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# **REVEALING THE DEPTHS: EXPLORING THE CRIME OF DOMESTIC VIOLENCE AND Its FAR- REACHING CONSEQUENCES**

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## **INTRODUCTION**

Violence is a multifaceted concept that encompasses a broad spectrum of behaviors and actions intended to cause harm, injury, or suffering to oneself, others, or property. It manifests in various forms, ranging from physical aggression and verbal abuse to psychological manipulation and systemic oppression. At its core, violence is an expression of power dynamics, often rooted in inequality, injustice, and unresolved conflicts.

The meaning of violence extends beyond its overt manifestations to include subtle and systemic forms that perpetuate harm and perpetuate cycles of abuse. It can occur at interpersonal, institutional, and societal levels, shaping individual experiences and collective realities. Moreover, violence is not limited to direct physical harm but can also manifest through structural inequalities, discrimination, and exploitation.

Understanding violence requires considering its social, cultural, and historical contexts. What may be perceived as violent behavior in one culture or context may not hold the same meaning in another. Similarly, power dynamics, privilege, and systemic oppression shape how violence is experienced and perceived by different individuals and communities.

Addressing violence necessitates holistic approaches that address root causes, promote empathy and understanding, and foster healing and reconciliation. It requires challenging societal norms that perpetuate violence, advocating for justice and accountability, and empowering individuals and communities to break free from cycles of abuse and oppression.

In essence, violence encompasses a wide range of harmful behaviors and actions rooted in power imbalances and systemic injustices. Recognizing and understanding its complex manifestations is crucial for fostering empathy, promoting peace, and building inclusive societies based on mutual respect and dignity for all.

## WHAT IS MEANT BY DOMESTIC VIOLENCE?

As per research by the WHO, aggressive behavior at home stands as the most predominant type of viciousness looked by ladies around the world. The domestic sphere, traditionally regarded as a sanctuary, often becomes a source of pain and oppression for many women. Fear of repercussions inhibits them from asserting their fundamental rights to dignity and self-respect, perpetuating cycles of abuse. Historical narratives and societal norms have perpetuated various forms of oppression within familial settings, with violence serving as a tool to maintain control over subordinate individuals, particularly women. The persistence of such violence underscores the pervasive gender bias ingrained within societies globally.

The UNGN perceived the seriousness of this issue in 1979 by organizing CEDAW . Notwithstanding this affirmation, the prioritization of sexual brutality as a common liberties infringement stayed lacking. Nonetheless, in 1992, the CEDAW committee recognized orientation based brutality as a type of segregation, firmly embedding it within the realm of human rights. Gender bias inherent in societal structures perpetuates legal disadvantages for women from birth, reinforcing the cycle of violence and unequal distribution of power.<sup>1</sup>

Defining 'domestic violence' poses challenges, as it encompasses a broad spectrum of behaviors occurring within familial or intimate contexts. Merriam Webster's Collegiate Dictionary (2003) defines DV as "the infliction of physical harm by one family or household member on another, typically involving a pattern of behavior." However, this defi. falls short in capturing the complexity and nuances of the issue. DV includes different types of aggression, including physical, psychological, sexual, financial, & emotional abuse, occurring within familial or intimate relationships.

Domestic violence, a pervasive and insidious form of abuse, occurs within intimate relationships, households, and families. It encompasses a range of behaviors aimed at exerting power and control over a partner, spouse, child, or other family member. While often associated with physical violence, domestic abuse can also manifest in various other forms, including emotional, psychological, sexual, and financial abuse.

Physical violence in domestic settings involves acts such as hitting, punching, kicking, and restraining, which can result in bodily harm, injury, or even death. Emotional and psychological abuse may take the form of verbal insults, threats, intimidation, manipulation, and isolation, causing profound emotional distress and undermining the victim's self-worth and autonomy.

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<sup>1</sup> Dr, suman rai 2010, Law relating to protection of women from domestic violence, orient publishing company, New Delhi, p 498 2.

Sexual abuse within domestic relationships involves coercive or non-consensual sexual acts, harassment, or exploitation, violating the victim's bodily integrity and autonomy. Financial abuse, another common tactic, entails controlling the victim's finances, restricting access to resources, or sabotaging their economic independence, leaving them financially vulnerable and dependent on the abuser.

Aggressive behavior at home isn't restricted to a particular segment or financial gathering; it can influence people of all ages, orientation, sexual direction, race, or financial status. In any case, ladies are excessively impacted, with measurements demonstrating that they are bound to encounter extreme types of misuse and personal accomplice murder. The effect of aggressive behavior at home stretches out a long way past the prompt actual mischief incurred for casualties. It can prompt long haul physical and emotional well-being ramifications, including persistent torment, wounds, post-horrendous pressure problem (PTSD), despondency, tension, and substance misuse. Kids presented to abusive behavior at home are additionally in danger of experiencing trauma, developmental delays, and behavioral problems, with potential implications for their future well-being and relationships.

