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India's Domestic Violence Laws Legal Challenges and Prospects

BHAVANSHI ALPESH PAREKH¹ AND SAUMYA SHUKLA²

ABSTRACT

Domestic violence in India is a deeply rooted and multifaceted issue influenced by social, cultural, and patriarchal structures. It encompasses physical, emotional, sexual, psychological, and financial abuse within intimate and household relationships. Despite India's cultural reverence for women, systemic inequalities have made domestic abuse a persistent reality. The challenge in defining domestic violence globally and nationally highlights inconsistencies in legal protection and societal perception. The Protection of Women from Domestic Violence Act, 2005, marked a significant shift by offering comprehensive safeguards beyond the Indian Penal Code. It recognizes the right of women to reside in their marital homes and acknowledges non-physical abuse. This chapter explores the complexity of domestic violence, signs of abuse, and the legislative necessity for protection in India. It advocates for recognizing the broader spectrum of abuse, moving beyond traditional notions, and calls for stronger legal enforcement and societal awareness to ensure justice and dignity for victims.

Keywords: Domestic Violence, Patriarchy, Women's Rights, Protection of Women from Domestic Violence Act, India

I. INTRODUCTION

A. The Problem of Defining Domestic Violence

Determining the scope of domestic violence is one of the primary challenges; this can be done broadly or specifically). There aren't many models in use since there isn't a universally acknowledged definition.

Definitions that are accessible. The following two definitions of the term are provided as examples for the purposes of this article. Violence against women is defined as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life," according to the United Nations Declaration

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on the Elimination of Violence Against Women.³" (UN, DEVAW, 1993: article 1).

Another definition of violence that is worth considering is found in the Maputo Protocol, sometimes referred to as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The African Union approved it in Maputo, Mozambique, in 2003, and it went into effect in 2005 (AU, Maputo Protocol, 2003). " Anything done against women that harms them physically, sexually, psychologically, or financially, includes threatening to do so, or carrying out the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war⁴," constitutes this. Violence against women is defined by protocol.

B. Domestic violence (Indian point of view)

Domestic violence refers to any pattern of violent behavior in a relationship that one spouse uses to gain or maintain control over another intimate partner. Domestic abuse includes physical, sexual, emotional, financial, psychological, or technological actions, threats of acts, and other types of coercive behavior that harm another person. Any activities that fear, terrorize, force, threaten, blame, intimidate, manipulate, humiliate, isolate, damage, injure, or wound someone come under this category⁵. Anyone can become a victim of domestic abuse, regardless of their age, social background, gender, sexual orientation, religion, or ethnicity. It is not just a problem for intimate partners. Domestic abuse can potentially affect a child, another family member, or any other household member.

Signs that can help you recognize if you are being abused in domestic relationship

1. Make jokes on you and make you feel lower in compare to him and his family status⁶
2. Never recognize your achievements
3. Answer you in such a way that makes you feel worst
4. Blame you for every think that goes wrong with him
5. Makes gesture of hitting you so that you obey him
6. Do not allow you to keep your opinion and if you do he will insult you that moment you speak

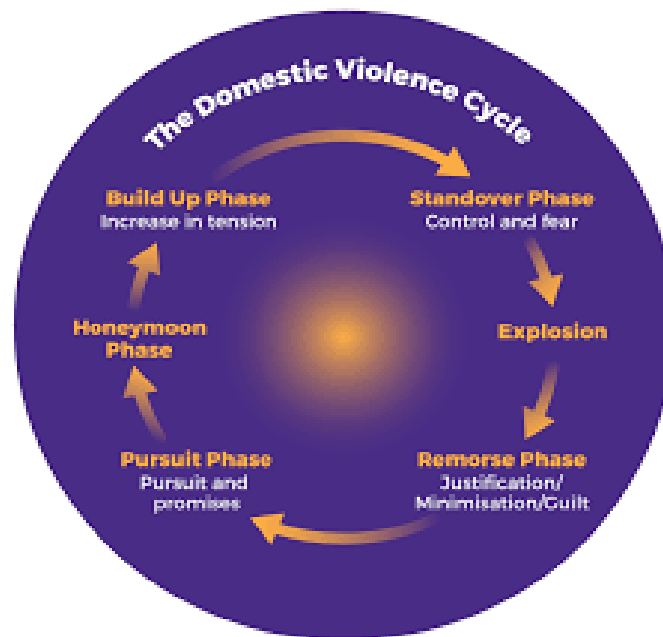
³ *Declaration on the elimination of violence against women* / ohchr, www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women.

⁴ *declaration on the elimination of violence against women* / ohchr, www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women. Accessed 7 mar. 2025.

⁵ "An indian perspective on domestic violence against men" (*times of india blog*, february 18, 2023) <<https://timesofindia.indiatimes.com/readersblog/my-thoughts-on-paper/an-indian-perspective-on-domestic-violence-against-men-50632/>>

⁶ Biswaranjansahoo, "domestic violence in india a report.pptx" (*slideshare*, march 7, 2024) <<https://www.slideshare.net/slideshow/domestic-violence-in-india-a-reportpptx/266680571>>

7. Makes you feel that you cannot go out of this relationship if you try you'll be destroyed



C. Need of domestic violence act

Domestic violence happens frequently in the social structure of India. During the patriarchal dominance of Indian society abuse towards women became a widespread social problem. Several reasons exist which lead to domestic violence occurrence. Under feminist interpretation of domestic violence causes the patriarchal order and gender-based stereotypes together with societal power structures function as primary factors which lead to abuse of women. Society⁷ considers men to possess more power than women under this belief system. Men gain authority through their position to harm women without fear of punishment because they control women and everything related to their lives. The woman must accept her destiny along with all the brutal treatment directed at her.

The Protection of Women from DV Act stands out for its admirable implementation in 2005 because it serves as the Domestic Violence Act. The legislation serves as a foundation for home environment protection of women.

