
DOMESTIC VIOLENCE SURVIVORS AND DIVORCE: LEGAL BARRIERS TO EXIT AND PROTECTION GAPS IN INDIA

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ABSTRACT

India's legal framework addressing domestic violence has evolved significantly since the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA). Yet, the distance between legislative intent and lived reality for survivors seeking divorce remains wide. This article examines the structural, procedural, and socio-cultural barriers that impede domestic violence survivors from exiting abusive marriages through legal divorce in India. Drawing upon statutory analysis, judicial precedents, empirical survey data (including NFHS-5), and scholarly literature, the article identifies and critiques four interconnected categories of barriers: legislative gaps (including the marital rape exception), implementation failures under the PWDVA, financial and housing insecurity, and deep-rooted social stigma. The article argues that while landmark judicial interventions have progressively expanded the protective umbrella, critical protection gaps persist particularly for women in rural areas, economically marginalised communities, and those subjected to non-physical forms of abuse. Concrete recommendations are proposed for legislative reform, institutional strengthening, and multi-agency coordination to bridge these gaps.

Keywords: Domestic Violence, PWDVA 2005, Divorce, Legal Barriers, Protection Officers, Marital Rape Exception, India, Gender Justice.

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I. Introduction

Domestic violence is one of the most pervasive yet underreported forms of gender-based violence in India. According to the National Family Health Survey (NFHS-5) conducted between 2019 and 2021, approximately 29.3% of married women aged 18–49 reported having experienced physical or sexual violence perpetrated by their spouses.² Alarmingly, a staggering 87% of these women did not seek any form of institutional help, revealing a profound chasm between the prevalence of abuse and access to legal remedies.³

For many survivors, divorce represents the most definitive legal exit from an abusive relationship. Yet the pathway to divorce for domestic violence survivors in India is obstructed by a complex web of legal, institutional, economic, and social barriers. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was enacted to provide comprehensive civil remedies including protection orders, residence orders, and monetary relief to survivors.⁴ However, the PWDVA does not itself confer a right to divorce; it operates as a civil protection mechanism distinct from divorce proceedings under personal laws.⁵

This article proceeds in six parts. Following this introduction, Part II surveys the existing legal framework. Part III examines legislative and definitional gaps. Part IV critically analyses implementation failures. Part V addresses financial, housing, and social barriers. Part VI discusses judicial interventions and their limitations. Part VII concludes with recommendations for reform.

II. The Legal Framework: An Overview

A. The PWDVA 2005 and Its Civil Remedies

The Protection of Women from Domestic Violence Act, 2005 marked a watershed moment in Indian law by offering, for the first time, a standalone civil remedy framework for victims of domestic abuse. Prior to its enactment, survivors were left almost exclusively with the blunt instrument of Section 498A of the Indian Penal Code (IPC), which criminalised cruelty by a

²National Family Health Survey (NFHS-5), 2019–2021, Ministry of Health and Family Welfare, Government of India (2021).

³NFHS-5 (n 2); see also Kamal & Co. Advocates, 'Domestic Violence in India: What You Must Know', (2025).

⁴Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005), Preamble.

⁵Pawar SS, Vaidya S, 'The Protection of Women from Domestic Violence Act, 2005: Evaluating Legal and Social Impact in India', *Journal of Neonatal Surgery*, Vol. 14(7), 2025, pp. 1308–1313.

husband or his relatives but offered little immediate civil protection. The PWDVA broadened the definition of domestic violence under Section 3 to encompass physical, sexual, verbal, emotional, and economic abuse.⁶

The Act empowers Magistrates to issue protection orders, residence orders, monetary relief, custody orders, and compensation orders. It also mandates the appointment of Protection Officers in each district to assist survivors in navigating the legal process. Critically, the Act recognises economic abuse including the deprivation of financial resources and forced financial dependence as a form of domestic violence, a recognition that was path-breaking in its time.⁷

B. Divorce Under Personal Laws

The right to seek divorce on the ground of cruelty is embedded across India's personal laws applicable to different religious communities. Under Section 13(1)(ia) of the Hindu Marriage Act, 1955, cruelty whether physical or mental constitutes a valid ground for divorce. The Dissolution of Muslim Marriages Act, 1939 similarly permits a wife to seek divorce on grounds of cruelty. Christian and Parsi marriage laws also recognise cruelty as a basis for dissolution.⁸

Courts have consistently interpreted 'cruelty' expansively to include sustained psychological abuse, financial deprivation, and conduct likely to cause grave physical or mental harm. When domestic violence is established as a ground for divorce, it can also affect ancillary determinations such as alimony, child custody, and property division, with courts often awarding higher compensation to survivor-petitioners.⁹

III. Legislative and Definitional Gaps

A. The Marital Rape Exception: A Glaring Lacuna

Perhaps the most egregious legislative gap in India's domestic violence architecture is the continued non-criminalisation of marital rape. Exception 2 to Section 375 of the Indian Penal

⁶Section 3, Protection of Women from Domestic Violence Act, 2005.