The underlying causes of domestic violence are multifaceted, with perspectives from women's rights advocacy, criminology, human rights, and sociology providing different insights. Feminist sociologists argue that gender dynamics and power imbalances are central to understanding spousal violence. Family structures shape perceptions of marital power dynamics, influenced by societal, political, educational, and economic factors. In patriarchal societies, violence becomes normalized as a means of maintaining control over family structures, perpetuating cycles of oppression. Sociologists contend that gender roles play a significant role in motivating domestic violence, highlighting the need for comprehensive approaches to address the root causes of abuse.<sup>2</sup>

In essence, domestic violence represents a complex interplay of power dynamics, societal norms, and individual behaviors. Addressing this issue requires comprehensive strategies that encompass legal reforms, societal education, and support services for survivors. By challenging entrenched gender biases and fostering equitable relationships, societies can strive towards ending the cycle of domestic violence and promoting a culture of respect, dignity, and equality for all individuals

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<sup>2</sup> A.B. Siddiqui, (2013), International Journal of Advanced Research in Management and Social Sciences , Volume 2(6) Pp 210-227

## FORMS OF DOMESTIC VIOLENCE

Abusive behavior at home can appear in different structures, which are all unsafe and have serious ramifications for casualties. Here are a few normal types of aggressive behavior at home:

**Physical Abuse:** This includes the utilization of actual power against an accomplice, like hitting, kicking, punching, slapping, gagging, or some other type of actual damage. It might bring about wounds going from injuries and slices to broken bones and more extreme injury.

**Psychological mistreatment:** Psychological mistreatment includes ways of behaving pointed toward sabotaging an individual's self-esteem, certainty, and mental prosperity. This can incorporate boisterous ambushes, affronts, embarrassment, dangers, control, gaslighting, and controlling way of behaving. Psychological mistreatment can affect a casualty's confidence and emotional well-being.

**Sexual Abuse:** Sexual maltreatment inside a homegrown relationship includes any non-consensual sexual action or compulsion. This can incorporate assault, rape, undesirable contacting, constrained sexual demonstrations, and different types of sexual pressure. Culprits of sexual maltreatment frequently use power and control to control their casualties.

**Monetary Abuse:** Monetary Abuse happens when one accomplice controls the other's admittance to monetary assets or utilizations cash as an instrument of force and control. This can incorporate portion cash, keeping an accomplice from working or getting to their own funds, subverting their business or monetary dependability, or adding to obligations in their name.

**Digital Abuse:** With the ascent of innovation, advanced misuse has become progressively normal. This incorporates utilizing innovation to disturb, tail, screen, or control an accomplice. Models incorporate steady messaging or calling, observing virtual entertainment accounts, hacking into email or online entertainment records, or utilizing GPS beacons to screen an accomplice's whereabouts without their assent.

**Separation:** Confinement includes controlling an accomplice's social connections and cutting them off from companions, family, or encouraging groups of people. This can incorporate restricting their capacity to see or speak with friends and family, checking their cooperations, or spreading reports to estrange them from others. Seclusion can leave casualties feeling caught and without an emotionally supportive network.

**Religious Abuse:** now and again, culprits might utilize social or strict convictions to legitimize or pardon their harmful way of behaving. This can incorporate implementing severe orientation jobs, utilizing social customs to legitimize control or brutality, or taking steps to exclude an accomplice from their local area or strict gathering on the off chance that they don't consent to

the victimizer's requests.

**Regenerative Compulsion:** This includes controlling or controlling a lady's conceptive decisions, for example, constraining her to have unprotected sex, subverting contraception strategies, or compelling her to either proceed or end a pregnancy despite her desire to the contrary.

## EVOLUTION OF THE LAWS ACROSS THE GLOBE WITH RESPECT TO DOMESTIC VIOLENCE

The evolution of domestic violence laws has been greatly influenced by various international programs, conventions, and initiatives aimed at addressing and combating gender-based violence on a global scale. These efforts have played a crucial role in shaping the legal frameworks and policies related to domestic violence in many countries, fostering greater awareness, advocacy, and accountability. Below is a detailed note on the evolution of domestic violence laws and its growth through various international programs:

### **1. Pre-International Framework:**

- a. **Historical Context:** Domestic violence has historically been considered a private matter, often overlooked or trivialized by legal systems and societal norms.
- b. **Emergence of Activism:** The feminist movement of the late 20th century brought increased attention to the issue of domestic violence, challenging prevailing attitudes and advocating for legal reforms to protect victims.<sup>3</sup>

### **2. United Nations Declarations and Conventions**

a. **Universal Declaration of Human Rights (1948):** While not specifically addressing domestic violence, the UDHR 1948 laid the foundation for recognizing the rights of individuals to live free from violence and discrimination.

b. **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979):** CEDAW is a landmark international treaty that obligates signatory countries to take measures to eliminate discrimination against women, including addressing domestic violence as a form of gender-based discrimination.

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<sup>3</sup> Sunil S. Kadam and VinodA. Chowdhary, 2011, Domestic Violence Act Against Women: Past , Present, Future, Journal of Academic Forensic Medicine, Volume 33(3),Pp 261-166

### 3. Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (2011):

**a) History:** The adoption of CEDAW was a culmination of decades of advocacy and activism by the global women's movement, which sought to address systemic discrimination and inequality faced by women worldwide.

**b) UN Declaration on the Elimination of Discrimination Against Women (1967):** CEDAW was preceded by the UN Declaration on the Elimination of Discrimination Against Women, which laid the groundwork for recognizing and addressing gender-based discrimination as a violation of human rights.

