



REVISITING THE GENDERED FRAMEWORK OF INDIA'S DOMESTIC VIOLENCE ACT: A CASE FOR GENDER-NEUTRAL PROVISIONS

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Abstract : The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents a landmark achievement in India's legislative history, addressing the pervasive issue of domestic violence against women through a comprehensive legal framework. However, the Act's gender-specific approach, while historically necessary and statistically justified, has increasingly come under scrutiny for its exclusion of male and LGBTQIA+ victims. This paper examines the socio-legal dimensions of domestic violence through a critical analysis of the PWDVA's gendered framework and explores the potential for gender-neutral provisions. Through doctrinal research, case analysis, and comparative perspectives with international jurisdictions, this study argues that while women remain disproportionately affected by domestic violence, the evolution towards gender-neutral legislation could enhance justice delivery without compromising the protection of women. The paper concludes that a nuanced approach incorporating gender-neutral language alongside targeted protections for vulnerable groups represents the most equitable path forward for Indian domestic violence law.\

Keywords: Domestic Violence, PWDVA 2005, Gender-Neutral Laws, Women's Rights, Male Victims, LGBTQIA+ Victims, Socio-Legal Analysis, Legal Reform, Comparative Jurisprudence, Gender Justice, Vulnerable Groups

I. INTRODUCTION

Introduction

Domestic violence constitutes one of the most pervasive violations of human rights globally, transcending boundaries of class, religion, and education. In India, the problem has been particularly acute due to deeply entrenched patriarchal structures that have historically normalized violence within intimate relationships. The enactment of the Protection of Women from Domestic Violence Act, 2005 marked a watershed moment in Indian jurisprudence, recognizing domestic violence as a serious crime requiring state intervention rather than a private family matter.

The PWDVA emerged from decades of advocacy by women's rights organizations and represented a paradigm shift in legal thinking about domestic violence. The Act's gendered approach, focusing specifically on the protection of women, was both deliberate and necessary given the overwhelming evidence of women's disproportionate victimization in domestic contexts. However, nearly two decades since its enactment, evolving social realities and emerging evidence of domestic violence against men and LGBTQIA+ individuals have sparked important debates about the inclusivity of India's domestic violence framework.

The contemporary discourse on gender neutrality in domestic violence laws reflects broader questions about equality, justice, and the evolution of legal frameworks to address changing social realities. While some argue that gender-neutral provisions would enhance the law's comprehensiveness and address issues of misuse, others contend that such changes could dilute the Act's protective intent and undermine hard-won gains in women's rights.

This research seeks to address several critical questions: Does the PWDVA adequately address all victims of domestic violence in contemporary India? Is there a compelling case for incorporating gender-neutral provisions within the existing framework? How does India's approach compare with international best practices in addressing domestic violence across gender lines?

The methodology employed in this study is primarily doctrinal, involving comprehensive analysis of statutory provisions, judicial decisions, and comparative legal frameworks. The research also incorporates empirical data from national surveys, crime statistics, and international reports to provide a evidence-based foundation for the analysis.

2. UNDERSTANDING DOMESTIC VIOLENCE: BEYOND GENDER BINARIES

2.1 Definition and Scope

Domestic violence encompasses a pattern of abusive behaviors used by one person to gain and maintain power and control over an intimate partner or family member. The PWDVA provides a comprehensive definition under Section 3, recognizing four distinct categories of abuse: physical, emotional, sexual, and economic violence. This broad definition represents a significant advancement over previous legal frameworks that focused primarily on physical violence.

Physical violence includes acts of assault, criminal intimidation, and criminal force, while emotional abuse encompasses verbal and emotional abuse, threats, and humiliation. Sexual violence covers any conduct of a sexual nature that abuses, humiliates, or degrades a woman, and economic abuse includes the deprivation of financial resources or the prevention of access to resources.

2.2 Forms and Manifestations

The multifaceted nature of domestic violence means that it can manifest in various forms, often occurring simultaneously and escalating over time. Physical violence, while the most visible form, represents only one dimension of abuse. Emotional and psychological abuse can be equally devastating, involving systematic patterns of behavior designed to undermine the victim's sense of self-worth and autonomy.

