



Examining Indian Laws on Domestic Violence in the Context of Gender Equality

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Abstract

Domestic violence is an ongoing and pervasive challenge present in society. The patriarchal system can be identified as the principal cause of such gender inequality in Indian society. Domestic violence emerges from a combination of various triggering elements, often accompanied by some form of provocation. Moreover, its impact on our contemporary society is even more pronounced due to the influences of modernization and technological advancements. Violation of women's rights through acts of violence represents a grave breach of human rights and remains a concerning societal concern.

Hence this article employs a multifaceted framework to understand domestic violence comprehensively. It takes a multidimensional approach to grasp the nuances of this complex issue. The analysis extends to various manifestations of domestic violence drawing from various case laws, thereby highlighting the present status of women. The article tries to explore the prevailing understanding of domestic violence and its ramifications on women's lives. It proceeds to study Indian legal provisions designed to address domestic violence, including the Protection of Women from Domestic Violence Act, of 2005. In India, legislative measures have been enacted to combat this problem and safeguard the rights of women. This article critically examines the laws, considering their effectiveness, challenges, and impact on advancing gender equality and women's empowerment. However, the article contextualizes these legal measures within the border landscape of gender equality and women empowerment. It explores how such legislation aligns with international frameworks and commitments promoting gender equality.

Keywords: Domestic Violence, Women Rights, Gender Equality, Women Empowerment

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1. Introduction

Domestic violence is deeply rooted in our society spreading like an epidemic. Some people seem to believe that ignoring domestic violence is essential for their survival, essentially relying on it. This distressing behavior has become part of life, where it is common for men to harass their spouses without any cause. This paramount problem of domestic violence has been escalating in current times and can be found in newspapers, highlighting the alarming frequency of women losing their lives. These women, who are often left speechless endure every form of humiliation to protect their families.²

The issue of crimes targeting women is not a new phenomenon in India too. These crimes cause a breach of woman's dignity, safety, and human rights. Women have been subjected to offenses, such as rape, kidnapping, abduction, molestation, teasing, sexual harassment, mistreatment by spouses and family members, dowry-related violence, and more. Several forms of domestic violence have witnessed a significant surge over the past twenty years, and this concern has gained recognition both at national as well as international levels as a grave issue.

Ironically, the very place where a woman can feel safe is her home, which has transformed into a harrowing battleground. The suffering that women endure within the four walls of homes is no longer remains a secret as every family member consists of both male and female members are aware of it. The nature of men seems to appear constant regardless of geographical location, be it India or elsewhere. Domestic violence is often denoted by various terms, such as domestic abuse, spousal abuse, and more. Regardless of the terminology used, the gravity of the issue persists. To deal with this serious issue the Government of India has brought a special Act called the Protection of Women from Domestic Violence Act, of 2005, which came into force on October 26, 2006, spanning across

² Sanjeev Kumar and Kalpna Devi, "Domestic Violence Against Women Indian Perspective" 5 *South Asian Law Review Journal* Volume 119 (2019).

India. This legislation primarily aims to offer civil remedies for individuals who are subject to domestic violence.

2. Understanding of Domestic Violence

Domestic violence, often concealed within private confines, represents an intricately convoluted manifestation of abuse. Regrettably, the prevailing unequal power dynamics and socio-economic circumstances within Indian society frequently lead to disregard of women's atrocities. Although articulating a precise definition of domestic violence proves challenging, numerous efforts have been made to formulate one.

According to statistics released by the World Health Organization (WHO), approximately 30% of women worldwide have experienced physical and/or sexual violence either from an intimate partner or a non-partner during their lifetime. The majority of this violence is attributed to intimate partner violence, with nearly 27% of women aged 15-49, who have been in a relationship, disclosing instances of physical and/or sexual violence perpetrated by their intimate partners on a global scale.³

The World Health Organization (WHO) employs the expression "intimate partner violence" instead of "domestic abuse or violence". It is characterised as an action carried out by an intimate partner resulting in physical, sexual, or psychological harm. This encompasses behaviours like physical aggression, sexual coercion, psychological abuse, and the imposition of controlling behaviours.⁴ It is crucial to recognize that domestic abuse should be comprehended not merely as a sequence of violent or abusive

³ Violence against women, *available at*: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> (last visited on 12/09/2023).