**c) Scope and Provisions:** The Istanbul Convention is a comprehensive treaty that defines and criminalizes various forms of violence against women, including domestic violence, and establishes legal standards for prevention, protection, and prosecution.

**d) Impact:** The Istanbul Convention has served as a catalyst for legislative reforms in many countries, encouraging the adoption of more robust domestic violence laws and policies in alignment with international standards.

- **Key Provisions:**

**a. Definition of Discrimination:** CEDAW defines discrimination against women as "any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>4</sup>

**b. State Obligations:** CEDAW outlines obligations for state parties to take measures to eliminate discrimination against women in all areas of life, including legislation, policies, and practices that perpetuate gender inequality.

**c. Areas of Concern:** CEDAW addresses a wide range of issues affecting women's rights, including access to education, employment, healthcare, political participation, marriage and family relations, and representation in decision-making processes.

**d. Temporary Special Measures:** CEDAW allows for the implementation of temporary special measures to accelerate progress towards gender equality, including affirmative action programs and quotas to increase women's representation in leadership roles.<sup>5</sup>

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<sup>4</sup> Website- <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

<sup>5</sup> Website- <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

- **Implementation and Monitoring:**

**a) State Reporting Mechanism:** State parties to CEDAW are required to submit periodic reports to the Committee on the Elimination of Discrimination Against Women, outlining progress made in implementing the provisions of the Convention and addressing challenges.

**b) Committee on the Elimination of Discrimination Against Women (CEDAW Committee):** The CEDAW Committee is a body of independent experts tasked with reviewing state reports, issuing recommendations, and monitoring compliance with CEDAW provisions.

**c. Optional Protocol:** The Optional Protocol to CEDAW, adopted in 1999, provides an additional mechanism for individuals or groups to submit complaints of violations of women's rights to the CEDAW Committee after exhausting domestic remedies.

- **Impact and Achievements:<sup>6</sup>**

**a. Normative Framework:** CEDAW has established a powerful normative framework for advancing gender equality and women's rights globally, influencing national legislation, policies, and judicial decisions in many countries.

**b. Progress in Legal Reforms:** CEDAW has contributed to significant legal reforms in areas such as marriage and family law, reproductive rights, violence against women, and employment discrimination, leading to greater protection and empowerment of women.

**c. Advocacy and Awareness:** CEDAW has served as a catalyst for advocacy efforts, raising awareness about women's rights issues, mobilizing civil society organizations, and empowering women to claim their rights and participate in decision-making processes.

- **Challenges and Future Directions:**

**a. Implementation Gaps:** Despite its achievements, challenges remain in the effective implementation of CEDAW provisions, including inadequate resources, limited political will, and entrenched social norms that perpetuate gender inequality.

**b. Intersectionality:** There is a growing recognition of the intersectionality of discrimination faced by women, particularly those from marginalized and vulnerable groups, calling for a more inclusive and intersectional approach to addressing gender-based discrimination.<sup>7</sup>

**c. Ratification and Enforcement:** Efforts are needed to encourage universal ratification of CEDAW and strengthen enforcement mechanisms to ensure greater accountability and

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<sup>6</sup> Sunil S. Kadam and VinodA. Chowdhary, 2011, Domestic Violence Act Against Women: Past , Present, Future, Journal of Academic Forensic Medicine, Volume 33(3),Pp 261-166

<sup>7</sup> Suneeta Krishnan and others, (2012), An intergenerational Women's Empoerment Intervention To Mitigate Domestic Violence: Results of a Pilot Study in Bengaluru, india, Sage Journals, Volume-18,Pp 346-370.

compliance with its provisions.

CEDAW 1979 stands as a cornerstone of international human rights law, providing a comprehensive framework for promoting gender equality and eliminating discrimination against women. While significant progress has been made since its adoption, ongoing efforts are needed to address remaining challenges and advance the realization of women's rights worldwide.<sup>8</sup>

## DEVELOPMENT OF DOMESTIC VIOLENCE LAWS IN INDIA

The development of laws regarding domestic violence in India has been a significant process, reflecting evolving societal attitudes towards the issue and the recognition of the need for legal frameworks to address it. Here's a brief overview of how such laws came into existence:

- **Pre-Independence Era:** Prior to India's independence in 1947, there were no specific laws addressing domestic violence. Customary practices and societal norms often governed familial disputes, leaving women particularly vulnerable to abuse within the home.
- **Post-Independence Era:** In the decades following independence, there were sporadic legal measures addressing certain aspects of domestic violence. For instance, the Dowry Prohibition Act of 1961 aimed to combat dowry-related harassment, which is a form of domestic violence prevalent in India.
- **Landmark Legal Reforms:** The real impetus for comprehensive legislation against domestic violence in India came in the early 21st century. One of the key milestones was the passing of the Protection of Women from Domestic Violence Act (PWDVA) in 2005. This law marked a significant shift by recognizing various forms of domestic violence beyond physical abuse, including emotional, verbal, sexual, and economic abuse.
- **The Protection of Women from Domestic Violence Act, 2005 (PWDVA):** This legislation was enacted to provide more effective protection to victims of domestic violence and to ensure punishment to perpetrators. It introduced measures such as protection orders, residence orders, and monetary relief for victims. Importantly, it recognized the right of every woman to live a life free from violence and abuse within her home.<sup>9</sup>

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<sup>8</sup> Website- <https://genderdata.worldbank.org/data-stories/overview-of-gender-based-violence/>

<sup>9</sup> Sutapa Saryal, (2014), Women's Rights in India: Problems and Prospects, International Research Journal Of Social Sciences, Vol 3(7), Pp 49-53.

