

A Critical Analysis of Domestic Violence Laws for Protection of Women: Evolving Jurisprudence

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Abstract

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represented a radical departure from the earlier Indian model, which mainly addressed the notion of home-based violence through penal cruelty, dowry and maintenance provisions.ⁱ It recast domestic violence as a question of rights involving bodily integrity, residence, dignity, economic autonomy and access to immediate civil relief.ⁱⁱ But the law's transformative potential has relied less on legislative language alone and more on those who interpret it.ⁱⁱⁱ This paper attempts a critical appraisal of the changing jurisprudence on domestic violence laws for protection of women, primarily examining the PWDVA and placing it in the larger context with criminal law provisions on cruelty, maintenance law, constitutional guarantees as well as international standards.^{iv} It claims that Indian courts have slowly and steadily transitioned from a restrictive, incident-cumulative understanding of abuse to a relatively more expansive grasp, which includes coercive control, economic deprivation, continuing wrongs and residential vulnerability.^v But the jurisprudence is uneven. Certain judgments expanded access to justice by widening the scope of respondent, common household and domestic relationship; others contracted protection through property centred reasoning, respectability filters in cases of live-in relationships or over-caution against misuse. By engaging with over forty academic publications and thirty court cases, the paper compares different lines in the literature: rights-based feminist narratives, implementation-focused socio-legal critiques and doctrinal approaches defending judicial restraint. It concludes that the trajectory of domestic violence jurisprudence in India is substantial but remains incomplete. If the promise of the PWDVA is to translate from symbolic advance to effective protection, then the next phase of reform must focus on doctrinal clarity, survivor-centred procedure, and serious investment in implementation institutions.

I. Introduction

Domestic violence law in India has shifted from a private-family paradigm to a constitutional and human-rights paradigm.^{vi} Earlier legal responses were fragmented.^{vii} Section 498A of the Indian Penal Code, dowry law, general assault provisions, matrimonial causes, and maintenance under Section 125 CrPC all addressed parts of the problem, but none created a coherent remedial framework for protection, residence, compensation, counselling, emergency orders, and institutional support.^{viii} Feminist scholars such as Flavia Agnes argued long before the PWDVA that criminal law alone could not capture the layered reality of abuse inside the home, particularly where violence was intertwined with dependency, stigma, and the lack of housing alternatives.^{ix} Indira Jaising similarly located domestic violence within substantive equality, arguing that the constitutional promise of dignity is hollow if women can neither exit violence nor remain in the home without coercion.^x By contrast, more conservative commentary viewed a strong domestic violence code with caution, fearing overlap with criminal law, matrimonial litigation, and maintenance proceedings. The PWDVA emerged from precisely this debate.

The Act is best understood as a social-welfare statute with constitutional ambition.^{xi} It defines domestic violence broadly to include physical, sexual, verbal, emotional, and economic abuse, and it links violence to access to the household, livelihood, and child custody.^{xii} Scholars such as Agnes, Brinda Karat, and Lotika Sarkar welcomed this move because it recognised that many women seek not punishment alone, but a combination of safety, residence, maintenance, and legal recognition.^{xiii} Others, including some implementation studies by Basu, Das, and Dhawan, have warned that legislative breadth does not by itself yield protection unless magistrates, protection officers, shelter homes, legal aid institutions, and police adopt the same rights-based understanding.^{xiv} The central jurisprudential question, therefore, is not simply whether the statute is progressive in text, but whether the courts have interpreted it in a manner that strengthens or dilutes its transformative design.

This paper argues that the jurisprudence has evolved in three identifiable phases. The first phase was experimental and uncertain, marked by attempts to fit the new statute into older property and criminal-law categories.^{xv} The second phase involved correction and expansion, particularly in relation to respondents, residence rights, continuing wrongs, and procedural flexibility.^{xvi} The third, ongoing phase is institutional: courts are increasingly attentive to implementation deficits, maintenance harmonisation, and the interaction between the PWDVA, family law, and the newer criminal-law framework. The paper adopts a literature-led doctrinal method. Each section reads case law against scholarship, comparing rights-expansive and rights-restrictive strands rather than treating precedent as self-explanatory.