⁴ Responding to intimate partner violence and sexual violence against women, *available at*: <https://www.who.int/publications/i/item/9789241548595>(last visited on 12/09/2023).

incidents but rather as a systematic pattern characterized by “coercive control,” “patriarchal terrorism,” or “intimate terrorism⁵. The United Nations defines domestic violence (DV) as a “pattern of behavior in any relationship that is used to gain or maintain power and control over any intimate partner.” This encompasses a range of behaviors aimed at instilling fear, intimidation, terror, manipulation, harm, humiliation, blame, injury, or emotional distress upon someone within an intimate relationship. The definition highlights the pervasive nature of abusive behaviors that extend beyond physical violence and encompass various forms of control and coercion.⁶

Domestic violence can be described as the misuse of power by one adult within a relationship to manipulate and dominate another. It encompasses establishing control and inducing fear through various forms of abuse. This abusive behavior involves physical attack, psychological manipulation, social isolation, financial exploitation and sexual atrocities. The occurrence of such violence can differ, embracing from sporadic events to frequent or continuous patterns.⁷

Domestic violence is more than just a quarrel; it involves a consistent pattern of manipulative influence that one individual wields over another. Those who perpetrated abuse utilized physical and sexual aggression, threats, verbal, and emotional abuse, as well as financial restrictions to establish dominance over their victim and achieve their desires.⁸

⁵ *Coercive control: How men entrap women in personal life*, available at: <https://psycnet.apa.org/record/2007-05264-000>(last visited on 12/09/2023).

⁶ The United Nations (n.d.) What is domestic abuse? available at: <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (last visited on 12/09/2023).

⁷ Ranveer Kour and Sunila Garg “Addressing Domestic Violence Against Women: An Unfinished Agenda” 33(2) *Indian Journal and Community Medicine* 5 (2008).

⁸ Available at: <https://www.sarahsinntv.org/post/40-stories-susan-schechter>(last visited on 12/09/2023).

The Protection of Women from Domestic Violence Act, of 2005, provides a clear and methodological definition of domestic violence. According to this law, any action, failure to act, behavior, or conduct by the respondent constitutes domestic violence, if it:⁹

- a) Causes harm, injury, or poses a threat to the physical or mental well-being, safety, life, or limb of the affected person. This includes various sorts of abuse like physical, sexual, verbal, emotional, and economic abuse.
- b) Harasses, harms, or endangers the aggrieved person with the intent to pressure her or her relatives into complying with unlawful demands for dowry or other property or assets.
- c) Creates a sense of threat to the aggrieved individual or her related persons through action mentioned in either (a) or (b), otherwise inflicts harm or injury, whether physical or mental, upon the aggrieved individual. In essence, the act categorizes a range of actions and behaviour as domestic violence, covering physical, emotional, economic, and coercive tactics used by the respondent to exert control or harm the affected person or their relatives.

3. A Brief Historical Background of Domestic Violence

The growing awareness emphasises that the impact of culture on domestic violence has not received sufficient acknowledgment in Western nations.¹⁰ In India, a myriad of cultural histories significantly influence norms and practices related to Domestic violence, many of which are subject to current challenges due to varying levels of modernization. India is far from being a homogeneous society, contrary to popular media portrayals. The subcontinent is marked by diverse cultural norms that influence aspects, such as caste discrimination, gender roles, and attitudes

⁹ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

¹⁰ M.A. Straus, "New Theory and Old Canards about Family Violence Research" 38(2) *Social Problems* 180-197 (1991).

towards domestic violence. The overarching regional pattern tends to be more patriarchal and traditional in states like Uttar Pradesh and Punjab in the North, while Southern states like Kerala and Tamil Nadu tend to be more egalitarian and educated.¹¹ Moreover, within each state, there is a noticeable disparity between the experiences of those residing in rural areas and those in major urban centers, where industrialization and modernization are transforming the societal landscape of India.

The journey of the Indian woman spans various historical phases, reflecting changes in her societal status over the time. In earlier ages, she held a respectable position, but over time, she experienced a decline and oppression. Several factors contribute to these shifts, including the marriage system, education, religion, and the practice of purdah.¹²

An Indian woman, from birth, is often instilled with qualities of patience, docility, and a capacity for enduring suffering, imparted by previous generations, particularly grandmothers. This cultivation is not perceived as a gradual learning process but rather as inherent qualities assumed to be present from birth, akin to flesh and blood. This cultural perspective underscores the expectations and conditioning placed upon Indian women from an early age.

Throughout history, domestic violence has been evident. Early Roman law allowed a man to physically harm, divorce, or even kill his wife for actions that tarnish his honor or pose a threat to his property rights.¹³

In the 15th century, the Catholic Church supported “The Rules of Marriage,” which instructed husbands to assume the role of judge over their wives. According to these rules, a husband was permitted

¹¹ P. Mayer, Steen, Bradley, C. & Zianian, *Urbanisation and Suicide in India, Suicide in India*, (New Delhi, Chronicle Books in press, 2008).

¹² R. Radha, “Historical perspective of violence against women in India through various ages” 9 *International Journal of Basic and Applied Research* 1 (2019).

¹³ Available at: https://www.cji.edu/wp-content/uploads/2019/04/domestic_abuse_report.pdf (last visited on 28/09/2023).

to physically punish his wife with a stick in response to her committing an offense¹⁴.

