

# Domestic Violence Laws In India And Their Effectiveness

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## Abstract

Domestic violence is a pervasive issue that affects millions of individuals worldwide, and India is no exception. It is one of the most common crimes against women which are intricately linked to the continuation of patriarchy system that gives power and control to men rather than women. Domestic violence is committed against women not only in their matrimonial houses but also in live-in relationships. In India, where women are held in high regard, numerous instances of violence against women persist. Almost every household in the country experiences some form of domestic abuse with women enduring physical, psychological and economic mistreatment. Domestic violence is recognised as a major hindrance in the path of women empowerment and also distorts the democratic set up of the country. Domestic violence against women is a widespread social issue, highlighting the need to enhance the legal framework to protect victims and ensure justice. India has specifically legislated Domestic Violence Act 2005 to reduce the violence against women. Apart from the PWDVA, several other laws indirectly address domestic violence in India; however the implementation and enforcement of these laws remain under scrutiny. Socio-cultural norms, insufficient awareness and institutional barriers contribute to the gap between law and their effective implementation. This paper examines the domestic violence laws in India, focusing on the Protection of Women from Domestic Violence Act, 2005 (PWDVA), its implementation, and its effectiveness. It also explores the socio-cultural challenges that hinder the effectiveness of these laws and provides recommendations for improving the legal framework and its enforcement. To reach to the goal researcher has adopted doctrinal method for data collection.

**Keywords** Constitutional provisions, Domestic violence, Implementation challenges, patriarchy, women empowerment

## Introduction

Domestic violence is a significant social issue that transcends boundaries of age, ethnicity, and economic status. In India, domestic violence has deep-rooted cultural and societal dimensions, making it a complex problem to address. The Indian government has enacted various laws to protect individuals, particularly women, from domestic violence, with the Protection of Women from Domestic Violence Act, 2005 (PWDVA) being the most prominent.

In India Domestic violence often manifests in gendered forms, with women and children being the most vulnerable victims. The patriarchal social structure, deeply entrenched gender norms, and systematic inequalities contribute to the prevalence and perpetuation of domestic violence. Women in particular face significant barriers in reporting abuse due to social stigma, fear of retribution, economic dependence and inadequate support system.

In ancient India, which may be called the Aryan age of History, women were respected as mothers, sisters and daughters as Manu said in the Code of Manusmriti that *yatra naaryastu*

*poojyanti ramante tatra devtah*,<sup>1</sup> which means that where women are respected, divine graces adore that home. But it has been observed that it was theoretical principle and was hardly in practice. There are many instances in Hindu Scriptures like Ramayana, Mahabharata and Muslim text of theology and Shariyat showing that there has been no practical equality between man and woman in society.

In contemporary times, the trend regarding the status of women is changing in every society, including India. Significant efforts have been made to ensure women are given equal status to men.

## Legal Framework

### Constitutional Provisions

The history of suppression of women in India is very long. Indian women “have suffered and are suffering discrimination in silence. Self – sacrifice and self- denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, inequality and discrimination”<sup>2</sup>

The makers of the Constitution were well aware of the discrimination and unequal treatment given to women since time immemorial. So they included some general as well as specific provisions for the upliftment of the status of women. Article 15 & 16 of the Constitution of India are crucial for women’s protection as they enshrine principles of equality and non-discrimination.

Article 15 of the Indian Constitution clearly states that:

1) The State shall treat all citizens equally and shall not discriminate based solely on religion, race, caste, sex, place of birth, or any combination of these factors. 2) No citizen shall face any limitations, restrictions, or penalties regarding access to shops, public restaurants, hotels, or entertainment venues, nor the use of wells, tanks, bathing areas, roads, and public places funded or maintained by the State or intended for public use, based solely on religion, race, caste, sex, place of birth, or a combination thereof. The article further provides that, nothing in this article shall prevent the State from making any special provision for women and children.<sup>3</sup> Article 16 ensures that women have equal access to public employment opportunities and also prevents discrimination against women in government jobs, promoting gender equality in the workforce.

These articles have led to various laws and policies aimed at protecting and empowering women, such as reservations in local governance bodies, maternity benefits and workplace protections against harassment. The judiciary has interpreted these articles to advance women’s rights, ensuring laws and government actions align with the constitutional mandate for equality and protection.

The Directive Principles of State policy contained in part IV of the Constitution of India provides many directives to the State to apply these principles in making laws in the governance of the nation. These Directive Principles are explicitly intended to improve the status of women and for their protection. There are many other articles like Article 40, 243D & 243T provides for the reservation of seats for women in Panchayats and Municipalities. So as to make them empowered.

