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Domestic Violence as a Human Rights Violation: A Critical Legal Analysis in Indian Context

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ABSTRACT

Domestic violence constitutes one of the most pervasive and systematically under-addressed violations of women's human rights, particularly in developing legal systems such as India's. Despite the enactment of the Protection of Women from Domestic Violence Act, 2005, a significant chasm persists between statutory aspiration and ground-level implementation. This article critically interrogates domestic violence through a human rights lens, examining its intersection with constitutional guarantees enshrined in Articles 14, 15, and 21 of the Indian Constitution, statutory protections under the PWDVA 2005, and evolving judicial interpretations. Employing a doctrinal methodology anchored in case law, legislative analysis, and international human rights instruments, the article argues that domestic violence is not a private or familial matter but a grave infringement of jus cogens norms and fundamental rights, including the rights to life, dignity, and equality. The study further identifies systemic impediments, including inadequate institutional capacity, socio-cultural entrenchment of patriarchal norms, low victim awareness, and procedural delays, that collectively undermine effective enforcement. Drawing upon comparative models from the United Kingdom and the United States, the article concludes with evidence-based policy recommendations aimed at bridging the enforcement gap and ensuring meaningful access to justice for survivors.

Keywords: Domestic Violence; Human Rights; Women's Rights; Constitutional Law; PWDVA 2005; India; Judicial Interpretation; Gender-Based Violence.

I. INTRODUCTION

Domestic violence stands at the confluence of private intimacy and public accountability, occupying a paradoxical space in legal discourse that has, for much of modern history, rendered it invisible to the law. Globally, the World Health Organization estimates that approximately one in three women has experienced physical or sexual intimate partner violence during her lifetime.1 In India, the National Family Health Survey (2019–21) reported that nearly thirty per cent of married women aged fifteen to forty-nine had experienced spousal violence, underscoring the endemic nature of the problem.2

Historically conceptualised as a 'private matter' insulated from legal scrutiny by patriarchal norms, domestic violence has undergone a decisive reconceptualisation in international human rights law. The Declaration on the Elimination of Violence against Women (1993) defined violence against women to

1World Health Organization, Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence (WHO, 2013) 2.

2National Family Health Survey (NFHS-5), 2019–21, Ministry of Health and Family Welfare, Government of India.

include physical, sexual, and psychological harm occurring within the family unit,3 thereby piercing the public–private divide that had long shielded perpetrators from accountability. India's legislative response, culminating in the Protection of Women from Domestic Violence Act, 2005 (hereinafter 'PWDVA' or 'the Act'), was influenced significantly by this international normative shift.

This article makes three principal contributions to the existing literature. First, it provides a consolidated human rights analysis of domestic violence in the Indian context, integrating constitutional, statutory, and international law perspectives that are too often examined in isolation. Second, it offers a systematic diagnosis of implementation failures, distinguishing between structural, institutional, and socio-cultural barriers. Third, it advances a set of evidence-based recommendations calibrated to the specific weaknesses identified in the Indian enforcement ecosystem. The article proceeds in six parts: a conceptual framework situating domestic violence within human rights law; an analysis of the Indian constitutional and statutory framework; an examination of judicial interpretation; a diagnosis of implementation challenges; a comparative perspective; and a set of policy recommendations.

II. CONCEPTUAL FRAMEWORK: DOMESTIC VIOLENCE AND HUMAN RIGHTS

The conceptualisation of domestic violence as a human rights violation represents a fundamental paradigm shift in international law. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979, obliges State parties to eliminate discrimination against women in all its manifestations.4 The CEDAW Committee subsequently clarified in General Recommendation No 19 (1992) that gender-based violence — including domestic violence — constitutes a form of discrimination that seriously inhibits women's ability to enjoy rights on a basis of equality with men.5

The Beijing Platform for Action (1995) further elevated domestic violence to the status of a matter of grave international concern, calling upon States to adopt integrated measures to prevent and eliminate it.6 Within this framework, domestic violence directly implicates three foundational clusters of rights: (i) the right to life and personal security; (ii) the right to dignity, encompassing freedom from cruel, inhuman, or degrading treatment; and (iii) the right to equality and non-discrimination.