Women in the home environment. This legislation presents the first substantial initiative to abolish the problematic distinction between public and private domains which law has always supported yet feminists have continually questioned. The history shows women during previous times could report cases of domestic abuse by using the provisions of IPC. This Act contains broader protections than IPC concerning both victim recognition and abusive events. The

⁷ dr J N barowalia "commentary on the protection of women from domestic violence act" <https://store.lexisnexis.in/commentary-on-the-protection-of-women-from-domestic-violence-act?srltid=afmbooqattvo_0q4wznsbb36q2v8ygtgclmu27u7pha2top3v0oqrkg>

unacceptable behavior failed to receive the designation of "domestic violence" throughout the IPC⁸. IPC only included married person cruelty among equivalent classes of criminal offenses in its legislation women. Every home-based domestic violence incident required a response according to the specific offenses defined by IPC offenses. When victims were female or child dependents a more serious problem occurred because they required the protection of their attackers. Despite marital ties a victim still maintains the right to file allegations through S.498A of IPC.

The IPC mandates she would probably need to break away from her marital home to defend herself from further assaults. Those laws included no provisions which would enable the victim to stay at her matrimonial home during her time of speaking out about abuse. The lawmakers implemented these laws because of many similar situations faced by women at home.

“For it to be considered domestic abuse, they don't need to strike you, strangle you, or force your head against a wall. They can degrade you, humiliate you, blame you, scream at you and withhold finances it's all domestic violence”.

INDIA being a country with very rich culture where women are treated as goodness but still treated as maids, unwanted, and many more. Which explain us how Indian society would have been for women how difficult it would have been for women to survive in such society

II. UNDERSTANDING PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005

The centuries-long development of Indian law has been shaped by a variety of factors, including colonial domination, post-independence reforms, and old tradition. With elements taken from British colonial laws, Hindu and Islamic jurisprudence, and modern constitutional norms, the Indian legal system is deeply rooted in the nation's rich cultural and historical legacy.

The first Indian legal systems were created during the Vedic era, when texts like the Manusmriti⁹ and Arthashastra¹⁰ offered guidance on social behavior, justice, and administration. Early Indian civilization was greatly impacted by the ancient rules. New legal traditions, including Islamic jurisprudence and administrative structures, were introduced with

⁸ ‘The protection of women from domestic violence act, 2005- civil or criminal?’ (*centre for law & policy research*) <<https://clpr.org.in/blog/the-protection-of-women-from-domestic-violence-act-2005-civil-or-criminal/>> accessed 7 march 2025

⁹ The Editors of Encyclopaedia Britannica, “Manu-Smriti | Dharma, Vedic Texts & Ancient India” (*Encyclopedia Britannica*, March 7, 2025) <<https://www.britannica.com/topic/Manu-smriti>>.

¹⁰ Joshua J Mark, “Arthashastra” [2025] World History Encyclopedia <<https://www.worldhistory.org/Arthashastra/>>.

the advent of Islamic authority.

British colonial authority was the most revolutionary stage in the development of Indian law. In certain locations, the British replaced the different customary rules with a codified legal system modeled after English common law. The foundation of a structured legal system was established by central laws such as the Indian Penal Code (1860)¹¹, the ICA (1872)¹², and the Indian Evidence Act (1872)¹³. The judiciary was further consolidated in 1774 with the establishment of the Supreme Court and High Courts.

Following its 1947 declaration of independence, India established a thorough legal system under the Constitution of India, which went into effect on January 26, 1950. In order to ensure that everyone has access to justice, equality, and freedom, the Constitution upheld the supremacy of the law, fundamental rights, and a democratic form of government. In order to adapt to the changing socioeconomic and political landscape, the Indian legal system has evolved throughout the years through court rulings, legislative modifications, and international trends.

As evidence of the progressive and dynamic character of Indian law, the country's legal system is still developing today, addressing contemporary issues including economic regulation, technology, environmental concerns, and human rights.

The Protection of Women from Domestic abuse Act, 2005 (PWDVA) developed a comprehensive legislative framework to protect women from domestic abuse and provide them with access to legal remedies and justice. Aside from providing urgent assistance in situations of domestic violence, harassment, or ill-treatment, this Act also protects women in all sorts of domestic partnerships. All women are included in the Act's definition of an aggrieved person who have suffered abuse in any form while cohabiting with the abuser, is one of its key provisions. Wives, mothers, sisters, widows, and even women in de facto relationships are all included in the legislation, provided that some criteria are met. To ensure that the right to protection of women is ensured, the judiciary has been at the forefront in interpreting and expanding the law of an injured person to also cover individuals who have cohabited as married persons.

The Act's definition of "respondent" initially only included adult males, but court decisions have extended the definition to include female spouses or partners, strengthening protection for

¹¹ government of india, *the indian penal code, 1860* (1860).

¹² *the indian contract act, 1872* (1872) <<https://www.indiacode.nic.in/bitstream/123456789/2187/2/a187209.pdf>>

¹³ government of india, *the indian evidence act, 1872* (2020) <https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf>.

women who are abused by members of their family. Despite its significance, the Act has been criticized as being misused. Courts have issued cautions against frivolous allegations that unjustly blame all members of the family without adequate proof. The Domestic abuse Act of 2005 remains a key piece of legislation that strives to empower women and provide them with legal protection against domestic abuse.

Who can be a complainant under the Act?

Any woman who is or has been in a domestic relationship with the respondent and claims to have been the victim of any act of domestic abuse by the respondent is classified as a "aggrieved person" under Section 2(a) of the Act.

The Domestic Violence Act extends not just to women who are or have been in a relationship with the abuser, but also to women who have shared a house and are related by consanguinity, marriage, or any other tie, such as adoption or marriage¹⁴.