II. Legislative Design and the Literature on Domestic Violence

The legislative design of the PWDVA is often described as innovative because it treats domestic violence as more than a criminal wrong.^{xvii} Agnes reads the Act as a move away from the dowry-cruelty frame toward a broader civil-rights model.^{xviii} Jaising and Sarkar similarly emphasise that the Act constitutionalises the home by treating violence within domestic relationships as a breach of women's rights to equality, residence, bodily autonomy, and dignity.^{xix} This is a significant conceptual departure from the older approach in which violence became legally visible only when it crossed thresholds of grave hurt, dowry harassment, or matrimonial desertion. The literature also notes that the Act was influenced by international norms, especially CEDAW, the U.N. Declaration on the Elimination of Violence against Women, and later interpretive frameworks that view domestic violence as a form of discrimination rather than merely interpersonal misconduct.^{xx}

At the same time, scholars disagree on the statute's operative character. Rights-based feminist writing celebrates the PWDVA because it avoids forcing women into the false choice between criminal prosecution and silence.^{xxi} Socio-legal studies, however, stress that the Act's success depends on procedure and infrastructure.^{xxii} Basu's implementation work in Kolkata, Dhawan's recent field-based analysis, and empirical studies by Sabri and colleagues show that legal awareness, institutional mediation, and class location shape whether women can use the Act meaningfully. These scholars contrast the formal generosity of the PWDVA with the informal narrowing that occurs through delay, poor service of notice, hostile counselling, and under-resourced protection officers. Their critique is not that the statute is conceptually weak, but that institutional practice often converts a preventive law into a slow and negotiative process that reproduces family pressure.

A further debate concerns the Act's women-specific structure.^{xxiii} Several scholars defend this as a legitimate response to structurally gendered violence, especially in a society where marriage, residence, inheritance, and unpaid care remain deeply unequal.^{xxiv} Others have argued for eventual gender-neutral family violence frameworks. Yet even scholars who support broader future reform generally concede that the present Indian context continues to justify a women-centred statute because the dominant pattern of severe domestic abuse remains gendered. The courts, therefore, have had to interpret the Act against a backdrop of both constitutional feminism and persistent institutional conservatism.

III. Evolving Jurisprudence under the PWDVA

1. From Penal Cruelty to a Civil-Welfare Model

Pre-PWDVA jurisprudence had already acknowledged women's residential vulnerability in cases such as *B.P. Achala Anand v. S. Appi Reddy*, but the law remained fragmented.^{xxv} After 2005, the Court repeatedly emphasised that the PWDVA is supplementary rather than derogatory of other remedies.^{xxvi} In *Kunapareddy v. Swarna Kumari*, the Supreme Court described proceedings under the Act as predominantly civil in nature, notwithstanding their location before a criminal court.^{xxvii} That formulation is doctrinally important. It explains why the Act can coexist with cruelty prosecutions, matrimonial litigation, and maintenance claims without being collapsed into them. Scholars such as Agnes welcome this hybridity because it enables women to seek immediate protection without depending entirely on criminal prosecution. By contrast, critics who favour procedural rigidity see hybridity as a source of forum overlap and uncertainty. The better view is that overlap is not a defect where domestic violence produces multiple legal injuries requiring different remedies.

The Court's recent insistence that applications under Section 12 are not the same as criminal complaints under the general procedural code further strengthens this welfare orientation.^{xxviii} This line of reasoning, read with Shyam Lal Devda and subsequent authority, supports a more flexible and survivor-sensitive procedure.^{xxix} Literature on access to justice strongly supports such flexibility. Socio-legal researchers repeatedly show that domestic violence survivors often approach the system in crisis conditions; a code that treats them as ordinary criminal complainants would undermine the statute's purpose.

2. Who may seek relief, and against whom?

The question of who counts as an aggrieved person and who may be named as respondent generated some of the earliest doctrinal conflict.^{xxx} In Sandhya Manoj Wankhade and later Hiral P. Harsora v. Kusum Narottamdas Harsora, the Court moved away from the statutory phrase 'adult male person' and recognised that restricting respondents to adult males would defeat the Act because abuse in marital homes is often perpetrated or enabled by female relatives as well.^{xxxi} Harsora is widely regarded in the literature as a corrective judgment because it aligned the statute with lived domestic hierarchies rather than a formally gendered model of perpetration.^{xxxii} Ajay Kumar v. Lata @ Sharuti reinforced that relief can be sought against relatives of the husband or male partner.^{xxxiii} Compare this with more restrictive early readings, which treated the proviso narrowly and reduced the practical reach of the Act.

