

IMPLEMENTING THE PWDVA, 2005: HUMAN RIGHTS STANDARDS, SYSTEMIC GAPS, AND PATHWAYS FOR REFORM IN INDIA

by

Ms. Mantu Acharjee

Research Scholar, Faculty of Legal Studies

Arunachal University of Studies, Namsai, Arunachal Pradesh

Under the supervision of:

Supervisor: **Dr. Sangita Hazarika**

Co-Supervisor: **Prof. Dr. Yogendra Kumar Verma**

ABSTRACT

Domestic violence is not merely a private family matter — it is a profound and systematic violation of fundamental human rights. In India, despite a robust constitutional framework guaranteeing equality, dignity, and life under Articles 14, 15, 19, and 21, millions of women continue to experience violence within the very spaces that should protect them. The enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) was a landmark legislative moment, broadening the definition of domestic violence beyond physical abuse to encompass emotional, economic, and sexual harm. Yet, more than two decades after its enactment, the gap between the law on paper and justice on the ground remains alarmingly wide. This paper examines domestic violence through the lens of human rights law, exploring how international instruments — including CEDAW and the UN Declaration on the Elimination of Violence Against Women — have shaped India's legislative obligations. It traces the judicial evolution of Article 21, evaluates the role of Protection Officers and Magistrate Courts, and argues for a holistic, multi-sectoral response that goes beyond mere legislative existence toward living enforcement.

Keywords: Domestic Violence, Human Rights, Protection of Women from Domestic Violence Act 2005, Article 21, CEDAW, Gender-Based Violence, Bharatiya Nyaya Sanhita 2023, Women's Empowerment, Judicial Activism, India.

I. INTRODUCTION

Domestic violence occupies a paradoxical position in the normative order of contemporary India: it is simultaneously a crime, a human rights violation, and — in the lived experience of millions of women — an unremarkable feature of daily life. The United Nations Declaration on the Elimination of Violence Against Women (1993) defines violence against women 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."¹ India's legislative response to this international mandate culminated in the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA),² widely regarded as the most comprehensive legislation on the subject in South Asia. Yet legislation, however progressive, cannot by itself dismantle the patriarchal structures within which domestic violence is embedded.

The National Family Health Survey (NFHS-5) reveals that approximately 29.3% of ever-married women in India have experienced physical, sexual, or emotional violence by a spouse.³ These figures, sobering as they are, represent only reported or disclosed incidents. The true prevalence is estimated to be significantly higher, given the profound stigma and fear associated with disclosure. Against this backdrop, this paper examines the interface between domestic violence law and human rights obligations in India, identifies the structural and systemic gaps in implementation, and proposes a framework for reform grounded in constitutional values and international human rights standards.

The paper proceeds in the following order: Part II traces the international human rights framework governing domestic violence, with particular attention to CEDAW and its General Recommendations. Part III examines the constitutional and legislative architecture in India. Part IV analyses the judicial evolution of the right to a life free from domestic violence. Part V critically

¹U.N. General Assembly, Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

²Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

³NFHS-5 (National Family Health Survey), Ministry of Health and Family Welfare, Government of India, Key Indicators — India (2019–21), at 568 (2022) [hereinafter NFHS-5].

evaluates implementation failures. Part VI situates India's obligations within the SDG framework. Part VII offers conclusions and recommendations.

II. INTERNATIONAL HUMAN RIGHTS FRAMEWORK: CEDAW, UN DECLARATIONS, AND STATE ACCOUNTABILITY

The international human rights framework on domestic violence is anchored principally in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979),⁴ to which India acceded in 1993. CEDAW General Recommendation No. 35 (2017) — updating General Recommendation No. 19 (1992) — explicitly recognises gender-based violence against women as a form of discrimination and imposes an obligation on State parties to exercise due diligence to prevent, investigate, prosecute, punish, and provide reparation for such acts.⁵ Critically, this obligation extends beyond the acts of State agents to encompass violence perpetrated by private persons, thereby bringing domestic violence squarely within the ambit of State accountability under international law.⁶

The UN Declaration on the Elimination of Violence Against Women (1993)⁷ complemented CEDAW by providing a free-standing instrument focused exclusively on violence. Together, these instruments oblige India to: (i) adopt legislation criminalising domestic violence; (ii) ensure effective remedies for survivors; (iii) train law enforcement and judicial personnel in gender-sensitive approaches; and (iv) collect and disseminate data on the prevalence of violence. India has taken significant steps on the first count; the latter three obligations remain incompletely fulfilled.

The jurisprudence of the UN Human Rights Council Special Rapporteur on Violence Against Women has further clarified that economic violence — including the deprivation of a woman's access to income, property, and employment — constitutes a cognisable form of gender-based violence.⁸ This

⁴Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

⁵U.N. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017).

