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## REVIEW OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE (PWDVA) ACT OF 2005 : A SPECIAL FOCUS ON THE RECENT CIRCUMSTANCES

~ Sneha Pal

### Introduction

Women have been more vulnerable to face domestic violence in the family structure of our country along with the other third world countries. In spite of being given the right to vote as her **political right**, her status in the arena of her family has remained unfavourable for her. In the post-independence era, there have been many instances where the Indian state has had to intervene in the private sphere of its citizens when it has found that the issues in the domestic arena are not mere ‘family disputes’, they are serious social problems entrenched in the Indian households. During the 1980s, the root cause of domestic violence was considered to be only the dowry related issues. But the broader picture of ‘domestic violence’ was much clarified in the ‘**Protection of Women from Domestic Violence**’ Act, 2005. <sup>1</sup>In most of the cases, women were socially mandated to take administrative assistance in order to ‘settle’ with her in-laws in order to reconcile with them to continue the conjugal life. The PWDV Act broadens the ambit of defining an act as violence. It focuses on recognising other forms of violence faced regularly by women - sexual, economic, emotional. Each of these violates the dignity of women as members of a family.

### Introduction of new terms in the act

<sup>2</sup>The law highlights the basic problems of Indian women to access the legal service- the lack of financial capital to afford a private lawyer, the lack of social capital to get benefited by the judicial

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<sup>1</sup> Flavia Agnes, Audrey D’Mello, *Protection of Women from Domestic Violence*, 44, EPW, 76, 76, (2015)

<sup>2</sup> Ibid 76-77

system etc. The law introduced the terms like 'Protection officers', 'service providers' etc. to provide women with legal aid. The NGOs and other social organizations were delegated with more responsibilities than the existing governmental institutions probably with the belief that their approachability to the families were more than that of the latter. But their lack of knowledge in court procedures and inadequate legal support led them to compromise with their duties.

The definitions of the aforementioned terms need more clarification and reconsideration. The states had to constitute a new office and appoint new officers. Many of them had little clarity about their jobs. In many cases, we found that they are not sensitive enough to the aggrieved women, though the law specifically mentions for lady protection officers with an objective that the aggrieved women may feel more comfortable to express their problems before them.

### **The *status quo* and the existing questions on the effectiveness of the act**

In our society, when a bride attempts to take some legal step to counter domestic violence, she is condemned and faces further abuses from her in-laws. The protection officers could hardly reach the marginalised section to provide them with legal remedies and legal literacy.<sup>3</sup>The **Oxfam Report** shows that in the remote villages of India, many a woman believes that the domestic violence is justifiable if she cannot produce male child for her matrimonial family or is unable to perform her carework properly.<sup>4</sup>The section 12 (1) of the act asks for applications with particular evidence to prove the complaint of the aggrieved. But how can a woman prove the emotional trauma and abuses she has faced before a system which is quite adverse for her!

The medical services are used to prove the physical violence. But the illegal sex-determination of the fetus being a burning example proves that the medical services can be unfavourable too for a woman. In the cases of domestic violence, the medical reports are often manipulated to save the convicted.<sup>5</sup>The **PWDV Act** announces a woman's right to reside in her matrimonial house with

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<sup>3</sup> Oxfam India (Amrita Nandy, Diya Dutta), *On Women's Backs: India Inequality Report* (2020),

<sup>4</sup> THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, 12(1), NO. 43, Acts of Parliament, 2005 (India)

<sup>5</sup> THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, 19, NO. 43, Acts of Parliament, 2005 (India)

certain measures for her safety as mentioned in the section 19. In the <sup>6</sup>*SR Batra vs Taruna Batra Case (2007)* the Supreme Court gave the judgement that as the aggrieved had left her matrimonial house after lodging the complaint, she couldn't claim for shared residence. Although she did so for her own security as there is a bigger chance of further violence when a housewife seeks for legal aid.

Indira Jaising points out that the act giving initial importance on the family courts and other subordinate courts looks for the reconciliation of the family instead of assuring the safety of the aggrieved in her matrimonial.

<sup>7</sup>In the *Lalita Toppo vs the State of Jharkhand* case the Supreme Court noted that, in a live-in relationship, the woman can seek for maintenance after being separated. It further declared that the aggrieved can lodge a campaign against the other members of her matrimonial family besides her husband. This act has remarkably broadened the concept of violence and of aggrieved persons. It includes the girls, the aged women and the live-in partners along with house-wife to provide with the remedies. The law specifically mentions "shelter homes" and keeps a track on its number in the community to save the women from facing further pressures. It also declares for certain measures to protect the children of the aggrieved from the same. It also declares free legal aid for women.

