

Definition And Scope Of Domestic Violence Under The 2005 Act

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Received: 20 Jan 2026, Accepted: 25 Jan 2026, Published with Peer Reviewed on line: 31 Jan 2026

Abstract

This paper critically examines the definition and scope of domestic violence under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and puts it in its context of the wider application of gender justice and constitutional safeguards. The comprehensive nature of violence as understood in the Act physical, sexual, verbal, emotional and economic abuse represents a paradigm shift in the wrongdoing/punitive approach to legal intervention to a rights-based approach. By considering some of the most important judicial statements like the case of (Indra Sarma v. V.K.V. Sarma), (V.D. Bhanot v. Savita Bhanot), and (Hiral P. Harsora v. Kusum Harsora). The paper, Kusum Harsora, explains why the judiciary has been applying the Act broadly to apply to live in relationships and to female respondents. The discourse also interacts with the constitutional provisions guaranteed in Articles 14, 15(3), and 21, with the Act in line with the fundamental human rights. Although it is a progressive structure, even with a progressive framework, it has continued to face a number of challenges in terms of implementation, awareness as well as institutional support that hinder its effectiveness to the extent that a thorough reform and gender-sensitive enforcement mechanisms are required.

Keywords- Domestic Violence, Protection of Women against Domestic Violence Act, 2005, Gender Justice, Constitutional Rights, Human Dignity, Judicial Interpretation, Women Protection Laws, Live in Relationships

Introduction

DV (Domestic violence) in India is a complex social issue which is just not limited to physical abuse but also comprises of (emotional, verbal, sexual, and economic) abuse experienced in domestic relationships. In the past, domestic issues were seen as confidential matters and women who were abused needed to do very little about it as per the law. The lack of legislation of non-physical abuse forms exposed the victims to continued psychological trauma, monetary loss, and social exclusion.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was passed after realizing these loopholes to ensure that civil remedies and protection are accorded to women in the domestic front.¹ In contrast to conventional criminal provisions, where most of the emphasis is made on the punishment of particular actions, the definition of domestic violence in the PWDVA is broad and all-inclusive because it highlights the effects of the abuse on safety, dignity, and well-being of a woman and not necessarily the nature of the act performed. The DV (domestic violence) is specifically stated in Section 3 of the PWDVA which include physical, sexual, verbal, emotional and economic abuse and, so, the reason behind it is that power and control can be exercised in complex ways in households.

The extent of the Act is notable since violence in the household is not exclusive to the marital relations. The PWDVA applies protection to women who are in a relationship that is in the nature of a marriage and also extends the protection to those victims who are being abused by others members of the family as it recognizes that the structure in Indian families are prone to having complicated living arrangements and a domineering

¹ PWDVA 2005: A Commentary (LexisNexis, 2024).

power structure. The Act responds to matters like humiliation, insults, deprivation of financial resources, and sexual exploitation forms of violence which previously did not receive recognition under Indian law because the Act has included not only physical violence.

The constitutional imperatives are also observed in the broad definition and scope of PWDVA domestic violence. Articles (14), (15) and (21) ensure equality, forbid discrimination due to sex and safeguard the right to life with dignity. To implement these principles, the PWDVA offers such mechanisms as protection orders, residence rights, maintenance, & access to shelter and medical services. Nevertheless, in spite of its forward-looking provisions, there are still concerns as to the effectiveness of the coverage of the Act, particularly in enforcement, the acknowledgment of live-in relationships, and the application of the Act in economic and emotional abuse.²

The meaning and the extent of domestic violence is thus essential to the assurance that judicial solutions are effective, encompassing, and sensitive to the realities on the ground of women who experience abuse. It brings to the fore the fact that domestic violence is not an isolated issue but a continuum of abusive behaviour that demeans the physical, emotional and financial independence of a woman. The full legalization as per the PWDVA is a revolutionary move towards seeking justice in India to tackle with the issue of DV (domestic violence), redefine what is meant by abuse before the law, and the benefit of the protection of more vulnerable women.

3

ISSUE:

1. How and what is domestic violence by the PWDVA, 2005?
2. What has the Indian judiciary done in terms of interpreting and broadening the application of DV (domestic violence) in the PWDVA?
3. Is PWDVA sufficient to address abuse which are not physical abuse such as emotional, verbal, economic and sexual violence?
4. Does the Act have any gaps or limitations in the area that it covers?