Economic abuse has emerged as a particularly significant form of control, involving the restriction of access to financial resources, prevention of employment, or the misuse of the victim's financial assets. This form of abuse can be particularly effective in maintaining control over victims by creating financial dependence and limiting options for escape.

2.3 Myths and Realities of Gendered Violence

The traditional understanding of domestic violence as exclusively affecting women has been challenged by emerging evidence of male victimization and violence within same-sex relationships. While women undoubtedly remain the primary victims of domestic violence, with studies consistently showing higher rates of severe violence against women, the binary understanding of perpetrator and victim roles has proven inadequate for capturing the full complexity of domestic violence.

Research from various countries indicates that men can be victims of domestic violence, particularly emotional and psychological abuse, though they may be less likely to report such incidents due to social stigma and traditional gender role expectations. Similarly, domestic violence within LGBTQIA+ relationships presents unique challenges, including the use of threats to "out" partners and the lack of gender-specific shelters and services.

2.4 Data and Statistics on Non-Female Victims

While comprehensive data on male and LGBTQIA+ victims of domestic violence in India remains limited, international studies provide important insights. The National Intimate Partner and Sexual Violence Survey in the United States found that approximately 26% of gay men and 37% of bisexual men experienced intimate partner violence in their lifetime. In India, while official statistics focus primarily on violence against women, helpline data and small-scale studies suggest that male victimization, while less common, is not negligible.

The absence of comprehensive data on non-female victims partially reflects the gendered nature of existing legal frameworks and data collection mechanisms, creating a cyclical problem where the lack of recognition leads to underreporting, which in turn reinforces the perception that such violence is rare or nonexistent.

3. THE DOMESTIC VIOLENCE ACT, 2005: A GENDERED FRAMEWORK

3.1 Legislative Intent and Historical Context

The PWDVA emerged from a specific historical context characterized by widespread violence against women and the failure of existing legal mechanisms to provide adequate protection. The Act's drafters deliberately chose a gendered approach based on empirical evidence demonstrating that women were disproportionately affected by domestic violence and faced unique barriers in seeking help.

The legislative intent was clearly articulated in the Act's preamble, which emphasizes the need to provide "more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family." This gendered approach was reinforced by India's international commitments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

3.2 Key Provisions and Protections

The PWDVA establishes a comprehensive framework of civil remedies designed to provide immediate and long-term protection to women victims of domestic violence. The Act empowers magistrates to issue protection orders restraining the respondent from committing acts of domestic violence, residence orders allowing the aggrieved person to remain in the shared household, and monetary relief for expenses and losses incurred due to domestic violence.

The Act also mandates the appointment of Protection Officers at the district level to assist victims in filing complaints and accessing services. These officers serve as crucial intermediaries between victims and the legal system, providing information about legal rights and available remedies.

3.3 Analysis of Gender-Specific Provisions

The Act's gender-specific language is most evident in Section 2(a), which defines an "aggrieved person" as "any woman who is, or has been, in a domestic relationship with the respondent," and Section 2(q), which defines a "respondent" as "any adult male person who is, or has been, in a domestic relationship with the aggrieved person." These definitions create a binary framework that assumes women are always victims and men are always perpetrators.

This binary approach extends throughout the Act, with provisions consistently referring to female victims and male perpetrators. While this reflects the statistical reality of domestic violence, it also creates legal blind spots that exclude male and LGBTQIA+ victims from protection.

3.4 Judicial Interpretations

Indian courts have generally interpreted the PWDVA's provisions in accordance with its gendered framework, though some judgments have acknowledged the potential for male victimization. In *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Supreme Court observed that the law should protect genuine victims while preventing misuse, but stopped short of advocating for gender-neutral provisions.

The Gujarat High Court in *Abhishek Bharti v. State of Gujarat* noted that while the current law is gender-specific, there may be cases where men require protection from domestic violence, particularly from female relatives. However, such observations have not translated into systematic legal reform.