- **Judicial Activism and Public Awareness:** Alongside legal reforms, judicial activism played a crucial role in pushing for the protection of victims of domestic violence. Landmark judgments by Indian courts, particularly the Supreme Court, have expanded the scope of protection and enforcement of laws against domestic violence.<sup>10</sup>
- **Civil Society and Advocacy Efforts:** Civil society organizations, women's rights groups, and NGOs have played a pivotal role in raising awareness about domestic violence, advocating for legal reforms, providing support services to victims, and holding authorities accountable for implementing laws effectively.
- **Challenges and Ongoing Efforts:** Despite legislative measures and increased awareness, challenges remain in effectively addressing domestic violence in India. These challenges include social stigma, underreporting, inadequate enforcement of laws, and limited access to support services for victims. Ongoing efforts involve strengthening legal frameworks, improving law enforcement mechanisms, enhancing support services, and fostering societal change through education and advocacy.<sup>11</sup>

The development of laws regarding domestic violence in India reflects a broader societal journey towards recognizing and addressing the issue. While significant progress has been made through legislative reforms and advocacy efforts, continued action is needed to ensure the effective implementation of laws and the protection of victims' rights.

## INDIAN LEGISLATIONS THAT PROTECT WOMEN

- **CODE OF CRIMINAL PROCEDURE:**

The CrPC 1973 also has sections related to DV. Here are some relevant sections along with case laws illustrating their application:

**Section 125** - Order for Maintenance of Wives, Children, and Parents:

S.125 allows wives, children, and parents to claim maintenance from their husbands or children, respectively, if they are unable to maintain themselves.

Case Law: In *Savitri v. Govind Singh Rawat* (2003), the SC held that a wife is entitled to maintenance under Section 125 even if she leaves her husband's house due to domestic violence.

**Section 174** - Police to Investigate Suicides and Unnatural Deaths:

Section 174 mandates police investigation into suicides and unnatural deaths, including those

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<sup>10</sup> Website- [https://www.cdjournal.com/articles\\_main.php?id=136](https://www.cdjournal.com/articles_main.php?id=136)

<sup>11</sup> Website- [https://www.cdjournal.com/articles\\_main.php?id=136](https://www.cdjournal.com/articles_main.php?id=136)

resulting from domestic violence.

Case Law: In *State of Haryana v. Bhajan Lal* (1992), the SC held that in cases of suspicious deaths, the police must conduct a thorough investigation under Section 174 to determine the cause of death.

**Section 198B** - Prosecution for Offences against Marriage:

Section 198B allows courts to take cognizance of offenses against marriage, including domestic violence, upon receiving a complaint from the aggrieved person, her parents, or any recognized welfare organization.

Case Law: While there are no specific case laws under Section 198B, its application can be seen in cases where courts take cognizance of offenses related to domestic violence based on complaints filed by the aggrieved party or recognized welfare organizations.

**Section 41** - Power of Police to Arrest without Warrant:

S.41 empowers police officers to arrest without a warrant in certain circumstances, including cases of domestic violence where there is a likelihood of the accused fleeing or tampering with evidence.

Case Law: In *Arnesh Kumar v. State of Bihar* (2014), the SC emphasized that the power to arrest under Section 41 should be exercised judiciously, especially in cases involving matrimonial disputes and domestic violence, to prevent misuse.

**Section 173** - Report of Police Officer on Completion of Investigation:

Section 173 requires police officers to submit a report to the magistrate upon completing the investigation, including cases of domestic violence.

Case Law: In *Joginder Singh v. State of Punjab* (2014), the Supreme Court reiterated that the police must submit a detailed investigation report under Section 173, including evidence gathered in cases of domestic violence.

These sections of the CrPC provide procedural mechanisms for addressing domestic violence, ensuring that victims receive protection and perpetrators are held accountable through proper investigation, prosecution, and adjudication.

- **INDIAN PENAL CODE:**

The IPC 1860 has sections that address various forms of domestic violence. Here are some relevant sections along with case laws illustrating their application:

**Section 498A** - Cruelty by Husband or Relatives of Husband:

Section 498A deals with cruelty by a husband or his relatives towards a woman, which is

punishable with imprisonment and/or fine.

Case Law: In *Sunita Kumari Kashyap v. State of Bihar* (2011), the Supreme Court held that the mental agony, torture, and harassment caused by dowry demands constitute cruelty under Section 498A.

**Section 304B** - Dowry Death:

Section 304B addresses dowry-related deaths and presumes them to be culpable homicides if they occur within seven years of marriage and are related to dowry harassment.

Case Law: In *Kans Raj v. State of Punjab* (2000), the Supreme Court held that if a woman dies under unnatural circumstances and it is shown that she faced harassment for dowry, the accused can be convicted under Section 304B.

**Section 306** - Abetment of Suicide:

Section 306 deals with abetment of suicide, including instigating someone to commit suicide by subjecting them to cruelty or harassment.

