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REVISITING THE DOMESTIC VIOLENCE ACT, 2005: SCOPE FOR GENDER-NEUTRAL AMENDMENTS

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1. Introduction

The *Protection of Women from Domestic Violence Act, 2005* (PWDVA) Passed in 2005, was a historic milestone in India's legislative history against domestic violence, establishing for the first time a civil remedy framework to secure women's rights and dignity. [1] Enacted with a victim-centric approach, the Act recognizes the multifaceted nature of domestic violence—encompassing physical, sexual, verbal, emotional, and economic abuse—and seeks to provide accessible legal recourse for women within domestic relationships.

Unfortunately, almost two decades after its introduction, the PWDVA has come under blistering criticism for its female-exclusive nature. While it is obviously indisputable that women remain the most frequent victims of domestic violence, a growing body of judicial commentary, academic literature, and empirical evidence indicates that men, elderly parents, and LGBTQ+ individuals can also be subjected to similar forms of abuse within domestic spheres.[2] [3]The Act's exclusive recognition of women as victims and adult males as respondents raises critical questions of constitutional validity and inclusivity, particularly in light of evolving jurisprudence on equality, non-discrimination, and human dignity under the Indian Constitution.

To add to this positive evolution, this paper undertakes a critical re-evaluation of the PWDVA with the objective of assessing its compatibility with contemporary constitutional values and societal realities. It explores the scope and implications of adopting a gender-neutral framework that upholds the foundational principles of justice, equality, and human rights in domestic violence legislation.

[1] Ministry of Women and Child Development, Government of India, Handbook on the PWDVA, 2005, 2007.
[2] Anuj Bhuwania, "Gendered Justice: The Problem with India's Domestic Violence Law", EPW, Vol. 45, No. 48, 2010.
[3] S.N. Balakrishnan, "Men and Domestic Violence: A Forgotten Reality", Journal of Law and Society, 2018.

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2. Objectives of the Act:

2.1 To Provide Protection to Women in Domestic Relationships

The central objective of the Act is to ensure protection for women who are subjected to abuse within domestic spaces. This includes not only wives but also mothers, daughters, sisters, and women in relationships akin to marriage, such as live-in partners. The Act acknowledges that domestic violence can occur in various familial and intimate relationships and seeks to shield women from such violence regardless of their marital status.[4]

2.2 To Recognize the Full Spectrum of Domestic Abuse

A progressive feature of the PWDVA is its expansive definition of domestic violence. Unlike traditional legal frameworks that predominantly focus on physical harm, the Act recognizes emotional, verbal, sexual, and economic abuse as actionable forms of domestic violence. This comprehensive understanding of abuse reflects the psychological, social, and financial dimensions of harm that victims may endure.

2.3 To Ensure Swift and Accessible Civil Remedies

The Act emphasizes the provision of prompt civil reliefs that do not rely on the rigours of criminal prosecution. These remedies include protection orders, residence orders, monetary relief, custody orders, and compensation for injuries and trauma. By enabling Magistrates to grant such reliefs swiftly, the law aims to minimize further victimization and offer a sense of security and stability to the aggrieved woman.

2.4 To Establish an Accessible and Supportive Redressal Mechanism

In order to make justice delivery more approachable, the Act provides for the appointment of Protection Officers and the establishment of support infrastructure, such as shelter homes, medical aid, counselling services, and free legal assistance. These provisions are intended to ensure that victims, especially those from marginalized backgrounds, can access justice without being hindered by systemic or economic barriers.

While the objectives of the PWDVA are laudable and rooted in the protection of women's rights, the Act's gender-specific orientation presents significant limitations. By confining the status of "aggrieved person" exclusively to women, the law excludes other similarly situated

[4] Section 2(f), PWDVA.

