor to the legal system and linking survivors to support services. According to Section 8(2) of the Act, Protection Officers shall, as far as is possible, be women who have sufficient experience in social work or legal service.

Yet, enactment has been less than legislative stipulations. Numerous states have instead added more work to current officials instead of giving specific Protection Officers, leading to overworked officials who cannot fulfill their roles efficaciously. A 2020 Supreme Court case, *We The Women of India v. UOI*, pointed out the ongoing lack of Protection Officers throughout states and called for the central government to intervene with urgency in this regard.

Service organizations, often NGOs, complement this by providing counseling, shelter, and other forms of support. However, poor funding and uneven geographical spread of the services result in wide gaps in the support system, most so in rural areas.

IV. Implementation Challenges and Ground Realities

A. Institutional and Resource Constraints

Even with the elaborate framework of the PWDVA, implementation has been undermined by critical resource shortages. According to a 2012 study by the Lawyers Collective Women's Rights Initiative, most states had not specifically budgeted for the implementation of PWDVA, leading to a lack of infrastructure, poor staffing, and limited training of staff. Protection Officers, the key actors in the implementation of the Act, lack adequate offices, transport facilities, and communication equipment to deal with complaints efficiently. Most of them cover big tracts of area and, therefore, instantaneous intervention in emergency cases becomes almost impossible. This infrastructural lacuna directly defeats the purpose of the Act and deprives the survivors of the immediate assistance required by law.

In addition to infrastructure, training deficits further undermine implementation quality. Most Protection Officers, police officials, receive no specialized training in DV dynamics, trauma-informed practices, and correct application of the PWDVA. The knowledge deficit can lead to insensitive case handling, misuse of legal provisions, and secondary victimization of survivors

who come for assistance.

B. Socio-Cultural Barriers to Accessing Justice

Apart from institutional limitations, socio-cultural factors strongly rooted in the society pose great obstacles for survivors of DV in pursuing justice. The NFHS-5 report indicates that fewer than 14% of women who had undergone DV sought any assistance, thereby pointing to the overwhelming majority that remain silent sufferers (IIPS, 2022).

There are a number of reasons for this reluctance to ask for assistance. Economic reliance on abusers makes it nearly impossible to leave violent relationships, particularly when women do not have independent financial resources or marketable skills. Economic disadvantage is augmented by social shame regarding DV and family disintegration, with women usually being blamed for "failing" to ensure family peace.

The intersectionality of many types of marginalization adds to these problems. Lower socioeconomic women, Dalit and Tribal populations, religious minorities, and disabled individuals encounter even greater obstacles in reaching justice systems that are already attuned to being unresponsive to their unique vulnerabilities.

Arguably most troubling is the normalization of DV in societies. The NFHS-5 revealed that around 45% of women endorsed wife-beating under some situations, showing just how internalized the acceptance of violence can be (IIPS, 2022). Such normalization makes the situation where violence will not be reported or viewed as a violation warranting action.

C. Procedural Bottlenecks and Delays

The procedural actuality of DV cases is oftentimes in contravention to the Act's ideal of prompt justice. Irrespective of Section 12(5) of the PWDVA ordering courts to decide on applications within 60 days, cases can often take years. Not only does this extended delay prolong the survivors' experiences of possible prolonged violence, it also exhausts their scarce resources and willpower to seek justice.

Several reasons account for these delays. Backlogs in courts imply that judges spend minimal time hearing DV cases, which leads to routine adjournments. Procedural intricacies, such as serving notices on respondents who willfully resist service, extend timelines further. The

adversarial nature of procedure, where respondents will use all manner of delaying tactics, exacerbates these challenges.

In addition, coordination gaps among various stakeholders—police, Protection Officers, service providers, and courts—generate inefficiencies that further delay case progress. Lacking integrated case management systems, information sharing tends to be disorganized, and survivors are forced to repeat descriptions of traumatic events to various authorities.