The human rights approach diverges from a purely criminal or tort-law approach in that it imposes positive obligations on the State. Rather than merely prohibiting State agents from inflicting harm, it mandates that the State exercise due diligence to prevent, investigate, prosecute, and provide redress for rights violations perpetrated by private actors — including intimate partners. This positive obligation is central to understanding why the persistence of domestic violence, despite legislative prohibition, may itself constitute a human rights failure attributable to the State.

III. THE LEGAL FRAMEWORK IN INDIA

3.1 Constitutional Foundations

The Indian Constitution provides a robust textual basis for the protection of women against domestic vio-

3UN General Assembly, Declaration on the Elimination of Violence against Women, A/RES/48/104 (20 December 1993) Art 1.

4UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 18 December 1979, 1249 UNTS 13, Art 2.

5CEDAW Committee, General Recommendation No 19 (1992): Violence against Women, UN Doc A/47/38, para 6.

6Beijing Declaration and Platform for Action (Fourth World Conference on Women, 1995) Strategic Objective D.1.

lence. Article 14 guarantees equality before the law and equal protection of the laws,7 while Article 15 prohibits discrimination on the grounds of sex, with Article 15(3) expressly permitting the State to make special provisions for women.8 The most expansive constitutional protection, however, is found in Article 21, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.9

The Supreme Court of India has progressively interpreted Article 21 to encompass a spectrum of rights ancillary to mere physical existence. In Francis Coralie Mullin v Union Territory of Delhi, the Court held that the right to life includes the right to live with basic human dignity.10 This expansive reading has been subsequently deployed to recognise that a woman subjected to domestic violence suffers a constitutional violation, not merely a criminal wrong. In Vishaka v State of Rajasthan, the Court affirmed that every form of gender-based violence offends the constitutional right to gender equality and a life of dignity.11

3.2 The Protection of Women from Domestic Violence Act, 2005

The PWDVA 2005 represents the most comprehensive legislative response to domestic violence in India's statutory history.12 Departing from the exclusively punitive paradigm of traditional criminal law, the Act adopts a civil-law framework that prioritises immediate relief and victim protection. Its principal innovations include: (i) a broad definition of domestic violence encompassing physical, sexual, verbal, emotional, and economic abuse; (ii) the availability of Protection Orders restricting a respondent's contact with the aggrieved person; (iii) Residence Orders securing the aggrieved person's right to remain in the shared household regardless of proprietary entitlement; (iv) Monetary Relief covering medical expenses, loss of earnings, and maintenance; and (v) Custody Orders in respect of minor children.

The Supreme Court in Indra Sarma v V K V Sarma characterised the Act as a "beneficial legislation" that must be construed liberally in favour of the aggrieved person, emphasising that its protective remit extends to relationships in the nature of marriage.13

3.3 The Role of Criminal Law

The Indian Penal Code 1860 provides supplementary criminal recourse for victims of domestic violence. Section 498A, inserted by the Criminal Law (Second Amendment) Act 1983, criminalises cruelty by a husband or his relatives towards a woman.14 The Dowry Prohibition Act, 1961 further addresses a specific and prevalent form of domestic violence linked to dowry demands.15 However, criminal law suffers from inherent limitations in the domestic violence context: it is primarily retrospective in orientation, focused on punishment rather than protection; criminal proceedings are adversarial and may re-traumatise victims; and the burden of proof beyond reasonable doubt is difficult to discharge in cases that typically lack independent witnesses.

7 Constitution of India 1950, Art 14.
8 Constitution of India 1950, Art 15.
9 Constitution of India 1950, Art 21.
10 Francis Coralie Mullin v Union Territory of Delhi AIR 1981 SC 746 (Supreme Court of India).
11 Vishaka v State of Rajasthan (1997) 6 SCC 241 (Supreme Court of India).
12 Protection of Women from Domestic Violence Act 2005 (Act 43 of 2005) (India).
13 Indra Sarma v V K V Sarma (2013) 15 SCC 755, [7] (Supreme Court of India).
14 Indian Penal Code 1860 (Act 45 of 1860) s 498A.
15 Dowry Prohibition Act 1961 (Act 28 of 1961) (India).

