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Domestic Violence in India: A critical analysis of the Protection of Women from Domestic Violence Act 2005

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Abstract: Domestic violence remains a pervasive and deeply entrenched social problem in India, cutting across class, caste, religion, and geography. The enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) marked a significant shift in the legal framework by recognizing domestic violence as a human rights violation rather than merely a private family matter. This research paper critically analyzes the scope, objectives, and implementation of the Act, highlighting its progressive features such as a broad definition of domestic violence, inclusion of emotional, economic, and sexual abuse, and provision of civil remedies like protection orders, residence rights, and monetary relief.

The domestic sphere, traditionally idealized as a sanctuary of safety and nurturance, is frequently the site of profound systemic violence. In India, domestic violence is not merely a collection of isolated incidents but a structural manifestation of gender-based discrimination and patriarchal dominance. For decades, the Indian legal system viewed marital discord through the lens of "private matters," leaving women with the binary choice of enduring abuse or pursuing rigorous criminal prosecution under Section 498A of the IPC now Section 85 of BNS (cruelty by husband or relatives).

The researcher had adopted the Doctrinal method of study. This approach entails a thorough analysis and review of all existing literatures, court decisions, and statutes that are pertinent to the law of Domestic Violence. Based on the legislative framework of the Indian law researcher discovered that India is incorporating environmental factors into the Domestic Violence in India. In ensures protection to women and promote equitable growth to women's.

Key words: Domestic Violence, PWDVA 2005, Women's Rights, Indian Judiciary, Family, Suggestions.

1. Introduction– Domestic violence refers to any form of abuse physical, emotional, sexual, or economic within a domestic relationship. In India, it is deeply rooted in patriarchal traditions and gender inequality. According to reports by the National Crime Records Bureau, crimes against women, particularly domestic violence, have shown alarming trends in recent years.

The legal recognition of domestic violence as a human rights issue marks a significant shift from viewing it as a private matter to a public concern requiring state intervention.

Domestic violence remains a pervasive human rights violation in India, transcending socio-economic, religious, and regional boundaries. The enactment of the Protection of Women from Domestic Violence Act (PWDVA), 2005, marked a paradigm shift in the Indian legal landscape by recognizing domestic abuse not merely as a criminal offense, but as a civil liberty issue requiring immediate relief and protection. This research paper provides a comprehensive critical analysis of the PWDVA, evaluating its efficacy, implementation challenges, and legal nuances nearly two decades post-inception.¹

The analysis begins by examining the Act's expansive definitions, specifically its inclusion of "domestic relationship" and "shared household," which extended protection beyond married women to include live-in partners, mothers, and sisters. It further scrutinizes the four-fold classification of abuse: physical, sexual, verbal/emotional, and economic.

In this backdrop the present research paper will analyze the followings.

- (i) To examine the meaning and definition of domestic violence act.
- (ii) To analyze the historical development in domestic violence act.
- (iii) To examine the legal Framework on domestic violence in India.
- (iv) To examine the basic schemes of domestic violence act and Bhartiya Nyaya Sanhita.
- (v) To examine the implementing machinery under domestic violence act.
- (vi) To examine the International Safeguard regarding under Domestic Violence Act.
- (vii) Concluding Observation and Agenda for Change.

2. Meaning and Definition of Domestic Violence Act- (A) Meaning of Domestic Violence Act:

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a social welfare law enacted to protect women from violence occurring within the domestic sphere. It gives a legal definition and recognition to domestic violence and provides remedies for women who face abuse from family members or persons in a domestic relationship.

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Under this Act, domestic violence is not limited to physical harm; it includes physical, sexual, verbal, emotional, and economic abuse. The law applies to women who are in relationships such as marriage, live-in relationships, or family relations, and who share or have shared a household with the respondent.

In simple terms, the Act means recognizes domestic violence as a violation of women's rights and dignity; civil remedies like protection orders, residence rights, monetary relief, custody orders, and compensation also aims to ensure immediate and effective protection to women without necessarily requiring criminal proceedings at the initial stage.²

Thus, the PWDVA, 2005 is a comprehensive legal framework designed to safeguard women from abuse within the home and to promote their right to live with dignity and security. Research paper 21 of the Constitution of the India provides the framework to protect who are suffering from Domestic Violence 2005.