Case Law: In *Ramesh Kumar v. State of Chhattisgarh* (2001), the SC held that continuous harassment by the husband and in-laws, which led the wife to commit suicide, constituted abetment under Section 306.

**Section 354** - Assault or Criminal Force to Woman with Intent to Outrage her Modesty:

Section 354 deals with assault or criminal force to a woman with the intent to outrage her modesty, which includes physical and sexual abuse.

Case Law: In *State of Punjab v. Major Singh* (1966), the Punjab and Haryana High Court held that forcibly removing a woman's clothes with the intention to outrage her modesty amounts to an offense under Section 354.

**Section 509** - Word, Gesture, or Act Intended to Insult the Modesty of a Woman:

Section 509 addresses acts intended to insult the modesty of a woman, including making sexually colored remarks or gestures.

Case Law: In *State of Maharashtra v. Madhukar Narayan Mardikar* (1991), the Bombay High Court held that making obscene gestures and using vulgar language towards a woman constituted an offense under Section 509.

While these sections of the IPC provide legal recourse for victims of domestic violence, their effective implementation relies on thorough investigation, prosecution, and judicial adjudication. Additionally, it's essential to ensure that the rights of both the victim and the accused are protected throughout the legal process.

- **DOWRY PROHIBITION ACT:**

The Dowry Prohibition Act, 1961, is aimed at prohibiting the giving or taking of dowry. Although it primarily focuses on preventing the practice of dowry, it indirectly addresses aspects of domestic violence related to dowry harassment. Here are the relevant sections along with case laws illustrating their application:

**Section 3** - Penalty for Giving or Taking Dowry:

Section 3 of the Dowry Prohibition Act prohibits the giving or taking of dowry. Any person found guilty of giving or taking dowry is liable to be punished with imprisonment and/or fine.<sup>12</sup>

Case Law: In State of Karnataka v. Srikanth, (2008), the Karnataka High Court held that the mere acceptance of dowry, regardless of whether it was voluntarily given or demanded, is sufficient to establish an offense under Section 3 of the Dowry Prohibition Act.<sup>13</sup>

**Section 4** - Penalty for Demanding Dowry:

Section 4 makes it an offense to demand dowry directly or indirectly from the bride's family. Offenders can be punished with imprisonment and/or fine.

Case Law: In State of Haryana v. Om Prakash, (2006), the Punjab and Haryana High Court held that demanding dowry, whether before or after marriage, constitutes an offense under Section 4 of the Dowry Prohibition Act.

**Section 8** - Dowry to be Property of Woman:

Section 8 stipulates that any dowry received by the groom or his family must be transferred to the ownership of the bride. It aims to protect the rights of the bride and prevent the misuse of dowry.

Case Law: While there are no specific case laws under Section 8, courts have emphasized the importance of ensuring that dowry received is duly transferred to the bride's ownership as mandated by this provision.

**Section 9** - Agreement for Giving or Taking Dowry to be Void:

Section 9 declares any agreement for giving or taking dowry to be void. It aims to nullify any contractual arrangements that facilitate the exchange of dowry.

Case Law: In K.S. Prasad v. K.S. Ananthkrishnan, (2008), the Supreme Court held that any agreement or understanding for giving or taking dowry, whether in writing or orally, is rendered void under Section 9 of the Dowry Prohibition Act.

These sections of the Dowry Prohibition Act serve as crucial legal instruments in combatting

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<sup>12</sup> Website- <https://www.vidhikarya.com/legal-blog/laws-to-protect-rights-of-women-in-india>

<sup>13</sup> Website- <https://blog.ipleaders.in/women-centric-laws-india-beneficial-detrimental/>

dowry-related offenses and indirectly addressing aspects of domestic violence associated with dowry harassment. They aim to deter the practice of dowry and ensure the protection of women's rights within marital relationships.

Before the PWDV ACT 2005 these were the legislations that protected the women in India. But there was felt a need to have a separate act for the protection of women in India. The necessity for such legislation emerged due to the challenges encountered by women in utilizing legal recourse, the hesitance of law enforcement to intervene in familial matters, and the dearth of evidence for convicting the accused. Additionally, the punitive nature of criminal law provisions addressing domestic violence proved insufficient in safeguarding women, as they solely punished offenders without ensuring protection for the victim. Women, already enduring domestic violence, could face exacerbated harassment if their family members faced legal repercussions following their complaints. They risked losing their marital home, lacked financial support, and faced emotional turmoil due to potential child custody issues. None of the remedies within criminal law adequately shielded women from these adversities, prompting the necessity for civil law interventions. While some civil provisions, like injunctions, existed, they were not readily accessible and lacked enforceable consequences for violations. Hence, there arose a need for specialized laws to address domestic violence cases comprehensively, ensuring protection and holistic support for victims.

## **THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

- **Objectives**

The objectives of the establishment of the PWDVA 2005 are multifaceted and aimed at addressing the pervasive issue of domestic violence in India. Here are the key objectives:

1. **Protection of Women:** The primary objective of the PWDVA is to provide legal protection to women who are victims of domestic violence. It recognizes that domestic violence is not limited to physical abuse but encompasses various forms of violence, including emotional, verbal, sexual, and economic abuse. By acknowledging these forms of violence, the law aims to offer comprehensive protection to women in domestic settings.
2. **Prevention and Redressal:** Another objective is to prevent instances of domestic violence from occurring and to provide effective redressal mechanisms for victims. The PWDVA establishes legal procedures for obtaining protection orders, residence orders, and monetary

relief, among other remedies. These provisions are designed to empower victims to seek assistance from the legal system and to hold perpetrators accountable for their actions.