By the 42<sup>nd</sup> Amendment of the Indian Constitution in 1976, one Article 51-A, which outlines the fundamental duties of citizens, includes a provision (Article 51-A (e)) that emphasizes the responsibility of every Indian citizen to foster harmony and a sense of brotherhood among all

<sup>1</sup> Women & Law- with law relating to children in India by Manjula Batra

<sup>2</sup> Justice K. ramaswamy in Madhu kishwar vs. state of Bihar [(1996)5 SCC 148]

<sup>3</sup> Law relating to women by Dr. S. R. Myneni

people, regardless of their religious, linguistic, regional, or sectional differences. It also encourages the rejection of practices that harm the dignity of women.”<sup>4</sup>

## **The Protection of Women from Domestic Violence Act, 2005**

The PWDVA is a comprehensive law aimed at protecting women from domestic violence. The Act provides various reliefs to the victims, including protection orders, residence orders, monetary relief, custody orders, and compensation orders. It also mandates the appointment of Protection Officers and the establishment of shelter homes and medical facilities for the victims.

The Act defines domestic violence in broad terms, encompassing physical, sexual, verbal, emotional and economic abuse. It recognises that violence can occur within various domestic relationships, including those involving spouses, partners and family members. The Act empowers the Magistrate to issue protection orders to prevent the abuser from committing further acts of violence, contracting the victim’s place of residence or workplace. To ensure the safety and housing security of the victim, the Act allows for residence orders. These can direct the abuser to leave the shared household or ensure that the victim is not evicted from the residence. Victims can seek monetary relief to cover expenses incurred due to the violence, including medical costs, loss of earnings, and maintenance.

The Act mandates the establishment of support services, including medical facilities, shelter homes, and counselling, to assist victims of domestic violence. Designated protection officers are appointed to assist victims in filling complaints, obtaining protection orders, and accessing support services.

The PWDVA is a progressive step towards ensuring the safety, dignity and rights of women in India, offering legal recourse and support systems to address and prevent domestic violence.

## **Other Relevant Laws**

Apart from the PWDVA, several other laws indirectly address domestic violence in India:

1. Indian Penal Code (IPC), 1860- The Indian Penal Code contains several provisions aimed at protecting women from domestic violence and addressing various forms of abuse. These provisions provide a legal framework for prosecuting offenders and ensuring justice for victims. Key IPC provisions relevant to the protection of women from domestic violence include:

Section 498A addresses cruelty by a husband or his relatives towards a woman. It covers physical and mental harassment, including demands for dowry. The offense is non-bailable and non-compoundable, ensuring strict legal action against the perpetrators. Section 304 B deals with dowry deaths. If a woman dies under questionable circumstances within seven years of marriage, and it can be established that she experienced cruelty or harassment connected to dowry demands, her husband and his family may be held responsible. Section 306 pertains to abetment of suicide. If a woman is driven to suicide due to harassment or cruelty by her husband or his relatives, they can be charged under this provision. Section 509 addresses acts intended to insult the modesty of a woman. It includes words, gestures, or acts that intrude upon a woman's privacy. Section 354 covers assault or criminal force used with the intent to outrage a woman's modesty. This provision aims to protect women from physical and sexual assault. Section 375 and 376 defines and prescribe punishment for rape. They ensure severe penalties for sexual violence against women, including within marriage under specific circumstances. Section 313 to 316 relate to offenses against pregnant women, including causing miscarriage without consent, infanticide, and related crimes. They aim to protect women from forced abortions and violence during pregnancy.

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<sup>4</sup> Introduction to The Constitution of India by Durga Das Basu

These provisions of the IPC complement the Protection of Women from Domestic Violence Act, 2005, by providing additional legal mechanisms to address various forms of violence and abuse against women. Together, they form a comprehensive legal framework to safeguard women's rights and ensure their protection from domestic violence.

2. Dowry Prohibition Act, 1961- This Act aims to combat the dowry system, which is often linked to domestic violence. The Act explicitly prohibits the giving, taking, or demanding of dowry. It applies to both parties involved in the marriage, their parents, and other relatives. The Act prescribes stringent penalties for those who give or take dowry. Violators can face imprisonment for a minimum of five years and a fine of up to Rs. 15,000 or the amount of the dowry, whichever is higher. Demanding dowry is also punishable with imprisonment of six months to two years and a fine of up to Rs. 10,000.

3. Criminal Procedure Code (Cr.P.C), 1973- the Cr.P.C includes certain sections that can be invoked in cases of domestic violence:

Section 125 provides for maintenance of wives, children, and parents. A woman can claim maintenance from her husband if she is unable to maintain herself. Section 154 relates to the registration of First Information Reports (FIR). Complaints of domestic violence can be registered under this section. Section 156(3) allows a magistrate to direct the police to investigate a complaint, including those related to domestic violence. Section 190 allows a magistrate to take cognizance of an offense upon receiving a complaint, including those related to domestic violence. Section 200 deals with the examination of the complainant by the magistrate when a private complaint is filed. Section 202 allows a magistrate to postpone the issue of process and inquire into the case himself or direct an investigation by a police officer. Section 209 provides for the commitment of cases to the Court of Session when the offense is exclusively triable by it. Section 309 relates to the power of the court to adjourn proceedings, which can be used to ensure the safety of a victim of domestic violence during the trial. Section 498A of the Indian Penal Code (IPC) while not part of the Cr.P.C, it is often invoked in cases of domestic violence. It deals with cruelty by a husband or his relatives, and the Cr.P.C provisions facilitate the procedural aspects of addressing these complaints.