- Women who have experienced domestic abuse and have a family or domestic relationship with the respondent can file a complaint this act to have her grievance addressed¹⁵.
- Report suspected domestic violence to the appropriate Protection Officer.
- Police, protection officers, and service providers can report domestic abuse against women.
- The Act protects joint families, including sisters, widows, and mothers.
- A woman in a "live-in-relationship" can qualify for benefits under the D.V. Act provided she satisfies certain standards.

Women in Live-in-relationships covered under the Act

The Supreme Court granted a broader definition of "aggrieved person" under Section 2(a) of the Domestic Violence Act in the case of *D.Veluswamy vs. D.Patchaiamm*¹⁶, The Court listed the following five components of a live-in relationship: In the eyes of the public, both partners must act and be acknowledged as husband and wife.

- I. They have to be of legal marriageable age.

¹⁴ "mahesh tiwari & associates - who can file a complaint under domestic violence act" <<https://www.maheshtiwarilegal.com/domestic-violenced-v-case/who-can-file-a-complaint-under-domestic-violence-act/>>.

¹⁵ vishal sainsi advocate, "filing a domestic violence complaint in india as a wife" (*vishal sainsi advocate*, january 19, 2024) <<https://vishalsainsiadv.com/matrimonial-disputes/filing-a-domestic-violence-complaint-in-india-as-a-wife/>>.

¹⁶ air 2011 sc 479

- II. They must be eligible to get married, meaning that none of the partners must be married at the start of the relationship.
- III. They must have lived together for a considerable amount of time on their own volition.
- IV. They had to share a home and live together.

Furthermore, the Supreme Court stated that not every cohabitation would result in a marriage-like relationship in order to qualify for the Domestic Violence Act's provisions. To access this advantage, you must meet the aforementioned standards, which must be proven using proof¹⁷. Status of a Keep: The Court additionally said in the case that a man's relationship would not be considered marriage-like if he had a "keep" that he financially maintained and primarily used for sex and/or as a servant¹⁸.

Additionally, the Court used the term "palimony" (The US Court first used the term "alimony" in the Marvin v. Marvin case in 1976. It refers to the payment of maintenance to a woman who has lived with a man for a significant amount of time without getting married and who is later abandoned by him.

What is shared household?

The Domestic Violence Act defines a "shared household" as any residence where the aggrieved person resides or has formerly resided in a domestic partnership, whether alone or with the respondent. This includes residences owned or rented jointly by the aggrieved party and the respondent, as well as those owned or rented by either party and for which either party, the aggrieved party, or both jointly or singularly have any right, title, interest, or equity. It also covers dwellings that are a member of the respondent's joint family, regardless of whether the resentful party or the responder has any ownership, rights, or interests in the shared home¹⁹.

In the case of *S.R.Batra & Another Vs. Smt.Taruna Batra*²⁰, When discussing the definition of "shared household" in Section 2(s) of the Domestic Violence Act, the Supreme Court declared that the term is not well-worded and seems to have been the product of awkward drafting, and that it must be interpreted sensibly.

The Court concluded that, under Section 17(1) of the Act, a woman can only assert her right to

¹⁷ anupama soumya, "live-in relationships and domestic violence" (*crc cnlu, patna*, august 29, 2020) <<https://crc.cnlu.ac.in/post/live-in-relationships-and-domestic-violence>>.

¹⁸ rajendra anbhule, "aggrieved women and live-in relationships: judicial discourse" (2013) <<https://docs.manupatra.in/newslines/articles/upload/0f9385c7-ddf2-41eb-a7db-fa111c39bfd8.pdf>>.

¹⁹ "mahesh tiwari & associates - what is shared house hold in term of domestic violence case?" <<https://www.maheshtiwarilegal.com/domestic-violenced-v-case/what-is-shared-house-hold-in-term-of-domestic-violence-case>>.

²⁰ air 2007 sc 1118

reside in a shared household, which is defined as the husband's home, the home he leases, or the home of the joint family he belongs to. In this case, the property in question was neither a joint family property of which the husband was a part, nor did it belong to him. be rented by him²¹. It was not a shared household; rather, it belonged to the husband's mother alone.

Who is Respondent under the Act?

According to **section 2(q)**, a **"adult male person"** who is or has been in a domestic relationship with the aggrieved party and against whom the aggrieved party has requested remedies under the Act is referred to as the "respondent." With the exception that a disgruntled wife or woman in a marriage-like relationship may also lodge a complaint against a husband's or partner's family.

In case of *Hiralal P.Harsora Vs. Kusum Narottamdas Harsora*²², It was decided that using the term "adult male person" goes against the goal of protecting women who have experienced any form of domestic abuse, and that "any person" should be used instead.

Given that the term "respondent" is defined to include adult male persons, the judiciary has frequently heard the argument that an aggrieved party may only file a complaint under the Domestic Violence Act against an adult male individual and not against the husband's female relatives, such as mother-in-law or sister-in-law.

However, the case of *Sandhya Wankhede vs. Manoj Bhimrao Wankhede*²³, The dispute was addressed by determining that the proviso to Section 2(q) does not exclude female relatives of the husband or male partner from the scope of a complaint that may be submitted under the provisions of the Domestic Violence Act. As a result, complaints can be filed against both the adult male and the female related of that adult man. (Archana Hemant Naik vs. Urmilaben I. Naik & Anr²⁴)

The Domestic Violence Act is a useful law, but it has frequently been claimed that women abuse it. A wife cannot implicate every member of the household. For example, women frequently file complaints under the Domestic Violence Act against all of their husbands' relatives, even in the absence of any proof of violence.

In *Ashish Dixit vs. State of UP & Anr*²⁵. According to the Supreme Court, a woman cannot

²¹ nyaaya, "what is a shared household? - nyaaya" (nyaaya, april 8, 2022) <<https://nyaaya.org/legal-explainer/what-is-a-shared-household/>>.