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victims of domestic violence—such as men, elderly parents, and LGBTQ+ individuals—solely on the basis of their gender or sexual identity. This exclusion runs counter to the constitutional guarantees of equality (Article 14), non-discrimination (Article 15), and the right to dignity and life (Article 21), raising important questions about the need for a more inclusive, gender-neutral approach to domestic violence legislation.[5]

3. Limitations and Criticisms of the Protection of Women from Domestic Violence Act, 2005

Despite its progressive aims and significant contributions to addressing domestic abuse, the *Protection of Women from Domestic Violence Act, 2005* (PWDVA) is not without limitations. Critics have raised concerns regarding its gender-specific framework, limited applicability, and susceptibility to misuse. These criticisms point to structural and conceptual shortcomings that challenge the Act's alignment with contemporary constitutional values and evolving societal dynamics.

a. Gender-Specific Language and Presumptive Victimhood

One of the most contentious aspects of the PWDVA lies in its gender-specific terminology. Section 2(a) of the Act defines an "aggrieved person" solely as a woman who is, or has been, in a domestic relationship with the respondent. Additionally, Section 2(q), as originally enacted, defined a "respondent" as an "adult male person," thereby establishing a binary and gendered framework where only women could be victims and only men could be perpetrators of domestic violence.

a. Exclusion of Male and LGBTQ+ Victims

There is growing recognition in both domestic and international legal discourse that domestic violence is not a phenomenon limited to women victims. Men, elderly parents, and members of the LGBTQ+ community can also experience intimate partner violence, familial abuse, and coercive control. Despite this, the PWDVA remains silent on the rights of these groups, effectively denying them any statutory protection or legal remedy under this legislation.

This exclusion is not merely a legislative oversight; it has significant constitutional implications. By denying protection to similarly situated individuals on the basis of their gender or sexual identity, the Act violates Article 14 (equality before the law), Article 15 (prohibition of discrimination), and Article 21 (right to life and personal

[5] Justice Dipak Misra in Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165.

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liberty) of the Indian Constitution. Moreover, such exclusion reflects and reinforces heteronormative and patriarchal assumptions, which are increasingly out of step with India's pluralistic and rights-based constitutional framework.

b. Potential for Misuse

Another recurrent criticism of the PWDVA pertains to its potential misuse. In practice, there have been instances where the Act has been strategically invoked in matrimonial disputes, custody battles, or property conflicts. Critics argue that the one-sided protection offered by the law can sometimes be leveraged to gain procedural or emotional advantage, especially in cases involving high-stakes litigation or marital discord.

While it is important to recognize that misuse is not unique to this law and that false cases may constitute only a small fraction of the total, the absence of gender neutrality contributes to a perception of bias. The lack of adequate safeguards against malicious prosecution or false allegations further undermines public confidence in the Act and diverts attention from genuine victims in need of support and protection.[6]

4. Judicial Interpretation and Case Law

The Indian judiciary has played a pivotal role in shaping the interpretation and implementation of the *Protection of Women from Domestic Violence Act, 2005* (PWDVA). Through landmark rulings, courts have sought to clarify the scope of the Act, address certain constitutional concerns, and expand its applicability to contemporary domestic arrangements. However, these interpretations have largely remained within the gender-specific framework of the legislation, often reinforcing rather than challenging its exclusionary nature. The following cases highlight key judicial developments and their implications for gender neutrality in domestic violence law:

a. *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165

In this landmark decision, the Supreme Court struck down the phrase "adult male person" from Section 2(q) of the PWDVA, holding it to be unconstitutional on the grounds that it violated Article 14 of the Constitution, which guarantees equality before the law. The Court observed that domestic violence is not confined to acts perpetrated by adult males and that women or even minors could also be respondents in cases of

[6] Rajesh Sharma v. State of U.P., (2017) 8 SCC 821.

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abuse.[7]

By expanding the definition of "respondent" to include any person, regardless of gender or age, the Court acknowledged the multifaceted nature of domestic violence and the need for a broader lens in identifying perpetrators. However, the judgment fell short of addressing the complementary issue—namely, the definition of "aggrieved person" under Section 2(a), which remains limited to women. As a result, while the pool of potential abusers has been expanded, the scope of potential victims has not, thus preserving the gender-asymmetric structure of the law.