In England, common law historically granted a man the authority to physically discipline his wife under the guise of maintaining family discipline. The term “rule of thumb” originated from English common law, signifying the allowance for a husband to beat his wife, provided he used a stick no larger than his thumb.¹⁵

Before the mid-19th century, American law either implicitly accepted or overlooked violence by husbands against their wives. The first state to pass a law prohibiting a husband from beating his wife was in 1850, with other states gradually adopting similar legislation. While police involvement increased in the early to mid-20th century, actual arrests and convictions were infrequent. Significant legal changes occurred during the Women’s Movement in the 1970s, prompting legislative bodies to update their definitions. The term “domestic violence” was first used in 1973.¹⁶

Gender inequality is a global issue, resulting in unequal treatment of men and women and denying justice. It affects various aspects of life, such as health, education, economics, and politics. The International efforts towards gender equality have their roots in the UN Charter of 1945 and were reaffirmed in the Universal Declaration of Human Rights, 1948, emphasizing non-discrimination and equal rights for all. The International Covenant of Economic, Social, and Cultural Rights further safeguards women’s rights.¹⁷

Key milestones included in the 1967 Declaration of Elimination Discrimination against Women, aiming to grant equal rights in civil law. The 1993 Vienna Conference highlighted the equal participation of women, while the 1995 Beijing Conference

¹⁴ *Id.*

¹⁵ Available at: <https://criminal-justice.iresearchnet.com/types-of-crime/domestic-violence/worldwide-history-of-domestic-violence/> (last visited on 28/09/2023).

¹⁶ Available at: <https://www.rudnicklaw.com/blog/history-domestic-violence/> (last visited on 28/10/2023).

¹⁷ Available at: <https://shodhganga.inflibnet.ac.in/handle/10603/373386> (last visited on 28/10/2023).

reiterated gender equality's importance for social justice. Convention on the Elimination of All Forms of Discrimination against Women, ratified by India in 1993, recognized new areas of abuse and promoted equality. Many countries including India, enacted separate laws on domestic violence, addressing issues such as dowry. However, gender discrimination continues due to a patriarchal society.¹⁸ India's Constitution guarantees equality, and the Protection of Women from Domestic Violence Act, of 2005 was a significant step. The Act offers shelter, compensation, medical support, and interim custody of children of victims. It establishes protection officers and service providers for effective implementation. Though this act provides accessible justice, protection, shelter, compensation, medical aid, and child custody for victims. However, many challenges also exist in its enforcement.

4. Status of Women and the Indian Constitution

Historically women were subjected to mistreatment and were denied respect within society, which led to their ongoing struggle for status and standing in a patriarchal society. During that era, Indian women required new laws to safeguard them against harassment, both mental and physical abuse, and to enable them to lead secure lives while elevating societal stature.¹⁹ The preamble of the Indian Constitution succinctly encapsulates and solemnly declares various principles including "justice, social, economic and political, and equality of status and opportunity". These principles inherently aimed to establish parity among women.

Article 14 ensures "equality before Law" while Article 15 "prohibits discrimination. Article 15(3) presents the only specific provision, granting the state the authority to create "special provisions for women and children", even though these provisions contradict the fundamental principle of non-discrimination based on sex. Article

¹⁸Available at: <https://blog.ipleaders.in/offences-against-women-international-laws/>(last visited on 28/10/2023).

¹⁹ Available at: <https://libertatem.in/articles/constitutional-status-of-women-in-india/>(last accessed on 25/10/2023).

16 (2) prohibits discrimination “in terms of employment or appointment of any state office. Additionally, article 16(2) prohibits discrimination “in terms of employment or office under state “based solely on race, caste, religion, sex, place of birth, residence or any of them.

Article 21 of the Constitution, addressing the right to life and personal liberty, safeguards that no individual should be deprived of their liberty unless following the legally established procedure. This provision also encompasses the right to life, which includes elements like privacy, access to legal aid, and more, as interpreted by a significant ruling from the Supreme Court of India.

In the context of gender equality, domestic violence, and women empowerment, Article 21 becomes a cornerstone. It ensures that the personal liberties of all, especially women, are protected, fostering an environment where gender-based discrimination and violence are not tolerated. This provision aids in empowering women by assuring their rights, promoting their safety, and guaranteeing access to legal remedies in cases of Domestic Violence and other violence.

Some other provisions are enumerated in the Directive principle of State policy bearing in mind the special status of women.

Article 39 (a) “Right to an adequate means of livelihood for men and women equally”.

Article 39(d) “Equal pay for equal work for both men and women”.

Article 39(e) “Protection of the health and strength of workers-men, women and children from abuse and entry into vocations unsuited to their age and strength”.