²² air 2016 sc 4774

²³ (2011) 3 scc 650

²⁴ 2009 (3) bom cr 851

²⁵ air 2013 sc 1077

implicate everyone in a case involving domestic abuse. In one instance, the complainant had named everyone as a party to the case, including people she didn't even know by name, in addition to her husband and in-laws. A thorough understanding of domestic relationships is essential.

A "domestic relationship" is described as a relationship between two persons who presently or have previously lived in the same home, regardless of whether they are related by consanguinity, marriage, or another relationship including marriage, adoption, or shared custody. As a result, an individual who is not a domestic partner cannot be a responder under this statute.

Types of Reliefs:

Magistrate protection orders are issued in many forms.

In accordance of section 18 of the Act, the protection order is issued to shield the women from future acts of violence by forbidding the respondent from contacting, meeting, or directly or indirectly harming the victim, as well as from alienating assets, bank lockers, and bank accounts that the respondent owns jointly or separately, among other actions that are forbidden by the protection order.

Once the respondent and the aggrieved party have had the opportunity to be heard, and the magistrate is convinced that there is a prima facie case of domestic abuse that has occurred or is likely to occur, issue a protection order in favor of the individual who feels wronged, prohibiting the respondent from engaging in any of the following behaviors, including domestic abuse.

- Facilitating or supporting domestic violence
- Entering the resentful party's workplace, school, or any other location if they are a child
Making an effort to connect via any medium, such as personal, written, spoken, electronic, or phone contact
- The respondent, including her stridhan, is alienating any assets, operating bank accounts, and bank lockers owned or enjoyed by both parties jointly or separately.
- Using violence against dependents, other family members, or anyone else who helps the individual who is wronged, or engaging in any other behavior that the protection officer specifies

In the case of *V.D. Bhanot Vs. Savita Bhanot*²⁶ which supported the Delhi High Court's conclusion that "even a wife who had lived with her husband prior to the Domestic Violence Act's implementation would be entitled to the protection of the Domestic Violence Act." Thus, even for crimes that were committed before the Domestic Violence Act's inception, the victim of domestic abuse has the right to make an application under the Act.

Residence orders

If the magistrate is confident that domestic violence has taken place, he may issue a residence order under Section 19 of the Act. The order may prohibit the respondent from removing or disturbing the aggrieved party's belongings from the shared household, entering the area occupied by the aggrieved party, alienating or disposing of or encumbering the shared household, renouncing his rights there, and ordering the respondent to leave the shared household or find the aggrieved party alternate housing²⁷.

If the magistrate is certain that domestic abuse has occurred, they will issue a dwelling order.

- Restricting the respondent from displacing or otherwise disturbing the peaceful possession of the shared household;
- ordering the respondent to leave the shared household;
- prohibiting the respondent or his family members from entering any area of the shared household where the person who has been wronged resides;
- prohibiting the respondent from alienating, displacing, or encumbering the shared household;
- prohibiting the respondent from renouncing his right to the shared household;
- Instructing the respondent to find the aggrieved person the same standard of alternate housing as she enjoys or paying rent for the same, if necessary.

Under this rule, women cannot be forced to do anything. The magistrate may impose further restrictions or directives to protect the affected person or her child. In addition, the magistrate has the jurisdiction to authorize the relevant police station house officer to give security to the victim in order to carry out his order.

The respondent may also be directed by the magistrate to surrender her stridhan or other valuable security to which she is entitled.

²⁶ air 2012 sc 965

²⁷ admin@amlegal, "Section 19 of the Domestic Violence Act: Residence Orders and Victim Protection" (AM LEAGAL, January 7, 2025) <<https://amlegal.in/section-19-of-domestic-violence-act/>>.

Monetary relief

The court might order the respondent to provide financial aid to pay the costs spent by the victim and any children as a result of domestic violence. This support can include:²⁸

Issue a maintenance order for the person who was wronged and her children, if any, Damages resulting from the destruction, removal, or damage of any property, Medical costs, Loss of income Include the maintenance order issued under section 125 of the Criminal Procedure Code²⁹ or any other legislation, either alone or in combination with another. The amount of relief must be fair, reasonable, and consistent with the living standards of the wronged individual. A lump sum payment may be ordered by the magistrate. If the respondent doesn't pay the order, the magistrate will order the respondent's employer or debtor to either pay the person directly or deposit a percentage of the respondent's salary or compensation in the court. A lump sum payment may be ordered by the magistrate.

If the respondent doesn't pay this order, the magistrate will order the respondent's employer or debtor to either pay the harmed party directly or deposit a portion of the respondent's salary or earnings in the court.

Custody orders

Section 21 of the Act allows the magistrate to provide temporary custody of any child or children to the person who has been harmed or the person filing an application on her behalf. The magistrate may also set the terms for the respondent's visit with the kid. If such a respondent's visit may be harmful to the child's interests, the magistrate may refuse it³⁰.

Compensation order

The magistrate may, on the application of the person who was harmed, require the respondent to compensate damages and compensation for the harm—including mental agony and emotional distress—caused by the respondent's acts of domestic violence under Section 22 of the Act.

²⁸ chhavi bansal, “monetary reliefs u/s 20 d.v. Act, 2005” (2005) <https://ujala.uk.gov.in/files/monetary_reliefs_us_20_d.v._act,_2005_1.pdf>.

²⁹ [advocatekhaj.com](https://www.advocatekhaj.com), “section 125 of the code of criminal procedure, 1973 | recommendations for amending various enactments - both civil and criminal | law commission of india reports | law library | advocatekhaj” (copyright 2024, [advocatekhaj.com](https://www.advocatekhaj.com)) <<https://www.advocatekhaj.com/library/lawreports/civilandcriminal/17.php?title=recommendations%20for%20amending%20various%20enactments%20-%20both%20civil%20and%20criminal&stitle=section%20125%20of%20the%20code%20of%20criminal%20procedure,%201973>>.