⁶CEDAW, *supra* note 5, art. 2(e) (obligating State parties to take appropriate measures to eliminate discrimination by private actors).

⁸U.N. Human Rights Council, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc. A/HRC/47/18, ¶¶ 14–19 (June 7, 2021).

understanding finds partial expression in the PWDVA's definition of 'economic abuse,' examined in Part III below.

III. CONSTITUTIONAL AND LEGISLATIVE ARCHITECTURE IN INDIA

A. Constitutional Foundations

India's constitutional framework provides a formidable, if imperfectly realised, basis for addressing domestic violence. Article 21, which guarantees the right to life and personal liberty,⁹ has been expansively interpreted by the Supreme Court to encompass the right to live with dignity, free from violence. Articles 14 and 15, which guarantee equality before law and prohibit discrimination on grounds of sex,¹⁰ provide the egalitarian foundation upon which gender-sensitive legislation must be constructed. Read together, these provisions impose a positive constitutional obligation on the State to protect women from violence — including violence perpetrated by private individuals within the domestic sphere.

B. The Protection of Women from Domestic Violence Act, 2005

The PWDVA marked a paradigmatic shift in India's approach to domestic violence by moving beyond the purely criminal framework of Section 498A of the Indian Penal Code¹¹ to provide a civil remedial architecture. Section 3 of the PWDVA defines 'domestic violence' to include physical, sexual, verbal, emotional, and economic abuse¹² — a definition that substantially accords¹³ with international standards. The Act extends protection to women in a 'domestic relationship,' defined broadly to include relationships by consanguinity, marriage, adoption, or those 'in the nature of marriage,'¹³ a formulation that has since been judicially extended.

The remedial scheme of the PWDVA is notable for its comprehensiveness: protection orders, residence orders, monetary relief, custody orders, and compensation orders are all available to an 'aggrieved person.'¹⁴ The institution of the Protection Officer is a structural innovation of the Act, tasked with assisting aggrieved persons in obtaining reliefs and filing Domestic Incident Reports

⁹INDIA CONST. art. 21.

¹⁰INDIA CONST. arts. 14, 15.

¹¹Indian Penal Code, No. 45 of 1860, § 498A (India) [hereinafter IPC].

¹²Protection of Women from Domestic Violence Act, No. 43 of 2005, § 3 (India) [hereinafter PWDVA].

¹³PWDVA, supra note 13, § 2(a) (defining 'aggrieved person' to include any woman in a domestic relationship).

¹⁴PWDVA, supra note 13, §§ 18–23 (residence orders, protection orders, custody orders, monetary relief, and compensation orders).

before the Magistrate.¹⁵ However, as Part V demonstrates, the effective functioning of Protection Officers has been systemically compromised by inadequate resourcing and absence of dedicated cadre.

C. Criminal Law: Section 498A IPC and the Bharatiya Nyaya Sanhita, 2023

Section 498A of the IPC, which criminalises cruelty by a husband or his relatives,¹⁶ has been the primary criminal instrument for addressing domestic violence since its insertion in 1983.¹⁷ With the coming into force of the Bharatiya Nyaya Sanhita, 2023 (BNS), this provision has been re-enacted as Section 85,¹⁸ with substantively similar content. The Dowry Prohibition Act, 1961¹⁹ further criminalises the demand for dowry, a practice closely linked to domestic violence in the Indian context.

It is important to note that the BNS, while modernising the penal code, does not significantly deepen the substantive protection afforded to domestic violence survivors. The transformative work, if any is to be achieved, must come through the civil-remedial apparatus of the PWDVA and through structural reforms in its implementation.

IV. JUDICIAL EVOLUTION: ARTICLE 21 AND THE RIGHT TO A LIFE FREE FROM DOMESTIC VIOLENCE

The Supreme Court of India has, through a series of landmark decisions, progressively deepened the content of the right to life under Article 21 in the context of gender-based violence. In *Vishaka v. State of Rajasthan* (1997),²⁰ the Court, in the context of sexual harassment at the workplace, held that gender equality and the right to live with dignity were fundamental rights enforceable against private actors. While *Vishaka* did not directly concern domestic violence, its doctrinal contribution — the recognition of the State's positive obligation to protect women from violence by private persons — laid the foundation for subsequent jurisprudence.

¹⁵PWDVA, supra note 13, § 8 (duties and functions of Protection Officers).

¹⁷*Wazir Chand v. State of Haryana*, (1989) 1 SCC 244 (India) (early recognition of domestic cruelty as criminal offence under § 498A IPC).

¹⁸Bharatiya Nyaya Sanhita, No. 45 of 2023, § 85 (India) [hereinafter BNS] (re-enacting with modifications the offence of cruelty by husband or his relatives, formerly § 498A IPC).

¹⁹Dowry Prohibition Act, No. 28 of 1961 (India).