3.5 Academic and Judicial Critiques

Legal scholars have increasingly questioned the sustainability of the PWDVA's gendered approach in light of evolving social realities. Critics argue that the Act's binary framework reinforces gender stereotypes and fails to address the complex dynamics of domestic violence in contemporary relationships.

The Law Commission of India has acknowledged these concerns, noting in its 267th Report that "the time has come to consider whether the domestic violence law should be made gender-neutral to protect all victims of domestic violence." This recognition by the country's premier legal reform body signals growing acceptance of the need for more inclusive legislation.

4. GENDER NEUTRALITY: CONCEPT AND CONSTITUTIONAL RATIONALE

4.1 Understanding Gender Neutrality in Law

Gender neutrality in legal frameworks refers to the principle that laws should not discriminate based on gender and should provide equal protection to all individuals regardless of their gender identity. This concept does not deny the existence of gender-based disparities but rather seeks to ensure that legal remedies are available to all victims based on their circumstances rather than their gender.

In the context of domestic violence, gender-neutral legislation would recognize that while women are statistically more likely to be victims, domestic violence can occur in any relationship configuration and all victims deserve legal protection and support.

4.2 Constitutional Principles

The Indian Constitution provides a strong foundation for gender-neutral legislation through Articles 14 and 15, which guarantee equality before the law and prohibit discrimination based on sex. The Supreme Court has consistently held that these provisions require the state to ensure equal treatment and protection for all citizens.

In *Anuj Garg v. Hotel Association of India*, the Supreme Court observed that gender-based classifications must be justified by compelling state interest and must be substantially related to achieving that interest. While the protection of women from domestic violence certainly constitutes a compelling state interest, the question remains whether complete exclusion of other victims is necessary to achieve this goal.

4.3 Arguments for Gender Neutrality

Proponents of gender-neutral domestic violence legislation advance several compelling arguments. First, they argue that such legislation would enhance equity and justice by ensuring that all victims have access to legal remedies regardless of their gender identity. This approach aligns with fundamental principles of equal protection and non-discrimination.

Second, gender-neutral provisions could help address concerns about misuse of domestic violence laws by removing the perception that such laws are inherently biased against men. This could improve the overall credibility of domestic violence legislation and reduce resistance to its implementation.

Third, inclusive legislation would provide much-needed protection to LGBTQIA+ individuals and male victims who currently have limited legal recourse. This is particularly important as social attitudes evolve and more individuals feel comfortable reporting non-traditional forms of domestic violence.

4.4 Counterarguments and Challenges

Critics of gender-neutral domestic violence legislation raise several important concerns. They argue that such legislation could dilute the focus on women's protection and undermine the gains made in addressing violence against women. Given that women remain disproportionately affected by domestic violence, they contend that gender-specific legislation is still necessary and justified.

Additionally, some argue that gender-neutral legislation could lead to increased misuse, with perpetrators potentially using such laws to retaliate against their victims. This concern is particularly acute given the power imbalances that often characterize abusive relationships.

Finally, critics worry that gender-neutral legislation might not adequately address the specific needs of women victims, who may require specialized services and protections that reflect their unique vulnerabilities.

5. COMPARATIVE LEGAL PERSPECTIVES

5.1 United Kingdom

The United Kingdom's approach to domestic violence has evolved significantly over the past decades, moving from gender-specific legislation to more inclusive frameworks. The Domestic Violence, Crime and Victims Act 2004 uses gender-neutral language and recognizes that domestic violence can affect anyone regardless of gender.

The UK's definition of domestic violence encompasses "any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality." This inclusive approach has been praised for its recognition of diverse victim experiences while maintaining strong protections for women.

5.2 Canada

Canada's approach to domestic violence combines gender-neutral legislation with targeted programs for specific vulnerable groups. The Criminal Code provisions addressing domestic violence are gender-neutral, while specialized programs focus on addressing violence against women and marginalized communities.