(B) Definition of Domestic Violence (Section 3)- Under the Act, domestic violence includes any act, omission, or conduct of the respondent that harms or injures the woman. It covers:

1. Physical Abuse:

- (i) Causing bodily pain, harm, or danger to life
- (ii) Assault, criminal intimidation, or use of force

2. Sexual Abuse:

- (i) Any conduct of a sexual nature that abuses, humiliates, or violates dignity

3. Verbal and Emotional Abuse:

- (i) Insults, humiliation, name-calling
- (ii) Accusations regarding character or morality
- (iii) Threats or mental harassment

4. Economic Abuse:

- (i) Depriving financial resources
- (ii) Not providing money for maintenance
- (iii) Restricting access to property or assets

In simple terms the act defines domestic violence as any form of abuse-physical, emotional, sexual, or financial by a person within the household that harms a woman's well-being or dignity. If any type of the violence is caused to women in her house hold life. Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.³

3. Historical Development in Domestic Violence Act- The evolution of laws addressing domestic violence in India reflects a gradual shift from viewing such abuse as a private family matter to recognizing it as a serious violation of human rights requiring state intervention.

A. Pre-Legislative Phase (Before 1980s): Traditionally, domestic violence was largely ignored by the legal system and treated as a personal or familial issue. Women had very limited legal remedies, mostly confined to general criminal provisions under the Indian Penal Code, 1860, which were not specifically designed to address domestic abuse within households.

B. Emergence of Women's Rights Movement (1980s–1990s): During the 1980s, increasing incidents of dowry deaths and cruelty against married women led to strong activism by women's groups. This resulted in significant legal reforms:

- (i) Introduction of Section 498A IPC to penalize cruelty by husband or his relatives.
- (ii) Enactment of the Dowry Prohibition Act, 1961, strengthened through amendments.

However, these laws were primarily criminal in nature and did not provide immediate civil relief such as shelter, protection, or financial support to victims.

C. International Influence and Policy Shift: India's commitment to international conventions, especially the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), influenced the recognition of domestic violence as a human rights issue. This encouraged the need for comprehensive legislation focusing on protection and prevention.

D. Enactment of the Protection of Women from Domestic Violence Act, 2005: A major milestone was the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA), which came into force in 2006. This Act marked a paradigm shift by:

- (i) Providing a broad and inclusive definition of domestic violence (physical, emotional, sexual, verbal,



and

economic abuse).

- (ii) Recognizing relationships beyond marriage, including live-in relationships.
- (iii) Offering civil remedies such as protection orders, residence rights, monetary relief, and custody.
- (iv) Establishing institutional mechanisms like Protection Officers and Service Providers.

E. Post-Enactment Developments and Judicial Interpretation: After its implementation, courts have expanded and clarified the scope of the Act. Judicial decisions have strengthened women's rights to residence, protection, and dignity under Research paper 21 of the Constitution of India. The judiciary has also addressed ambiguities regarding live-in relationships and the extent of protection under the Act.

4. Legal Framework on Domestic Violence in India- The legal framework addressing domestic violence in India is primarily built upon two important statutes: the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and the Bharatiya Nyaya Sanhita, 2023 (BNS). While both deal with issues arising from violence within domestic settings, their schemes, objectives, and mechanisms are fundamentally different yet complementary. The PWDVA is a civil law aimed at providing immediate relief and protection to victims, whereas the BNS is a criminal law focused on defining offences and prescribing punishment.

A. Basic Scheme of the Protection of Women from Domestic Violence Act, 2005: The Protection of Women from Domestic Violence Act, 2005 represents a progressive shift in Indian law by recognizing domestic violence as a violation of human rights and not merely a private family matter. Its scheme is primarily remedial and preventive.

One of the central features of the Act is its broad definition of domestic violence. Unlike traditional criminal laws that focus mainly on physical harm, this Act includes physical, emotional, verbal, sexual, and economic abuse. This inclusive definition acknowledges the multifaceted nature of abuse faced by women in domestic relationships. For instance, deprivation of financial resources or constant humiliation also falls within the ambit of domestic violence.⁴

Another important feature is the speedy and simplified procedure. Applications under the Act are filed before Magistrates, and the law aims to provide quick relief without the complexities of prolonged litigation. However, while the Act is primarily civil in nature, it incorporates a criminal element: breach of protection orders is punishable as a criminal offence. This ensures enforceability and deterrence.