IV. JUDICIAL APPROACH AND INTERPRETATION

The Indian higher judiciary has played an instrumental role in expanding the protective scope of domestic violence law through purposive and rights-oriented interpretation. In Hiral P Harsora v Kusum Narottamdas Harsora, the Supreme Court struck down a restrictive interpretation of the term 'respondent' under the PWDVA that would have confined its application to adult males, holding that such a reading was antithetical to the Act's remedial purpose.16

Conversely, S R Batra v Taruna Batra illustrates the limitations of judicial activism in this domain. The Court narrowly construed 'shared household' to exclude a property owned by the husband's mother, thereby circumscribing the residence rights of an aggrieved woman.17 This decision drew significant scholarly criticism for undermining the protective intent of the PWDVA. Subsequent decisions have sought to mitigate the rigours of this ruling, though a definitive legislative correction remains absent.18

Notwithstanding such inconsistencies, the overall judicial trajectory has been one of progressive interpretation consonant with international human rights norms. The courts have, inter alia, recognised the evidentiary weight of medical certificates and Women's Protection Officer reports, expanded the grounds for ex parte protection orders in cases of imminent danger, and held that judicial delay in processing PWDVA applications itself constitutes a deprivation of the right to effective remedy.19

V. IMPLEMENTATION CHALLENGES

5.1 Institutional Weaknesses

The effective implementation of the PWDVA 2005 is substantially compromised by institutional deficiencies at every level of the enforcement apparatus. Protection Officers — the primary point of contact for aggrieved women under the Act — are chronically understaffed and inadequately trained.20 National Crime Records Bureau data reveal that while complaints of domestic violence under the IPC have risen year-on-year, conviction rates remain persistently low, suggesting systemic failures in investigation and prosecution.21

5.2 Socio-Cultural Barriers

The enforcement deficit cannot be adequately understood without reference to the socio-cultural milieu in which domestic violence occurs. Patriarchal norms, deeply embedded in both institutional culture and social consciousness, create structural disincentives to reporting. Victims are frequently subjected to social pressure from extended family members to withdraw complaints in the interests of family honour. Economic dependency further constrains women's capacity to seek legal redress, particularly in contexts where separation or divorce carries severe social and financial consequences.

5.3 Lack of Legal Awareness

A critical empirical finding in the literature is the widespread ignorance among potential beneficiaries of their rights under the PWDVA 2005.22 This knowledge deficit is particularly acute in rural and peri-urban

16 Hiral P Harsora v Kusum Narottamdas Harsora (2016) 10 SCC 165 (Supreme Court of India).

17 S R Batra v Taruna Batra (2007) 3 SCC 169 (Supreme Court of India).

18 Saraswathy v Babu (2014) 3 SCC 712 (Supreme Court of India).

19 Law Commission of India, Report No 243: Section 498A IPC (2012) ch 3.

20 Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India (Oxford University Press 2002) 87.

21 National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, Government of India, 2023) Table 3A.1.

22 Upendra Baxi, The Future of Human Rights (3rd edn, Oxford University Press 2008) 139.

areas, where legal literacy programmes are sparse and access to civil society organisations — which frequently serve as first-response support networks — is limited.

5.4 Procedural Delays

The phenomenon of 'justice delayed is justice denied' assumes particular acuity in the context of domestic violence, where the ongoing threat to the victim's safety is dynamic and escalating. Judicial delay in adjudicating PWDVA applications — attributable to chronic docket congestion in Magistrate courts — significantly diminishes the Act's protective efficacy. Interim Protection Orders, the Act's most immediate safeguard, frequently take weeks or months to obtain, during which the aggrieved person remains in a position of danger.

VI. DOMESTIC VIOLENCE AS A HUMAN RIGHTS VIOLATION: A CRITICAL ASSESSMENT

Examining domestic violence through a human rights prism transforms the analytical framing from a bilateral dispute between private parties to a tripartite relationship engaging the victim, the perpetrator, and the State. Under international human rights law, the State bears a duty of due diligence that encompasses prevention, protection, prosecution, and the provision of redress.23 India's persistent implementation gap may therefore be characterised not merely as a policy failure, but as a continuous violation of its obligations under CEDAW and cognate international instruments to which it is party.