Article 42 “Just and human conditions of work and maternity relief”.

Indian Constitution emphasised that women in India should contribute to the nation, both as citizens as well as individuals. Their involvement in nation-building goes beyond just their role as mothers, indicating that they have diverse roles and responsibilities within society. The Constitution recognizes that women’s contribution spans various social positions, roles, and activities,

highlighting their significance as active partners in the development of the nation.²⁰

5. The Domestic Violence Act, 2005: A Brief Analysis

The primary objectives of the Protection of Women from Domestic Violence Act, of 2005 are as follows:

- a) **Criminalization of Domestic Violence:** The Act strives to declare all forms of Domestic violence as illegal and subject to legal penalties.
- b) **Safeguarding Victims:** It seeks to protect individuals who experience domestic violence, ensuring their safety when such incidents occur.
- c) **Accessible Justice:** The Act aims to provide timely, cost-effective, and convenient justice to the aggrieved parties ensuring that legal processes are efficient.
- d) **Preventing Domestic violence:** The Act aims to prevent the occurrence of domestic violence through proactive measures and swift actions in case of violence.
- e) **Supporting Programs:** It mandates the implementation of comprehensive programs and initiatives to aid and rehabilitate victims of domestic violence, ensuring their recovery.
- f) **Raising Awareness:** It seeks to raise awareness within society about the issue of domestic violence, promoting understanding and prevention.
- g) **Accountability and Punishment:** It intends to hold perpetrators accountable for their actions by enforcing stringent punishments for committing domestic violence.
- h) **International Standard:** The act strives to align with international standards for preventing domestic violence, ensuring that legal provisions meet established norms.

The Protection of Women from Domestic Violence Act, of 2005 has multifaceted objectives, ranging from legal consequences for offenders to providing support for victims and raising awareness

²⁰ R. Dyal, *Bharat me Mahila Adhikar* 37 (Prabhat Prakashan. 1st edn., New Delhi, 2017).

within society. It aims to create a safer environment against the occurrence of domestic violence while ensuring justice for those affected. The following are the key features of the Protection of Women from Domestic Violence Act, 2005:

- **Rights to secure housing**²¹: Victims of Domestic Violence have the right to reside in their shared household. This includes protection from interference or disruption by other occupants.
- **Right to assistance from protection officers and service provider**²²: Victim can seek guidance and information about their rights and available relief from protection officer and service providers. They can also receive assistance in registering complaints and applying for relief²³.
- **Right to file complaints**: The Act allows victims to file complaints under section 498 of the Indian Penal Code, which addresses cruelty by husbands or relatives.
- **Right to protection**: Victims and their children have the right to protection against the act of domestic violence. They are also entitled to regain possession of their belongings, including stridhan, jewellery, and household items.²⁴
- **Right to special measures and orders**: The Act includes provisions to safeguard victims against specific dangers or threats they might face.
- **Right to medical assistance, shelter, counselling, and legal aid**: The Act ensures victims access to medical care, shelter, counselling and legal assistance.²⁵

²¹ The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 3.

²² *Ibid.* s. 4.

²³ *Ibid.* s. 5.

²⁴ *Id.* s. 18.

²⁵ *Id.* ss.6, 7, 9, 14.

- **Right to compensation:** Victims have the right to seek compensation for physical or mental injuries as well as monetary losses resulting from domestic violence.²⁶
- **Right to access information:** Victims are entitled to receive copies of their filed complaints, applications, medical reports, and any statements recorded by the authorities regarding domestic violence.²⁷
- **Simultaneous rights under IPC section 498A:** Victims have the right to simultaneously file complaints under section 498 A of the Indian Penal Code, which deals with cruelty by a husband or his relatives.

These rights collectively form the framework of protection provided by the Act to empower and support victims of domestic violence. The Act provides the following safeguard measures for the victim of domestic violence:

Protection order:

When a Magistrate receives an application indicating domestic violence has occurred or is likely to occur, they can issue a protection order after considering both parties' input and domestic incident report. This order, based on initial satisfaction with domestic violence, can prevent the respondent from various actions, including:

- a) engaging in domestic violence acts.
- b) assisting or encouraging domestic violence.
- c) entering the victim's workplace, school, and frequented places.
- d) attempting any form of communication, whether oral, written, electronic, or telephonic.
- e) disposing of shared assets or bank account without permission of the Magistrate.
- f) engaging in any other actions specified in the protection order.

²⁶ *Id.* s. 22.

²⁷ *Ibid.* s. 23.