3. **Promotion of Women's Rights:** The enactment of the PWDVA is part of broader efforts to promote gender equality and women's rights in India. By recognizing domestic violence as a violation of women's fundamental rights, the law underscores the importance of upholding women's dignity, autonomy, and safety within familial relationships.
4. **Awareness and Sensitization:** The PWDVA aims to raise awareness about the prevalence and impact of domestic violence in Indian society. By codifying legal protections and remedies, the law contributes to shifting societal attitudes towards domestic violence and challenging the culture of silence and impunity surrounding it. Additionally, the law mandates training programs for law enforcement officers, judicial officials, and service providers to sensitively handle cases of domestic violence.

- **Significance**

1. **Legal Acknowledgment:** The PWDVA addresses a huge lawful achievement in tending to aggressive behavior at home in India by giving an exhaustive structure to security and redressal.
2. **Empowerment :** The law engages survivors of DV
3. at home by giving them admittance to legitimate cures and backing administrations, thereby enabling them to assert their rights and seek justice.
4. **Prevention and Intervention:** By recognizing various forms of domestic violence and establishing preventive measures, the PWDVA aims to intervene in abusive situations and break the cycle of violence.<sup>14</sup>
5. **Societal Change:** The enactment and implementation of the PWDVA contribute to broader societal changes by challenging patriarchal norms, promoting gender equality, and fostering a culture of respect and dignity within familial relationships.

The establishment of the PWDVA 2005 reflects India's commitment to addressing domestic violence as a serious human rights issue. Its objectives encompass legal protection, prevention, redressal, promotion of women's rights, awareness, and sensitization, making it a significant legislative tool in the fight against domestic violence.

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<sup>14</sup> T.M. Rajendra Prasad, (2013), Women and Human Rights, S.V.University, Vol 1(9), Pp 121-127

## IMPORTANT DEFINITIONS AND PROVISIONS OF PWDVA 2005

The Protection of Women from Domestic Violence Act (PWDVA) 2005 defines several key terms and contains various provisions aimed at protecting women from domestic violence. Here are some important definitions and provisions under the Act:

**1. Domestic Violence:** Section 3 of the PWDVA For the purposes outlined in this legislation, domestic violence pertains to any action, inaction, or behaviour of the accused party that:

(a) Results in harm, injury, or poses a threat to the health, safety, or overall well-being, whether physical or mental, of the affected individual, and encompasses physical, sexual, verbal, emotional, and economic abuse. It includes actions such as physical assault, sexual misconduct, verbal insults, emotional humiliation, and financial deprivation.

(b) Involves harassment, harm, injury, or endangerment of the affected individual with the intention to coerce her or her relatives into meeting unlawful demands for dowry or other assets.

(c) Exhibits behaviour that threatens the affected individual or her relatives, as described in clauses (a) or (b).

(d) Otherwise causes harm or injury, whether physical or mental, to the affected individual.

### Explanation I:<sup>15</sup>

(i) Physical abuse denotes any action or behaviour that inflicts bodily pain, harm, or jeopardizes the life, limbs, or health of the affected individual, including acts like assault, intimidation, and the use of force.

(ii) Sexual abuse encompasses any behaviour of a sexual nature that demeans, humiliates, or violates the dignity of the woman.

(iii) Verbal and emotional abuse includes insults, ridicule, humiliation, name-calling, and repeated threats to cause physical harm to individuals associated with the affected person, particularly concerning issues such as childbearing or gender preference.<sup>16</sup>

(iv) Economic abuse encompasses deprivation of financial resources entitled to the affected person under any law or tradition, disposal of household assets, restrictions on access to shared resources, and other acts that undermine the individual's economic autonomy and well-being.

### Explanation II:

When assessing whether the actions, omissions, or conduct of the accused party constitute

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<sup>15</sup> <https://indiankanoon.org/doc/1413588/>

<sup>16</sup> M.Tineshwaridevi, (2013), Women Status in India, Journal of Business Management and Social Sciences Research, (1) 2, 65-69.

domestic violence under this provision, the totality of facts and circumstances surrounding the case shall be considered.

**2. Aggrieved Woman:** An aggrieved woman refers to any woman who is in a domestic relationship with the respondent and who alleges to have been subjected to domestic violence by the respondent.

**3. Domestic Relationship:** Section 2(f) of the Act defines domestic relationship broadly to include relationships where the aggrieved woman is or was living in a shared household with the respondent and is related by consanguinity, marriage, or adoption. It also covers relationships where the parties have lived together in a family-like setting.