³⁰ admin@amlegal, “section 21 of the domestic violence act: custody orders and child welfare” (*am legal*, january 7, 2025) <<https://amlegal.in/section-21-of-domestic-violence-act/>>.

Copies of the magistrate's orders must be given to the parties, the police officer, and the service provider at no cost³¹.

In addition to the remedies sought in a suit or other legal action before a civil or criminal court, any relief permitted by this Act may be sought in any other legal procedure before a civil, family, or criminal court.

Execution of Orders:

The magistrate himself is responsible for carrying out the directives, as is the case with all of his orders. The respondent is instructed not to impede the aggrieved woman's freedom if the orders are prohibitory³².

Protection order:

Section 31 of the DV Act states that the respondent's breach of a protection order or an interim protection order is a felony. The maximum term for this violation is one year in any form of prison, a fine of twenty thousand rupees, or both.

The Magistrate issued the order., whose violation was allegedly caused by the accused, will, to the greatest extent possible, try the matter under sub-section (1).

If the circumstances disclose that an offense was committed under section 498A of the Indian Penal Code (45 of 1860), any other provision of that Code, or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, the Magistrates may also file charges under those provisions when drafting charges under sub-section (1).

In **Kanaka Raj vs. State of Kerala and another**³³, The Honorable Kerala High Court declared that a Magistrate may only register a complaint and undertake an inquiry under Section 31 of the DV Act if the order is for protection or interim protection. Even if Lok-Adalath issues an award, it cannot constitute a protection order or an interim protection order unless it complies with Section 18 of the DV Act, and breaking it is not punished under Section 31 of the DV Act.

Residence order:

The magistrate has the authority to authorize the appropriate station house officer of the police station to provide security to the person who has been wronged in order to carry out the residence orders. The respondent may also be ordered by the magistrate to give up her stridhan

³¹ pwonlyias, "compensation for domestic violence damages - pwonlyias" *pwonlyias* (may 6, 2024) <<https://pwonlyias.com/current-affairs/domestic-violence-act-2005/>>.

³² refworld - unhr's global law and policy database, "kosovo: law no.03/l –182 on protection against domestic violence" (*refworld*, february 12, 2024) <<https://www.refworld.org/legal/legislation/natlegbod/2010/en/123447>>.

³³ 010 crl.l.j (noc) 447 (kerala)

or any other valuable security to which she is entitled³⁴. A violation of a residence order may also constitute an offense under section 31 as these orders are put in place to shield the harmed party from being evicted.

Monetary relief/Maintenance Order:

Any application under Section 12 of the Domestic Violence Act will be handled and ordered enforced in accordance with the same procedure specified in Section 125 of the Criminal Procedure Code, as per Rule 6 of the Protection of Women from Domestic Violence Rules, 2006.

The Hon'ble Karnataka High Court declared in *Renuka vs. Yelaguresh* that orders issued under Section 12 of the Protection of Women from Domestic Violence Act, 2005, can be executed in the same way as indicated in Section 125. of the Cr.P.C³⁵.

If the respondent doesn't pay the order, the magistrate will order the respondent's employer or debtor to either pay the aggrieved party directly or deposit a percentage of the respondent's income or earnings in the court. A lump sum payment may also be ordered by the magistrate. If the respondent doesn't pay this order, the magistrate will order the respondent's employer or debtor to either pay the harmed party directly or deposit a portion of the respondent's income or earnings in the court³⁶.

In the event that the order is for maintenance, the respondent's moveable property is attached. If it is still unpaid, the District Collector may receive the maintenance order and take action to recover the money owed, treating it as though it were a land revenue arrear. In such a case, the Collector may seize the respondent's real estate.

In *Shalu Ojha vs. Prashant Ojha*³⁷, The Honorable Supreme Court ruled that in cases When a magistrate awards maintenance under Section 20 of the DV Act, the Session Court should not delay the implementation of the maintenance order on appeal. Not all courts have the inherent ability to provide interim orders.

The Kerala High Court ruled in *Suneesh vs. State of Kerala & Anr* that a violation of a monetary relief order cannot be tried under section 31, which exclusively imposes penalties for protection order violations.

³⁴ nyaaya, "what is a residence order under domestic violence law? - nyaaya" (*nyaaya*, april 8, 2022) <<https://nyaaya.org/legal-explainer/what-is-a-residence-order-under-domestic-violence-law/>>.

³⁵ "india code: section details" <https://www.indiacode.nic.in/show-data?actid=ac_cen_5_23_000010_197402_1517807320555&orderno=147>.

³⁶ "maintenance under the dv act" (*drishti judiciary*) <<https://www.drishtijudiciary.com/current-affairs/maintenance-under-the-dv-ac>>.

³⁷ 014(4) rcr (civil) 815 (sc)

A maintenance order, including an interim maintenance order issued under section 23, can be executed in the same way as described under section 125 Cr.P.C. and cannot be enforced under section 31. The procedure for conforming to the maintenance order is outlined in Section 20(4)..

Custody orders:

If the ruling concerns child custody, the magistrate, with the help of the police, regains custody of the children from the respondent and gives them to the lady who feels wronged³⁸.

Duty of Courts while deciding cases under the Domestic Violence Act

In the case of *Krishna Bhattacharjee vs. Sarathi Choudhury and Another*³⁹, The Supreme Court defined the responsibility of courts in settling complaints under the Domestic Violence Act, stating that: The Court must analyze all relevant circumstances to determine whether a plea given by the respondent to dismiss the aggrieved party's grievance is proper and legally sound.

It is critical to recall the saying, "Justice to the cause is equivalent to the salt of the ocean." The truth, which shines when justice is administered, must be supported by a court of law.