⁷The Law Institute, 'Empowering Victims: The Protection of Women from Domestic Violence Act 2005', (2025), available at: <https://thelaw.institute/law-and-vulnerable-groups/protection-women-domestic-violence-act-2005/>.

⁸Section 13(1)(ia), Hindu Marriage Act, 1955; see also Section 2(viii), Dissolution of Muslim Marriages Act, 1939.

⁹Raizada & Associates, 'The Impact of Domestic Violence on Divorce Proceedings in India', (2025), available at: <https://www.raizadaassociates.com/blog/domestic-violence-on-divorce/>.

Code, 1860 retained verbatim in Section 63 of the Bharatiya Nyaya Sanhita, 2023 provides that sexual intercourse by a man with his own wife is not rape.¹⁰ This exception, rooted in Victorian colonial jurisprudence and the discredited 'doctrine of coverture', effectively denies married women equal protection against sexual violence perpetrated within the marital home.¹¹

While the Supreme Court in *Independent Thought v. Union of India* (2017) partially struck down the exception insofar as it applied to girls between the ages of 15 and 18,¹² the marital rape exception continues to apply to adult married women. In a significant development, the Karnataka High Court in *Hrishikesh Sahoo v. State of Karnataka* (2022) held that the marital rape exception was regressive and violated the right to equality,¹³ though the matter remains sub judice before the Supreme Court. In October 2024, the Union Government filed an affidavit opposing the criminalisation of marital rape by the same name as rape, reflecting an institutional reluctance to fully recognise sexual autonomy within marriage.¹⁴

The practical consequence for divorce proceedings is severe. A survivor of marital rape may cite the conduct as cruelty for the purposes of divorce, but she cannot initiate criminal proceedings against her husband for rape. This asymmetry denies her both criminal accountability and the deterrent protection that criminalisation would afford, leaving a critical protection gap that weakens her negotiating position in divorce proceedings.

B. Institutional Limitations: PWDVA's Structural Blind Spots

The PWDVA's scope is explicitly limited to women; male victims of domestic abuse and individuals in same-sex relationships have no equivalent statutory remedy. More pertinently for the present discussion, the Act does not directly provide a right to divorce. A survivor must simultaneously navigate proceedings under the PWDVA before a Magistrate and divorce proceedings under the applicable personal law before a Family Court proceedings that are legally distinct, operate under different procedural codes, and may be conducted in different fora. This institutional bifurcation imposes a heavy procedural burden on survivors who are

¹⁰Section 375, Indian Penal Code, 1860, Exception 2; retained in Section 63, Bharatiya Nyaya Sanhita, 2023.

¹¹Sarthak Makkar, 'Marital Rape: A Non-criminalized Crime in India', Harvard Human Rights Journal, (2019), available at: <https://journals.law.harvard.edu/hrj/2019/01/marital-rape-a-non-criminalized-crime-in-india/>.

¹²*Independent Thought v. Union of India*, W.P. (Civil) No. 382 of 2013 (Supreme Court of India, decided 11 October 2017).

¹³Karnataka High Court, *Hrishikesh Sahoo v. State of Karnataka*, decided 23 February 2022.

¹⁴Supreme Court Observer, 'Challenge to the Marital Rape Exception: Hrishikesh Sahoo v. State of Karnataka', (2024–25).

already in vulnerable circumstances.

IV. Implementation Failures Under the PWDVA

A. The Crisis of Protection Officers

The Protection Officer is the linchpin of the PWDVA's operational framework. Yet the systemic failure to appoint adequate numbers of Protection Officers has been one of the most persistently documented failures of the Act's implementation. The Supreme Court in *We the Women of India v. Union of India* (Writ Petition Civil No. 1156/2021) expressed grave concern that many States and Union Territories had failed to appoint sufficient Protection Officers even two decades after the Act's enactment.¹⁵

In Ahmedabad, a single Protection Officer was assigned to the entire district, resulting in a backlog of over 800 pending applications and victims being told to wait up to three months before their complaints could be processed. The same officer worked on eleven-month contracts, lacked a proper office space, and frequently went unpaid conditions that structurally precluded effective discharge of statutory duties.¹⁶ In Bihar, a High Court found that the state had appointed no full-time Protection Officers, registered no service providers, and failed to notify shelter homes about the Act's provisions.¹⁷