The PWDVA takes revolutionary steps to counter the very problem of domestic violence. But a greater number of violated women remain out of its purview. <sup>8</sup>Statistics prove the consistent growth of the unnatural deaths of the housewives. There are obviously a lot of cases which are not yet registered under the **National Crime Records Bureau**. The accessibility of women to the legal services questions the effectiveness of the law. There are also instances showing the misuse of the law too by lodging false complaints against one's in-laws.

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<sup>6</sup> Srinath Sridevan, Anita Suresh, Bhagavath Krishnan, Differing approaches to statutory interpretation: *Was there a better way to set right the error of Batra v Batra?*, Bar and Bench (November 10, 2025, 11:15 am), <https://www.barandbench.com/columns/was-there-a-better-way-to-set-right-the-error-of-batra-v-batra>

<sup>7</sup> The Legal Lock, <https://thelegallock.com/lalita-toppo-vs-the-state-of-jharkhand-and-another/> (Last visited 10th November, 2025)

<sup>8</sup> Flavia Agnes, Audrey D'Mello, *Protection of Women from Domestic Violence*, 44, EPW, 76, 77, (2015)

## Shifts in the social sphere and the lacunae of the act

Despite all these arguments, considering the issues heard in the current times, we cannot deny the fact that the idea of domestic violence, be it physical or emotional, is not limited to a specific gender. The continuous discourse on addressing domestic violence issues have established a fact among one section of the society that the women can only be the victims of domestic violence given the fact that, in our country there are a lot of areas, where women can hardly know about the existence of the act or can access the legal aid carved in the law.<sup>9</sup> But the social complexities also give us numerous evidence that violence does occur to the male members of the family. Even the Bharatiya Nyay Sanhita fails to address this fact. Domestic violence is still a crime only committed to the female members of a family only by the male members and other relatives.<sup>10</sup> There are also a handsome number of fake cases regarding domestic violence. Therefore, the aforementioned argument that since emotional violence cannot be proved by evidence, has another lacunae within itself that it enables a few to lodge fake complaints.

## The queer community and the PWDV Act

<sup>11</sup>The WHO defines **Intimate Partner Violence (IPV)** as encompassing physical, sexual, emotional, and psychological abuse, as well as controlling behaviour, and studies show that IPV rates in LGBTQ+ relationships are comparable to or even higher than in heterosexual ones. Despite this, India's legal framework—particularly the **Protection of Women from Domestic Violence**

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<sup>9</sup>The Economic Times

<https://economictimes.indiatimes.com/wealth/legal/will/are-men-defenceless-against-domestic-violence-laws-what-sc-says-about-mens-rights-in-these-cases/articleshow/118726168.cms?from=mdr> (Last visited 10th November, 2025)

<sup>10</sup> The Economic Times <https://economictimes.indiatimes.com/wealth/save/another-misuse-of-domestic-violence-law-supreme-court-warns-wife-for-filling-false-fir-under-section-498a-of-ipc-and-the-dowry-act/articleshow/116678590.cms?from=mdr> (Last visited 10th November, 2025)

<sup>11</sup> RUSHA GHOSH DASTIDAR AND ILA NATH, The Pot of Tar at the End of The Rainbow: An Analysis of India's Hollow Legal Protection to Same-Sex Live-In Couples, 4, IJLMH, 2698, 2703-2705, 2021, <https://ijlmh.com/paper/the-pot-of-tar-at-the-end-of-the-rainbow-an-analysis-of-indias-hollow-legal-protection-to-same-sex-live-in-couples/>

**Act, 2005 (DV Act)**—excludes same-sex live-in couples from its ambit due to its heteronormative construction.

<sup>12</sup>Although Section 2(a) could conceptually include same-sex relationships as “**relationships in the nature of marriage,**” <sup>13</sup>Section 2(q) restricts the “**respondent**” to an “**adult male person,**” thereby denying protection to lesbian couples and ignoring the possibility of female-perpetrated violence. Judicial interpretation of “**relationships in the nature of marriage**” also remains confined to heterosexual contexts, given that same-sex marriage is impermissible in India. Studies, including those by the **Tata Institute of Social Sciences and Messenger (2011)**, reveal that lesbian women face the highest risk of partner abuse, followed by heterosexual women, homosexual men, and heterosexual men. Yet, no parallel statutory protection exists for same-sex couples—male or female—beyond the general offences of assault and battery under **Sections 350 and 351 IPC**.