²⁰*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

The most significant judicial development in the domestic violence context is *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755,²¹ wherein the Supreme Court expanded the protective scope of the PWDVA to include relationships 'in the nature of marriage,' thereby protecting women in live-in relationships from domestic violence. The Court, per K.S. Radhakrishnan, J., held that the PWDVA must be interpreted purposively to advance its protective object, and that the constitutional guarantee of dignity under Article 21 demands nothing less. The Court further laid down factors for determining whether a relationship constitutes a relationship 'in the nature of marriage,' including a shared household, a semblance of permanence, and the parties' conduct in the community.

In *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016),²² the Supreme Court read down the expression 'adult male person' in Section 2(q) of the PWDVA to include female respondents and non-adults, thereby enlarging the class of persons against whom relief could be sought. This purposive construction reflects the Court's commitment to ensuring that the protective object of the Act is not defeated by narrow textual readings.

In *Shayara Bano v. Union of India* (2017),²³ the Supreme Court struck down the practice of triple talaq as unconstitutional, holding that practices that subordinate women within marriage violate Articles 14 and 21. The decision is significant for the present discussion because it affirms that constitutional values of equality and dignity impose substantive constraints on the exercise of personal law, and by extension, on all practices within the domestic sphere.

In *Saraswathy v. Babu* (2014),²⁴ the Court clarified the ambit of monetary relief available under the PWDVA, holding that it must be just and fair in the facts of each case, and should reflect the actual loss suffered and the means of the respondent. In *State of Punjab v. Gurmit Singh* (1996),²⁵ the Court emphasised the need for judicial sensitivity in all proceedings involving crimes against women — a principle that acquires particular importance in domestic violence cases, where survivors must navigate a predominantly male judiciary and law enforcement apparatus.

V. IMPLEMENTATION FAILURES: THE GAP BETWEEN LAW AND JUSTICE

²¹*Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 (India).

²²*Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165 (India) (holding that the expression 'adult male person' in § 2(q) of the PWDVA must be read down to include female respondents and non-adults).

²³*Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

²⁴*Saraswathy v. Babu*, (2014) 3 SCC 385 (India) (clarifying scope of monetary relief available under PWDVA).

²⁵*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India) (emphasising judicial sensitivity in crimes against women).

A. The Underreporting Crisis

NFHS-5 data reveals that only 14% of women who have experienced spousal violence have sought help from any source, and a mere 2% have approached the police.²⁶ The National Crime Records Bureau (2022) recorded 138,366 cases under Section 498A IPC — a figure that represents only the most visible stratum of a vast and submerged iceberg.²⁷ The causes of underreporting are structural: economic dependence on the abuser, fear of social stigma, absence of safe accommodation, inadequate awareness of legal remedies, and deep-seated scepticism about the responsiveness of the criminal justice system to domestic violence complaints.

B. The Protection Officer Deficit

The PWDVA's architecture is premised on the functional effectiveness of Protection Officers, who serve as the critical interface between the survivor and the legal system.²⁸ However, the Law Commission of India has documented severe deficiencies in the Protection Officer cadre: most states have appointed Protection Officers on an additional-charge basis rather than as full-time dedicated officers; there is no standardised training curriculum; and Protection Officers frequently lack the logistical support required to prepare Domestic Incident Reports in a timely manner.²⁹ These failures have a cascading effect on the PWDVA's remedial scheme: without a Domestic Incident Report, Magistrate Courts cannot efficiently grant emergency protection orders.

C. Patriarchal Structures and Cultural Normalisation

A central argument of this paper is that domestic violence is not an isolated social pathology but is structurally embedded in patriarchal norms that assign women an inferior status within the family and community. The cultural normalisation of marital violence — reflected in expressions such as 'a husband's right to discipline his wife' — serves to delegitimise the survivor's experience and deter disclosure. Social stigma is compounded in rural and semi-urban India, where community mechanisms

²⁶NFHS-5, supra note 3, at 569 (reporting that only 14% of women who experienced spousal violence sought help from any source, and only 2% approached the police).

²⁷National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2022: Statistics, Vol. I, at 142 (2023) [hereinafter NCRB 2022].

²⁹Law Commission of India, Complaints Against Protection Officers Under PWDVA: A Review, Rep. No. 253, at 18–22 (2015).

(panchayats, extended family councils) frequently intervene to pressure survivors into reconciliation, often without any legal safeguard for their safety or interests.

Furthermore, the economic dependence of women on their abusers creates a formidable practical barrier to accessing justice. The PWDVA's provision for monetary relief — including maintenance, compensation for losses suffered, and payment of rent — is designed to address this barrier. However, enforcement of monetary relief orders remains chronically weak, with courts frequently lacking the institutional capacity to compel compliance.