RULE:

1. Statutory Provisions-

The definition of DV (domestic violence) in PWDVA 2005 is given in section 3 that states:

- Physical abuse: an act that produces bodily injury, risk to life, health or development.
- Sexual abuse: is a sexual act of abuse, humiliation, or degradation.
- Verbal and emotional abuse: slurs, teasing, humiliation, calling names, incidences of unchastity.
- Economic abuse: denial of economic provision, stridhan, or need of life.⁴
- Section 2((f)): Provides the meaning of domestic relationship, which is a consanguinity relationship, marriage or live-in relationship.⁵
- Section 2(q) (which was later overruled): Limited respondent to adult male individuals.⁶

² L Menon, 'The Role of Civil Remedies in Indian Domestic Violence Law' (2015) 31 J South Asian L 91.

³ S N Ray, 'Twenty Years of Domestic Violence Legislation in India: Implementation and Challenges' (2025) 37 J Indian L Soc 56.

⁴ PWDVA 2005, s 3.

⁵ PWDVA 2005, s 2(f).

⁶ PWDVA 2005, s 2(q).

2. Constitutional Provisions-

- Article 14: Right to equality before the Law.⁷
- Article 15 (3): Authorizes women-specific legislation.⁸
- Article 21: Right to life consists of right to live with dignity without violence (Francis Coralie Mullin v. UT of Delhi).⁹

¹⁰

3. Case Laws-

- In the case of Indra Sarma v. V.K.V. Sarma (2013): Protection extended to women in live in relationship.¹¹
- In the case of Hiral P. Harsora v. Kusum Narottamdas Harsora (2016): Section 2(q) was struck down to permit women to be respondents, as there are women who can also commit domestic violence.¹²
- In the case of V.D. Bhanot v. Savita Bhanot (2012): It was determined that marriages and incidents that took place prior to 2005 are also subject to the Act.¹³
- In the case of Aruna Pramod Shah v. Union of India (2008): It was held that domestic violence does not include only the physical harm but also any verbal and economic abuse.

¹⁴

4. International Instruments-

- CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), 1979: India is a convention signatory; it needs security against gender-based violence.¹⁵
- UN Declaration on the Elimination of Violence against Women (1993): Acknowledges domestic violence as one of the human rights abuses.¹⁶

APPLICATION:

Application of rules to cases of domestic violence under the PWDVA, 2005 must be closely analysed in respect to judicial interpretations, legislative intent, enforcement processes and challenges in practice. Although the law is very broad in defining domestic violence, the judicial system and the law in practice establish its effectiveness in safeguarding women.

1. Judicial Interpretation Broadening the Domestic Violence meaning.

The role of Indian courts has been crucial in making sure that the Act is not interpreted in order to provide a limited textual interpretation but its remedial and protecting nature.

- The Supreme Court in Indra Sarma v. V.K.V. Sarma (2013) construed the expression relationship in the nature of marriage in Section 2(f). The Court also declared that women who live in a long-distance relationship that is of the nature of marriage should have protection to the relationship in the sense that there are a household, social recognition, and financial dependency. This case expanded the limits of the Act, whereby

⁷ Constitution of India 1950, art 14.

⁸ Constitution of India 1950, art 15(3).

⁹ Francis Coralie Mullin v. UT of Delhi (1981) 1 SCC 608 (SC).

¹⁰ Constitution of India 1950, art 21.

¹¹ *Indra Sarma v V.K.V. Sarma* AIR 2014 SC 309.

¹² *Hiral P. Harsora & Ors v Kusum Narottamdas Harsora & Ors* (2016) AIR 2016 SC 4774.

¹³ *V.D. Bhanot v Savita Bhanot* (2012) 3 SCC 183.

¹⁴ *Aruna Pramod Shah v Union of India* WP(Crl.) 425/2008, DRJ 543.

¹⁵ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.