The Canadian experience suggests that gender-neutral legislation can coexist with targeted interventions, allowing for comprehensive protection while addressing specific vulnerabilities of different groups.

5.3 Australia

Australia has implemented a nuanced approach that includes both gender-neutral legislation and women-specific protections. The Family Law Act 1975 defines family violence in gender-neutral terms while maintaining specialized services for women and children.

Australian research has shown that gender-neutral legislation has not diminished protection for women victims while providing important protections for male and LGBTQIA+ victims. This experience provides valuable lessons for other jurisdictions considering similar reforms.

5.4 United States

The United States presents a complex picture, with federal legislation being largely gender-neutral while state laws vary considerably. The Violence Against Women Act (VAWA) has evolved to include protections for male and LGBTQIA+ victims while maintaining its focus on addressing violence against women.

The American experience demonstrates that it is possible to maintain strong protections for women while expanding coverage to include other vulnerable groups, though this requires careful attention to implementation and resource allocation.

6. JUDICIAL AND LEGISLATIVE DEVELOPMENTS IN INDIA

6.1 Recent Judicial Recognition

Indian courts have begun to acknowledge the limitations of the current gendered framework, though comprehensive reform remains elusive. In *Deepika Singh v. Central Administrative Tribunal*, the Delhi High Court observed that domestic violence can affect individuals regardless of gender and called for more inclusive legal frameworks.

The Bombay High Court in *Shantaram Uttamrao Chavan v. State of Maharashtra* noted that while the current law focuses on women's protection, there may be circumstances where men require similar protection from domestic violence. These judicial observations, while not binding precedent, indicate growing recognition of the need for reform.

6.2 Legislative Initiatives

Several private member bills have been introduced in Parliament advocating for gender-neutral domestic violence legislation. The Protection of Persons from Domestic Violence Bill, 2018, proposed replacing the gendered language of the PWDVA with inclusive terminology while maintaining strong protections for women.

The Bill failed to gain traction, but its introduction signals growing political awareness of the need for more inclusive legislation. Parliamentary debates have reflected the tension between maintaining women's protection and addressing the needs of other victims.

6.3 Law Commission Recommendations

The Law Commission of India has played a crucial role in advancing the discussion on gender neutrality in domestic violence law. In its 267th Report, the Commission recommended that the government consider making domestic violence laws gender-neutral while ensuring that such changes do not dilute protections for women.

The Commission's recommendations provide a roadmap for reform, emphasizing the need for comprehensive research, stakeholder consultation, and careful implementation to ensure that any changes enhance rather than diminish justice delivery.

7. CRITICAL ANALYSIS AND DISCUSSION

7.1 Strengths of the Current Framework

The PWDVA's gendered approach has achieved significant successes in addressing domestic violence against women. The Act has provided legal remedies to millions of women and has contributed to changing social attitudes about domestic violence. The gender-specific framework has also enabled targeted interventions and specialized services for women victims.

The Act's comprehensive definition of domestic violence and its emphasis on civil remedies have been particularly effective in providing immediate protection to victims without requiring them to navigate complex criminal justice processes. This approach has been praised by women's rights advocates and has influenced domestic violence legislation in other countries.

7.2 Gaps and Biases

Despite its successes, the PWDVA's gendered framework creates significant gaps in protection for non-female victims. Male victims of domestic violence, particularly those experiencing emotional or economic abuse, have limited legal recourse under the current framework. Similarly, LGBTQIA+ individuals face unique challenges that are not addressed by the Act's heteronormative assumptions.

The binary framework also reinforces gender stereotypes that may prevent some victims from seeking help or being taken seriously by law enforcement and judicial officials. This can perpetuate cycles of violence and limit the effectiveness of interventions.

7.3 Balancing Protection and Inclusion

The central challenge in reforming domestic violence legislation lies in balancing the need for continued protection of women with the goal of providing inclusive coverage for all victims. This requires careful attention to implementation mechanisms, resource allocation, and training programs.