Overall, the scheme of the PWDVA is victim-centric, focusing on protection, rehabilitation, and empowerment rather than retribution.

B. Basic Scheme of the Bharatiya Nyaya Sanhita, 2023: The Bharatiya Nyaya Sanhita, 2023, which replaces the Indian Penal Code, 1860, represents the criminal law framework of India. Its scheme is fundamentally punitive, aiming to define crimes and prescribe penalties.

In the context of domestic violence, the BNS does not provide a single comprehensive definition like the PWDVA. Instead, it addresses various acts of domestic violence through specific offences such as assault, causing hurt, grievous hurt, criminal intimidation, and sexual offences. Each of these offences carries prescribed punishments depending on the severity of the act.

A significant feature carried forward into the BNS is the provision relating to cruelty by husband or relatives, similar to Section 498A of the IPC now Sec 85 of BNS. This provision addresses harassment and abuse inflicted upon a married woman, particularly in connection with dowry demands. It recognizes both physical and mental cruelty, thereby providing a criminal remedy against abusive spouses and in-laws.

Another aspect of the BNS scheme is its focus on state responsibility. Crimes are considered offences against the state rather than merely private disputes. Therefore, once an offence is reported, the state takes charge of prosecution, and the victim becomes a witness in the process.

Thus, the scheme of the BNS is offender-centric, emphasizing punishment and deterrence rather than immediate relief.

5. Implementing Machinery under Domestic Violence Act- The Protection of Women from Domestic Violence Act, 2005 establishes a comprehensive and structured institutional framework to ensure that the rights granted under the law are effectively implemented. This framework, often referred to as the implementing machinery, reflects the Act's victim-centric and welfare-oriented approach. It recognizes that legal provisions alone are insufficient unless supported by accessible, coordinated, and responsive institutions. Therefore, the Act creates a multi-layered system involving judicial authorities, executive officers, police, medical institutions, and social welfare organizations to provide immediate relief and long-term support to victims of domestic violence.



At the centre of this machinery is the Judicial Magistrate of the First Class or the Metropolitan Magistrate, who plays a crucial role in enforcing the provisions of the Act. The Magistrate is empowered to receive applications from the aggrieved person or on her behalf and to pass a variety of orders aimed at protecting and rehabilitating the victim. These include protection orders restraining the respondent from committing further acts of violence, residence orders ensuring that the woman is not dispossessed from her shared household, monetary relief for maintenance and losses suffered, custody orders relating to children, and compensation orders for injuries and emotional distress. The Act emphasizes speedy justice by directing that cases should, as far as possible, be disposed of within sixty days. The Magistrate thus acts as the primary authority translating legal rights into enforceable remedies.⁵

The Act recognizes the role of Service Providers, which include registered non-governmental organizations and voluntary associations working in the field of women's welfare. These organizations provide essential support services such as shelter, counseling, medical aid, and legal assistance. They are authorized to record incidents of domestic violence, and such records can be used as evidence in court proceedings. The involvement of Service Providers ensures that victims receive not only legal protection but also emotional and psychological support, which is often necessary for recovery from abuse. This reflects the understanding that domestic violence is not merely a legal issue but also a social and psychological problem requiring a holistic response.⁶

Medical facilities are also integrated into the implementation process. Hospitals, particularly those run by the government, are required to provide immediate medical assistance to victims of domestic violence. They must offer treatment without delay and prepare medical reports documenting injuries, which can serve as crucial evidence in legal proceedings. Medical professionals may also be required to inform Protection Officers or the police in cases where domestic violence is suspected. This ensures that victims receive timely healthcare and that instances of abuse are properly recorded.⁷

Access to justice is further strengthened through the provision of free legal aid. Institutions such as the National Legal Services Authority and State Legal Services Authorities provide legal assistance to victims who may not have the financial means to engage a lawyer. Legal aid includes not only representation before the court but also assistance in drafting applications and understanding legal procedures. This ensures that economic constraints do not become a barrier to seeking justice under the Act.⁸

The State Government bears the overall responsibility for ensuring the effective implementation of the Act. It is tasked with appointing Protection Officers, registering Service Providers, establishing shelter homes and medical facilities, and conducting awareness and training programs. The government also plays a crucial role in ensuring coordination among various agencies involved in the implementation process. Without adequate administrative support and infrastructure, the objectives of the Act cannot be fully realized.