B. Judicial Delays and the 60-Day Mandate

Section 12 of the PWDVA mandates that Magistrates dispose of applications within 60 days of first hearing.¹⁸ In practice, this statutory timeline is routinely breached. Research indicates that only 8% of cases reviewed in Gujarat were disposed of within the prescribed 60-day limit, with many remaining pending for over 800 days.¹⁹ The Lawyers Collective's monitoring reports have confirmed that no courts have been able to consistently achieve the 60-day disposal norm.²⁰ For a domestic violence survivor simultaneously pursuing divorce, such

¹⁵*We the Women of India v. Union of India*, Writ Petition (Civil) No. 1156 of 2021 (Supreme Court of India).

¹⁶American India Foundation (AIF), 'Strong Laws, Weak Implementation: Dissection of Protection of Women Against Domestic Violence Act, 2005', (2017), available at: <https://aif.org/strong-laws-weak-implementation>.

¹⁷*Ibid.*; see also Oxfam India, 'Implementing the PWDVA: Safeguarding Women from Domestic Violence', (2015).

¹⁸Section 12, PWDVA 2005; Rule 6, Protection of Women from Domestic Violence Rules, 2006.

¹⁹AIF (n 8); see also Oxfam India (n 9), p. 12.

²⁰Lawyers Collective Women's Rights Initiative, 'Stay Alive: Annual Monitoring and Evaluation Report on the PWDVA', (2013).

delays translate directly into prolonged exposure to the abuser, financial uncertainty, and psychological attrition.

C. Data Deficits and Accountability Gaps

A structural problem compounding implementation failures is the absence of comprehensive, publicly accessible data on PWDVA case outcomes. The National Crime Records Bureau (NCRB) began collecting data under the PWDVA only in 2014, and even then records only criminal violations of court orders not civil protection applications, residence orders, or maintenance determinations. The outcomes of civil proceedings remain largely invisible.²¹ Without robust data, it is impossible to hold state governments accountable for implementation failures, evaluate the effectiveness of judicial interventions, or identify geographic disparities in access to protection.²²

V. Financial, Housing, and Social Barriers to Exit

A. Economic Dependence as a Structural Trap

Economic abuse recognised under Section 3 of the PWDVA as a form of domestic violence is simultaneously one of the most effective mechanisms for trapping survivors within abusive marriages. Research based on NFHS-5 data demonstrates that financial dependence on husbands is among the primary factors that prevent women from leaving abusive relationships. Women who are economically dependent perceive divorce as a leap into destitution, particularly in the absence of assured interim maintenance.²³

Although monetary relief is available under Section 20 of the PWDVA, Section 125 CrPC, and Section 24 of the Hindu Marriage Act,²⁴ the realisation of these remedies is contingent on the very judicial machinery that is plagued by delays. Interim maintenance orders, even when granted, frequently go unenforced due to the absence of effective execution mechanisms and the reluctance of courts to impose penal consequences for non-payment. The result is that many

²¹IndiaSpend, '10 Years of Domestic Violence Act: Dearth of Data, Inadequate Implementation, Delayed Justice', (2017), available at: <https://www.indiaspend.com/10-years-of-domestic-violence-act-dearth-of-data>.

²²Oxfam India (n 9), p. 14; Centre for Social Research, 'Domestic Violence in India: A Study of PWDVA Cases', (2021).

²³Springer Nature, 'Domestic violence and women's health: evidence from NFHS-5 survey data', *Discover Public Health*, (2025), available at: <https://link.springer.com/article/10.1186/s12982-025-00973-0>.

²⁴Section 125, Code of Criminal Procedure, 1973; Section 20, Protection of Women from Domestic Violence Act, 2005; Section 24, Hindu Marriage Act, 1955.

survivors remain in abusive marriages not by choice, but because the legal system has failed to translate economic rights into economic security.²⁵

B. The Housing Crisis: Shared Household Rights

The right to reside in the shared household irrespective of ownership is among the most innovative protections offered by the PWDVA. The Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja* (2021) affirmed a woman's right to continued residence in the shared household even when the property is owned by in-laws.²⁶ This right is critical because homelessness is one of the most powerful forces that compel survivors to remain in or return to abusive relationships. However, the practical enforcement of residence orders particularly against recalcitrant respondents remains deeply problematic, especially in rural settings where the physical presence of Protection Officers is minimal.

C. Social Stigma and the Culture of Silence

Social stigma constitutes perhaps the most formidable non-legal barrier to exit for domestic violence survivors. Research consistently reveals that women in India face intense social pressure to preserve their marriages regardless of the violence they endure, with divorce widely stigmatised as a mark of personal failure and family dishonour.²⁷ Divorced women frequently face social exclusion, reduced prospects for remarriage (particularly in communities where this is socially significant), and discrimination in housing and employment.