V. Comparative Analysis: International Standards and Best Practices

A. UN Framework and CEDAW Recommendations

Global human rights instruments present key benchmarks upon which to judge India's response to DV. The CEDAW, which was ratified by India in 1993, enunciates unambiguous state obligations to eliminate gender-based violence. Gender-based violence is stated categorically to constitute a form of discrimination which considerably disables women from enjoying liberty and rights on a basis comparable to men in General Advice 19 (revised by General Recommendation 35 in 2017).

CEDAW's approach stresses an integral model dealing with prevention, protection, prosecution, and coordination of policy. The committee has always advised states to enact legislation on DV that establishes provision for protection orders, services for survivors, and proper punishment for offenders. India's PWDVA is generally in compliance with these suggestions in its legislative model but is facing issues in implementation.

The UN "Handbook for Legislation on Violence against Women" (UN Women, 2012) offers specific guidelines for effective DV legislation, highlighting inclusive definitions, prompt enforcement mechanisms, and integrated multi-sectoral responses. These guidelines provide useful benchmarks for evaluating and enhancing India's legal response.

B. Innovative Approaches from Other Jurisdictions

A number of jurisdictions have adopted creative strategies for DV that might be used to enhance India's system. Spain's Organic Law on Integrated Protection Measures against Gender Violence (2004) created specialized courts with sole jurisdiction over gender violence cases, allowing judges to become experts and ensuring uniform application of applicable laws. These

courts combine civil and criminal jurisdiction, permitting coordinated management of related issues such as protection orders, divorce proceedings, and criminal charges.

Australia's models of integrated responses, as in Victoria, show the benefit of coordinated community responses. They unite police, courts, health services, and specialist DV services in formal partnerships with explicit information-sharing arrangements and case management frameworks. This integration avoids gaps in service provision and ensures consistent assistance for survivors.

The Philippines' Anti-Violence Against Women and Their Children Act has robust monitoring provisions, including periodic review of implementation and impact. This accountability process assists in identifying gaps in implementation and adjusting strategies accordingly. This approach is followed will give better results in India.

C. Lessons for Indian Context

Though foreign models provide useful lessons, they need to be tailored to India's context. A few major lessons are evident from comparative examination. One, specialized institutional frameworks, like dedicated DV courts or court wings, would go a long way in enhancing case management and curbing delays. This specialization would enable judges and court personnel to acquire expertise in processing DV cases with sensitivity and speed.

Second, integrated service delivery models might solve coordination issues among various stakeholders. Co-location of services, official protocols for information sharing, and concurrent training of various agencies might make the experience smoother for survivors and minimize the burden of dealing with complicated systems.

Third, more robust mechanisms of accountability, such as routine data collection and regular review of implementation, would identify recurring gaps and track progress. India does not have comprehensive data on DV cases, and therefore, it is challenging to assess the effectiveness of the PWDVA and direct interventions where needed most.

Lastly, increasing preventive strategies, such as community education and early intervention programs, would be able to address the underlying social norms which cause DV. Legal responses are important, but they need to be supplemented with broader social change strategies in order to be fully effective.

VI. Proposed Reforms: Towards a More Effective Legal Framework

A. Substantive Legal Reforms

A number of substantive legal changes can make the PWDVA more effective. First, defining the interrelationship among various legal provisions dealing with DV—such as Section 498A IPC, the PWDVA, and personal laws—would eliminate confusion and facilitate more uniform application. This may include specific provisions on how these legislations interact and which remedies can be sought together.

Second, enhancing enforcement mechanisms for protection orders is essential. This might involve express criminal sanctions for violating protection orders, mandatory police response policies, and electronic monitoring in high-risk situations. The existing absence of definite enforcement provisions weakens the deterrent value of protection orders and exposes survivors to ongoing violence.

Third, broadening the definition of DV to clearly cover certain types of technology-enabled abuse (e.g., cyberstalking, spyware surveillance, and image abuse) would recognize changing patterns of domestic abuse during the digital age. The present definition, as wide as it is, falls short of providing sufficient coverage to these new and developing forms of abuse that are potentially highly injurious.