Because the 2005 Act, as we have stated, is a beneficial and assertively affirmative enactment for the realization of women's constitutional rights and to ensure that they do not become victims of any kind of domestic violence, it is necessary to ensure that the person who has been wronged by such legislation is not faced with a situation of non-adjudication before throwing a petition at the threshold.

Husband's Obligation to maintain wife under the DV Act

In a case taken up by the Supreme Court i.e. *Vimlaben Ajitbhai Patel vs. Vatslaben Ashok Bhai Patel and Ors*⁴⁰, It was determined that under the Domestic Violence Act and the Hindu Adoption and Maintenance Act of 1956, it is the husband's sole responsibility to support his wife. The property of the mother-in-law cannot be attached, nor can the husband's personal duty to support his wife be ordered to be enforced against it throughout his lifetime.

Application to the Magistrate

The victim of domestic violence, or a protection officer acting on their behalf, may file an application with the magistrate for one or more of the reliefs stated in the sections. Anyone else acting on behalf of the person who has been mistreated.

³⁸ admin@amlegal, "section 21 of the domestic violence act: custody orders and child welfare" (*am legal*, january 7, 2025) <<https://amlegal.in/section-21-of-domestic-violence-act/>>.

³⁹ (2016) 2 scc 705

⁴⁰ (2008) 4 scc 649

Jurisdiction of court

The competent court in the local limits where the aggrieved party either permanently or temporarily resides, conducts business, or is employed, or where the cause of action arises is the first-class magistrate court or metropolitan court.

All orders issued in compliance with this Act would be enforceable throughout India. The magistrate must consider any domestic incident report provided by the protection officer or service provider when determining how to proceed with the application. Without impacting the individual's capacity to sue for damages or compensation for injuries caused by domestic violence, the remedy requested under this section includes the issuance of an order for payment, compensation, or damages. Based on the aggrieved party's affidavit, the magistrate may issue the following ex parte interim order against the respondent if he believes that the application prima facie discloses that the respondent is committing or has committed an act of domestic violence, or that such violence is likely.

Depending on the circumstances of the case, the magistrate may issue a range of orders, including protection orders, residence orders, monetary relief orders, custody orders, or compensation orders. Any money paid pursuant to a previous compensation or damages order made by another court in favor of the injured party would be subtracted from the amount required to be paid under this legislation. The magistrate's application must follow as nearly as possible to the forms established in this Act and its regulations⁴¹.

Following receipt of the application, The magistrate shall arrange the initial hearing within three days and make every endeavor to resolve each matter within sixty days of the hearing.

The protection officer will notify the respondent of the hearing date after it has been received from the magistrate. The magistrate has the ability to order counseling for the respondent or damaged party at any time during the application process, either alone or in collaboration with any service provider. The magistrate may choose a qualified person, preferably a woman, to assist the court with the case, including someone concerned in women's welfare. The magistrate may conduct the proceedings on camera if the circumstances of the case so justify and if any party so requests. In the instance of *Nasir Khan son of Shri Hazi Hasan Raja vs. Smt. Rizwana Sheikh wife of Shri Nasir Khan*⁴², The Honorable Rajasthan High Court ruled that a victim of domestic abuse cannot be forced to use the Family Court's jurisdiction in order to obtain the

⁴¹ editor_4, "delhi hc says maintenance under domestic violence act unrelated to inability of wife to maintain herself | scc times" (*scc times*, september 18, 2024) <<https://www.scconline.com/blog/post/2024/09/13/delhi-hc-says-maintenance-under-domestic-violence-act-unrelated-to-inability-of-wife-to-maintain-herself/>>.

⁴² 2018 3 rlw (raj) 1842

reliefs allowed by the Act of 2005.

Some other important legal principle

1. Shared household & its meaning & claim of residence in the house owned by parent-in-laws (Sec. 23)

The phrase "shared household accommodation" does not apply to a mother-in-law's or father-in-law's home. Just because the application wife formerly shared the mother-in-law's home with her husband does not mean that the two of them are now living together. That must be a home that the husband owns or rents, or one that is a part of the joint family of which he is a member.

- a. S.R.Batra Vs. Smt. Taruna Batra⁴³,
- b. Vimla Ben Ajitbhai Patel Vs. Vatsalaben Ashokbhai Pate⁴⁴

2. Self-acquired house of father-in-law or mother-in-law & right of residence of wife therein

According to sections 17 and 26 of the PWDO Act, 2005, a daughter-in-law would not be permitted to live in the self-acquired home of her parents-in-law, that is, her father-in-law (or mother-in-law). An injunction prohibiting the daughter-in-law from evicting the parents-in-law from their home may be obtained as the parents-in-law are the only owners of the property. Look Shubhwant *Kaur Vs. Lt.col.Prithi Pal Singh Chugh*⁴⁵,

3. Claim of wife to alternative accommodation

According to PWDO Act, 2005, s. 19(1), a wife may only assert her entitlement to alternate accommodations against her husband. Look *S.R.Batra Vs. Smt.Taruna Batra*⁴⁶

4. As Per the Protection of Women from Domestic Violence Act of 2005, a spouse or his family's retention of Stridhan constitutes a continuous offense: According to the Protection of Women from Domestic Violence Act of 2005, a spouse or his family's retention of Stridhan constitutes a continuing offense. Look--- Krishna Bhattarjee Vs. Sarathi Choudhury⁴⁷

5. Lesbians and gay people are not acknowledged as being in a partnership that is similar to marriage:

The Act does not recognize domestic relationships between gay and lesbian same-sex partners. One cannot refer to such a connection as a marriage-like partnership. Although "any two

⁴³ air 2007 sc 11184

⁴⁴ (2008) 4 scc 649.