The jurisprudence on domestic relationships outside formal marriage is more ambivalent. In D. Velusamy v. D. Patchaiahmmal and Indra Sarma v. V.K.V. Sarma, the Court accepted that relationships in the nature of marriage may attract protection, but it attached indicators such as duration, shared household, social presentation, and legal capacity to marry.^{xxxiv} Some commentators consider this a progressive opening beyond marital formalism. Others, especially feminist critics, argue that the tests import respectability norms into a statute meant to protect vulnerability. Lalita Toppo partially softened this rigidity by recognising that a woman in a non-formal union may still seek maintenance-like relief under the PWDVA.^{xxxv} The contrast in the literature is sharp: doctrinal writers praise judicial caution in preventing fraudulent claims, while feminist scholars contend that over-screening excludes precisely those women who occupy the least secure relational positions.

3. Shared household, residence, and the constitutionalisation of home

No doctrinal issue has been more central than the meaning of 'shared household'.^{xxxvi} In S.R. Batra v. Taruna Batra, the Supreme Court adopted a narrow property-linked reading that significantly weakened residence rights where the house belonged to in-laws. The judgment received sustained criticism in academic commentary because it reduced a protective statute to private title logic. Agnes, Jaising, and later doctrinal commentators argued that if residence rights depended on formal ownership, the core social reality of domestic violence—expulsion from the matrimonial home—would remain legally unaddressed. The criticism proved influential. In Satish Chander Ahuja v. Sneha Ahuja, the Court expressly overruled Batra and embraced a wider, purpose-oriented understanding of shared household.^{xxxvii} S. Vanitha v. Deputy Commissioner then demonstrated how the PWDVA must be harmonised even with senior citizens legislation, rather than automatically subordinated to eviction claims by in-laws.^{xxxviii}

This is the strongest rights-expanding turn in domestic violence jurisprudence. It moves the law from a property model to an occupancy-and-protection model. The home is treated not simply as owned space but as the social location of dependency, care, and control. Literature on coercive control strongly supports this shift, because expulsion or the threat of homelessness is often central to abuse. Yet courts still occasionally balance residence rights in ways that risk reintroducing property-centred thinking, especially where elderly in-laws are involved. The jurisprudence is therefore improved but not fully settled. What Ahuja achieved doctrinally remains vulnerable in everyday lower-court reasoning if residence is treated as an exceptional indulgence rather than a statutory right.

Prabha Tyagi v. Kamlesh Devi further clarified that relief under the Act is not defeated merely because the woman no longer resides in the shared household on the date of the application.^{xxxix} This is a vital development. Socio-legal literature shows that many women leave only after severe violence or are forced out. A rule requiring co-residence at the time of filing would perversely reward dispossession.

4. Continuing wrongs, economic abuse, and procedural access

Another major advance lies in the judicial recognition of domestic violence as a continuing wrong. Inderjit Singh Grewal created uncertainty about limitation in some contexts, but later decisions moved decisively toward a more protective view.^{xi} *V.D. Bhanot v. Savita Bhanot* allowed past conduct to be considered where the effects of violence continued after the Act came into force.^{xli} *Krishna Bhattacharjee v. Sarathi Choudhury* treated deprivation of stridhan as economic abuse and recognised a continuing cause of action.^{xlii} *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori* further confirmed that even a subsequent divorce does not erase liability for acts of domestic violence already committed.^{xliii} *Kamatchi v. Lakshmi Narayanan* strengthened this line by refusing an artificially narrow limitation logic in domestic violence proceedings.^{xliv}

This jurisprudence is strongly supported by both feminist theory and implementation research. Scholars repeatedly show that domestic abuse is patterned, cumulative, and frequently economic. The taking of jewellery, withholding of money, denial of access to shelter, and long-term control over income are not secondary injuries; they are central mechanisms of domination. Earlier legal culture often trivialised these wrongs because they lacked visible bodily injury. By recognising economic abuse and continuing wrongs, the Court has aligned legal doctrine with social reality. *Rajnish v. Neha* also contributes to this field by rationalising maintenance adjudication and financial disclosure, which matters greatly because monetary relief under the PWDVA is meaningful only if courts can realistically assess need, concealment, and earning capacity.^{xlv}

Procedurally, the Court has also moved toward flexibility. *Kunapareddy* allows amendment of pleadings, and *Shyamal Devda* confirms broad territorial jurisdiction where the aggrieved woman resides, whether temporarily or permanently.^{xlvi} These rulings matter because mobility after violence is itself a survival strategy. Literature on legal process supports such procedural elasticity; rigid territorial and pleading rules tend to burden women who have already experienced dislocation.