The nexus between domestic violence and the right to dignity under Article 21 of the Constitution has been established with increasing clarity in Indian jurisprudence. However, the translation of this jurisprudential recognition into effective institutional practice remains incomplete. A genuinely rights-centred approach would require the State not only to enact protective legislation but to invest substantially in the infrastructure of implementation: adequately resourced protection officers, sensitised police, accessible courts, and integrated support services.

VII. COMPARATIVE PERSPECTIVES

The United States' Violence Against Women Act (1994), reauthorised and expanded through the Family Violence Prevention and Services Act (2010), provides a useful comparative reference point.24 The American model is characterised by substantial federal funding for victim support services, mandatory arrest protocols in domestic violence incidents, and the development of specialist Domestic Violence Courts that bring expertise and dedicated resources to bear on these cases. The United Kingdom's Domestic Abuse Act 2021 represents an equally instructive model, notably for its statutory definition of domestic abuse — which expressly includes coercive and controlling behaviour — and its creation of a Domestic Abuse Commissioner tasked with monitoring and promoting the response to domestic abuse.25 Both models demonstrate that effective domestic violence legislation requires not merely a statutory framework but a system of coordinated institutional responses encompassing law enforcement, the judiciary, health services, and civil society. India's PWDVA 2005, while progressive in conception, operates in relative isolation from such a coordinated ecosystem, which accounts in substantial measure for the implementation deficit documented in Part V above.

23 Rashida Manjoo, 'Report of the Special Rapporteur on Violence against Women' (UN Human Rights Council, A/HRC/23/49/Add.1, 2013) para 52.

24 Family Violence Prevention and Services Act 2010 (USA) 42 USC § 10401.

25 Domestic Abuse Act 2021 (UK) s 1.

VIII. RECOMMENDATIONS FOR REFORM

On the basis of the foregoing analysis, the following evidence-based reforms are recommended:

1. Establishment of Dedicated Domestic Violence Courts: Fast-track courts with exclusively domestic violence jurisdiction would reduce procedural delays and build institutional expertise. Priority should be accorded to ex parte Protection Order applications.
2. Strengthening the Protection Officer Infrastructure: A statutory minimum ratio of Protection Officers to population should be prescribed and funded centrally. All Protection Officers should undergo mandatory gender-sensitisation and legal training.
3. National Legal Literacy Campaign: A time-bound, multi-media public awareness campaign should be launched to inform women of their rights under the PWDVA 2005, with particular emphasis on rural and low-literacy populations.
4. Integrated Support Services: Victim shelters, legal aid clinics, psychological counselling, and economic rehabilitation programmes should be co-located and co-ordinated under a unified service delivery model.
5. Legislative Amendment on Shared Household: Parliament should enact an amendment to the PWDVA 2005 to overturn the restrictive interpretation of 'shared household' in S R Batra and restore the legislative intent of broad residence protection.
6. Mandatory Police Training and Accountability: Specialised training on the PWDVA 2005 and gender-based violence should be incorporated as a compulsory module in police training curricula at both induction and in-service stages, with disciplinary accountability for dereliction of duty.

These recommendations collectively aim to close the gap between the normative commitments India has undertaken internationally and the practical realities experienced by survivors of domestic violence.26

IX. CONCLUSION

This article has sought to demonstrate that domestic violence is not a private affliction but a matter of grave public law concern — a systematic violation of the constitutional and international human rights of women. India's legal framework, anchored in the PWDVA 2005 and the constitutional rights guaranteed by Articles 14, 15, and 21, provides a normatively adequate foundation. The critical deficiency lies not in legislative text but in the institutional and socio-cultural conditions of implementation.

A genuinely rights-based response to domestic violence requires the State to internalise its positive obligations under human rights law — to prevent violence, protect victims, prosecute perpetrators, and provide meaningful access to redress. This demands sustained political will, substantial resource allocation, and a fundamental reorientation of institutional culture. The persistence of domestic violence in the face of progressive legislation is not merely a social problem; it is a constitutional indictment that demands an urgent, comprehensive, and co-ordinated legal response.

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