VI. STATE ACCOUNTABILITY, SDG 5, AND THE PATH FORWARD

India's obligations under international human rights law require it to adopt a proactive, multi-sectoral approach to domestic violence that goes beyond criminalisation.³⁰ Sustainable Development Goal 5 — to achieve gender equality and empower all women and girls — explicitly targets the elimination of all forms of violence against women in public and private spheres.³¹ India's progress under SDG 5 is measurable, and the persistence of domestic violence at scale represents a material failure of State accountability under this framework.

The Draft National Policy for Women, 2016, acknowledges the need for gender-sensitive reforms across the criminal justice system, health, education, and social welfare sectors.³² What is required is the operationalisation of this acknowledgement through specific, time-bound, and resourced action. This paper identifies four priority areas:

First, the creation of a dedicated Protection Officer cadre in every district, with standardised training, adequate staffing, and logistical support. The existing pattern of additional-charge appointments must be ended.

Second, the establishment of One Stop Centres (Sakhi Centres) in every sub-district unit, providing integrated services — shelter, legal aid, medical assistance, and psychological counselling — under a single roof.

³¹U.N. General Assembly, Transforming Our World: The 2030 Agenda for Sustainable Development, G.A. Res. 70/1, Sustainable Development Goal 5 (Sept. 25, 2015).

³²Ministry of Women and Child Development, Government of India, National Policy for Women 2016: Draft, at 12–14 (2016) [hereinafter Draft National Policy for Women].

Third, mandatory gender-sensitivity training for judicial officers, police personnel, and public prosecutors, drawing on the framework articulated by the Supreme Court in Gurmit Singh and consolidated by subsequent decisions.³³

Fourth, a sustained national awareness campaign, targeting rural and semi-urban communities, on the legal rights of women under the PWDVA, BNS Section 85, and the Dowry Prohibition Act — with particular emphasis on the civil remedies available without the need to initiate criminal proceedings.

VII. CONCLUSION

Domestic violence, in the constitutional and human rights imagination of India, is neither acceptable nor inevitable. Articles 14, 15, and 21 of the Constitution,^{34,35} read with India's obligations under CEDAW³⁶ and the 1993 UN Declaration,³⁷ impose a clear and non-negotiable obligation on the State to protect women from violence within the domestic sphere. The PWDVA, 2005³⁸ and BNS Section 85³⁹ provide the legislative instruments for discharging this obligation. The Supreme Court, in a long and distinguished line of decisions from Vishaka to Indra Sarma to Navtej Singh Johar,⁴⁰ has consistently affirmed that dignity and equality are not empty constitutional promises but justiciable rights.

And yet, the gap between law on paper and justice on the ground persists — wide, structural, and resistant to purely formal interventions. That gap is produced by the intersection of patriarchal

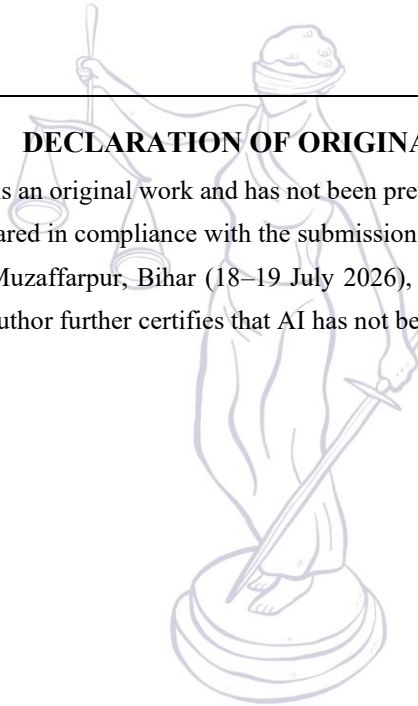
⁴⁰Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India) (affirming dignity and autonomy as core constitutional values under art. 21).

norms, economic inequality, institutional inadequacy, and cultural silence. Closing it demands not merely the existence of law, but its living, breathing enforcement — backed by institutional will, judicial sensitivity, adequately resourced implementation machinery, and a society that refuses to look away.

True empowerment of women against domestic violence will be achieved not on the day Parliament enacts another statute, but on the day a survivor in a rural district of Arunachal Pradesh or Assam finds, without obstruction or shame, a Protection Officer who listens, a court that responds, and a community that stands with her. That day must be the aim of law, policy, and scholarship alike.

DECLARATION OF ORIGINALITY

The Author declares that this paper is an original work and has not been previously published or submitted for publication elsewhere. The paper has been prepared in compliance with the submission guidelines of the Two Day National Seminar, Sri Krishna Jubilee Law College, Muzaffarpur, Bihar (18–19 July 2026), and adheres to the citation format prescribed (ILI/Bluebook 20th Edition). The Author further certifies that AI has not been used in the drafting of this paper.



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