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

In this case, the Supreme Court dealt with the applicability of the PWDVA to women in live-in relationships. The Court held that a woman in a relationship "in the nature of marriage" is entitled to protection under the Act, provided certain criteria—such as shared household, duration, and mutual dependence—are met. This judgment was significant in recognizing non-traditional domestic arrangements and extending legal protection to women outside formal marital bonds.[8]

While progressive in acknowledging evolving relationship norms, the judgment continued to reinforce the woman-centric structure of the PWDVA. The Court did not entertain the possibility of male or LGBTQ+ victims in such relationships, thereby reaffirming the presumption that only women can be aggrieved parties under the Act.

c. *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600

Although not a case directly concerning the PWDVA, the Supreme Court's observations in this matter are relevant to the discourse on personal autonomy and non-traditional relationships. The Court dismissed multiple criminal complaints filed against a public figure for expressing views on pre-marital relationships and emphasized the importance of respecting individual autonomy, freedom of expression, and personal liberty in intimate matters.

This judgment contributes to a broader constitutional and jurisprudential recognition of individual dignity and autonomy in personal relationships. It strengthens the argument for a legal framework that accommodates diverse domestic arrangements and protects all individuals from abuse, regardless of gender or sexual orientation. In this context,

[7] https://www.barandbench.com/news/words-adult-male-section-2q-domestic-violence-act-violates-art-14-supreme-court

[8] Adv. Bhagat Singh Sharma, Women in Live-In Relationships Can Now Claim Maintenance: Reflecting the Changing Nature of Partnerships (https://www.linkedin.com/pulse/women-live-in-relationships-can-now-claim-maintenance-sharma-d92nc/)

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the principles articulated in *Khushboo* could inform a more inclusive and rights-oriented interpretation of domestic violence laws.

5. The Case for Gender-Neutral Amendments

As society evolves and the understanding of domestic violence expands beyond traditional paradigms, it becomes imperative to re-evaluate the *Protection of Women from Domestic Violence Act, 2005* (PWDVA) through a more inclusive and constitutionally aligned lens. The case for gender-neutral amendments is grounded in legal, social, and international rationales, each underscoring the necessity for reform.

a. Constitutional Mandate

The Indian Constitution enshrines the principles of equality and non-discrimination. Article 14 guarantees equality before the law and equal protection of the laws to *all persons*, not merely to a particular gender. Furthermore, Article 15(1) explicitly prohibits the State from discriminating against any citizen on grounds of sex. A legislative framework that restricts access to legal remedies based solely on gender may thus run afoul of these constitutional guarantees. By denying statutory protection to male and LGBTQ+ victims of domestic violence, the PWDVA arguably institutionalizes a form of gender-based discrimination, contrary to the egalitarian spirit of the Constitution.[9]

a. Changing Societal Dynamics

Indian society is undergoing a marked transformation in gender roles, family structures, and awareness of non-traditional forms of abuse. Men are increasingly assuming caregiving roles, and societal acknowledgment of abuse faced by men and LGBTQ+ individuals is gaining traction. In this context, a legal regime that continues to adhere to a binary, patriarchal conception of victimhood appears outdated and exclusionary. For the law to remain relevant and effective, it must reflect the lived realities of all potential victims, irrespective of gender or sexual orientation.[10]

b. International Trends

Globally, there is a shift toward the adoption of gender-neutral domestic violence legislation. Countries such as the United Kingdom, Canada, Australia, and New Zealand have enacted inclusive laws that recognize domestic abuse as a violation of

[9] Constitution of India, Articles 14, 15, 21.
[10] Ministry of Social Justice & Empowerment, "Transgender Persons and Protection Needs", 2020.

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human rights, regardless of the victim's gender. India, as a signatory to international conventions like the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), has an international obligation to eliminate all forms of discrimination and ensure equal protection of laws. Adopting a gender-neutral framework for domestic violence laws is thus consistent with both global best practices and international human rights commitments.

6. Arguments Against Gender Neutrality and response to them:

While the demand for gender-neutral domestic violence laws is gaining momentum, it has also faced resistance. Critics often raise concerns about the implications of inclusivity on the efficacy of protection for women. These arguments, however, do not withstand rigorous legal and empirical scrutiny.