This culture of silence is further reinforced by the patriarchal attitudes of some law enforcement personnel, Protection Officers, and even judicial officers, who have been documented to discourage survivors from pursuing legal proceedings in order to 'preserve the family'. Studies in Odisha, for instance, have found that legal personnel including police, lawyers, and judges often interpret and implement domestic violence provisions through a patriarchal lens that reinforces gendered norms of wifely submission.²⁸

²⁵Springer Nature (n 16).

²⁶*Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414 (Supreme Court of India).

²⁷PubAdmin Institute, 'Domestic Violence in India: Statistics, Impact, and Legal Framework', (2025), available at: <https://pubadmin.institute/gender-sensitization/domestic-violence-india-statistics-impact-legal>.

²⁸JETIR, 'Domestic Violence in India: An Analytical Review', Vol. 12, Issue 1, January 2025, available at: <https://www.jetir.org/papers/JETIR2501183.pdf>.

VI. Judicial Interventions: Progressive Expansion and Residual Limitations

The Indian judiciary has, through purposive and expansive interpretation, significantly strengthened protections for domestic violence survivors seeking divorce. In *Krishna Bhattacharjee v. Sarathi Choudhury* (2016), the Supreme Court protected a divorced woman's right to her *stridhan* (personal property), establishing that the cessation of the marital relationship does not extinguish property rights accrued during the marriage.²⁹

A particularly significant principle emerged from a 2018 Supreme Court decision affirming the Rajasthan High Court's ruling that the cessation of a domestic relationship does not preclude a court from granting relief to a survivor under the PWDVA. This temporal extension of the Act's protective reach ensures that women who have already left, or been forced to leave, an abusive marriage are not rendered remediless.

Despite these progressive developments, judicial intervention has inherent structural limitations as a mechanism for systemic change. Judicial remedies are reactive rather than preventive; they require survivors to first be exposed to violence, then navigate complex legal proceedings, and then await outcomes whose enforcement is itself uncertain. Courts, moreover, cannot address the supply-side failures of the PWDVA the shortage of Protection Officers, the absence of shelter homes, the non-enforcement of maintenance orders which require executive action and legislative will.³⁰

VII. Conclusion and Recommendations

The analysis presented in this article reveals a profound and multi-dimensional disjunction between India's formal legal framework for domestic violence survivors and their lived experience of seeking divorce. The PWDVA 2005 represents a landmark achievement, but it has been systematically undermined by institutional under-resourcing, structural legislative gaps, and socio-cultural barriers that formal law alone cannot overcome.

This article proposes the following recommendations:

First, legislative reform is urgently required to criminalise marital rape in full not merely as

²⁹*Krishna Bhattacharjee v. Sarathi Choudhury*, (2016) 2 SCC 462 (Supreme Court of India).

³⁰ICRW, 'Assessing the Impact of PWDVA in India', (2023); CHRI, 'Status of Women's Rights and Law Enforcement in India', (2022).

civil domestic violence but as a criminal offence. The continued marital rape exception in the Bharatiya Nyaya Sanhita 2023 is constitutionally untenable and must be excised.

Second, institutional strengthening demands the appointment of adequate full-time Protection Officers in every district, with security of tenure, proper remuneration, and dedicated office infrastructure. The Supreme Court's directions in *We the Women of India* must be treated as minimum standards, not aspirational targets.

Third, integrated legal aid and one-stop crisis centres must be established that consolidate PWDVA proceedings, divorce proceedings, maintenance applications, and housing support under a single institutional roof, eliminating the procedural burden currently imposed on survivors navigating multiple fora simultaneously.

Fourth, mandatory data collection on all PWDVA case outcomes including protection orders, residence orders, maintenance enforcement, and divorce proceedings should be implemented through a centralised digital registry accessible to researchers, civil society, and policymakers.

Fifth, gender-sensitisation training must be made mandatory for all actors in the legal system who come into contact with domestic violence survivors police, Protection Officers, lawyers, judicial officers, and shelter home staff to dismantle the patriarchal attitudes that continue to operate as informal barriers to justice.

Ultimately, the goal of Indian law to protect, empower, and ensure justice for domestic violence survivors cannot be achieved by legislation alone. It requires a concerted commitment from the executive, judiciary, legislature, civil society, and communities to transform both institutional practice and social norms. Until that transformation is achieved, the protection gap for domestic violence survivors seeking divorce will remain a shameful index of the distance between India's constitutional aspirations and lived realities.