⁴⁵ air 2010 (noc) 638(p & h)

⁴⁶ air 2007 sc 1118

⁴⁷ (2016) 2 scc 705.

persons" is used Section 2(f) of the DV Act exclusively includes women in the definition of "aggrieved person" under Section 2(a). Because of the Act does not acknowledge same-sex relationships (gay or lesbian), any action, inaction, or behavior by either of the parties would not constitute domestic violence and would not qualify for any DV Act remedies. Look *Indra Sarma Vs V.K.Sarma*⁴⁸

6. A divorce decree prevents the magistrate from acting under the PWDV Act of 2005: The Hon'ble Supreme Court has concluded that enabling the Magistrate to go further under the terms of the PWDV Act, 2005, was incompatible with the divorce order and amounted to abuse of the court's process in cases where the civil court's divorce decree was still in effect. The party must apply to the proper forum to have the divorce judgment revoked, even if it is claimed that the court was deceived into awarding it. Look---

i. *Inderjit Singh Grewal Vs. State of Punjab & another*⁴⁹

ii. *Hitesh Bhatnagar Vs Deepa Bhatnagar*⁵⁰

7. The PWDV Act of 2005 does not include a statute of limitations for submitting complaints.

Under the PWDV Act of 2005, there is no statute of limitations for submitting a complaint. View *Inderjit Singh Grewal v. Punjab State & Others*⁵¹

8. A complaint filed under Sections 26 and 28 of the PWDV Act may be amended by the court in accordance with Sections 26 and 28 of the PWDV Act for an offense under Section 498 of the IPC. Nookala, also known as *Kunapareddy Kunapareddy Swarna Kumari vs. Shanku Balaji*⁵²

III. CONCLUSION & SUGGESTIONS

In Indian society, domestic violence is rather common. Women are often the victims while males are the perpetrators. It is now a fundamental aspect of family life, both a woman's obligation and a man's prerogative. In India, women have been opposing the practice in all of its manifestations and calling for laws to prevent violence. The Indian government has taken action in response to pressure from the world community and women's groups. The 2005 Protection of Women Against Domestic Violence Act and its 2006 regulations. One unique enactment is the PWDV Act of 2005. This law is secular and applies to all religions. This

⁴⁸ air 2014 sc 309 (para 38)

⁴⁹ 2011 (75) acc 225.

⁵⁰ air 2011 sc 1637

⁵¹ 2011(75) SCC 225

⁵² air 2016 sc 2519.

civil legislation was created to protect women, not to punish those who commit acts of violence. It provides a broad definition of domestic violence that includes sexual, psychological, financial, and physical abuse. It applies to every relationship. Sister, daughter, spouse, mother, and cohabitor. This statute acknowledges the victim's different rights. It established straightforward guidelines for exercising these rights, emphasizing the need of proof. The current study's goal is to assess how well the Protection of Women from Domestic Violence Act of 2005 protects women from domestic abuse. The goal is accomplished by a sequence of connected inactive procedures. These actions consist of

1. Evidence-based reality at the local level
2. Examining the act and the institutional mechanisms critically
3. Assessment of the Act's Significance and Impact
4. The CTS, created by sociologist Murray Straus in the 1970s

Domestic violence prevalence

The data unequivocally shows that, of the 2837 examined houses, 1029 had a prevalence of violence against women, or 36.27 percent of all families. In rural regions, domestic abuse affects one in three women, according to the research. The findings of this study are supported by other research on domestic violence in India, which finds the prevalence of domestic violence to be about equal.

Types of domestic violence in INDIA

Domestic violence has been divided into three categories: psychological, sexual, and physical. All three types of questions are included in the Demographic and Health Survey questionnaire module. Violence, however, is only classified as physical and psychological in this study. The majority of women stated that experiencing physical and psychological abuse is a regular occurrence in their life. In their regular interactions with their spouse and in-laws, they encounter psychological abuse.

Timing, Frequency and Grievance of Domestic Violence

The study suggests that violence is a common occurrence in most families later on and that about 91% of families see it during the first year of marriage. Even during pregnancy, women are subjected to physical and psychological abuse, and in many situations, they require medical assistance because of severe injuries.

Domestic Violence Causes and Women's Justifications for Them

According to the survey, ladies' disregard or carelessness for their husbands and family elders

is the main contributing factor. This group includes 71.5% of responders.

The second major factor contributing to husbands' aggressive conduct is wives' neglect of domestic responsibilities. The third main factor contributing to marital violence is spouses' neglect of their children.

According to the poll, 29.8% of women believe that a husband has the right to abuse his wife. According to 47.2% of women, a husband may beat his wife for legitimate reasons. Therefore, 77.0 percent of women do not oppose domestic abuse. Therefore, 77.0 percent of women do not oppose domestic abuse. This suggests that women accept their lesser status. In contrast to this, just 23.0% of women believe that a husband has no right to abuse his wife. They think it's important to preserve the dignity and respect of the wife. Nonetheless, society is aware of their opinions.

The study also suggests that over 50% of women blame their husbands' violent actions on the victims' errors or other justifications.

This suggests that males utilize violence to exert control over their wives' lives and conduct. Men are conditioned to feel that every other family member must perform in a way that pleases them alone, and that any member who deviates from their expectations—especially women—must face consequences. Men behave in ways that reinforce their superior status. They don't respect the equality of husband and wife.

Reaction of the women and family members of both parties towards domestic violence

According to the survey, Indian wives do not use derogatory language and treat their husbands with respect. The majority of them either accept their husbands' inappropriate behavior in silence, believing it to be predetermined and written in their fortunes, or seek redress through their parents' intervention.

Most of the time, victims' families remove their daughter from her in-laws' home out of concern for their safety and to put moral pressure on the husband by complaining to the responsible members of the husband's family. Financial or associated demands are typically the cause of domestic violence. Therefore, the victim's family tries to accommodate their husband's or his family's requests. Caste panchayats or courts are only consulted in a small number of situations.