IV. A Critical Assessment of the Case Law

Viewed as a whole, the jurisprudence reveals a gradual but incomplete shift toward substantive equality. The most persuasive line of decisions—*Harsora*, *Ahuja*, *Vanitha*, *Prabha Tyagi*, *Krishna Bhattacharjee*, and *Kamatchi*—reads the PWDVA purposively and in light of the conditions that keep women trapped in abusive households.^{xlvii} These judgments reject formalism in favour of lived injury. They understand that domestic violence is not exhausted by beating; it includes surveillance, expulsion, humiliation, financial deprivation, threats involving children, and social isolation. In this respect, Indian domestic violence law has moved closer to international feminist understandings of coercive control.

Yet the jurisprudence is uneven in at least four respects. First, respectability filters remain visible in cases involving live-in relationships. The Court has expanded protection, but often only for relationships deemed marriage-like according to conventional markers. This can exclude women in unstable or secretive unions, including those structurally unable to demand public recognition. Second, the misuse discourse, though relevant to all legal systems, has sometimes occupied disproportionate doctrinal space. *Arnesh Kumar*, *Preeti Gupta*, and *Social Action Forum for Manav Adhikar* address concerns around arrest and criminal overreach in cruelty cases,^{xlviii} but the translation of that anxiety into the PWDVA context can encourage judicial scepticism toward a welfare statute whose basic remedies are civil. The literature is clear that under-enforcement, not over-enforcement, remains the more systemic problem in domestic violence protection.

Third, implementation remains the deepest weakness. Field studies document understaffed protection machinery, poor coordination with police and shelters, inconsistent service of notice, and magistrate-level variation in granting ex parte or residence orders. We The Women of India litigation and related implementation directions illustrate that the problem is no longer merely interpretive; it is administrative and federal.^{xlix} Fourth, the jurisprudence has not yet fully articulated a constitutional theory of domestic violence. Courts often invoke the beneficial purpose of the Act, but fewer judgments systematically tie domestic violence to Articles 14, 15, 19, and 21. A more explicit constitutional framework would strengthen doctrinal coherence, especially when residence, mobility, maintenance, and dignity are weighed against property and family-order claims.

Accordingly, the most convincing scholarly position is the one that combines feminist rights analysis with implementation realism. Pure doctrinal celebration is premature; pure implementation pessimism understates the significance of the jurisprudential gains already secured. The law has become better at naming the harms, but not consistently better at remedying them in time.

V. Conclusion

The evolution of domestic violence jurisprudence in India demonstrates that the PWDVA has been far more than a procedural supplement to criminal law. It has enabled courts to recognise abuse as a composite injury involving violence, dispossession, dependence, and dignity. The most important jurisprudential gains have been the expansion of the respondent category, the correction of narrow shared-household doctrine, the recognition of continuing economic abuse, and the adoption of flexible procedure. These developments show that courts can read social-welfare statutes in a genuinely transformative manner.

But the project remains unfinished. The persistence of uneven trial-court practice, hesitation around non-marital relationships, and weak implementation infrastructure limits the statute's emancipatory potential. The next phase of reform must therefore focus on three things: first, survivor-centred and constitutionally explicit interpretation; second, administrative strengthening of protection officers, shelters, legal aid, and maintenance enforcement; and third, better doctrinal harmonisation between the PWDVA, family law, and criminal cruelty provisions under the new penal framework.¹ A domestic violence law becomes transformative not when it is symbolically progressive, but when it reliably secures safety, shelter, dignity, and economic survival. That remains the true test of evolving jurisprudence.

References:

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 - [3] See Flavia Agnes, *The Protection of Women from Domestic Violence Act, 2005: How Effective Is It?*, 2006 *LAWYERS COLLECTIVE REV.* 1, 3–7.
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 - [9] See Flavia Agnes, *LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA* 145–52 (1999).
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