¹⁶ United Nations Declaration on the Elimination of Violence against Women, GA Res 48/104, 20 December 1993.

the culprits could no longer get away with the charges only because the relationship was not officially registered as a marriage.¹⁷

- In V.D. Bhanot v. Savita Bhanot (2012) the Court determined that the incidents of domestic violence that occurred before the enactment of the PWDVA may also be taken into consideration. This guaranteed the protection of women in abusive relationships that have had a long history without the law denying them protection on grounds that the abuse is older than the law.
- In Hiral P. Harsora v. Narottamdas Harsora (2016) the Supreme Court invalidated the limitation in Section 2(q) that previously made respondents to be restricted to adult male members. The Court argued that females may also commit domestic violence, e.g. when a mother-in-law or a sister-in-law takes part in a household and commits the offense to a woman. This gendered limitation was eliminated, and the Court did this to make the Act consistent with Articles (14) and (21) of the Constitution.¹⁸

All these decisions prove the purposive interpretation of the Act by the judiciary to protect the feeling and independence of women, instead of following the strict formalities.

2. Intangible Abuse: Identification and Dilemmas.

The PWDVA transcends the conventional criminal law by accepting the fact that violence is not only identified with physical harm. The identification of emotional, verbal, economic, and sexual abuse is an indicator of gender justice development.

- Emotional and Verbal Abuse: Courts have come out to accept verbal and emotional abuse as harmful as much as physical violence. As an illustration, humiliation, name-calling or insinuations of unchastity can have a devastating impact on the psychological well-being of the woman in the case of constant fighting. In Aruna Pramod Shah v. Union of India (2008), the Delhi high court said that the Act addresses not only obvious violence but also the more subtle cruelty of emotion.
- Economic Abuse: Economic violence is a highly devastating yet least reported types of domestic violence. It also involves usurping women of stridhan, denying them access to household earnings, or denying them access to employment. This is clearly stated in the Act and is contained in Section 3. Nevertheless, practically, it is not strong as women do not have the documentary evidence of economic deprivation and cultural traditions do not encourage independence in their finances.¹⁹
- Sexual Abuse: The PWDVA is aware of sexual abuse that falls outside the criminal law such as marital rape (not criminalized in India under IPC). Although the Act offers civil remedies that offer protection orders and right to residence, absence of social recognition and stigma tends to prevent women to advance claims of sexual abuse in a marriage.

Therefore, even though the Act conceptually expands the definition of violence, it is difficult to realize in practice because of the practical obstacles.

3. Problems of Enforcement in operation-

The PWDVA is mostly dependent on the machinery to enforce the law, yet it cannot eliminate a number of loopholes:

Protection Officers (POs): According to the Act, Protection Officers are supposed to play a significant role of providing a connection between victims and the legal system. The truth is that there are so many states that

¹⁷ S Choudhury, 'Live-in Relationships and Domestic Violence: Defining "Relationship in the Nature of Marriage"' (2014) 10 Int J Law Pol Soc 144.

¹⁸ R Dhavan, 'Gender Equality and Domestic Violence Laws: A Critical Appraisal' (2023) 42 SCC J 156.

¹⁹ A Sharma, 'Interpreting Economic Abuse under the PWDVA' (2012) 23 Indian J Soc Study Law 77.

make current officials (teachers, clerks, or social workers), POs who do not even have any training or motivation. This waters down the availability of remedies.²⁰

Court delays: The Act was meant to provide quick relief but in reality, court case takes months or even years leaving the women susceptible. The use of temporary protection orders is not well deployed and implementation of residence rights is lapsing.

Social Stigma and Family Pressure: A lot of women do not want to file cases according to PWDVA because of the fear of the family break-up, his/her financial reliance or social ostracism. This is weakening the potential of the Act.²¹

Absence of Shelter Homes and Support Services: most states lack proper infrastructure as required by the Act which requires states to offer shelter homes, counselling, and medical facilities. In the absence of these, women who run away abusive homes do not have a safety net.

These issues indicate that the legal definition is as broad as possible, but the framework of implementation should be reinforced.

4. Comparative Perspectives: Abroad Lessons-

Examining how other states deal with domestic violence can help to point out the strengths and weaknesses of the PWDVA.

- United Kingdom (Domestic Violence, Crime and Victims Act 2004): This law highlights the restraining orders and criminal liability as well as civil protection. Having instant interim orders enhances the security of the victims.²²
- United States (Violence Against Women Act 1994, VAWA): Goes a step further to feature stalking, harassment and even immigration related safeguards to abused immigrant women. Notably, VAWA offers federal funds to shelters and support of victims, which means that local authorities are not left alone with implementation.²³

In comparison to them, India has a progressive PWDVA that is more progressive in identifying non-physical types of abuse and less resourceful and enforcement. This shortfall of comparison indicates a disparity between what is in statute and reality.