Social stigma, gender stereotypes, and the absence of recognition of power dynamics further deter victims from seeking redress. Consequently, the lack of legislative and judicial protection violates the fundamental right to life under Article 21, as recognized in <sup>14</sup>**Navtej Singh Johar v. Union of India (2018)**. Extending the DV Act’s protective umbrella to same-sex live-in couples is essential to uphold equality and ensure legal recourse for all victims of IPV.

## **The advent of the Bharatiya Nyay Sanhita**

<sup>15</sup>The Supreme Court’s decision in *Shivangi Bansal v. Sahib Bansal (2025)* supports the Allahabad High Court’s 2022 guidelines that create a two-month “cooling-off” period before any

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<sup>12</sup> THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, 19, NO. 2(a), Acts of Parliament, 2005 (India)

<sup>13</sup> THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, 19, NO. 2(q), Acts of Parliament, 2005 (India)

<sup>14</sup> Constitutionality of Section 377 IPC, Supreme Court Observer (October 19, 2025, 11:30 PM), <https://www.scoobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/>

<sup>15</sup> Shivam Jadaun, *Judicial safeguards or overreach? Rethinking the Supreme Court’s approach to Section 85 BNS*, Bar and Bench (November 10, 2025, 12:30 pm)

arrest or coercive action under Section **498-A IPC (now Section 85 BNS)**. It also requires referrals to family welfare committees. This decision represents a concerning change in gender-justice law.

While the aim is to prevent the misuse of anti-cruelty laws, the order replaces a careful, case-by-case evaluation with a blanket rule. Earlier rulings, like *Arnesh Kumar v. State of Bihar (2014)* and *Satender Kumar Antil v. CBI (2022)*, had established a procedures-based balance under Sections 41 and 41A CrPC. Critics argue that the pause on arrests puts victims at risk of immediate violence, discourages reporting, and leads to police inaction. This change effectively reverses the careful approach reestablished after *Rajesh Sharma v. State of UP (2017)* was overturned in the *Social Action Forum for Manav Adhikar v. Union of India (2018)*.

NCRB data reveals that the number of cruelty cases by husbands or relatives rose from about 1.1 lakh in 2015 to over 1.4 lakh in 2022. However, arrests have decreased and conviction rates stay low, pointing to systemic investigative issues rather than widespread misuse. Research by Humsafar Women's Centre warns that more complaints often signal increased awareness rather than dishonesty. Furthermore, family welfare committees lack the training and neutrality to handle criminal complaints effectively and may inadvertently mediate serious abuse.

The Bansal ruling, by halting arrests entirely, weakens victims' right to timely justice and undermines Parliament's goal of criminalizing domestic cruelty. Real reform should focus on improving investigations, protecting victims, and strictly enforcing existing procedural safeguards, not instituting judicial pauses that delay justice.

## **Conclusion**

In a nutshell, the issue of domestic violence is a complex one. It has different interpretations under other laws. It has multiple loopholes. But it has made up a good co-ordination among all the levels of administration and judiciary to combat the issue. The access of women from each section of the society to the legal service should be made easier. <sup>16</sup>The Ministry of Women and Child

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<sup>16</sup> The Hindu, <https://www.thehindu.com/news/national/coming-women-only-courts-for-alternative-dispute-resolution/article67053956.ece> (Last visited 10th November, 2025)

Development, Government of India has started to constitute the Women's Courts (Nari Adalat) in the States and in the Union Territories to offer legal aid and to promote legal literacy among the women. The general idea that violence can come only from a man and only to a woman in the domestic sphere, reflects in the laws as well. This loophole results in the non-addressal and non-redressal of male victims. On the other hand, lesbian women face more violence due to their so-called 'queer' sexuality. Therefore, the heteronormativity here, also limits its purview of intervention. In order to address these issues comprehensively, the legislature has to go beyond the mere name-changing of existing legal frameworks. Rather, regular legislative deliberations among them and interactions with the various sections of the society can make the laws more and more inclusive in course of time.