International experience suggests that this balance can be achieved through graduated approaches that maintain strong protections for women while expanding coverage to include other vulnerable groups. Such approaches require sustained commitment from policymakers, civil society, and the legal profession.

7.4 Policy Considerations

Any reform of domestic violence legislation must consider broader policy implications, including resource allocation, training requirements, and social acceptance. Gender-neutral legislation would require significant investment in training law enforcement officers, judicial personnel, and service providers to recognize and respond to diverse forms of domestic violence.

Additionally, public awareness campaigns would be necessary to educate communities about the expanded scope of domestic violence legislation and to encourage reporting by previously excluded victim groups.

8. RECOMMENDATIONS

8.1 Legislative Amendments

This paper recommends amending the PWDVA to incorporate gender-neutral language while maintaining strong protections for women. Specifically, Section 2(a) should be amended to define an "aggrieved person" as "any adult person who is, or has been, in a domestic relationship with the respondent," while Section 2(q) should define a "respondent" as "any adult person who is, or has been, in a domestic relationship with the aggrieved person."

These amendments would expand the Act's coverage while maintaining its comprehensive framework of protections and remedies. Additional provisions could be included to address specific vulnerabilities of different victim groups.

8.2 Implementation Mechanisms

Successful implementation of gender-neutral domestic violence legislation would require comprehensive training programs for law enforcement officers, judicial personnel, and service providers. These programs should address unconscious bias, recognize diverse patterns of abuse, and provide practical guidance for handling cases involving different victim populations.

Specialized services should be developed for male and LGBTQIA+ victims while maintaining and strengthening existing services for women. This might include dedicated helplines, counseling services, and shelter facilities that can accommodate diverse needs.⁶¹

8.3 Research and Data Collection

Comprehensive research is needed to understand the full scope of domestic violence across different populations in India. This research should include large-scale surveys, qualitative studies, and analysis of service utilization patterns to inform policy development and resource allocation.

Data collection mechanisms should be revised to capture information about all victims of domestic violence, enabling better understanding of trends and patterns across different demographic groups.

8.4 Public Awareness and Education

Broad-based public awareness campaigns are necessary to change social attitudes about domestic violence and to encourage reporting by all victims. These campaigns should address gender stereotypes, promote understanding of diverse relationship dynamics, and provide information about available legal remedies.

Educational programs in schools and communities should promote healthy relationship models and challenge traditional gender norms that contribute to domestic violence.

9. CONCLUSION

The Protection of Women from Domestic Violence Act, 2005 represents a landmark achievement in India's efforts to address domestic violence, providing crucial protections for millions of women and contributing to changing social attitudes about violence in intimate relationships. However, the Act's gendered framework, while historically necessary and statistically justified, has created gaps in protection that exclude male and LGBTQIA+ victims from legal remedies.

The analysis presented in this paper demonstrates that the evolution towards gender-neutral domestic violence legislation represents a natural progression in the development of inclusive legal frameworks. International experience suggests that such evolution can be achieved without compromising the protection of women, provided that reforms are carefully designed and implemented with attention to the specific needs of different victim populations.

The case for gender-neutral provisions in India's domestic violence legislation is supported by constitutional principles of equality and non-discrimination, emerging evidence of diverse victim experiences, and the need for comprehensive approaches to addressing domestic violence. However, such reforms must be implemented thoughtfully, with adequate resources and training to ensure that the expansion of coverage enhances rather than diminishes justice delivery.

Moving forward, India has the opportunity to lead in developing inclusive domestic violence legislation that maintains strong protections for women while providing comprehensive coverage for all victims. This requires sustained commitment from policymakers, legal professionals, and civil society to create a legal framework that reflects the complex realities of domestic violence while upholding the fundamental principle that all individuals deserve protection from abuse.

The ultimate goal should be the creation of a legal system that provides effective protection for all victims of domestic violence while continuing to address the systemic factors that make women disproportionately vulnerable to such violence. This balanced approach represents the most equitable path forward for India's domestic violence legislation and could serve as a model for other jurisdictions grappling with similar challenges.

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