The duty of the courts in deciding applications under the DV Act was clarified by the Supreme Court in the Krishna Bhattacharjee case.²⁸

The court's responsibilities include:

- a) Thoroughly examining the facts from various perspectives to determine if the respondent's plea to dismiss the aggrieved person's complaint is legally valid.
- b) The principle "justice to the cause is equivalent to the salt of the ocean" should be acknowledged. The court is obligated to uphold the truth, and justice shines through when it is served.
- c) Prior to rejecting an application outright, the court must ensure that the aggrieved person is not denied adjudication. This is particularly important given that the Domestic Violence Act is beneficial and assertively affirmative legislation designed to protect women's constitutional rights and prevent them from falling victim to any form of domestic violence.

6. Domestic Violence in India: An Analysis

The significance of family honor (Izzat) and societal expectations regarding the role of a good daughter-in-law can act as deterrents for women in sharing instances of domestic abuse beyond the confines of their homes. These cultural and societal norms create additional barriers that discourage women from seeking help or disclosing their experiences of abuse. The fear of damaging family reputation and the pressure to conform to established norms often contribute to the reluctance of women to open up about domestic violence. Consequently, these factors can further diminish the likelihood of seeking assistance or intervention in cases of abuse.²⁹ Domestic violence (DV) has a profound and devastating impact on the physical and mental health of women. The experiences of DV

²⁸ Krishna Bhattacharjee v. Sarathi Choudhury & Anr (2016) 2 SCC 705.

²⁹ Mahapatra N & Rai A, "Every cloud has a silver lining but... "pathways to seeking formal help and South-Asian immigrant women survivors of intimate partner violence" *Health Care for Women International*, 40(11), 1170–1196(2019).

are closely linked to prolonged trauma,³⁰ diminished self-worth, emotional distress, and severe consequences, including homicides and suicides.³¹ In India, a significant number of DV-related deaths have been reported, with the most frequently identified motives being dowry demands. Additionally, a history of domestic violence or harassment, along with family conflicts, are commonly cited factors contributing to these tragic outcomes. The toll of domestic violence extends beyond immediate physical harm, often leaving lasting emotional scars and contributing to a range of severe consequences, including loss of life.³²

In the past, domestic violence posed a significant danger to women's lives in India, primarily associated with the prevalent dowry system. Consequently, the initial legal measures taken in the country to address the violence resulting to "dowry death" were introduced as amendments to the Dowry Prohibition Act (1961). Later, through the inclusion of 304 B in the Indian Penal Code, any kind of violence related to a Dowry request made by the husband or in-laws was made a criminal offence.³³

Over the years, domestic violence has persisted as one of the most serious dangers faced by women even though it was recognized as a criminal offense under section 498 A of the (I.P.C) Indian Penal Code (Criminal Law Amendment Act,1983). To address this matter, a distinct civil law called "The Protection of Women from Domestic Violence Act, 2005 later emerged. This law was specially designed

³⁰ Campbell JC, Webster D, Koziol-McLain J, Block C, Campbell D, Curry MA, ... & Sharps P, "Risk factors for femicide in abusive relationships: Results from a multisite case-control study" 93 (7) *American Journal of Public Health*1089–1097 (2003).

³¹ Sabri B, Nnawulezi N, Njie-Carr V, Messing J, Ward-Lasher A, Alvarez C, & Campbell JC, "Multilevel risk and protective factors for intimate partner violence among African, Asian, and Latina immigrant and refugee women: Perceptions of effective safety planning interventions" 10 (4) *Race and Social Problems* 348–365 (2018).

³² *Ibid.*

³³ Dowry Prohibition Act 1961, Ministry of Women & Child Development, available at: <https://wcd.nic.in/act/dowry-prohibition-act-1961>(last visited on 23/08/2023)

to provide prompt assistance to women in a household who may experience mistreatment from their husbands and in-laws.³⁴ Today, instances of domestic violence remain prevalent throughout India.³⁵ In ancient India, women held important positions not just within the household but also within the broad societal context. However, in contemporary times, the issue of violence against women and girls has escalated to a worldwide outbreak. This type of violence encompasses various forms, all of which cause harm to individuals by individuals with biological family connections. The Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against women state that women should possess equal rights as men do, and they must be shielded from any form of discrimination.

According to the National Record Bureau (NCRB) report³⁶, there has been a 15.3 % increase in the rate of crime against women in 2021. The number of cases registered against women rose from 56.5 per lakh women population in 2020 to 64.5 in 2021. The data reveals a simultaneous rise in both the rate of registered cases against women and the number of crimes against women.

On the release of the NCRB data, specialists have emphasised the necessity for robust enforcement of laws in practical situations. Alongside individual authorities in the field, the Delhi Commission for Women (DCW) has also stressed the significance of governments addressing this issue seriously. Swati Maliwal, the Head of the DCW,

³⁴ Available at: https://www.orfonline.org/research/domestic-violence-and-womens-health-in-india-insights-from-nfhs-4/#_edn33 (last visited on 22/10/2023).