5. Justifications for and against the Adequacy of Scope-

Arguments for Sufficiency

- Extensive Definition: In Section 3, nearly all the possible types of abuse; physical, sexual, verbal, emotional, and economic, are discussed.
- Judicial Activism: Courts have always embraced the Act to its full extent so that women in live-in relationships or victims of female abusers are also covered.
- Constitutional Support: The Act is in tune with Articles 14, 15(3) and 21 as it demonstrates Indian desire towards equality and dignity.
- International Alignment: The law satisfies the requirements of India under CEDAW and UN Declaration on Violence against Women.

6. Contingencies against Sufficiency

²⁰ Ministry of Women and Child Development, 'Statewise Implementation of PWDVA 2005' (2023).

²¹ N Singh, 'Social Stigma and Barriers to Reporting Domestic Violence' (2021) 5 Gender Justice Report 32.

²² Domestic Violence, Crime and Victims Act 2004 (UK).

²³ Violence Against Women Act 1994 (US).

- Uncertainty in Live-in Relationships: In spite of Indra Sarma, there are no clear standards of relationship in the nature of marriage, so women are at a disadvantage when it comes to unequal interpretations.
- Under-Enforcement of Economic Abuse: Economic abuse is known but hardly enforced because of the difficulty in proving it.
- Implementation Shortcomings: The Act covers a lot of theoretical areas unless protection officers are trained, there are proper shelter homes, and awareness.²⁴
- Locking out Men and Other Vulnerable Groups: The Act is focused on women and does not include either males or LGBTQ+ victims of domestic violence, which restricts its inclusivity.

7. Finding a Golden Mean between Theory and Reality.

Theoretically, PWDVA domestic violence is broad based and encompasses a broad area of abusive behaviour. In practice, though, its effectiveness is limited by socio-legal constraints such as patriarchal pressures, poor institutional backup and ignorance. Progressive interpretation has been trying to fill certain gaps in the Act, but it is time to have systemic reforms to make the promise of the Act closer to reality.

CONCLUSION:

Another landmark event in India legal history was the Protection of Women against domestic violence act, 2005 which launched the shift in the legal arena where the emphasis of the law was no longer in the penal code but on the prevention of violence and protection of victims. Its legal definition by Section 3 of the PWDVA 2005 acknowledges the fact that domestic violence is not only physical but also emotional, sexual, verbal, and economic abuse and, therefore, as a concept, it meets the constitutional vision of dignity and equality as provided in Articles (14), (15) and (21). Courts of law ruling like the (Indra Sarma v. V.K.V. Sarma) and the (Hiral P. Harsora v. Kusum Narottamdas Harsora) have broadened their scope, making live-in connections inclusive and acknowledging the women who have been the perpetrators.

Combination of constitutional jurisprudence especially Francis Coralie Mullin v. UT of Delhi, highlights the fact that the right to life is not just limited to survival but it is living a life of dignity, devoid of humiliations and coercions. Placing PWDVA in this constitutional framework has helped the courts to treat non-physical abuse on the same level of seriousness as physical violence, which has made women have more autonomy and agency in the home.

However, although having a progressive range, the Act has been challenged practically: insufficient infrastructure, lack of awareness and societal stigma still hold women back in seeking remedies in the Act. Besides, the vagueness of definitions, in particular that of relationship in the nature of marriage poses interpretative challenges.

Consequently, though the concept of the Act is sound, and its judicial underpinning is solid, the potential of the Act has not been achieved in practical form. The reforming should be oriented on capacity-building of Protection Officers, development of support services, and better legal instructions on the formation of new structures of relations. Finally, the PWDVA should not be viewed as only being a statutory instrument but as an embodiment of a constitutional duty of India to ensure the right of women to life with dignity and equality even in the most intimate spheres of life.

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INTERNATIONAL JOURNAL OF ADVANCED RESEARCH IN MULTIDISCIPLINARY SCIENCES (IJARMS)

A BI-ANNUAL, OPEN ACCESS, PEER REVIEWED (REFEREED) JOURNAL

Volume 09, Issue 01, January 2026