Most of the time, respondent's families try to settle the dispute by appeasing both the husband and the wife, and in over half of the instances, the matter is discussed between the two families. Information on the offenders' characteristics, including their present age, marital age, level of education, employment status, and drinking habits, was gathered.

Result of the research

The following are the thesis results that address the hypothesis put forward in the first chapter:

1. Women's human rights are negatively impacted by domestic violence, which also has a negative impact on their dignity and ability to participate in the process of development.
2. In the patriarchal cultural setting of India, the Act has conceptual flaws.
3. Because the Act pits the wife against the husband in a marital setting, it undermines the unity of the family structure.
4. The state-driven legal system's insensitivity in addressing delicate man-woman relationship difficulties prevents the Act's execution from providing a comprehensive response to contemporary understandings of domestic abuse.
5. Due to inadequate design and the importation of western beliefs, the Act is only a western copy that is unable to comprehend Indian cultural ethos and the traits of family togetherness.

Suggestions and recommendations

The laws in India are inherently limited in their ability to address issues pertaining to man-woman relationships inside familial structures. Human nature cannot be altered by law alone. The awakening of cultural thought brought about by education is what is required to reform society. The symbolic and normative authority of the purpose of the legislation should be to uphold the long-standing civilizational norms and traditions surrounding family life, not to dismantle family bonds or obtain support for new lifestyles. The fundamental standards upon which the higher forms of the same are reflected at the macro level include respect for others, protection of the weak, recognition of the integrity and dignity of others, emulating the elders' experiences, etc. within the family.

All of them encourage the growth of skills like negotiating, perspective taking, and flexible, introspective thinking. Consequently, this fosters a culture of harmony among the community. A comprehensive approach to the issue of domestic abuse against women is urgently needed. The issue has several facets, including social and cultural aspects that contribute to the nation's growth, psychological and clinical aspects, human rights aspects, and personal and individual aspects. A triangle viewpoint should be applied to the interaction between a man, woman, and kid in a family; each of them contributes to and receives from the others, which gives life purpose.

The Act's proposed solution is to place all of the responsibility for the issue on men and their families. In the Indian familial cultural context, anti-discriminatory and protectively

discriminatory laws that benefit women cannot be conceived in a vacuum. The remedies offered is more dangerous than the disease itself in the Indian cultural scenario. In Indian culture, the treatments supplied are more hazardous than the ailment itself. In this case, a need-based approach (the woman's need to halt abuse without breaking relationships) is more appropriate than a rights-based one (a woman's right as a person). In the Indian culture, a woman must be considered in conjunction with her family.

Sociocultural beliefs consider her role, her reputation, and the human desire for belonging. Ending domestic violence against women can be accomplished by addressing the issue inside the family structure rather than severing family bonds. To put it briefly, an effort should be made to incorporate and implement the relational worldview into the Indian cultural context of domestic violence prevention.

The foundation of Indian extended family life is healthy interdependence, and the community offers extra balancing resources. The Indian family setting is full with resources that produce and harmonize strength.

The idea of balance is strengthened by the support of the older generations. The roles and structure of families, kinship networks, etc., all have an impact on how people interact with one another, support one another, and behave within a system. The system has an innate propensity to strive for harmony. Instead than focusing on a particular collection of symptoms, services should aim to restore equilibrium. The law does not provide for this kind of reestablishing equilibrium within a particular system. Families have negative outcomes when individualistic inclinations are exacerbated.

According to Tocqueville, one of humanity's basic necessities that enables social duty is familial stability and loyalty. Domestic abuse victims deal with issues that prohibit them from meeting their safety requirements at different phases of life. Working with her to increase her ability to make decisions about her own future is urgently needed. Because they are viewed as "experts in their own lives," victims of domestic abuse are assisted in making decisions about their preferred lifestyle. This aspect of choosing wisely over one's own survival is regarded as a component of feminist counseling as it is practiced in the West. In the Indian setting, emphasis should be placed on the cultural demands of communal living and the human need for belongingness rather than an independent way of life. Malinowski's assertion that the family is the universal human institution that must be conserved reflects the necessity to preserve indigenous culture and the family. According to Malinowski, the occurrence of domestic violence inside the family cannot take away from the collectivity of familial ties, the necessity

for a shared physical space, or the love that results from such interactions. The recommendations made in this context include family alliances and mentorship programs that adhere to the tribal idea of collectivity.

To enable people to adjust to such a style of thinking, a thorough institutional and environmental transformation is needed. Schools may serve as key sites of entry for this goal. The course curriculum can incorporate teaching on the importance of maintaining family stability and the roles that family members play. A curriculum based on gender sensitivity to these concerns may be developed through cooperation between the law faculty at each university, Women Study Centers, the Ministry of HRD, the Ministry of Women and Children, and the Government of India. It is important to make sure that individuals tasked with enforcing laws against violence against women, such as judges, prosecutors, and police, have a thorough grasp of the laws and are capable of applying them in a way that is acceptable and gender-sensitive.

There is a chance that the legislation won't be applied consistently or successfully if public authorities tasked with enforcing it are not fully instructed on its provisions. There have been numerous and diverse attempts to provide public officials with training and/or incorporate violence against women into the official curricula for various occupations. It has been discovered that these kinds of Trainings and capacity-building activities are most effective.

Paralegal training classes for law students and attorneys are urgently required, as is clinical education to sensitize victims of domestic abuse to the devastating stages of their experiences. The theory of women's best interests, which is very similar to the child's best interests theory, can be upheld and justified by understanding and addressing the victim's subjectivities in her own space, giving her time to evaluate the meaning of her violent experience, and guiding her to self-guided resolutions. Clinical supervision, working with psychologists, and the necessity for psychiatric therapy, among other things, help her make judgments about a slew of competing loyalties in her own life.

The main goal of the program is to connect with the victim. In the Indian setting, where women victims want to end abuse without ending relationships, this method can be greatly modified.