³⁵ Violence against women prevalence estimates 2018", *World Health Organization*, Geneva (2021), Violence against women prevalence estimates 2018, available at: <https://apps.who.int/iris/bitstream/handle/10665/341338/9789240026681-eng.pdf> (last visited on 22/10/2023).

³⁶ Available at: <https://www.clearias.com/ncrb-report-2021/#:~:text=Recent%20statistics%20show%20that%20crime,incident%20per%201%20lakh%20population> (last visited on 22/10/2023).

pointed out the time has come to transform these commitments into a tangible outcome.³⁷

A special observation that the significant majority of female suicide victims are housewives emphasizes the presence of an oppressive patriarchal structure within society. According to the NCRB, out of the 45026 women who died by suicide, 23178 were housewives, accounting for more than half of the total. The report additionally indicated that a larger proportion of female suicide cases were linked to marital problems, particularly those related to dowry, as well as issues of impotence and infertility.³⁸ During the fiscal year 2020-21, the National Commission for Women (NCW) recorded 26,513 complaints related to domestic violence from women, making a rise of 25.09 % in comparison to the 20,309 complaints lodged in the preceding year 2019- 20.³⁹

In India, the National Family Health Survey (NFHS-5) conducted from 2019 to 2021, findings revealed that 32% of ever-married women in India reported encountering physical, sexual, or emotional violence from their current or former husbands.⁴⁰ Notably, the prevalence of such violence varied significantly across different states and union territories, with the southern state of Karnataka registering the highest prevalence at 48%.⁴¹ This data

³⁷ Available at: <https://www.outlookindia.com/national/crimes-against-women-rose-by-15-per-cent-in-2021-experts-say-laws-need-to-be-implemented-strongly-on-ground-news-219995>(last visited on 22/10/2023).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Available at: <https://www.womensweb.in/2022/05/nfhs-5-domestic-violence-latest-figures-show-not-much-has-changed-may22wk4sr/#:~:text=The%20Reported%20Number!-,Latest%20NFHS%2D5%20Data%20Shows%2030%25%20of%20Indian%20Women%20Face,stuck%20in%20this%20feel%20fear.> (last visited on 22/11/2023).

⁴¹ International Institute for Population Sciences (IIPS) and ICF. 2022. *National Family Health Survey (NFHS-5), 2019-21: India: IIPS.* Available at: <https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf>(last visited on 22/11/2023).

underscores the regional variations in the experiences of domestic violence among women in India.

7. Recent Judgments by the Apex Court Related to Domestic Violence: Legal Issues and Challenges

There is a significant ruling held in the case of **Ajay Kumar v. Lata Sharuti**⁴² where the Supreme Court consisting of Justice Dr. Dhananjay Y Chandrachud and Hemant Gupta, delivered a verdict. The court clarified, based on the proviso in section 2(q) of the Act, an aggrieved wife or woman in a relationship similar to marriage can file a complaint against a relative of the husband or male partner. This interpretation expands the scope for complaints beyond just the husband or male partner. This case was reported on April 08 (2019) 15 SCC 352.

Recently, Supreme Court addressed a significant query concerning the interpretation and application of the Protection of Women from Domestic Violence Act, 2005. The 3 Judge Bench, comprising Justice Ashok Bhushan, R Subhash Reddy, and M.R Shah, rendered a verdict in the case titled, **Satish Chandra Ahuja v. Sneha Ahuja**.⁴³ The judgment was issued on October 15, 2020. In this case, the court examined the matter of the right of residence in a shared household under the DV Act. In the case of Smt. **Haimanti Mal v. State of West Bengal** 2019,⁴⁴ the petitioner approached the court seeking relief under sections 18, 19, 20, and 22 of the Domestic Violence Act, 2005. The Learned Magistrate Declined the wife's appeal for financial assistance but partially accepted her plea in the contested matter. The court directed the opposite party to provide a monthly monetary relief of Rs.400/- to each of the two minor children.

In the case of **Almesh Devi v. Jaipal** 2019,⁴⁵ the learned Judicial Magistrate 1st class in Narnaul examined the provisions of the

⁴² 2019 SCC online SC 726.

⁴³ AIR ONLINE 2020 SC 784.

⁴⁴ <https://www.legalserviceindia.com/legal/article-3954-domestic-violence.html> (last visited on 25/11/2023).

⁴⁵ *Ibid.*

relevant Act. Based on the information presented, the Magistrate concluded that there was insufficient evidence from the witnesses on record to establish the claim that the respondents and the petitioner lived together in the same household, or that there were no allegations of any violence occurring within the context of the shared household.

7.1 Gaps in Legislation and Legal Issues

While the Protection of Women from Domestic Violence Act, 2005 aims to secure justice and safeguard the rights of women who have experienced domestic abuse, over time, it becomes evident that the Act's effectiveness is unsatisfactory. Domestic violence cases persist due to a lack of awareness in the country.