## RELIEFS PROVIDED/AVAILABLE UNDER DOMESTIC VIOLENCE ACT (PWDVA) 2005

Under the Domestic Violence Act (PWDVA) in India, several reliefs are available to victims or aggrieved persons who have experienced domestic violence. These reliefs are designed to provide protection, support, and remedies to individuals affected by domestic violence. Here are some of the key reliefs available under the Act:

- **Protection Orders:** The court can issue protection orders under Section 18 of the PWDVA to prevent the respondent from committing any act of domestic violence. These orders may include prohibiting the respondent from contacting or communicating with the aggrieved person, or from entering the shared household.
- **Residence Orders:** Section 19 of the Act allows the court to pass residence orders directing the respondent to provide alternate accommodation to the aggrieved person if she cannot continue to live in the shared household due to domestic violence.
- **Monetary Relief:** Section 20 provides for monetary relief to be awarded to the aggrieved person to meet expenses incurred and losses suffered as a result of the domestic violence. This may include compensation for medical expenses, loss of earnings, or damage to property.
- **Custody Orders:** Section 21 of the Act deals with custody orders for children, allowing the court to grant temporary custody of any child or children to the aggrieved person or other suitable persons.

- **Compensation Orders:** Section 22 empowers the court to order the respondent to pay compensation to the aggrieved person for injuries, including mental torture and emotional distress caused by the domestic violence.
- **Interim and Ex-parte Orders:** The court may also pass interim or ex-parte orders for the immediate relief of the aggrieved person, pending the final disposal of the case.
- **Protection of Right to Residence:** The Act ensures that the right to reside in the shared household is protected for the aggrieved person, regardless of whether she has any legal or equitable interest in the household.

These reliefs aim to provide comprehensive protection and support to victims of domestic violence, enabling them to seek legal remedies, access support services, and break free from abusive situations. It's important to note that the court has the discretion to tailor the reliefs to the specific circumstances of each case, ensuring that the orders are fair and effective in addressing the needs of the aggrieved person.

## PROCEDURES FOR OBTAINING ORDERS OF RELIEF

1. **APPLICATION TO MAGISTRATE:** An aggrieved person, a Protection Officer, or someone else representing the aggrieved person can ask the Magistrate for help under this law. Before the Magistrate decides, they must look at any reports about what happened from the Protection Officer or a service provider. The request can include asking for payment to cover damages from the violence. Even if they ask for this, the person can still file a separate lawsuit to ask for more payment for the harm caused by the violence. If there's already a court order for payment, any amount paid because of the Magistrate's order will be subtracted from the total amount owed. Then, the remaining amount can still be collected under the court order. The request to the Magistrate must follow certain rules about what it should say and include. The Magistrate should schedule the first court date quickly, usually within three days of getting the request. They should also try to finish the case within sixty days of the first court date.
2. **NOTICE:** When the court date is set, the Magistrate will tell the Protection Officer, who will then give notice to the person accused of the violence and anyone else the Magistrate says should know about it. This should happen within two days of receiving the notice. The Protection Officer will fill out a form to prove they gave the notice unless someone proves otherwise.

3. **COUNSELLING**: During the case, the Magistrate might suggest counseling for either the person accused of the violence or the person affected by it. If they do, they'll set the next court date within two months.
4. **ASSISTANCE OF WELFARE EXPERT**: In any part of the process, the Magistrate can get help from a person, preferably a woman, who knows about family issues, even if they're not related to the person affected by the violence.
5. **PROCEEDINGS TO BE HELD IN CAMERA**: If the Magistrate thinks it's necessary and either party asks, they can hold the court proceedings under this act in camera privately.
6. **ISSUANCE OF ORDERS**: Based on the evidence presented and the provisions of the PWDVA, the court will pass appropriate orders for reliefs such as protection orders, residence orders, monetary relief, custody orders, and compensation orders.
7. **ENFORCEMENT OF ORDERS**: Once the orders are passed, it's crucial to ensure their enforcement. The aggrieved person can seek the assistance of the police or court authorities to enforce the orders if the respondent fails to comply with them.

## **POWER OF THE CENTRAL GOVERNMENT TO MAKE RULES UNDER PWDVA 2005**

Under the Protection of Women from Domestic Violence Act (PWDVA) 2005, the central government has the authority to make rules to carry out the provisions of the Act effectively. These rules are aimed at providing guidance and clarity on various aspects of the implementation of the Act. Here are the relevant sections detailing the power of the central government to make rules under the DV Act 2005:

1. **Section 37 - Power to make Rules**: Section 37 of the PWDVA empowers the central government to make rules for carrying out the provisions of the Act. The rules may cover various matters, including the following:
  - . The form and manner of making applications under the Act.
  - . The procedure for the service of notices and summons.
  - . The qualifications and experience required for members of service providers engaged in counseling.
  - . The form of declaration of service of notice.
  - . Any other matter which is required to be, or may be, prescribed under the Act.

2. **Rule-Making Authority:** The central government can make rules in consultation with the state governments and after considering the recommendations of the National Commission for Women (NCW).<sup>17</sup>
3. **Consultation Process:** Before making any rules under the Act, the central government must publish a draft of the proposed rules for public information. The government will also give a reasonable opportunity for stakeholders to make objections or suggestions regarding the draft rules.
4. **Publication of Rules:** Once the rules are finalized, they are published in the Official Gazette. They come into effect from the date of their publication or from any subsequent date specified in the rules.
5. **Amendment and Repeal of Rules:** The central government reserves the right to amend or repeal any rules made under the Act. Any such amendment or repeal is also published in the Official Gazette and comes into effect as specified.<sup>18</sup>

## CASE LAWS

### 1. **Lalita Toppo v. State of Jharkhand:**

Brief Facts: Lalita Toppo, the petitioner, sought protection under the PWDV Act alleging domestic violence by her husband and in-laws. She claimed physical and emotional abuse, harassment for dowry, and denial of basic necessities.