These sections of the Cr.P.C provide the procedural framework to support the enforcement of laws related to domestic violence and ensure that victims have access to justice. The primary substantive law, however, remains the PWDVA, which specifically addresses various forms of domestic violence and provides civil remedies such as protection orders, residence orders, and monetary relief.

### **The National Commission for Women**

The National Commission for Women Act, 1990, established the National Commission for Women (NCW) in India, with a mandate to safeguard and promote the interests of women. Although the NCW Act itself does not directly provide specific provisions for the protection of women from domestic violence, the commission plays a pivotal role in addressing such issues.

The NCW advises the government on policy matters related to women's issues, including domestic violence. It reviews existing laws and suggests amendments to ensure they adequately protect women's rights. The NCW has the authority to investigate and review issues concerning the protections granted to women under the Constitution and various laws. This includes cases of domestic violence. The NCW receives complaints from women facing domestic violence and takes appropriate steps to address these issues. It can refer cases to the appropriate authorities and ensure that legal action is taken.

### **Implementation and Challenges**

Despite the robust legal framework, the implementation of domestic violence laws in India faces several challenges:

1. Lack of Awareness- Many women are unaware of their legal rights and the protections available under the PWDVA.
2. Societal Norms and Stigma- Deep-rooted patriarchal norms and the stigma associated with reporting domestic violence deter many victims from seeking help.
3. Ineffective Enforcement- Law enforcement agencies often lack the training and sensitivity required to handle domestic violence cases effectively.
4. Judicial Delays-The Indian judicial system is plagued by delays, which can discourage victims from pursuing legal action.
5. Inadequate Support Services- There is a scarcity of shelter homes, counselling services, and legal aid for victims of domestic violence.

### Effectiveness of Domestic Violence Laws

The effectiveness of domestic violence laws in India can be assessed through various parameters:

1. Increase in Reporting- There has been an increase in the reporting of domestic violence cases since the enactment of the PWDVA, indicating greater awareness and willingness to seek legal recourse.
2. Judicial Precedents- Several landmark judgments have strengthened the interpretation and enforcement of the PWDVA, providing better protection to victims.
3. Government Initiatives- Various government initiatives, such as help lines, awareness campaigns, and training programs for law enforcement personnel, have contributed to better implementation of the laws.

However, the overall impact remains limited due to the aforementioned challenges. Many victims still do not receive timely and adequate relief, and societal attitudes towards domestic violence remain largely unchanged.

### Recommendations

To enhance the effectiveness of domestic violence laws in India, the following measures are recommended:

1. Awareness Campaigns- Conduct widespread awareness campaigns to educate women about their legal rights and the provisions of the PWDVA.
2. Training for Law Enforcement- Implement comprehensive training programs for police officers and judicial officers to handle domestic violence cases with sensitivity and efficiency.
3. Strengthening Support Services- Increase the number of shelter homes, counselling centres, and legal aid services to provide holistic support to victims.
4. Fast-Track Courts- Establish fast-track courts to expedite the adjudication of domestic violence cases and ensure timely justice for victims.
5. Community Engagement- Engage community leaders and organizations to challenge patriarchal norms and reduce the stigma associated with reporting domestic violence.

### Conclusion

In conclusion, domestic violence laws in India have evolved significantly over the years to provide better protection and support for victims. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents a significant advancement in tackling different forms of domestic violence, providing extensive civil remedies and support systems. Complementary provisions within the Indian Penal Code (IPC), such as Section 498A, and procedural safeguards outlined in the Code of Criminal Procedure (Cr.P.C) further reinforce the legal framework, ensuring that victims have access to justice and protection. The NCW's role complements the PWDVA by ensuring that women's issues are highlighted at the national level and that appropriate measures are taken to protect and promote women's rights.

Together, Article 15 & 16 forms the Constitutional foundation for gender equality and women's protection in India, ensuring that women receive fair treatment and opportunities across different spheres of life. The domestic violence laws in India, particularly the PWDVA, provide a strong legal framework to protect women from abuse. However, the effectiveness of these laws is hindered by various socio-cultural and systemic challenges. Addressing these challenges through awareness, training, improved support services, and community engagement is crucial to ensure that the laws serve their intended purpose and provide meaningful protection to victims of domestic violence.

Despite these advancements, challenges remain in the effective implementation and enforcement of these laws. Issues such as societal stigma, lack of awareness, and inadequate training of law enforcement personnel hinder the full realization of legal protections. Continuous efforts are needed to address these barriers through public education, capacity-building programs for law enforcement, and stronger institutional support systems.

Efforts to combat domestic violence in India require a multifaceted approach, including legal reforms, societal change and enhanced support systems for victims. Education and awareness campaigns are crucial in challenging and changing the deep seated cultural norms that condone violence against women. Additionally strengthening legal mechanisms, improving the responsiveness of law enforcement, and providing accessible support services can empower victims to seek justice protection. By fostering a more supportive environment and enhancing the effectiveness of existing laws, India can make significant strides in combating domestic violence and ensuring the safety and dignity of all individuals.

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