

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown. A black leather watch with a silver dial is also visible on the desk. A large, semi-transparent white rectangular area is centered over the image, containing the journal's title and ISSN information.

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PROTECTION OF WOMEN'S RIGHTS UNDER DOMESTIC VIOLENCE LAWS: A DOCTRINAL RESEARCH STUDY

AUTHORED BY - SHRADDHA BABASAHEB SANAP
Manikchand Pahade Law College, Chh. Sambhajinagar

1. Abstract

Domestic violence continues to remain a pervasive and deeply embedded social issue that undermines the fundamental rights and dignity of women in India. This paper undertakes a doctrinal examination of the legal framework governing domestic violence, with particular emphasis on the Protection of Women from Domestic Violence Act, 2005 (PWDVA). The Act represents a shift from a purely punitive model of justice to a rights-based, victim-centric framework aimed at immediate relief and protection.

The study evaluates statutory provisions, constitutional mandates, judicial pronouncements, and scholarly discourse to assess the effectiveness of the Act. It further analyses landmark judicial decisions, including *VD. Bhanot v. Savita Bhanot* and *Hirai P. Harsora v. Kusum Narottamdas Harsora*, which have expanded the scope of protection available to women.

Despite its progressive framework, the implementation of the Act remains fraught with challenges such as lack of awareness, institutional inefficiencies, and weak enforcement. Through comparative insights and critical analysis, this paper argues that while the PWDVA is normatively robust, its transformative potential remains under-realized in practice. The paper concludes with recommendations aimed at bridging this gap.

2. Introduction

Domestic violence is not merely a private wrong but a violation of fundamental human rights. It erodes the dignity, autonomy, and equality of women, thereby striking at the core of constitutional values. Historically, domestic violence was shielded from legal scrutiny under the guise of family privacy, leaving victims without meaningful remedies.

The enactment of the Protection of Women from Domestic Violence Act, 2005 marked a significant departure from this approach. Unlike traditional criminal provisions, the Act

recognizes domestic violence as a **continuing civil wrong** and provides immediate relief through protective and remedial mechanisms.¹

The constitutional foundation of this legislation lies in the Constitution of India, particularly Articles 14, 15, and 21, which collectively guarantee equality, non-discrimination, and the right to live with dignity.²

However, the existence of a progressive statute does not automatically translate into effective protection. This paper critically evaluates whether the PWDVA has succeeded in fulfilling its intended purpose or whether structural and societal barriers continue to impede its implementation.

3. Legal Framework: A Critical Examination

3.1 *Constitutional Foundations*

The Indian constitutional framework provides the normative basis for addressing domestic violence. Article 14 ensures equality before law, while Article 15(3) empowers the State to enact special legislation for women. Article 21, as expansively interpreted, includes the right to live with dignity and free from violence.³

The Supreme Court has repeatedly emphasized that gender justice is an integral component of constitutional morality.⁴ Thus, the PWDVA must be understood not merely as a statutory instrument but as a realization of constitutional guarantees.

3.2 *Protection of Women from Domestic Violence Act, 2005*

The Protection of Women from Domestic Violence Act, 2005 is unique in its approach as it:

- Recognizes multiple forms of abuse
- Provides civil remedies alongside criminal sanctions
- Ensures speedy and accessible relief

Critical Insight

While the Act is progressive in recognizing **economic and emotional abuse**, its effectiveness depends heavily on institutional mechanisms. The absence of adequate infrastructure often reduces these rights to mere formal declarations.

3.3 *Interface with Criminal Law*

The Act operates alongside the Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023, particularly in cases involving cruelty and maintenance.

Critical Observation

This dual framework creates both opportunities and challenges. While it allows multiple remedies, it may also lead to procedural complexity and forum shopping, thereby delaying justice.

4. Judicial Interpretation: Detailed Case Analysis

4.1 *V.D. Bhanot v. Savita Bhanot*

Facts & Issue

The central issue was whether the Act could apply retrospectively to acts committed before its enactment.

Judgment

The Supreme Court held that the Act applies to past conduct if its effects persist.⁵

Critical Analysis

This judgment is significant because it recognizes domestic violence as a **continuing offence**, rather than a one-time act. By doing so, the Court ensured that victims are not denied relief merely due to temporal technicalities.

However, critics argue that retrospective application may create uncertainty in legal proceedings. Despite this, the judgment aligns with the **beneficial nature of the legislation**, prioritizing victim protection over procedural rigidity.

4.2 *Hirai P. Harsora v. Kusum Narottamdas Harsora*

Facts & Issue

The constitutionality of limiting respondents to "adult male persons" was challenged.

Judgment

The Court struck down the restriction as unconstitutional.⁶

Critical Analysis

This decision is a landmark in advancing **substantive equality**. By recognizing that women can also be perpetrators, the Court removed an artificial limitation that undermined the Act's effectiveness.

The judgment also reflects a shift towards **gender-neutral accountability within a gender-sensitive framework**. It reinforces that the objective of the law is protection from violence, not merely targeting a specific gender.

4.3 *Krishna Bhattacharjee v. Sarathi Choudhury (2015)*

Key Principle

Economic abuse constitutes a continuing offence.⁷

Critical Insight

This case expanded the temporal scope of relief, enabling women to claim their rights even after separation. It is particularly important in addressing **financial dependency**, which often traps women in abusive relationships.

4.4 *Ajay Kumar v. Lata (2019)*

Key Principle

Right to residence in a shared household is enforceable.

Critical Analysis

This judgment reinforces the idea that a woman's right to shelter is **independent of ownership rights**, thereby challenging patriarchal notions of property control.

5. Implementation Challenges: A Structural Critique

Despite its progressive framework, the implementation of the PWDVA reveals a gap between **law in books and law in action**.

5.1 Lack of Awareness

Many women remain unaware of their rights, particularly in rural areas.⁸

5.2 Institutional Weakness

Protection Officers are often overburdened or inadequately trained.

5.3 Judicial Delays

Although the Act mandates speedy relief, procedural delays persist.

5.4 Social Barriers

Patriarchal norms discourage women from reporting abuse.

Critical Evaluation

These challenges highlight that domestic violence is not merely a legal issue but a **socio-legal problem**. Without addressing underlying social structures, legal reform alone cannot achieve meaningful change.

6. Comparative Analysis: Lessons for India

United Kingdom

The Domestic Abuse Act, 2021 recognizes children as victims-an area where Indian law remains underdeveloped.

Australia

Integrated service delivery ensures coordinated response mechanisms.

United States

Strong enforcement of restraining orders and victim support systems.

Critical Insight

India's legal framework is comparable in substance but lacks **effective implementation and coordination**, which are key strengths in these jurisdictions.

7. Findings and Critical Discussion

The study reveals that:

- The PWDVA is **normatively strong but operationally weak**
- Judicial activism has expanded its scope
- Implementation gaps undermine its effectiveness

Key Argument

The real issue is not the absence of law but the **failure of enforcement mechanisms**. The law has the potential to transform gender relations, but only if supported by institutional commitment and societal change.

8. Recommendations

1. Strengthen institutional capacity
2. Increase legal awareness
3. Ensure accountability of officials
4. Expand support services
5. Recognize children as victims
6. Promote inter-agency coordination
7. Use technology for accessibility

9. Conclusion

The Protection of Women from Domestic Violence Act, 2005 represents a progressive step towards gender justice. However, its success depends on effective implementation, institutional support, and societal transformation.

A holistic approach combining legal reform, awareness, and social change is essential to ensure that women can live with dignity, safety, and freedom from violence.

10. References

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