6. International Safeguard regarding under Domestic Violence Act.- The issue of domestic violence is not confined to any one country but is recognized globally as a serious violation of human rights. The Protection of Women from Domestic Violence Act, 2005 reflects India's commitment to international norms and standards that seek to protect individuals, particularly women, from violence within the domestic sphere. The framework of this Act is significantly influenced by various international safeguards, conventions, and declarations that emphasize gender equality, dignity, and freedom from violence.⁹

One of the most important international instruments in this regard is the Convention on the Elimination of All Forms of Discrimination Against Women. Adopted by the United Nations in 1979, CEDAW is often described as an international bill of rights for women. India is a signatory to this convention and is therefore obligated to take appropriate measures to eliminate discrimination against women in all forms. Although CEDAW does not explicitly use the term "domestic violence" in its original text, its provisions have been interpreted broadly by the CEDAW Committee to include gender-based violence as a form of discrimination. General Recommendations issued by the Committee, particularly General Recommendation No. 19 and No. 35, clarify that domestic violence falls within the scope of discrimination and requires state action. The Domestic Violence Act, 2005 can thus be seen as a legislative measure undertaken by India to fulfill its international obligations under CEDAW.¹⁰

In addition, broader human rights instruments like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights also contribute to the international framework against domestic violence. These instruments guarantee fundamental rights such as the right to life, liberty, equality, and security of person. Domestic violence, by its very nature, violates these basic rights. Therefore,



states have a duty under international law to protect individuals from such abuse, even when it occurs within private relationships.

The concept of “due diligence” has emerged as an important principle in international law concerning domestic violence. It requires states to prevent, investigate, and punish acts of violence against women and to provide compensation and support to victims. Failure to do so may result in state responsibility under international law. The Domestic Violence Act embodies this principle by creating a detailed implementing machinery involving Magistrates, Protection Officers, police, and service providers, thereby ensuring that the state actively intervenes in cases of domestic violence rather than treating them as private matters.¹¹

Furthermore, international commitments have encouraged the integration of support services into domestic legislation. The provision for shelter homes, medical assistance, counseling, and legal aid under the Domestic Violence Act reflects global best practices in addressing domestic violence. These measures ensure that victims are not only protected from immediate harm but are also supported in rebuilding their lives.

7. Concluding Observation and Agenda for Change- The Protection of Women from Domestic Violence Act, 2005 is a significant milestone in India’s legal framework as it recognizes domestic violence as a violation of human rights and provides a civil, victim-oriented remedy. Unlike traditional criminal laws, the Act focuses on protection, prevention, and rehabilitation rather than mere punishment. It broadens the concept of domestic violence by including physical, emotional, sexual, and economic abuse, and extends protection not only to married women but also to women in relationships in the nature of marriage. This progressive approach reflects an evolving understanding of gender justice and the realities of domestic relationships in India.¹²

Lack of awareness is another serious concern. Many women, particularly in rural and marginalized communities, are unaware of their rights under the Act. Social stigma, fear of retaliation, and economic dependence further discourage victims from reporting abuse. Even when complaints are made, insensitive attitudes of enforcement authorities and procedural complexities can hinder access to justice. Judicial delays also undermine the objective of providing speedy relief, as cases often take longer than the prescribed time for disposal.

In light of these challenges, an effective agenda for change is necessary. First, there is a need to strengthen the implementing machinery by ensuring adequate appointment and training of Protection Officers and expanding support services such as shelter homes, medical aid, and counseling. Second, awareness campaigns and legal literacy programs must be intensified to empower women to assert their rights. Third, procedural reforms, including fast-track courts and use of digital platforms, can help in ensuring timely justice. Fourth, better coordination between civil and criminal laws should be developed to provide a more streamlined and victim-friendly legal process. Institutions like the National Commission for Women can play a key role in monitoring implementation and addressing systemic gaps.¹³

In conclusion, while the Protection of Women from Domestic Violence Act, 2005 is a progressive and comprehensive law, its success depends largely on effective implementation and societal change. Strengthening institutions, improving awareness, and addressing gender inequalities are essential steps toward ensuring a violence-free and equitable society.

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