a) **Argument: Women are the primary victims of domestic violence.**
While statistical data does show that women constitute a majority of domestic violence victims, legal protection should not be contingent on majority victimhood. The rights of minority groups, including male and LGBTQ+ victims, are no less deserving of recognition and protection. Ensuring inclusivity does not dilute the focus on women; rather, it strengthens the law by acknowledging and addressing the full spectrum of victim experiences.[11]

b) **Argument: Gender-neutral laws could weaken protections for women.**
Gender neutrality does not necessitate the erosion of gender-sensitive mechanisms. Protective provisions for women can and should coexist with inclusive legal frameworks. Tailored safeguards can be retained for particularly vulnerable groups, even within a gender-neutral statute, through context-specific implementation and procedural safeguards.[12]

c) **Argument: Gender neutrality may increase false cases by men.**
The potential for misuse exists in all legal systems and is not unique to gender-neutral laws. Instead of using this concern to justify exclusion, the focus should be on incorporating procedural checks, evidentiary safeguards, and penal consequences for false complaints. Denying access to justice for genuine victims based on fear of

[11] Gautam Bhatia, The Transformative Constitution, HarperCollins, 2019.
[12] UK Domestic Abuse Act, 2021.

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hypothetical misuse undermines the rule of law and perpetuates discrimination.[13]

7. Proposed Amendments and Policy Recommendations

To ensure that the PWDVA aligns with constitutional principles, reflects contemporary social realities, and provides effective protection to all victims of domestic violence, the following legislative and policy changes are proposed:

- **Redefining "Aggrieved Person"**

  Amend Section 2(a) of the Act to define the "aggrieved person" as *"any person"* in a domestic relationship who alleges to have been subjected to domestic violence. This inclusive definition would ensure protection for male, LGBTQ+, and elderly victims.
- **Expanding the Definition of "Respondent"**

  While *Hiral Harsora* struck down the term "adult male," the legislation must be explicitly amended to state that any individual, irrespective of gender, sex, or age, can be a respondent. This would provide statutory clarity and prevent regressive interpretations.
- **Establishing Gender-Neutral Support Mechanisms**

  Create shelters, helplines, legal aid services, and counseling centers that are accessible to all victims of domestic violence, including men and transgender persons. These services should be sensitively designed to address the unique needs of different demographic groups.
- **Training and Sensitization of Stakeholders**

  Develop mandatory training programs for police officers, judicial officers, protection officers, medical personnel, and NGOs to address gender stereotypes, unconscious bias, and the importance of inclusivity in the implementation of domestic violence laws.
- **Maintaining Disaggregated Data**

  Statistical tracking of domestic violence cases should include gender-disaggregated and orientation-disaggregated data. Such data is crucial for policy-making, monitoring trends, and identifying the needs of various victim groups.
- **Conducting Public Awareness Campaigns**

  Launch national and regional awareness initiatives to sensitize the public about the inclusive nature of domestic violence, the availability of remedies for all victims, and the importance of gender-neutral laws in promoting justice and equality.

[13] Law Commission of India, 243rd Report (2012).

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8. Conclusion

The *Protection of Women from Domestic Violence Act, 2005* marked a watershed moment in Indian legislative history. For the first time, a civil law mechanism was specifically enacted to address the pervasive issue of domestic abuse, offering crucial protections and redressal mechanisms for women across diverse domestic relationships. The Act has, without doubt, empowered numerous women to assert their rights and seek relief from systemic violence that had long remained shrouded in silence and stigma.

However, nearly two decades since its enactment, the social, legal, and constitutional landscape of India has significantly evolved. The rigid gender binary that underpins the PWDVA increasingly appears out of step with contemporary understandings of domestic violence, gender roles, and the spectrum of identities that characterize intimate relationships today. By restricting protection solely to women, the Act inadvertently excludes male, LGBTQ+, and elderly victims, thereby failing the test of constitutional equality under Articles 14 and 15 of the Indian Constitution.

The call for gender neutrality in domestic violence legislation is not an attempt to undermine or minimize the suffering of women. Rather, it is a call to extend the law's protective embrace to *all* individuals who experience domestic abuse, regardless of their gender or sexual orientation. Justice must be blind not only to caste, class, and religion but also to gender, and must be dispensed equitably to every victim.

As India continues to reaffirm its commitment to equality, dignity, and human rights—both domestically and on the global stage—there is an urgent need to reimagine the PWDVA as an inclusive and progressive statute. Such a reform would reflect not only a deeper understanding of the nature of domestic violence but also a more compassionate and equitable legal system—one that recognizes and protects the rights of every individual to live free from violence, fear, and coercion within their home.

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