B. Procedural and Implementation Reforms

Procedural changes are necessary in order to close the gap between intention and reality of implementation. Having procedures for fast-tracking DV cases can prove helpful in cutting back delays. This could encompass easy filing procedures, accelerated hearings for interim orders, and strict timeframes for different proceedings stages.

Improving the Protection Officer system is of paramount importance, such as making qualifications compulsory, specialized training, proper remuneration, and reasonable caseloads. States must be obligated to appoint full-time dedicated Protection Officers instead of making these assignments additional responsibilities to current officials. Specific performance standards and accountability for Protection Officers would also improve the quality of service.

Having detailed standard operating procedures for each implementing agency would maintain response consistency. The protocols must address initial response, risk assessment, safety planning, referral mechanisms, and follow-up procedures. Periodic joint training for everyone involved would foster knowledge of the protocols and establishment of collaborative relationships.

Opening one-stop crisis centers in every district and providing co-located medical, legal, counseling, and shelter services would increase access to support for survivors. Effective in a number of states, these centers require nationwide adoption with sufficient funding.

C. Institutional and Structural Reforms

Wider institutional changes are required to provide an enabling environment for successful implementation. Setting up a national monitoring mechanism, perhaps in the form of an empowered National Commission for Women, could track implementation at the state level, highlight best practices, and resolve chronic issues. It could issue periodic implementation status reports and enforce action against defaulting states.

Establishing specialized DV courts or court divisions within family courts would enable the building of judicial expertise and more uniform case handling. Judges in such courts would need specialized training in DV dynamics, trauma-informed practice, and effective implementation of the PWDVA.

Building coordinated electronic case management systems linking police, Protection Officers, courts, and service providers would enhance coordination and eliminate duplication of effort. These systems would also produce useful data for monitoring and evaluation.

Last but not least, sustainable, and sufficient funding channels are a necessity. This might involve specific budget lines for implementing PWDVA at both state and central levels, with set allocations for protection officers, service providers, and awareness programs. Performance-based incentive funding could prompt states to implement more forcefully.

VII. Conclusion: The Path Forward

The PWDVA was a major milestone in India's legal response to DV, and it set up an integrated framework based on constitutional values of justice, dignity, and equality. Nevertheless, the

enduring gap between legislative promise and the reality of implementation cries out for immediate attention and collective action.

The reforms suggested in this article—ranging from substantive legal provisions, procedural frameworks, and institutional arrangements—present a blueprint for enhancing India's response to DV. These reforms acknowledge that successful intervention is not just a matter of having powerful laws but also effective implementation mechanisms, sufficient resources, and changes in social attitudes.

Apart from institutional and legal reforms, combating DV needs to challenge the highly ingrained social norms that underpin gender inequality and render violence acceptable. Legal action needs to be accompanied by education, media, and community work at a larger level to promote values of gender equality and non-violence in relationships.

The COVID-19 pandemic, which witnessed a sudden spike in DV across the world, including India, has further highlighted the need to expedite the strengthening of response systems. As India recovers from the pandemic, there is both need and opportunity to place DV prevention and response as critical elements of social infrastructure.

Ultimately, the proof of any legal regime is whether it can provide protection and justice to those most in need. For the millions of Indian women confronted with DV, the PWDVA's promise remains partly realized. Narrowing the implementation gap calls for political will, investment of resources, institutional change, and consistent pressure. With such an integrated effort, India can get closer to actualizing the constitutional promise of equality, dignity, and freedom from violence to all its citizens.

References

- Francis Coralie Mullin v. Union Territory Delhi, Administrator, (1981) 1 SCC 608.
- Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165.
- Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.
- International Institute for Population Sciences. (2022). National Family Health Survey (NFHS-5), 2019-21: India. Mumbai: IIPS.
- Protection of Women from DV Act, 2005, No. 43, Acts of Parliament, 2005 (India).
- UN Women. (2012). Handbook for Legislation on Violence against Women. UN Entity for Gender Equality and the Empowerment of Women.
- We The Women of India v. UOI, Writ Petition (Civil) No. 1156/2021.