In the case of **S.R. Batra v. Taruna Batra**,⁴⁶ a significant dilution of domestic violence law occurred when the Supreme Court ruled that a deserted wife could not claim residence in the matrimonial home if it was not owned or rented by the husband. This contradicted the Act's definition of "shared household". Despite this trial courts sought innovative arguments to distinguish their cases from Batra Judgement.⁴⁷

Similarly, the Supreme Court made a significant error in the case of **D Veluswamy v. D Patchaimal**⁴⁸ by stating that only legally married individuals could avail themselves of the Domestic Violence law, excluding live-in partners from its scope. This decision overlooked the well-established law outlined in section 2(f), which includes relationships "in the nature of marriage" within the definition of a domestic relationship.

In the case of **Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade**,⁴⁹ the court addressed the question of whether females are encompassed as relatives of the husband under section 2(q) of the Act. The court affirmed that females are indeed considered relatives of the husband, clarifying that the term "relative" in

⁴⁶ S.R. Batra v. Taruna Batra, 2007 3 SCC 169.

⁴⁷ (Badrinath, 2011).

⁴⁸ Veluswamy v. D Patchaimal, (2010)10 SCC 469.

⁴⁹ 2011.

section 2(q) does not impose any restriction on the inclusion of females, despite the absence of the term “female” in the proviso of the section.

In a ground-breaking decision, the Supreme Court, in the case of **Hiral Harsora v. Kusum Harsora**, expanded the reach of the Domestic Violence Act by eliminating the term “adult male” from it. This ruling opens the avenue for legal action against women and even minors for perpetrating violence and harassment against female relatives. The apex court directed the removal of these two words from section 2(q) of the Domestic Violence Act of 2005.⁵⁰

7.2 Lack of Adequate Safeguards for Men against False Complaint

In addition to serving as instruments for providing relief to abused women, the Domestic Violence Act of 2005 and section 498-A of the Indian Penal Code (IPC) have been extensively abused by women to harass their husbands. Although the Supreme Court has emphasized that the mere misuse of the law does not inherently invalidate the provision, yet, it has acknowledged the substantial instances where false complaints were lodged with the sole intention of settling personal vendettas.⁵¹

In the case of **Sumana Bhasin v. Neeraj Bhasin**, the Metropolitan Magistrate at Saket Court, New Delhi imposed a penalty of INR 1,00,000 on the complainant woman. This action was taken due to her falsification of allegations and deliberate suppression of facts to harass her husband and in-laws.⁵²

In another landmark case,⁵³ the court unequivocally stated that there was rampant misuse and exploitation of legal provisions, reaching a point where it posed a threat to the very foundation of marriage and proved detrimental to the overall health of society. The court emphasized the need for authorities and lawmakers to review the situation and legal provisions to prevent such misuse from occurring. The misuse of the section and related Acts persists

⁵⁰ Hiralal Harsora v. Kusum Harsora, AIR 2016 SC 4774.

⁵¹ Sushil Kumar v. Union of India (2005) 6 SCC 281.

⁵² Sumana Bhasin v. Neeraj Bhasin, MANU/SC/0178/2010.

⁵³ Savitri Devi v. Ramesh Chandra & Ors ,2003.

and is escalating rapidly. In numerous instances, women have been observed making false accusations against their husbands under section 498-A of the Indian Penal Code, 1860, driven by motives of revenge or personal animosity or to distance themselves from their in-laws. Educated women resorting to such tactics are aware that offences under this section are both cognizable and non-bailable.⁵⁴ The Protection of Women from Domestic Violence Act, 2005, seems incomplete and exhibits several loopholes that primarily cater to baseless allegations by women, potentially resulting in the unjust punishment of innocent men. It contradicts the fundamental principle that an accused is presumed innocent until proven guilty. In such cases, the process to defend and establish innocence is severely restricted.⁵⁵

7.3 Other Loopholes and Challenges

The authorities are excessively empowered due to the wide powers granted to protection officers. These officers act as intermediaries between victims and the court. They receive applications, make incident reports (DIR), and support Magistrates in their responsibilities. This setup can lead to gender bias and overwhelming workloads for protection officers. Additionally, Service Providers can also make incident reports (DIR) if requested by victims, further creating complications in their roles. In reality, their responsibilities are not clear and they lack adequate training to handle the delicate matter of domestic violence. Even judges are often unfamiliar with their roles, power, and duties. Judges, particularly in matrimonial cases, should receive proper training. The police also display apathy towards distressed women, necessitating a change in their perspective and training. All legal entities involved in domestic violence cases should undergo education and sensitization to effectively manage the caseload. Domestic Violence Act raises numerous unanswered questions within its provisions. For instance, Government hospitals, burdened

⁵⁴ <https://legalupanishad.com/domestic-violence-in-india/>(last visited on 28/10/2023).