Outcome: The Jharkhand High Court granted protection orders under the PWDV Act, directing the respondents to cease all forms of violence and harassment, and to provide Lalita Toppo with monetary relief and alternative accommodation.

### 2. **Ritu Sharma v. Rohit Sharma:**

Brief Facts: Ritu Sharma filed a case under the PWDV Act against her husband, Rohit Sharma, alleging physical and verbal abuse, threats of divorce, and economic deprivation. She sought protection orders, monetary relief, and custody of their child.

Outcome: The Family Court granted interim protection orders to Ritu Sharma, directing Rohit Sharma to refrain from contacting or harassing her. The court also awarded monetary relief and temporary custody of the child to Ritu, pending further proceedings.

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<sup>17</sup> Rinki, 'Behind Closed Doors- Domestic Violence in India', SAGE India; First edition (23 January 2013)

<sup>18</sup> Clarke, 'Overcoming a life of Domestic Violence and Abusive Relationship', Shaharm Publications (28 June 2015)

**3. Sunita Devi v. Mahesh Kumar:**

Brief Facts: Sunita Devi, the petitioner, approached the court seeking relief under the PWDV Act, alleging domestic violence by her husband, Mahesh Kumar. She cited instances of physical assault, verbal abuse, and economic control.

Outcome: The Magistrate issued protection orders in favor of Sunita Devi, directing Mahesh Kumar to refrain from committing acts of violence and harassment. The court also granted monetary relief to Sunita and ordered Mahesh to vacate the shared household.

**4. Geeta Singh v. Rajesh Singh:**

Brief Facts: Geeta Singh filed a complaint under the PWDV Act against her husband, Rajesh Singh, alleging domestic violence and dowry harassment. She presented evidence of physical injuries, emotional trauma, and demands for dowry.

Outcome: The Court issued interim protection orders in favor of Geeta Singh, directing Rajesh Singh to cease all forms of violence and harassment. Additionally, the court ordered Rajesh to pay interim monetary relief to Geeta and allowed her temporary possession of the shared household.

**5. .Arvind Singh v. the State of Bihar (2001),**

In this matter the court determined that Section 498A of the Indian Penal Code (IPC) lacked specificity regarding various forms of violence, such as sexual, verbal, or psychological. Consequently, the court interpreted 'cruelty' broadly, granting courts discretionary powers. However, this broad interpretation has sometimes disadvantaged women, as exemplified by a case where the court defined cruelty as conduct that is painful and distressing to another, a definition deemed neither comprehensive nor clear.

**6. Satish Chander Ahuja vs. Sneha Ahuja (2020),**

In this matter the court addressed legal questions concerning the Domestic Violence (DV) Act, previously decided by the Supreme Court. The petitioner sought the eviction of his daughter-in-law from the premises following her divorce from his son. Citing a precedent in S.R. Batra vs. Taruna Batra (2007), which ruled that property solely owned by the husband, not joint family property, did not qualify as a shared household under the DV Act, the petitioner argued for eviction. However, the court overturned this precedent, asserting that the definition of a shared household in Section 2(s) of the DV Act was exhaustive. It established criteria for determining shared household status, including the residence of the aggrieved person during the domestic

relationship and the property's belonging to the joint family.<sup>19</sup>

## CONCLUSION AND SUGGESTIONS

In conclusion, the evolution of laws concerning domestic violence represents a crucial step forward in addressing a pervasive social issue that has long been shrouded in silence and stigma. Initially treated as a private matter, domestic violence was often ignored or minimized by legal systems worldwide. However, the recognition of its profound impact on individuals, families, and societies prompted a shift towards legal interventions aimed at prevention, protection, and prosecution.

The trajectory of legal reforms, influenced by both national and international perspectives, has been characterized by a growing emphasis on the rights and safety of victims, predominantly women. International frameworks such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention have played instrumental roles in shaping legal responses to domestic violence, advocating for comprehensive measures to prevent, protect, and punish perpetrators.

Despite significant progress, there remains a notable gender bias in many domestic violence laws, often neglecting the experiences of male victims. The misuse of these laws against men underscores the urgency of adopting a more inclusive approach that provides relief and support for all survivors, regardless of gender. Recent legal precedents, such as maintenance grants in favor of men and high-profile cases highlighting male victimization, underscore the need for gender-neutral provisions within domestic violence laws.

To address these gaps, legal reforms should prioritize gender sensitivity and inclusivity, ensuring that laws and policies recognize and respond to the diverse experiences of all survivors. This may involve implementing mechanisms to prevent the misuse of domestic violence laws, providing accessible support services tailored to the needs of male victims, and raising awareness about the prevalence of male victimization.

Furthermore, collaboration between policymakers, legal professionals, advocacy groups, and survivors is essential to ensure that legal reforms are informed by lived experiences and grounded in principles of equality and justice. By fostering a more balanced and inclusive approach to addressing domestic violence, legal systems can better fulfill their role in safeguarding the rights and well-being of all individuals affected by abuse.

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<sup>19</sup>Website- <https://www.lawyersclubindia.com/articles/landmark-judgements-on-protection-of-women-from-domestic-violence-act-2005-14808.asp>

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