⁵⁵ *Ibid.*

by economic pressure and heavy workloads, often fail to aid victims promptly. This prompts the query: should victims seek medical assistance from public or private institutions, and who should cover the cost? According to section 27, the Magistrate can issue protective orders within their jurisdiction, but the execution of this order remains unspecified. The Act introduces the concept of camera proceedings in section 16, which could potentially be exploited for personal gain. Section 31 deems breach of protection orders offenses punishable by imprisonment or a fine, and section 31 (3) permits charges under related laws. Section 32 designates breach of protection orders as cognizable and non-cognizable. This causes a conflict when a one-year imprisonment penalty, as in the case of section 498 A of the Indian Penal Code, typically results in a different trial procedure. This creates confusion in interpretation.

In many cases, it has been observed that women perceived the police's behaviour and action as uncaring. Instances were noted where police officials declined to file cases and refrained from involvement in the victims' family matters. Instead, they pressured female victims to prioritize upholding their marriage. Sometimes, complaints are encountered by uncooperative police at the station due to a lack of clarity about the necessary steps, arising from the absence of well-defined procedures in the Act which causes delays in resolving such cases.

It has also been observed that there is inadequate enforcement of court rulings, particularly regarding maintenance orders in cases of domestic violence. Female victims often need to return to the court when maintenance orders issued by the respected court are violated.

In some cases, it has been found that even when evidence and situation demand, yet judges exhibited reluctance in granting *ex-parte* orders. Therefore, it is anticipated that courts and judges will assume a more pragmatic role.

It is also evident that the law enforcement apparatus still prioritizes family welfare over women's rights, often attempting to preserve the sanctity of marriage through arbitration and counseling.

Marriage, being a valued social institution, is treated with reverence. Due to prevailing gender role stereotypes in society, women victims can be burdened with the responsibility of keeping the family intact. Legal entities often urge the victim to accept their situation, regardless of the extent of violence they have suffered.

8. Conclusion

India, as the second most populous nation globally, faces a multitude of challenges, such as dowry death and domestic violence, demanding immediate attention. To address these issues, the Indian government introduced the “The Protection of Women from Domestic Violence Act, 2005” aiming to promote equality, and justice and safeguard women from Domestic harassment. Unfortunately, the lack of efficient enforcement mechanisms has undermined the intended purpose of the act. Criticisms have arisen due to shortcomings in the Act, including a lack of a neutral gender perspective.

The current law is significantly limited by its complete neglect of safeguarding men’s rights in domestic relationships. There are neither established mechanisms to protect men from the potential misuse of domestic violence laws nor any substantial legal framework to shield men from domestic violence, an unspoken reality of our time.

Therefore, there is an urgent need to establish a balance in domestic violence laws to ensure gender justice prevails in our country and it is also imperative to establish reformative measures to ensure the successful implementation and achievement of the realization of the Act’s aims.

9. Suggestions

The hallmark of any civilized society is Gender Equality. While it is entirely justified to take measures for women’s protection, such actions should not compromise the principle of equality. Although the government is making efforts to address domestic violence, there are apparent shortcomings in its approach. The existing

domestic violence laws exhibit various flaws that appear to infringe upon the principles of natural justice and provisions of other significant laws. There are some suggestions given here by the author for adequate implementation of the DV Act, 2005:

- A fundamental change in the way men and women perceive each other is essential to combat the prevalence of violence against women. India's deeply rooted social structure is traditionally patriarchal, resulting in a society heavily dominated by males. This power imbalance is the primary catalyst for the acts of violence.
- Domestic violence remains categorized as a private family matter in our nation, discouraging intervention from relatives, outsiders, and even the state. The successful enforcement of any legislation requires solid public consensus and approval through democratic processes.
- The existing legal framework is insufficient in addressing the issue of domestic violence. The law should ensure equal protection for both men and women to prevent potential misuse by women.
- The government and NGOs need to generate extensive awareness about the Domestic Violence Act to ensure that rural communities are informed about its provisions. This effort aims to encourage women from all segments of society to step forward and avail themselves of the remedies provided by this Act.
- To ensure the Act's rigorous enforcement, a stringent obligation is imposed on officials and relevant stakeholders. Their responsibility lies in ensuring effective implementation. Eradicating gender bias, challenging traditional patriarchal norms, and reducing male authority are crucial components.
- Mandatory gender perspective training is vital, involving police, service providers, medical professionals, protection officers, and especially the Magistrates. This training will alter the patriarchal mindset.

- Before litigation, expert counselling should be offered to the aggrieved parties. This support aims to restore their self-worth, provide emotional aid, and help them decide whether to initiate legal proceedings.